NOTES AND COMMENTS

EROSION OF THE LEGAL PRINCIPLES ESTABLISHED IN UMA DEVI: ANALYSING THE SUPREME COURT'S DECISION IN *JAGGO* V. *UNION OF INDIA*

Abstract

This paper critically examines the Supreme Court's two-judge bench ruling in the *Jaggo* case concerning the regularization of part-time workers. The decision deviates from established constitutional principles by placing disproportionate emphasis on long service, even in cases of unsanctioned or part-time appointments. It undermines the Constitution Bench ruling in Secretary, *State of Karnataka* v. *Uma Devi*, which held that appointments not made in accordance with prescribed rules and competitive selection do not confer a right to regularization. The two-judge bench's artificial interpretation of "sanction" and disregard for minimum educational qualifications contravenes legal precedent and judicial propriety. This approach risks enabling backdoor entry into public employment and introduces legal uncertainty. Referring to *Official Liquidator* v. *Dayanand*, where the Supreme Court reaffirmed the binding nature of Constitution Bench decisions under article 141, the paper argues that the observations in *Pooran Chandra Pandey* must be treated as obiter. A larger bench must now be constituted to resolve these conflicting interpretations.

I Introduction

ON DECEMBER 20, 2024 a two- judge bench of the Supreme Court in *Jagoo* v. *Union of India*[1] (*Jagoo's* case) held that safaiwali and khallasi who had been engaged on part-time, *ad-hoc* and contractual by the Central Water Commission for more than 10 years are entitled for regularization. In reaching this decision, the court not only failed to apply settled principles of law laid down by the Constitution Bench in *Secretary, State of Karnataka* v. *Uma Devi*[2] but overlooked the decisions of two judge bench of the Supreme Court in *Union of India* v. *Ilmo Devi*[3] and in several other decided cases[4] on same issue. On the other hand, Vikram Nath J. (who wrote the judgment in *Jagoo*

1 2024 INSC 1034; SLP(C) NO.5580 of 2024. The judgment was delivered by Vikram Nath J. on Dec, 20,2024.

2 (2006) 4 SCC 1.

3 AIR 2021 SC 4855.

4 *Delhi* v. *Delhi University Contract Employees Union* (2021) INSC 174; *Renu* v. *District and Sessions Judge Tishazri* 2014 Latest Caselaw 91 SC; *Official Liquidator* v. *Dayanand,* 2008) 10 SCC 1.UP *State Electricity Board* v. *Pooran Chandra Pande*, (2007) 12 SCALE 304, *State of Rajasthan.* v. *Daya Lal* (2011) 2 SCC 429; *State of Maharashtra* v. R.*S*. *Bhonde* (2005) 6 SCC 751; *Director, Institute of Management Development* v. *Pushpa Srivastava,* AIR 1992 SC 2070 ; *M.P. State Coop. Bank Ltd.* v. *Nanuram Yadav* (2007) 8 SCC 264; Satya *Prakash* v. *State of Bihar* (2010) 4 SCC 179).

v. *Union of India)* relied upon the decision in *Vinod Kumar* v. *Union of India*[5] (which was also delivered by him) on January 30, 2024 about regularization and absorption of accounts clerks who were appointed temporarily. Further the court has re-opened several issues already settled by the Constitution and other benches of the Supreme Court and adopted an interpretation which, in effect, demolishes the foundation laid down by the Constitution bench in *Uma Devi*'s case. Indeed, the decision, it is felt, may open flood gates of litigation.

II Factual matrix

In *Jagoo,* the petitioners nos. 1, 2, and 3 were appointed by the Central Water Commission (CWC) as *Safaiwalis*, while petitioners nos. 4 and 5 were engaged as *Mali* and *Khallasi*, respectively. All were employed for over a decade on a part-time, *ad-hoc*, or contractual basis and received fixed monthly emoluments. Seeking regularization of their services, the appellants initially approached the Central Administrative Tribunal (CAT), Principal Bench, New Delhi, primarily on two grounds, namely: (i) Over the years, their roles and responsibilities had evolved beyond the nominal labels of "part-time" or "contractual" and that they were performing ongoing and core functions integral to the CWC's operations. (ii) As per the instructions issued by the government long-serving employees, engaged against work of a perennial nature, deserve fair consideration for regularization, provided their appointments were not illegal or clandestine. The CAT dismissed their application by stating that they were not appointed against regular vacancies and had not completed 240 days of work in a year and did not meet the criteria to attract the principles enabling regularization. Ten days after the dismissal of the application by the CAT the respondent authorities terminated their services without issuing show-cause notice. Aggrieved by the decision of tribunal and their subsequent termination, the appellants filed a writ petition before the High Court of Delhi. They sought to (i) set aside and quash the order of the CAT; (ii) reinstate to their previous posts; (iii) regularize their services from the date of their initial appointments with all the consequential benefits; (iv) issue the writ of *mandamus* or any other appropriate writ, direction, or order in their favour, they also urged the high court to recognize their long and continuous service without any break. The high court held that the petitioners (i) were part-time workers (ii) had neither been appointed against sanctioned posts nor they had performed required duration of full-time service to satisfy the criteria for regularization. The high court upheld the order of tribunal also held that the petitioners (i) did not possess the minimum educational qualifications ordinarily required for regular appointments and (ii) the employer had subsequently outsourced the relevant housekeeping and maintenance activities. In support of its conclusion the high court relied on the principle laid down

5 [2024] 1 S.C.R. 1230.

in *Secretary, State of Karnataka* v. *Uma Devi*[6] by holding that the petitioners could not claim a vested right to be absorbed or regularized without fulfilling the requisite conditions. Having held that there was no legal basis to grant the reliefs sought, the high court dismissed the writ petition. Against this order the petitioners filed an appeal before the Supreme Court.

III Area of conflict

A reading of the Supreme Court decision reveals the following areas of conflict:

(i) Whether part-time workers engaged as Malis and Khallasis and paid a fixed monthly remuneration for over ten years are entitled to seek regularization of their services?

(ii) Can the requirement of a sanctioned post for regularising an employee's service fulfilled if the nature of the employee's engagement aligns with the duties ordinarily performed under a sanctioned post?

(iii) Is it necessary that appellants' appointment must be made against regular posts in order to avail the benefit of regularization of their services?

(iv) Whether the Court may review the minimum educational qualifications mandated for regular recruitment?

(v) What is the distinction between illegal and irregular appointment and how either of them is relevant in regularizing or making permanent the services of an employee?

(vi) Whether every termination of service amount to dismissal?

Although the Supreme Court did not formulate the aforesaid issues but it has dealt with the aforesaid issues in the case. Quite apart from the aforesaid issues the court also dealt with multifaceted forms of exploitation of persons employed on contract basis, issues relating to gig economy, impact of ILO's Multinational Enterprises Declaration and lessons to be drawn from the decisions of the United State Court of Appeals for the Ninth Circuit on classification of workers.

IV Response of the Supreme Court

First issue: Entitlement to regularization of long-term part-time malis and khallasi

In the instant case the court held that appellants were performing essential duties indispensable to the day-to-day functioning of the offices of the Central Water Commission (CWC). As *safaiwalis* they were responsible for maintaining hygiene, cleanliness, and a conducive working environment within the office premises. Additionally, one of the appellants was required undertook task similar to *mali* which

6 (2006) 4 SCC 1.

includes gardening, upkeep of outdoor premises, and ensuring orderly surroundings. Having said so the court formulated the following principles:

(i) Despite being labelled as "part-time workers," the appellants performed essential tasks on a daily and continuous basis.

(ii) The appellant performed the so-called essential task over extensive periods, ranging from over a decade to nearly two decades. Therefore, the appellants' long and uninterrupted service, for periods extending well beyond ten years, cannot be brushed aside.

(iii) Merely by labelling appellants 'initial appointments as part-time or contractual employee their claim for regularization cannot be denied.

(iv)The essence of their employment must be considered in the light of their-

(i) sustained contribution,

(ii) the integral nature of their work, and

(iii) the fact that no evidence suggests their entry as through any illegal or surreptitious route.

The aforesaid observation requires a careful scrutiny.

The aforesaid observation runs contrary to the decision of the Constitution Bench of the Supreme Court in *Secretary, State of Karnataka* v. *Uma Devi*[7] wherein it was held that daily wages workers form a class by themselves and cannot claim discrimination as against regularly recruited employees on the basis of the relevant rules. Further, employment on a daily wages basis does not create a right to be treated equally with regular employees or be made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is also not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right.

In *M.P. State Coop. Bank Ltd.* v. *Nanuram Yadav,*[8] the Supreme Court ruled that (i) the appointments made without following the procedure prescribed under the rules/ government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution. (ii) regularization cannot be a mode of appointment. (iii) those who come by backdoor should go through that door. (iv) the court should not exercise its jurisdiction on misplaced sympathy.

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7 (2006) 4 SCC 1.

8 (2007) 8 SCC 264 para 20,

Again in State of *U.P.* v. *U.P. State Law Officers' Assn.*,[9] while dealing with the backdoor entries in public appointment the Supreme Court observed that those who come by the backdoor have to go by the same door. This is all the more so when the order of appointment itself stipulates that it is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely professional engagements till they last. The mere fact that they are made by public bodies does not confer upon them additional sanctity.

The issue whether the work done by appellant falls under core activity may also be looked at from another perspective. Here mention may be made of section 2(dd) of the Contract Labour (Regulation and Abolition) (Andhra Pradesh Amendment) Act, 2003 which defines "core activity "to mean:

Any activity for which the establishment is set up and includes any activity which is essential or necessary to the core activity, but does not, *inter alia*. Include:

(i) Sanitation works, including sweeping, cleaning, dusting, and collection and disposal of all kinds of waste.

(ii) Watch and ward services including security service.

(iii) Gardening and maintenance of Lawns, *etc.*

The aforesaid provision excludes the work done by *Safaiwali* of sweeping, dusting, and cleaning of floors, workstations, and common areas and by a *Khallasi* of maintenance including gardening, upkeep of outdoor premises, and ensuring orderly surroundings outside the purview of core activity. The Occupational Safety, Health and Working Conditions Code, 2020 also contain similar provisions.

Second issue: **Sanctioned post**

The Supreme Court in this case while dealing with the requirement of sanctioned post observed that the engagement of *safaiwali and khallasi* on part time was similar to the responsibilities typically associated with sanctioned posts. It is difficult to support the proposition that essential requirement of sanctioned post be substituted by the phrase "*akin to the responsibilities typically associated with sanctioned posts"*. This view runs counter to dictionary meaning provided in various dictionary and approach adopted of the decision of Supreme Court in *Uma Devi* case and other cases of apex court.

Dictionary meaning

According to Oxford Dictionary sanction is an official order that limits trade, contact, *etc.,* with a particular country, in order to make it do something;

According to Cambridge Dictionary it is an official order, such as the stopping of trade, that is taken against a country;

9 1994 SCR (1) 348 para 19.

According to Webster Dictionary sanction means to give effective or authoritative approval or consent to … such character;

According to Collins Dictionary sanction means administrative approval;

According to Law Dictionary sanction means explicit or official approval;

According to Justia Legal Dictionary sanction means the act of giving formal or authorized approval or agreement;

According to Legal Clarity Teams sanctions in law are essential tools for enforcing legal obligations and maintaining order within the judicial system.[10]

Approaches of the Supreme Court

The Constitution bench of the Supreme Court in *Uma Devi* case ruled that the engagement of the person must be against sanctioned post.

In *Union of India* v. *Ilmo Devi*[11] the Supreme Court having held that in the absence of any sanctioned posts in the post office in which the respondents were working, there was no question of appointing the respondents after following due procedure.

Again, in *Satya Prakash* v. *State of Bihar*[12] the Supreme Court held that the appellants who had worked for more than 10 years on daily rated basis in the Bihar Intermediate Education Council were not entitled to get the benefit of regularization of their services since they were never appointed in any sanctioned posts.

Thus, the artificial meaning given to the word "sanction" is not only opposed to the meaning assigned to the term in various dictionaries but is also not in conformity with the ruling of the Constitution Bench of the Supreme Court in *Uma Devi* case. The consequences of this interpretation are far reaching, introduce anomaly in application of this requirement and throw the fulfilment of this essential conditions laid down by the Constitution Bench and other benches of the Supreme Court out of gears.

Issue Third: Effect of appellants' appointment not made against regular posts

In the present case the court observed that the posts in question were not regular, as the nature of the work performed by the appellants was perennial and essential to the functioning of the offices. Moreover, the recurring nature of these duties necessitates their classification as regular posts, regardless of how the appellants were initially engaged. The court also noted that subsequent outsourcing of these same tasks to private agencies after the appellants' termination highlights the continuing need for such services and reinforces that the work was neither temporary nor

10 Published Jan 22, 2025.

11 AIR 2021 SC 4855.

12 2010 (4) SCC 179, 2010 LAB. I. C. 2181.

occasional. Having said so the court referred to the competence and performance and observed that their consistent performance over their long tenures further strengthen their claim for regularization. On the other hand, their services were extended repeatedly over the years, and their remuneration, though minimal, was incrementally increased which was an implicit acknowledgment of their satisfactory performance. In view of this the court held that respondents' belated plea of alleged unsatisfactory service appears to be an afterthought and lacks credibility.

The aforesaid findings run counter to several decisions of the apex court. In *Umadevi's* case (supra) the Constitution Bench clarified, as observed earlier, that merely on the strength of such continuance of a temporary employee or a casual wage worker beyond the term of his appointment, he would not be entitled to be absorbed in regular service.[13] Again, the three judge bench of the Supreme Court in *Renu* v. *District and Sessions Judge Tishazri*[14] rejected the contention that *ad-hoc* appointees working for long be considered for regularisation on the ground that such a course only encourages the State to flout its own rules and would confer undue benefits on some at the cost of many waiting to compete.

Issue four: Requirement of minimum educational qualifications for regular appointment unjust

In the case under review the Supreme Court rejected the argument relating to minimum educational qualifications prescribed in the regulation framed by the government on the ground that the nature of duties the appellants performed—cleaning, sweeping, dusting, and gardening—does not inherently mandate formal educational prerequisites. The court felt that it would be unjust to rely on educational criteria that were never central to their engagement or the performance of their duties for decades. This was all the more so when the respondents themselves have, by their conduct, shown that such criteria were not strictly enforced in other cases of regularization. The court, therefore held that making rigid insistence on formal educational requirements creates an unreasonable hurdle. In support of its conclusion the court pointed out that the appellants have also established that individuals with lesser tenure or comparable roles were regularized by the respondents. Such disparity according to the court violates the principles of equality enshrined in Articles 14 and 16 of the Constitution of India and cannot be sustained in law.[15]

The aforesaid decision makes a departure from the settled principles laid down by the Constitution Bench in *Uma Devi* case that where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal.

13 2006 (4) SCC 1, para 34.

14 2014 Latest Caselaw 91 SC.

15 *Supra* note 16 para 17.

Again, in Maharashtra *Public Service Commission* v. *Sandeep Shriram Warade*[16] the Supreme Court ruled that "essential qualifications for appointment to a post are for the employer to decide". The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review.[17]

In *M.P. State Coop. Bank Ltd.* v. *Nanuram Yadav*[18] also, the Supreme Court ruled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization. Thus, unless the essential qualifications prescribed by the government or employer are undermined the court cannot substitute its judgment or determine whether the conditions of eligibility are necessary. Indeed, this matter falls outside the scope of judicial review.

Issue five: Distinction between "irregular" and "illegal" appointments not tenable

In the present case the court pointed out in para 20 of its judgment that the decision in *Uma Devi* sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements.[19] 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

16 AIR 2019 SC 2154; 2019 (6) SCC 362.

17 *Id.*, para 10. emphasis added.

18 (2007) 8 SCC 264, para 20.

19 The relevant paras of this judgement 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).

Again, the court in para 26 observed:

> 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

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.[20]

Since Vikram Nath J, wrote the judgment in *Jagoo* v. *Union of India* it is not surprising to rely on his own judgement in *Vinod Kumar Etc.* v. *Union of India*[21] wherein it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee.

It is submitted that *Uma devi* judgment casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. *Uma devi,* directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on April 10, 2006).

Explaining the distinction drawn by the court between "irregular" and "illegal" in *Uma Devi* case the Supreme Court in *State of Karnataka* v. *M.L. Kesari*[22] observed:

> The appointment of such employee should not be illegal, where the appointments were 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 where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

In the case under review, however, as discussed earlier, the court held that the engagement of *safaiwalis* and *khallasis* on a part-time basis was analogous to the

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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.

20 *Supra* note 1 para 20.

21 [2024] 1 S.C.R. 1230.

22 AIR 2010 SC 2587.

responsibilities typically associated with sanctioned posts, and that such roles do not inherently require formal educational qualifications. Consequently, the court concluded that such appointments would not render the employment illegal, but merely irregular. This approach, however, departs from the established judicial precedents cited above, which consistently hold that both the fulfilment of minimum educational qualifications and appointment against a sanctioned post are mandatory conditions—failing which, the appointment is deemed illegal and void *ab initio*.

Issue six: Termination of the appellants' services if amounted to dismissal

In this case the court observed that the abrupt termination of the appellants' services, following dismissal of their original application before the tribunal, was arbitrary and devoid of any justification. Further the termination letters, issued without prior notice or explanation, violated fundamental principles of natural justice.[23]

It is difficult to support the aforesaid observations of the Supreme Court that termination of service amounted to dismissal.[24] Needless to add that the order of dismissal by way of punishment be issued if the employee has committed misconduct specified in service rules or standing orders. A perusal of facts- situation specified in the judgment reveals that there was no mention in this case that appellant committed a misconduct for which disciplinary action could have been taken by way of dismissal by the employer.[25]

Issue seven: Exploitation of contract appointment to evade long term obligations owed to employees

The Supreme Court in this case in para 25 pointed out that it is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. These practices manifest in several ways such as (i) misuse of "temporary" or "contractual" labels, (ii) arbitrary termination, (iii) lack of career progression, (iv) a deliberate effort to bypass the obligation to offer regular employment, and (v) denial of basic rights and benefits.[26]

In view of above the court pointed out that 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

23 *Supra* note 1 para 14.

24 "In this case, the appellants were given no opportunity to be heard, nor were they provided any reasons for their dismissal, which followed nearly two decades of dedicated service".

25 For detail see S.C. Srivastava, *Industrial Relations and Labour Law*, 8th edn. 2022 Vikas Publishing House, New Delhi.

26 *Supra* note 1 para 25.

standards but also exposes the organization to legal challenges and undermines employee morale."

The court added that 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.[27]

While we agree with the concern shown by the court in the case under review it was submitted that framing of any scheme is not the function of the court but it is the prerogative of the government. Even the creation and/or sanction of the posts is also the sole prerogative of the government and the high court, in exercise of the power under Article 226 of the Constitution, cannot issue *mandamus* and/or direct to create and sanction the posts. Moreover, the policy regarding the regularization of employees serving in a temporary capacity and/or as casual labourers is a matter of policy discretion. In judicial review, the court cannot issue a writ of *mandamus* or mandatory directions compelling such regularization.

Issues relating to *Gig* economy

The Supreme Court in support of its conclusion also referred to the problems relating to gig economy by observing: [28]

> 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.

It was submitted that the reference of the impact of gig economy appears to be misplaced. The current labour laws in India, like many other countries, could not keep pace with the advancement of digital technology. Indeed, it is not adequately

27 *Supra* note 1 para 27.

28 *Id.*, para 22.

equipped to address the challenges posed by platform-based gig workers. Further, there is no specific national policy on the employment of platform-based gig workers. Indeed, there is no reliable data on the number of persons engaged as gig and platform workers. There has been a significant global debate regarding the employment status of gig workers in platform-based work. While the Supreme Court of UK and the *Cour de Cassation* of France have classified them as "workers," the apex courts of California, the Netherlands, Spain, Denmark, and Canada have classified them as "employees." Other countries have classified them as contractors, freelancers, self-employed, casual workers, invisible workers, essential workers, or crowd workers. In India, even though the Supreme Court has not yet determined the status of gig and platform workers, a survey of decided cases reveals that while determining employer–employee relations, it has been held that though "control" is one of the important tests, though it is not the sole test. All other relevant factors and circumstances are also required to be considered, such as the terms and conditions of the contract and the actual nature of employment. The mere fact that the workers perform the work at home or use their vehicles, instruments, or materials would make no difference. Thus, the determination of the employer–employee relationship in the case of gig and platform workers would depend on the extent of control and supervision of the aggregator, terms and condition of the employment, and the actual nature of employment. In India although the definitions of "gig worker" and "platform worker" do not occur in any existing labour legislation but under the Code on Social Security, 2020 it is defined as an arrangement outside the scope of a traditional employer–employee relationship.[29]

Issue eight: Significance of ILO's multinational enterprises and later development

The court in this case relied upon the ILO's Multinational Enterprises Declaration in support of its conclusion by observing:[30]

> The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.[31]

29 See S.C. Srivastava, "Employment Status of Digital Platform Workers Approaches of Apex Courts", Vol. IIX no. 9 *Economic & Political Weekly*, Mar. 2, 47-48 (2024).

30 International Labour Organization- Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

31 *Supra* note 1, para 23.

No doubt, the ILO's Multinational Enterprises Declaration aligns with the broader principles of decent work, sustainable development, and corporate social responsibility. However, in the Indian context, it must be examined through the lens of unemployment, economic slowdown, and the need to promote fair job opportunities. Here mention may be made of ILO, Global Employment Policy Review 2023.[32]

Global Employment Policy Review 2023, highlights Macroeconomic policies for recovery and structural transformation which states that in view of COVID -19 the then regulatory systems were replaced by specific crisis-related regimes and new job retention schemes. These economies, efforts sought to protect jobs through wage subsidy schemes as an ad-hoc intervention rather than short-time work schemes.[33]

Quite apart from the aforesaid development the 20th International Conference of Labour Statisticians (ICLS) in the 15th ICLS in January 1993 resolved to include a broader international classification of workers such as permanent employees, fixed-term employees, short-term, casual employees, paid apprentices, trainees, interns, *etc*.[34]

Issue nine: Lessons to drawn from the decision of U.S. Court of Appeals and later decisions

The court in the instant case in para 24 placed reliance on the judgement of the United State Court of Appeal in *Vizcaino* v. *Microsoft Corporation*[35] by observing that it 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. In this case the United States Court of Appeals for the Ninth Circuit held that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The court pointed out that large corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee and benefits, thereby increasing their profits. This judgment, according to the court in the case under review "underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the

32 Global Employment Policy Review 2023: Macroeconomic policies for recovery and structural transformation, *available at* :https://www.ilo.org/publications/major-publications/global-employment-policy-review-2023-macroeconomic-policies-recovery-and (last visited on Feb. 20, 2025).

33 *Ibid.*

34 Concerning statistics of work, employment and labour underutilization. Contact details International Labour Organization Route des Morillons 4 CH-1211 Geneva 22 Switzerland, International Labour Organization 2023.

35 97 F.3d 1187 (9th Cir. 1996).

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

While agreeing that it is the nature of work, not the designation, that should determine whether a person is a workman or employee, several considerations come into play while addressing the issue of regularization. Since, the aforesaid judgment was delivered much water has flown in the role of judiciary in rectifying such misclassifications and ensuring that workers receive fair treatment.

In United States there was a split among the federal appeals courts as to what standard of proof the employer must meet.[36] In *New Prime Inc.* v. *Oliveira*,[37] the United States Supreme Court while dealing with the classification of employees hired as contractors ruled that the exceptions set forth in the Federal Arbitration Act do apply to contractors as they would to regular employees.Recently the United States Supreme Court in *E.M.D. Sales, Inc.* v. *Carrera*[38] held that employers do not need to meet a heightened standard of proof to establish an exemption from the minimum wage and overtime requirements under the Fair Labor Standards Act (FLSA).[39] In a unanimous opinion, the Supreme Court rejected the employee's argument that the higher "clear and convincing" evidence standard should apply.[40]

Issue ten: Verdict of the Supreme Court in the case under review

The court in the case under review after dealing with the contention of the parties set aside the orders passed by the high court and the CAT. It accordingly quashed the termination orders and directed that the appellants be taken back on duty and their services be regularised forthwith. However, the appellants shall, not be entitled to any pecuniary benefits/back wages for the period they have not worked but they would be entitled to continuity of services for the said period and the same would be counted for their post-retiral benefits**.**

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36 The Fair Labor Standards Act of 1938 requires employers to pay their employees a minimum wage and overtime compensation.

37 5 86 U.S. (2019), See, *available at:* https://en.wikipedia.org/wiki/New_Prime_Inc._v._Oliveira.(last visited on Feb.20, 2025).

38 E.M.D. Sales, *Inc.* v. *Carrera*, 604 U.S. (2025) See, *available at:* https://supreme.justia.com/cases/federal/us/604/23-217/ last visited on Feb.20, 2025).

39 Ryan W. Jaziri and Jack Thaler; *et. al*, U.S. Supreme Court Clarifies That Employers Are Not Required to Meet Heightened Standard of Proof to Establish an FLSA Exemption Applies, *HR Management and Compliance*, Mar 19, 2025

40 Brendan J. Lowd, Tom J. Pagliarini, Kathryn R. Droumbakis, Employer Win on FLSA Exemption Issue – Heightened Pleading Standard Rejected by high court, *available at:* https://www.mintz.com/insights-center/viewpoints/2226/2025-01-28-employer-win-flsa-exemption-issue-heightened-pleading (last visited on Feb. 20, 2024).

Issue eleven: Supreme Court decisions denying regularization to part-time workers on facts similar to *Jagoo's* case

Jagoo case not only deviated from the two-judge bench of the Supreme Court in *Union of India* v. *Ilmo Devi*[41] and *State of Rajasthan* v. *Daya Lal,*[42] having similar factual situations but did not even refer these cases. This contrast highlights the evolving and often inconsistent judicial stance on the issue of regularizing part-time workers in public employment. It is for this reason that it has been considered necessary to discuss both the cases in a separate section.

In *Union of India* v. *Ilmo Devi* [43] like *Jagoo's* case, the respondents were working as contingent paid part-time Sweepers (Safai Karamcharies working for less than five hours a day) in a Post Office at Sector-14, Chandigarh. The Supreme Court following the decisions in *State of Karnataka* v. *Umadevi,*[44] *M. Raja* v. *CEERI Educational Society*,[45] *S.C. Chandra* v. *State of Jharkhand,*[46] *Kurukshetra Central Coop. Bank Ltd.* v. *Mehar Chand,*[47] and *Official Liquidator* v. *Dayanand*[48] held that as per the law laid down by this court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees. The court also held that part-time temporary employees in a government run institution cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work.

Earlier in *State of Rajasthan* v. *Daya Lal*[49] the services of some part-time cooks and chowkidars, who were employed on temporary basis in the government hostels during the years 1995, 1996, 1997, and 1998, had been terminated within one or two years from the date of temporary appointment. On these facts the the two judge bench of the Supreme Court held that the (i) service for a period of one or two years or continuation for some more years by virtue of final orders under challenge, or interim orders, will not entitle them to any kind of relief either with reference to regularization or for payment of salary on par with regular employees of the department (ii) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts (iii) There cannot be a direction for absorption, regularization

41 AIR 2021 S C 4855.
42 2007 (15) SCC 680.
43 AIR 2021 S C 4855.
44 (2006) 4 SCC 1.
45 (2006) 12 SCC 636.
46 (2007) 8 SCC 279.
47 (2007) 15 SCC 680
48 (2008) 10 SCC 1.
49 AIR 2011 SC 1193.

or permanent continuance of part time temporary employees (iv) Part time temporary employees in government run institutions cannot claim parity with regular employees of the government.

The divergent rulings of the Supreme Court on the regularization of part-time workers underscore a lack of uniformity in judicial interpretation. While the *Jagoo's* case diluted the principle laid down in *Uma Devi* to offer regularization, earlier decisions have relied upon the decision of the Constitution bench in *Uma Devi's* case favoring constitutional and statutory compliance over equitable considerations. This inconsistency calls for clearer legislative or constitutional guidelines to ensure fair and predictable outcomes for similarly situated workers.

V Conclusion

A two-judges bench of the Supreme Court in the case under review, while dealing with the issue of regularization of part-time workers, placed undue emphasis on their long and uninterrupted service, for periods extending well beyond ten years even where the employee was engaged on part time basis. This approach raises concerns about enabling "back door entry" into regular employment, potentially bypassing established legal principles that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee". Such an interpretation not only undermines the settled principles of law, laid down by the Constitution bench in *Secretary, State of Karnataka* v. *Umadevi* which cautioned against regularizing employees appointed without following due process but has attempted to dilute the Constitution Bench judgment.

The consequences of interpretation given by the two-judge bench of the Supreme Court in the case under review is far reaching. The artificial meaning given to the word "sanction" in the case under review is not only opposed to the meaning assigned to the term in various dictionaries but makes a departure from the ruling of the Constitution bench of the Supreme Court in *Uma Devi* case. This interpretation, it is submitted would render use of the word "sanction" superfluous, introduce anomaly in application of this requirement and throw the fulfilment of this essential conditions laid down by the constitution bench and other benches of the Supreme Court out of gears. Similarly, the court's conclusion—that the government-prescribed minimum educational qualifications are irrelevant because the appellants' duties of cleaning, sweeping, dusting, and gardening purportedly do not necessitate such criteria—effectively rewrites those standards. It is not the role of the judiciary, but that of the employer, to determine job qualifications. Moreover, appointments made or continued in positions that are either unsanctioned or where the appointees do not meet the prescribed minimum qualifications cannot be considered legal. To treat such illegal appointments as merely irregular would disregard well-established legal principles.

In *Official Liquidator*[50] a three-judge bench of the Supreme Court deprecated the approach adopted by a two-judge bench in a similar case. The court emphasized that, by virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in *Uma Devi* is binding on all courts, including benches of the Supreme Court, unless overruled by a larger bench. The court expressed concern over the growing trend of conflicting judgments from high courts and even among two-judge benches of the Supreme Court, observing that such inconsistencies cause irreparable harm to the legal system. This judicial uncertainty undermines the core principles of predictability and certainty that have been the hallmarks of Indian jurisprudence for over six decades and leaves subordinate courts uncertain about the correct interpretation of the law.

In the light of what has been stated above, the three judge bench in the above case clarified that the comments and observations made by the two-Judges Bench in *UP State Electricity Board* v. *Pooran Chandra Pandey*[51] should be read as obiter and the same should neither be treated as binding by the high courts, tribunals and other judicial for as nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.[52] Given these concerns, it is imperative to constitute a larger bench to provide clarity and settle the law on this issue.

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50 (2008) 10 SCC 1.

51 2007 (11) SCC 92.

52 *Id.*, para 71.

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