



2025:DHC:4663-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 16 January 2025

Judgment Pronounced on: 30 May 2025

+ LPA 347/2024

ALKA SRIVASTAVAAppellant

Through: Mr. M.S. Ganesh, Sr. Adv. with
Mr. Rao Raj Bahadur Singh, Adv.

versus

INDIAN COUNCIL OF SOCIAL SCIENCE
RESEARCH & ORS.Respondent

Through: Mr. Amitesh Kumar, Ms. Priti
Kumari & Mr. Mrinal Kishor, Advs. for R-
1/ ICSSR.

Dr. S.S. Hooda, Ms. Rashmi Rawat and Mr.
Ayushman, Advs. for R-3/CAG.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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C. HARI SHANKAR, J.

1. The appellant was appointed as a Research Assistant in the Indian Council of Social Science Research¹ on an *ad hoc* basis for 6 months, on 13 July 1989. She continued, in the same capacity, till 22 February 1996, during which period her *ad hoc* appointment was periodically renewed every 6 months with a technical break of 1 day prior to each renewal.

¹ "ICSSR" hereinafter



2. During the aforesaid period, the appellant remained absent from duty from 11 March 1996 to 31 August 1996, without sanctioned leave. The ICSSR issued her a Memorandum on 6 March 1997, seeking her explanation for the aforesaid absence. The appellant replied on 12 March 1997. The ICSSR, after considering her reply, permitted her to rejoin on *ad hoc* basis, *vide* order dated 19 September 1997, subject to a final decision in the matter.

3. *Vide* Order dated 19 January 1997, a High-Powered Committee, chaired by Hon'ble Mr Justice V.S. Malimath², former Chief Justice of the High Courts of Karnataka and Kerala, was constituted by the ICSSR to address the issue of regularisation of *ad hoc* appointments and promotion of *ad hoc* employees. This included the appellant. The Malimath Committee submitted its report to the ICSSR in June 1998.

4. Pursuant to a decision taken by the ICSSR in its 83rd Meeting on 16 September 1998, the ICSSR regularised the service of the appellant with effect from 1 January 1996, *vide* the following Office Order dated 17 March 1999, in the scale of ₹ 1640-60-2600-75-2900 (revised scale ₹ 5500-175-9000):

“INDIAN COUNCIL OF SOCIAL SCIENCE RESEARCH
(P & A)

F. No. 19-21/98-A

Date: 17.03.1999

OFFICE ORDER

Consequent upon the decision taken by the Council at its 83rd meeting held on September 16, 1998, the services of Mrs Alka

² "the Malimath Committee" hereinafter



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Srivastava are regularised in temporary capacity as Research Assistant in the pre-revised a scale of ₹ 1640-60-2600-75-2900 (now revised to ₹ 5500-175-9000) with effect from 01.01.1996

Her pay shall be fixed at appropriate stage in the scale of pay as on date subject to the condition that no arrears shall be paid to the for the period between 11.03.1996 to 25.09.1997.

Sd/-
(A.K. Khanna)
Administrative Officer”

5. The above Office Order dated 17 March 1999 was, however, revoked by the ICSSR by its Order dated 31 May 2000, which read thus:

“F. No. 19-21/98-A

Dated: 31.5.2000

OFFICE ORDER

In revocation of the Councils order of even number dated 17.3.1999 services of Ms Alka Srivastava stand regularised with effect from 1.1.1996.

Mrs Alka Srivastava will be treated as junior to the regular employees of the ICSSR as on 1.1.1996 in his her cadre. The benefit of past services of the ad hoc employee will not count for any purpose pending the decision to be taken by a Committee formed for the purpose as per order of the Chairman, ICSSR.

(Dr Ranjit Sinha)
Director (P&M)”

6. The Office Order dated 17 March 1999 was partially modified by Order dated 29 October 2002 issued by the ICSSR, which read:

“F. No. A(47)88-A

Dated: 29 October 2002

OFFICE ORDER

Impartial modification of Councils Order No. 19-21/98-A dated 17.3.99 the pay of Smt. Alka Srivastava, Research Assistant is hereby fixed on notional basis with effect from 13.7.1989 i.e. the date of her in 3 into the service as per rules. This will be subject to the following conditions.



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1. She shall be required to refund the amount on account of notional fixation of pay to the Council in case the judgement of the High Court, where the other ad hoc employees have filed a Writ Petition for evocation of the Council order No. 19-21/98-A dt. 31.5.2000 is decided against the ad hoc employees. In this connection the undertaking given by her on 26 September 2002 is noted.
2. No arrears shall be paid to the for the period between 11.3.19 96 to 25.9.19 97.
3. The notional fixation of pay shall not confer, any rights to Mrs Alka Srivastava to claim any seniority and regularisation from the date of the initial appointment.
4. Her patiently fixed notion any which effect the date of the initial appointment but financial benefit, if any, shall be given to her with effect from 1.1.1996 only.

Sd/-
(Dr K.D. Gaur)
Administrative Officer”

7. On 24 April 2008, the ICSSR issued the following Office Order, revoking and withdrawing the earlier Office Order dated 31 May 2000 *supra*:

“F. No. 8-2/2008-09-A

24th April, 2008

OFFICE ORDER

Consequent upon the decision taken by the Policy, Planning and Administration Committee (PPAC) at its 65th meeting held on 29 January 2008 based on the recommendations of Grievance Redressal Committee (GRC) and its endorsement by the Council at its 108 Meeting held on 24 March 2008, the Office Order No. F. No. 19-21/98-A dated 31.5.2000 stands revoked and withdrawn with immediate effect. Consequently, the Office Order No. F. No. 19-21/98-A dated 17.03.1999 based upon the decision taken by the Council in its 83rd Meeting held on 16 September 1998 shall remain effective.



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This issue is with the approval of the Competent Authority.

(Dr. K.D. Gaur)
Administrative Officer”

8. Consequent on acceptance of the recommendations of the 5th Central Pay Commission, the Department of Personal and Training³, *vide* Office Memorandum dated 9 August 1999, introduced the Assured Career Progression⁴ Scheme, available to all categories of civilian employees of the Central Government. Under the ACP Scheme, an employee who did not on earn any promotion for 12 years was entitled to a financial upgradation in accordance with the Scheme, with a 2nd financial upgradation after 24 years.

9. *Vide* the following Office Order dated 8 July 2008, the appellant was granted her 1st financial upgradation under the ACP Scheme with effect from 1 September 2001 to the scale of ₹ 8000-275-13500, reckoning her initial appointment from 13 July 1989:

“F. No. 3-4/2008-A (Vol-1)

Date: 08.07.2008

OFFICE ORDER

Consequent upon introduction of Assured Career Progression (ACP) Scheme for the Central Civilian Employees as contained in the DOP&T office memorandum No. 35035/1/97/-Estt (D) dated 9th August, 1999, the competent authority of the Council has approved the 1st 2nd financial upgradation on completion of 12/24 years of regular service in respect of the following employees of the Council. Their present pay scales and upgradation scales are as under:

³ "DOPT" hereinafter

⁴ "ACP" hereinafter



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S.No	Name and Designation	Present Pay Scale ₹	Upgradation Pay Scale ₹	Date of Upgra- dation

8	Smt. Alka Srivastava (R.A.)	5500-175-9000	8000-275-13500	01.09.2001

The above financial upgradation shall be purely to the official concerned and shall have no relevance to his/her seniority position. As such, there shall be no additional financial upgradation for the official on this ground that the junior officials in the grade has got higher pay scale under the ACP Scheme.

The pay of the officials shown shall be fixed under the provision of FR 22(1) subject to minimum financial benefit of ₹ 100/- as per the DOP&T Office Memorandum No. 1/6/97-Pay I dated 5th July, 1999. The financial benefit allowed under the ACP Schemeshall be final and no pay fixation shall accrue to them at the time of regular promotion, i.e. posting against a functional post in the higher grade.

The above upgradation will be further subject to the terms and conditions stipulated in the DOP&T OM No 35035/1/97-Estt (D) dated 9.8.1999.

Sd/-
(Dr K.D. Gaur)
Administrative Officer”

10. By ICSSR Office Order dated 9 April 2009, the appellant was promoted as Assistant Director in the pay scale of ₹ 15600-39100 with Grade Pay of ₹ 5400 with immediate effect.

11. By DOPT OM dated 19 May 2009, following the recommendations of the 6th CPC, the Modified Assured Career Progression⁵ Scheme was introduced, whereunder civilian Central Government employees were entitled to three financial upgradations on completion of 10, 20 and 30 years of regular service without promotion.

⁵ "MACP" hereinafter



12. Consequent on the recommendations of a Departmental Promotion Committee⁶ which met on 12 April 2018, the appellant was promoted as Deputy Director (Research) on regular basis in the pay scale of ₹ 67000-208700 with effect from the date of assumption of charge of the post. She was to be on probation for 2 years. In view of the fact that the Appellant had already been granted upgradation under the MACP scheme in the grade pay of ₹ 6600 and had availed benefit of fixation of pay accordingly, the Office Order stated that her pay would not be refixed on promotion.

13. On 21 September 2019, the appellant addressed a representation to the ICSSR, seeking correction in para 3 of Office Order dated 29 October 2022 *supra*, by replacing the word “and”, in the said paragraph with the word “on”. In other words, the appellant desired the sentence, in the said paragraph, which read “The notional fixation of pay shall not confer any rights to Mrs Alka Srivastava to claim any seniority *and* regularisation from the date of her initial appointment”, to read “The notional fixation of pay shall not confer any rights to Mrs Alka Srivastava to claim any seniority *on* regularisation from the date of her initial appointment”.

14. The said representation was rejected by the ICSSR by a terse communication dated 18 March 2021, which merely stated that the appellant’s request had been examined in detail, and that it had not been found feasible to accede to it.

⁶ DPC hereinafter



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15. On the same day, i.e. 18 March 2021, the ICSSR issued Office Order 7/2021, retrospectively withdrawing the benefits of 1st ACP and 2nd MACP, granted to the appellant with effect from 1 September 2001 and 13 July 2009, and re-fixing the appellant's pay. The Office Order, inasmuch as it constitutes the substratum of the challenge by the appellant, deserves to be reproduced, *in extenso*, thus:

“INDIAN COUNCIL OF SOCIAL RESEARCH

(Administration Division)

F. No. A (47)/89-A Dated: 18.03.2021

OFFICE ORDER NO. 7/2021

With the approval of the Competent Authority, the pay of Smt. AlkaSrivastava, Deputy Director, after withdrawing the benefits of Ist ACP and 2nd MACP granted w.e.f. 01.09.2001 and 13.07.2009 respectively, is re-fixed as under:

Date of Regularization of Service			01.01.1996
SNo	Date	Pay Drawn	Pay re-fixed
1	2	3	4
1.	31.08.2001	6900/- (5500-175-9000)	6900 (5500-175-9000)
2.	01.09.2001	(Granted Ist ACP) 8000/- (8000-275-13500)	-do- (Withdrawal of Ist ACP)
3.	01/01/2002	-	7075/-
4.	01.09.2002	8275/-	-
5.	01.01.2003	-do-	7250/-
6.	01/07/2003 to 30/06/2005	On EOL for one-year w.e.f. 30/06/.2003 to 29/06/2004 Further extended by one more year w.e.f. 01/07/2004 to 30/06/2005	-
7.	01.07.2005	8275/-	7250/-
8.	02.09.2005	8550/-	-do-
9.	01.01.2006	After implementation of 6 th CPC PB 2 (9300- 34800) 15,910+5400= 21,310	7425/- 6 th CPC 13,820 + 4200=18,020
10.	01.07.2006	16,550 + 5400 =	14,360+4200 = 18,560/-



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		21,950	
11.	01.07.2007	17,210 + 5400 = 22,610	14,920+4200 = 19,120
12.	01.01.2008	-do-	Granted 1 st ACP in pay band 9300- 34800+5400 GP 15,500+5400=20,900
13.	01.07.2008	17,890+5400=23,290	16,130 + 5400 = 21,530
14.	09.04.2009	Promoted as AD in the pay band 9300- 34800+5400 GP 18,590+5400 = 23,990	-do- Promoted as AD in the pay band 9300- 34800+5400 GP
15.	01.07.2009	-do-	16,780+5400= 22,180
16.	13.07.2009	Granted 2 nd MACP (15600-39100) 19,310+6600= 25,910	-do- (Withdrawal of 2 nd MACP)
17.	01.07.2010	20,090 + 6600 = 26,690	17,450+5400 = 22,850
18.	01.07.2011	20,890+6600=27,490	18,140 + 5400 = 23,540
19.	01.07.2012	21,720 + 6600=28,320	18,850 + 5400 = 24,250
20.	01.07.2013	22,570 + 6600=29,170	19,580 + 5400 = 24,980
21.	01.07.2014	23,450 + 6600 = 30,050	20,330 + 5400 = 25,730
22.	01.07.2015	24,360+6600= 30,960	21,110 +5400=26,510
23.	01.01.2016	After implementation of 7 th CPC L-II (56100-1,77,500) 80,900	Granted 2 nd MACP 21,910 + 6600 = 28,510 Implementation of 7 th CPC 74,000
24.	01.07.2016	83,300/-	76,200/-
25.	01.07.2017	85,800/-	78,500/-
26.	13.04.2018	Same on promotion to the post of Deputy Director	-do-
27.	01.07.2018	88,400	80,900
28.	01.07.2019	91,100	83,300
29.	01.07.2020	93,800	85,800

Date of Next Increment (if otherwise admissible) on 1st July 2021.

This issues with the concurrence of Finance Branch and approval of the Competent Authority.

(Ashish Deolia)
Administrative Officer

To,
Smt. Alka Srivastava



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Deputy Director”

16. The appellant represented against the above Office Order dated 18 March 2021, on 9 April 2021. She submitted that, as her date of regularisation ought to have been 13 July 1989, she had rightly been granted her 1st ACP and 2nd MACP with effect from 1 September 2001 and 13 July 2009 respectively and that, therefore, there was no justification for withdrawing the said benefits.

17. The Appellant also petitioned this Court by means of WP (C) 13454/2021, which was disposed of, by this Court, *vide* order dated 2 December 2021, recording the statement of learned Counsel for the ICSSR that a Committee had been constituted to consider the representation dated 9 April 2021 of the appellant and that, pending the decision of the Committee, no coercive action, including action for recovery of any amounts paid to her, would be taken against the appellant.

18. Ultimately, the representation of the Appellant was rejected by the ICSSR by the following order dated 4 March 2022:

“No. F.A-(47)/89-A
To

Date: 04.03.2022

Smt. Alka Srivastava,
Deputy Director,
Indian Council of Social Science Research,
New Delhi-110067.

Subject: Request for rectification of Office Order regarding regularization.

Madam,



I am directed to refer to your request dated 9 April, 2021 addressed to the Member Secretary, ICSSR, New Delhi and copy endorsed to the undersigned requesting to review the matter by an Administrative Committee and to say that as per your request, the Competent Authority of the ICSSR, constituted a three members Committee to examine the matter. The Committee has examined the grievances raised by you in the aforesaid request along with earlier representations dated 21.09.2019 and 13.03.2020 in detail as per the office records available with reference to the rules on the subject and concluded/recommended as under:-

(a) The initial appointment of Smt. Alka Srivastava as R.A. on ad-hoc basis was made in blatant violation of mandatory provision of SR 9 of ICSSR Service Regulations 1970 from 13.07.1989 and also on the date of her regularization w.e.f. 1.1.1996 as she did not meet the eligibility criteria prescribed in the recruitment rules for the post of R.A.

(b) As per the report of the High Powered Committee (Justice V.S. Malimath Committee), Smt. Alka Srivastava did not possess all the prescribed qualifications/experience.

(c) As per the report of the High Powered Committee, she did not have any order of appointment in her favour between 1-9-1996 and 25-9-1997. The said committee also found that Smt Alka Srivastava did not perform duty during the said period from 01.09.1996 to 25.09.1997 not on account of any lapse on the part of the Council.

(d) As per the Seniority list of the officers in the cadre of Research Assistant as on 1-1-1997, the services of Smt. Alka Srivastava had been recommended to be regularized w.e.f. 1-1-1996 and also notional fixation of pay w.e.f. 1-1-1996.

(e) As per the rules [F.R.17-A-(iii)] of the CCS (Pension) Rules, 1972 'In the case of an individual employee, remaining absent unauthorisedly or deserting the post, shall be deemed to cause an interruption or break in the service of the employee. So far as applicability of CCS (Pension) Rules, 1972 to the employees of the ICSSR is concerned, as per item No. 13, a resolution was adopted by the Administration Committee at its 2nd meeting held on 30-08-1969 wherein it was agreed that rules and orders of the Central Government may apply to the staff in matter which



are not specifically covered by the Council's own rules, regulations and orders.

(f) The period which was not considered as qualifying service cannot be counted for the purpose of granting increments/ financial up gradation under MACPs which is contrary to the provisions (FR 26 (1), GIDs (2), (4), Als (1),(2) thereunder, and GID (3), FR 54.).

(g) The Departmental Screening Committee for Group 'A' posts which was constituted to consider and review grant of financial up-gradation under ACP/MACP had clearly mentioned that as per records it has been found that in her regularization order, she has been regularized w.e.f. 01.01.1996.

(h) When a person enters a temporary employment or gets engagement as a contractual worker or casual worker or ad-hoc employee and the engagement is not based on a proper selection as per the rules or procedure, he/she is aware of the consequences of the appointment being temporary casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed / regularized in the past. As such the theory advanced by Smt. Alka Srivastava cannot be accepted. The applicant does not have any legal right to enforce.

(i) As per the policy, the benefits under MACPs are to be granted in the Standard hierarchy of Grade pays/ pay level and not in the promotional hierarchy.

(j) The recommendations of the High Powered Committee including in respect of Smt. Alka Srivastava were considered opinion and were also accepted by the Council. This is not a typographical or clerical error which could be rectified. As such, the substitution of word 'and' in para 3 (three) of Office Order dated 29-10-2002 with word 'on' cannot be done and should not be done as it will virtually amount to reviewing the earlier decision made effective by the Council.

(k) Smt. Alka Srivastava was not engaged for the period w.e.f. 11.03.1996 to 25.09.1997 (563 days). This period was not regularized by granting any leave, but treated as technical break. As per the provisions of relevant rules, such absence amounts to the forfeiture of the entire past service. Further, she remained absent/ without pay i.e.



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01.02.1991 to 20.02.1991 (20 days), 15.08.1991 to 08.09.1991 (25 days), 30.06.1992 to 04.07.1992 (5 days) and 15.02.1993 to 30.06.1993 (136 days).

(1) The committee also noted that Smt. Alka Srivastava has submitted the representation dated 21.09.2019 against the Office Order dated 29.10.2002 which is extremely belated and afterthought. Smt. Alka Srivastava submitted the representations in question at this belated stage only to create a cause of action. The committee is of the view that such belated representations deserve to be rejected on the ground of delay apart from the fact that there is no merit in the claim.

Accordingly, the Committee has recommended as under:-

(1) The substitution of the word 'and' with 'on' cannot be done in the recommendations of the High Powered Committee as the report of the Committee already been accepted by the Competent Authority. Even otherwise, the recommendations of the High Powered Committee cannot be changed or modified by any other committee as even mere substitution of the word "and" with "on" has huge implications.

(2) The request of Smt. Alka Srivastava, Deputy Director for counting of her services as regular w.e.f. 13-7-1989 instead of 1-1-1996, is an after thought and does not have any merit.

(3) Grant of financial benefits under ACP/MACP to Smt. Alka Srivastava may be done after taking into consideration the provisions mentioned in above paras "f" & "j".

(4) As per the relevant provisions of Rules/Regulations, the regular services of Smt. Alka Srivastava should have been counted from 26-9-1997 when she resumed her duties after technical break for 563 days.

In view of the above recommendations made by the Administrative Committee, the Competent Authority of the ICSSR has not acceded to the request dated 09.04.2021 of Smt. Alka Srivastava, Deputy Director, ICSSR, New Delhi.

Yours faithfully



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(Ashish Deolia)
Administrative Officer”

19. Aggrieved by the aforesaid rejection of her representation, the Appellant petitioned this Court by means of WP (C) 9434/2022⁷. Though there were seven prayers in the writ petition, the Appellant restricted the relief sought by her to prayers (iv) and (v). As pressed, therefore, the prayer clause in the writ petition read thus:

“In the premises ... the Hon’ble Court may be pleased to:

(iv) hold and declare that (a) the impugned Office Order No. 7/2021 bearing F. No. A(47)/89-A dated 18-03-2021 (Annexure P-31), (b) the order bearing F. No. A(47)/89-A (Annexure P-32) and (c) the impugned decision bearing F. No. A(47)/89-A dated 04-03-2022 (Annexure P-34) are ultra virus and violated of the Petitioner’s fundamental rights under Articles 14, 16(1) and 300 A of the Constitution, and vitiated by legal malafides;

(v) issue an appropriate writ, order or direction in the nature of Certiorarified mandamus striking down the impugned orders and decisions being dated 18.03.2021 i.e., Annexures P-31, P-32 and dated 04.03.2022 i.e., P-34 respectively as mentioned in prayer (iv) above and directing (a) her service proper to be counted from 13-07-1989 as recommended by the Justice Malimath Committee and already accepted and approved by the Plenary Council of ICSSR, Respondent No. 1 and (b) Grant of MACP on completion of 30 years of service with effect from July 2019.”

20. WP (C) 9434/2022 stands dismissed by the learned Single Judge by judgement dated 22 February 2024.

⁷ *Alka Srivastava v. Indian Council of Social Science Research & Others*



21. The present appeal, preferred under Clause X of the Letters Patent as applicable to this Court, assails the said judgement.

The Impugned Judgement

22. The learned Single Judge has correctly noted the two issues arising for consideration as :

“a. Whether the petitioner is entitled to regularisation from her initial date of joining i.e., 13 July 1989,

b. Whether the recovery of the benefits by the Respondent no. 1 granted to the petitioner under ACP/MACP illegal”.

23. Re. Issue a.

23.1 On Issue a, the Single Judge, after quoting extensively from the judgements of the Supreme Court in *State of Karnataka v. Uma Devi*⁸, *Official Liquidator v. Dayanand*⁹ and *State of Rajasthan v. Daya Lal*¹⁰, proceeds to hold that an *ad hoc*/temporary/contractual employee has no vested right to seek regularisation, despite having worked for a long time with a public authority, the only exception being in the case of a temporary employee, appointed against the sanctioned post in accordance with the applicable Recruitment Rules. The learned Single Judge thereafter quotes from the recommendations of the Malimath Committee, and observes that the recommendations noted that, against the leave availed by her from 11 March 1996 till 2 September 1996, the Appellant was entitled only to 2 ½ days of

⁸ (2006) 4 SCC 1

⁹ (2008) 10 SCC 1

¹⁰ (2011) 2 SCC 429



earned leave. The Committee, therefore, recommended that the of absence from work of the Appellant be treated as a technical break, and not held against her, in equity. In para 112 of the impugned judgement, the learned Single Judge proceeds to observe that “the Committee taking into consideration 8 years of service, which the petitioner had rendered along with the equitable consideration pertaining to her technical break recommended that the petitioner’s service shall be regularised from 1 January 1996 with the condition that no arrears shall be paid to the for the period of absence that is 11 March 1996 till 25 September 1997”. Thus, holds the learned Single Judge, the ICSSR had acted as per the recommendations of the Malimath Committee treating services of the appellant as Research Assistant to be regularised with effect from 1 January 1996. In view of the fact that the Malimath Committee had extended an equitable dispensation to the appellant, despite her absence from duty from 1 September 1996 till 25 September 1997, the learned that Single Judge held that the contentions of the appellant could not sustain. The learner Single Judge further noted that Office Order dated 29 October 2002 modified the earlier Office Order dated 17 March 1999 and fixed the appellant’s pay on notional basis with effect from 13 July 1989, when she entered service. This was, however, subject to the condition that the appellant would not be entitled to claim seniority and regularisation from the date of her initial appointment and that actual financial benefits would be granted to her from 1 January 1996.

23.2 The learned Single Judge further holds that the ICSSR was clearly not competent to modify the recommendations of the



Malimath Committee and, therefore, rightly rejected the request of the appellant in that regard. The learned Single Judge further observes that the period during which the appellant was on leave without permission could not be reckoned for the purposes of granting financial upgradation under the MACP Scheme. Following this, the learned Single Judge concludes, in para 122 of the impugned judgement, thus:

“122. This Court is of the view that the aforesaid Committee report has correctly decided the grievances of the petitioner that the petitioner is not entitled to the regularization from the year 1989 since, the High-Power Committee recommended that the petitioner shall be regularized from w.e.f. 1st January 1996. Moreover, the petitioner does not have vested right to seek regularisation from the date of her date of ad-hoc appointment i.e., 13th July 1989.”

23.3 Adverting, next, to the Office Order dated 4 March 2022, whereby the ICSSR rejected the appellant’s representation, the learned Single Judge notes the contention of ICSSR that the appellant did not possess the eligibility criteria for appointment as Research Assistant either on 13 July 1989 or on 1 January 1996. It was for this reason that the Malimath Committee recommended regularisation of the appellant as Research Assistant w.e.f. 1 January 1996 and not w.e.f. 1989. Further, the learned Single Judge reiterates his earlier finding that no one can claim a vested right to regularisation merely because of continuous holding of a post on *ad hoc* basis. Even after 1 January 1996, the appellant remained absent from duty without authorisation for the period 11 March 1996 to 25 September 1997, owing to no fault of the ICSSR. It was for this reason that the Malimath Committee, adopting a lenient view, directed that the said period of absence be treated as a technical break of 563 days. Following these observations,



the learned Single Judge holds as under, in paras 129, 130, 133 and 134:

“129. In the instant petition, this Court is of the view that there is no vested right with the petitioner to claim regularization from the year 1989. Since the petitioner has been time and again employed on contractual basis by the Respondent no. 1. Moreover, it is pertinent to note that the various appointment letters issued by the Respondent no. 1 stipulated specifically that the petitioner has been employed on ad- hoc basis and her employment can be terminated by the respondent no. 1 without any basis. Hence, there was never a vested legal right in accrued in favour of the petitioner to seek regularization.

130. The respondent no. 1 has rightly acted in terms of the recommendations of the Malimath Committee which recommended that the appointment of the petitioner shall be regularized from 1st January 1996 taking into consideration the fact that the petitioner was ineligible to be appointed at the said job position as well as the fact that the petitioner was absent from work for 563 days without any sanctioned leave in this regard, which the Committee in equity accorded as a technical break and further stated that the such technical break shall ever negatively impact the petitioner.

133. Nowadays, there is a growing trend of contractual employees seeking regularization of their employment despite the fact that they have not been appointed by the competent authority and at sanctioned position. There has been a wrong expectation from the public authority perpetrating that these contractual employment will eventually get converted into regularized positions.

134. This Court opined that the discretion to regularize position lies with the executive and it cannot be claimed as a matter of right. Since the executive which has to ensure that if a sanction position is being filled then equal opportunity is accorded to all the candidates who might be eligible for the position. If the executive appoints any contractual employee to the sanctioned post without even giving an opportunity to other candidates then it would amount to violation of article 14 and article 16 of the Constitution of India.”



23.4 The learned Single Judge holds, in conclusion, therefore, that, as the appellant had erroneously been granted 1st ACP and 2nd MACP financial upgradations, her pay had been rightly re-fixed by the order dated 18 March 2021. No case for interference with the said order, under Article 226 of the Constitution of India, therefore, existed.

23.5 The learned Single Judge has also upheld the decision of the ICSSR, in its other impugned order dated 18 March 2021, to reject the appellant's request for substituting the word "and" in para 3 of the Office Order dated 29 October 2002 with the word "on". Such substitution, holds the learned Single Judge, would also be contrary to the terms of the Malimath Committee report.

23.6 The learned Single Judge has, therefore, upheld both the orders dated 18 March 2021 issued by the ICSSR. Having so held, the learned Single Judge proceeded to address the issue of recovery, from the appellant, of the allegedly overpaid amounts. In dealing with this aspect, the learned Single Judge relies on the judgment of the Supreme Court in *High Court of Punjab & Haryana v Jagdev Singh*¹¹, which carved out an exception to para 18 of the earlier judgment of the Supreme Court in *State of Punjab v Rafiq Masih*¹², where an undertaking had been obtained from the employee concerned at the time when her, or his, pay was upwardly fixed.

24. Re. Issue b

¹¹ (2016) 14 SCC 267

¹² (2015) 4 SCC 334



24.1 The learned Single Judge upholds the recoveries effected from the appellant on two grounds. The first is that the ICSSR had acted on the basis of the report of the Comptroller and Auditor General of India¹³ to the effect that there were irregularities in the matter of grant of financial benefits to ICSSR's employees. Secondly, the learned Single Judge relies on the following undertaking, dated 23 September 2008, provided by the appellant:

“I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the government either by adjustment against any future payments due to me or otherwise.”

24.2 The learned Single Judge holds that, having subscribed to the above undertaking, the appellant could not challenge the recoveries made from her by the ICSSR.

24.3 For the aforesaid reasons, the learned Single Judge proceeds to dismiss the writ petition filed by the appellant.

25. Aggrieved thereby, the appellant has preferred the present LPA.

Rival Contentions

26. We have heard Mr. M.S. Ganesh, learned Senior Counsel appearing for the appellant, Mr. Amitesh Kumar, learned Counsel

¹³ “CAGI”, hereinafter



appearing for the ICSSR, and Dr. S.S. Hooda, learned Counsel for the CAGI, at length.

27. Written submissions have also been filed by the appellant, ICSSR, and the CAGI.

28. Submissions of Mr. M.S. Ganesh

29. Mr. Ganesh submits that the ICSSR, as well as the learned Single Judge, misread and misunderstood the recommendations of the Malimath Committee. He has drawn our attention to the following paras from the said Committee report:

“1.3 On consideration of the recommendations of both these Committees, the Council at its meeting held on 31st October, 1996, resolved to set-up a High Powered Committee to deal with the issues relating to the regularisation of ad-hoc appointments and promotions made in the Council in the past.

1.5 The terms of reference of the Committee are contained in Para 2 of the order No.F.No.3-9/96-A, dated 19.1.1997 and for the sake of convenience are extracted below:

(i) To screen the ad-hoc appointments and promotions made in the Council with reference to the record of performance of the persons and qualifications prescribed for the posts and to recommend the fitness or otherwise for the retention of the incumbents on a regular basis in the posts.

1.12 The emerging picture from the point of view of the employees is even more chaotic and pathetic. Large number of employees of the Council who have been holding ad-hoc appointment for several years suffer from a sense of insecurity. By



now most of them have become age-barred for securing other appointments elsewhere. Many of them who should have in the normal course secured regular promotions have been denied that privilege. So far as the Council is concerned it is not in a position to make any regular appointments or promotions as there is no clear picture about the availability of vacancies that can be filled up in accordance with the rules and about the relative seniority of the employees of the Council. If the appointments made over several years contrary to the Recruitment Rules are to be reviewed, it would result in the termination of service of large number of experienced employees who have served the Council with devotion and loyalty for several years. This would result in depriving a large number of employees of their means of livelihood.

APPROACH ADOPTED AND METHODS FOLLOWED

1.14 The main approach of the Committee has been to harmonise the interests of the employees on the one hand with the interests of the Council on the other, bearing in mind the humane and equitable considerations that the facts and circumstances call for. The Committee has borne in mind the pronouncements of the Supreme Court, which have frowned upon the misuse of the power of ad-hoc appointment resulting in such appointments continuing for several years, as also making of appointments for a period of six months and continuing them after a technical break of one day. Even in respect of the irregular appointments the Government have, in their generosity, not denied the budgetary support for salary and allowances. This is consistent with the respect the Government shows for the autonomy of the Council.

1.14.2 Above all it would be most unjust and inequitable to punish the employees of the Council who have served it with loyalty and devotion for several years for no fault of theirs, they being not responsible for the Council not making appointments following the Recruitment Rules. Throwing away large number of employees on the ground that their appointments have not been made strictly in accordance with the rules would render jobless most of them, being over-aged for fresh recruitment. The Council which is an academic body is expected to deal with its employees in a fair and equitable manner and not to expose them to undue hardship by taking a technical and legalistic view of the matter, after having slept over the entire matter for more than a decade.

1.14.4 The Committee felt that in the matter of exercising the power of relaxation of the rules a balanced approach should be



adopted bearing in mind the interests of the employees on the one hand and the interests of the Council on the other. In deciding on the extent of relaxation that should be recommended, the Committee was guided by the consideration that while the employee is being granted benefits not legally admissible, but justifiable on equitable grounds, the Council should not be subjected to unreasonable financial burden. While recommending regularisation in relaxation of the rules, in regard to the posts which are filled by direct recruitment on ad-hoc basis, though the deemed dates of appointment or promotion have been indicated which count for the purpose of seniority and notional fixation of pay, arrears of emoluments are denied prior to 1.1.1996. However, arrears are not denied in cases of regularisation of promotions on ad-hoc basis, as they were already having the benefit of the scales of pay and increments. The Committee has chosen 1.1.1996 as the crucial date for this purpose bearing in mind that this is the date proximate to the decision of the Council to constitute, this Committee and also having regard to the fact that the Fifth Central Pay Commission's recommendations have been brought into force w.e.f. 1.1.1995.

2.18 RESEARCH ASSISTANTS (GRADE I) (RS.550-900)

2.18.4. There were twenty-six posts covering both the categories, out of which 12 were surrendered in implementation of economy measures. Though there are 14 posts left, presently there are only six incumbents are listed below:

1. Shri Bhawani Singh
2. Shri Radhey Shyam
3. Smt. Anjali Ball
4. Shri Mahesh P. Madhukar
5. Smt. Revathi Viswanath
6. Smt. Alka Shrivastava

2.18.5 These six persons were directly recruited by the prescribed authority but without following the procedure prescribed by SR 9. None of them possesses all the prescribed qualifications.

2.18.6 It is clear from the information furnished in Annexure 2.18.1 that all the six persons mentioned therein have rendered service between seven to eleven years. The Council has taken a decision on 31.10.1996 not to make any further recruitment to this



cadre. This would result in virtual abolition of the cadre on the demitting of office by the present incumbents by the process of promotions, death, retirement or resignation. Having regard to the background and the fact that they have rendered satisfactory service for a long period, it would be unjust and inequitable to terminate their service at this stage on the ground that their recruitment or continuance is strictly not in accordance with the Recruitment Rules. The power to relax any of the provisions is conferred on the Council by Regulation 77.

2.18.11 In the background and bearing in mind the interests of the Council, the Committee is of the opinion, that the power of regularisation vested in the Council under Regulation 77 should be exercised in their favour, their services duly regularised and they be deemed to have been appointed to the cadre as on the respective dates on which they were for the first time appointed on ad-hoc basis as Research Assistants Grade I, subject to the conditions specified below.

2.18.13 As the services are being regularised by exercising the power of relaxation it is just and proper to hold that their pay should be fixed on the basis that they are deemed to be in continuous service from their very first appointment on ad-hoc basis, but so far as financial benefit of notional fixation of pay is concerned, the Committee recommends that should be given w.e.f. 1.1.1996.

2.18.14 St. Alka Shrivastava was first appointed on ad-hoc basis for a period of six months as Research Assistant (Grade I) on 13.7.1989. She was continued on ad-hoc basis upto 1.3.1996 with a technical break of one day at the end of every six months. On 1.3.1996 she was appointed on ad-hoc basis for a further period of six months which expired on 30.9.1996. It is during this period that she made an application on 11.3.1996 for grant of leave for two months and went away without awaiting for a decision on her application for leave. She made a further request for grant of leave upto 31.8.1996. The Council had not passed orders on any of her applications for grant of leave. It is in this background that she made a request on 2.9.1996 seeking permission of the Council to report for duty. No order was made to permit her to join duty. On the contrary the Council issued a charge memo on 6.3.1997 calling upon her to show cause for remaining absent upto 31.8.1996 without sanction of leave. She was also asked to explain why in the



circumstances she should be considered for further employment for casual vacancies in the Council. On 12.3.1997 she gave her reply explaining the circumstances under which she remained absent and seeking indulgence of the Council. On the consideration of the cause shown by her, the Council constituted a Committee to examine her case. The Committee of officers noted that she had only two-and-a-half days Earned Leave and was, therefore, not entitled to two months leave, which was initially asked for and for further leave upto 31.8.1996. It also noticed that she absented herself without leave being sanctioned. Further, the Committee of officers recommended that her period of absence from 11.3.1996 till she joins her duty may be treated as technical break. Even before the P.A.C. took a decision on the recommendation of the Committee of officers, Smt. Alka Shrivastava was permitted to report for duty on 26.9.1997. The P.A.C., at its 41st meeting held on 31.10.1997, after considering the report of the committee treated the absence as technical break. This was followed by an order of appointment dated 22.10.1997 by which she was given an appointment as Research Assistant on ad-hoc basis initially on a pay of Rs.1640/- p.m. in the scale of Rs.1640-2900 for a period of six months w.e.f. 26.9.1997. It is clear from these facts that she did not have any order of appointment in her favour between 1.9.1996 and 25.9.1997. The expression used by the P.A.C. that the period of absence should be treated as technical has been used only to convey that her absence for such a long period should not in equity be held against her in the matter of giving a fresh order of ad-hoc appointment for a period of six months. It is obvious that she did not perform duty during the sad period not on account of any lapse on the part of the Council.

2.18.15 Having regard to the fact that Smt. Alka Shrivastava has rendered service for over eight years and taking into account the equitable considerations, the Committee recommends that her services be regularised in relaxation of the relevant rules and given notional fixation of pay w.e.f. 1.1.1996, as has been recommended in all other cases, subject to the condition that no arrears shall be paid for the period of her absence from 11.3.1996 to 25.9.1997.”

30. Mr. Ganesh has especially underscored the specific observation in para 2.18.13 of the Malimath Committee report that the employees with which it was concerned, including the appellant, were required to be “deemed to be in continuous service from their very first appointment on *ad hoc* basis”. He also points out that, in para 2.18.15



of the report, the Malimath Committee has observed that the appellant had rendered service for over eight years. Inasmuch as the report itself was of June 1998, Mr. Ganesh submits that it was obvious that the report reckoned the appellant's service as commencing from 1989, and not from 1996.

31. Mr. Ganesh has, thereafter, drawn our attention to the actual recommendation made by the Malimath Committee in the case of the appellant, as contained in clause 2.18 of the report, which read thus:

“The services of all the six persons need to be regularised on equitable considerations, by invoking the powers of relaxation vested in the Council and they be deemed to have been appointed to the cadre on the respective dates on which they were for the first time appointed on ad-hoc basis as Research Assistants Grade I.

Smt. Alka Shrivastava, whose disciplinary case was settled by the Council, shall also be given notional fixation from the date of initial appointment as Research Assistant Grade I, and financial effect from 1.1.1996, but with the further condition that no arrears shall be paid for the period between 11.3.1996 and 25.9.1997.”

32. Following this, the service of the remaining five Research Assistants was regularised from the dates of their initial *ad hoc* appointment, by Office Order dated 14 December 1998. There was no justification, therefore, to regularise the services of the appellant, as Research Assistant, only with effect from 1 January 1996, as was done by the Office Order dated 17 March 1999 *supra*.

33. Mr. Ganesh points out that, in the subsequent Office Order dated 29 October 2002 *supra*, the ICSSR had evinced its intent to implement the recommendations of the Malimath Committee by



fixing the pay of the appellant “on notional basis w.e.f. 13.7.1989, i.e., the date of her entry into service as per rules”. However, the said Office Order was unjustified in proscribing, in para 3 thereof, the appellant from claiming any right to seniority or regularisation from the date of her initial appointment.

34. The submission of Mr. Ganesh is that a holistic and true construction of all the relevant documents would reveal that the services of the appellant as Research Assistant in fact stood regularised from 13 July 1989. It was on that basis that the appellant had correctly been granted her 1st ACP benefit w.e.f. from 1 September 2001, after she had completed 12 years, and her 2nd MACP benefit w.e.f. 13 July 2009 after she had completed 20 years, reckoned in each case from 13 July 1989.

35. Mr. Ganesh has placed reliance, to support his submissions, on paras 2, 3, 4, 7, 8, 14, 15 and 17 of the judgment of the Supreme Court in *Purshottam Lal v UOI*¹⁴ and on paras 13 and 14 of the judgment of the Supreme Court in *Laljee Dubey v UOI*¹⁵. The said paragraphs may be extracted thus:

From *Purshottam Lal*

“2. The petitioners are employed with the Forest Research Institute and Colleges, Dehra Dun. This Institute is a department of the Government of India, Ministry of Food and Agriculture. The petitioners are Research Assistants and fall within Class III of the Non-Gazetted Technical Posts. It is alleged that the qualifications

¹⁴ (1973) 1 SCC 651

¹⁵ (1974) 1 SCC 230



prescribed for recruitment to the post of Research Assistant Grade II are Bachelor's Degree in Science (BSc) and BA or BSc, with Mathematics and knowledge of statistics for computers.

3. On August 21, 1957, the Government of India set up a Commission of Enquiry, hereinafter referred to as “the Second Pay Commission”, to enquire into the emoluments and conditions of service of the Central Government employees. The terms of reference of the Commission were—

“(i) examine the principles which should govern the structure of emoluments and conditions of service of the Central Government employees;

(ii) consider and recommend what changes in the structure of emoluments and conditions of service of different classes of Central Government employees are desirable and feasible....;

(iii) recommend, in particular, the extent to which benefits to Central Government employees can be given in the shape of amenities and facilities;”

4. In Chapter II of the report, in para 1 it is stated:

“For the purposes of our enquiry we have taken all persons in the Civil Services of the Central Government or holding civil posts under that Government, and paid out of the Consolidated Fund of India, to be Central Government employees. Those in the service of public corporations and other semi-autonomous bodies under the Central Government are thus excluded; and employees of the Union Territories are included. In view, however, of certain practical difficulties to which we refer in a later chapter, and in consultation with the Government we have examined only the principles on which the emoluments of the employees of the Union Territories should be determined, and have not gone into details of pay-scales.”

7. It is the contention of the petitioners that their case was also covered by the recommendations of the Commission.

8. On August 2, 1960, the Government issued a notification giving effect to the recommendations of the Pay Commission. On June 21, 1962, the Government of India revised the pay-scales of



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the petitioners in the Forest Research Institute and Colleges, Dehradun, giving them the revised scales as follows:

<i>Sl. No.</i>	<i>Designation of the post</i>	<i>Pay-scale fixed under CCS (Revised Pay) Rules, 1960</i>	<i>Revised pay-scale sanctioned</i>
1.	Research Assistant Grade II	130-5-160-8-200-EB-8-256-EB-8-280-10-300	150-5-160-8-240-EB-8-280-10-300
2.	Computer	130-5-160-8-200-EB-8-256-EB-8-280-10-300	150-5-160-8-240-EB-8-280-10-300

But it was stated in the order, dated June 21, 1962, that the revision of the pay-scales mentioned in column 4 above will take effect from the date of issue of these orders, and that re-fixation of the pay of the incumbents of these posts will be done under the provisions of the fundamental Rules only.

14. Mr Dhebar on behalf of the Government maintains the same position and he says that the Pay Commission Report did not deal with the case of the petitioners. We are unable to accept this contention. The terms of reference are wide, and if any category of government servants was excluded material should have been placed before this Court. The Pay Commission has clearly stated that for the purposes of their enquiry they had taken all persons in the Civil Services of the Central Government or holding civil posts under that Government and paid out of the Consolidated Fund of India, to be Central Government employees. It is not denied by Mr Dhebar that the petitioners are paid out of the Consolidated Fund of India.

15. Mr Dhebar contends that it was for the Government to accept the recommendations of the Pay Commission and while doing so to determine which categories of employees should be taken to have been included in the terms of reference. We are unable to appreciate this point. Either the Government has made reference in respect of all government employees or it has not. But if it has made a reference in respect of all government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all government employees. If it does not implement the report regarding some employees only it commits a breach of Articles 14 and 16 of the Constitution. This is what the Government has done as far as these petitioners are concerned.



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17. In the result the petition is allowed and it is directed that the revised pay-scales of the petitioners will have effect from July 1, 1959, in accordance with the recommendations of the Pay Commission. We further direct that the petitioners should be paid the amount payable to them as a consequence of the revision of the pay-scales with effect from July 1959. The petitioners will have the costs of this petition.”

From *Laljee Dubey*

“13. Counsel on behalf of the appellants contended that the letter dated November 17, 1953 should be implemented because the Government accepted the recommendation of Kalyanwala Committee. Counsel for the appellants submitted these reasons. Denial of the benefits of the order to the appellants is violative of fundamental rights guaranteed under Articles 14 and 16 of the Constitution. Other Checkers performing duties similar to those of the appellants have been granted the benefit of the order contained in the letter dated November 17, 1953 whereas the appellants who are similarly situate have been arbitrarily denied the benefit of the same.

14. In the recent decision in *Purshottam Lal (supra)* this Court held that the Government was bound to implement the recommendations of the Second Pay Commission and if the Government did not implement the report regarding some employees only there would be a breach of Articles 14 and 16 of the Constitution. In **Purshottam Lal** case the Government of India set up a Commission called the “Second Pay Commission” to enquire into emoluments and conditions of service of Central Government employees. Purshottam Lal and others were employed in the Forest Research Institute and Colleges, Dehra Dun. They were Research Assistants. Their contention was that their case was covered by the recommendations of the Commission. On August 2, 1960 the Government issued a notification giving effect to the recommendations of the Pay Commission. On June 21, 1962 the Government of India revised the pay scales of the petitioners and stated that the revision of the pay scales of the petitioners would take effect from the date of the issue of the order. The petitioners contended that the revised pay scales of similar posts in similar sister institutes of the Research Institute under the same Ministry had been implemented from July 1, 1959 according to the Second Pay Commission recommendations, and, therefore, the petitioners were entitled to the benefit of the retrospective date viz. July 1,



1959. The Government contended that it was for the Government to accept the recommendations of the Pay Commission and while doing so to determine what categories of employees should be taken to have been included in the terms of reference. This Court did not accept the contention of the Government. The Government made reference in respect of all Government employees. The Government accepted the recommendations. Therefore, the Government was bound to implement the recommendations in respect of all Government employees. The reason given by this Court was that if the Government did not implement the Report regarding some employees only there would be a breach of Articles 14 and 16 of the Constitution.”

36. In the facts of the present case, Mr. Ganesh submits that the judgment of the Constitution Bench in *Umadevi* would have no application and the case would, rather, be covered by the more recent judgment of the Two Judge Bench of the Supreme Court in *Jaggo v UOI*¹⁶.

37. Arguing for ICSSR, Mr. Amitesh Kumar sought to submit that the initial ad hoc appointment of the appellant as Research Assistant on 13 July 1989 was specifically made subject to the condition that the appointment would not confer on her, any right to claim regular appointment in the ICSSR. Pointing out that the appellant had remained absent without authorisation from 11 March 1996 to 31 August 1996, Mr. Amitesh Kumar submits that, after considering her reply dated 12 March 1997, to the Memorandum dated 6 March 1997 issued by the ICSSR seeking her explanation in that regard, the ICSSR permitted the appellant to join on *ad hoc* basis by order dated 19 September 1997, subject to the final decision to be taken by it. Subsequently, vide letter dated 19 January 1997, the ICSSR

¹⁶ 2024 SCC OnLine SC 3826



constituted the Malimath Committee to deal with the issue of regularisation of *ad hoc* appointments and promotions made in the past. The Malimath Committee examined individual cases, including that of the appellant.

38. Mr. Amitesh Kumar has drawn our attention to paras 2.18.1 to 2.18.16 of the Malimath Committee report and has pointed out that, in para 2.18.14, the Malimath Committee found that the appellant “did not have any order of appointment in her favour between 01.09.1996 and 25.09.1997”. The report further observed, in the same para, that it was obvious that the appellant had not performed her duties during the said period, owing to no fault on the part of the ICSSR. The Committee recommended her regularisation in relaxation of the rules and grant of notional fixation of pay w.e.f. 1 January 1996, provided that she would not be entitled to arrears for the period 11 March 1996 to 25 September 1997. Thus, the Malimath Committee itself recommended regularisation of the appellant only w.e.f. 1 January 1996. Following this, the ICSSR, in its 83rd meeting held on 16 September 1998, regularised the services of the appellant in temporary capacity as Research Assistant w.e.f. 1 January 1996, and issued Office Order dated 17 March 1999 in that regard. This was followed by Office Order dated 24 August 1999, re-fixing the pay of the appellant as Research Assistant w.e.f. 1 January 1996. The subsequent order dated 31 May 2000, issued by the ICSSR also identified the date of regularisation of the services of the appellant as Research Assistant as 1 January 1996 and further stipulated that the *ad hoc* service of the appellant would not count for any purpose. This Office Order dated



31 May 2000 was, however, later revoked by the ICSSR by Office Order dated 24 April 2008, which therefore reinstated the earlier Office Order dated 17 March 1999.

39. Subsequently, it was noticed, in the light of the audit report of ICSSR for the period 2009-2011, as forwarded by the office of the Director General of Audit by letter dated 1 August 2011, that, though the appellant was regularised w.e.f. 1 January 1996, she was granted her 1st ACP upgradation w.e.f. 1 September 2001 and 2nd MACP w.e.f. 13 July 2013, counting her service for the purposes of entitlement to ACP / MACP w.e.f. 13 July 1989. The Committee, therefore, recommended that 1st ACP benefit would inure to the appellant only w.e.f. 1 January 2008 and the 2nd MACP from 1 January 2016.

40. Thereafter, the ICSSR, by Office Order dated 18 March 2021, correctly withdrew the 1st ACP and 2nd MACP benefits granted to the appellant w.e.f. 1 September 2001 and 13 July 2009, reckoning her qualifying service, for the purposes of ACP/MACP w.e.f. 13 July 1989. She was, therefore, granted the corrected benefit of 1st ACP and 2nd MACP on the basis of her regular service reckoned from 1 January 1996.

41. In order to avoid this consequence, the appellant belatedly sought substitution, in para 3 of the Office Order dated 29 October 2002 of the word “and” with the word “on”. This request was, therefore, rightly turned down.



42. Mr. Amitesh Kumar points out that Office Orders dated 24 August 1999, 31 May 2000 and 29 October 2002 all recognised the regular service of the appellant as commencing only from 1 January 1996. The appellant did not, therefore, have any right to claim that her regular service, for the purposes of ACP / MACP should be reckoned from 13 July 1989. In any event, as the initial *ad hoc* recruitment of the appellant w.e.f. 13 July 1989 was in contravention of the Recruitment Rules, without following any recruitment process, and without subjecting the appellant to selection and appointment, she could not claim regularisation from that date.

43. Mr. Amitesh Kumar places reliance on the judgment of the Supreme Court in *State of Haryana v. Vijay Singh*¹⁷, to contend that a person appointed purely on *ad hoc* basis for a fixed period without following the recruitment/selection rule and process was not entitled to count such *ad hoc* service for any purpose including seniority.

44. The provisions of the ACP and the MACP scheme specifically stated that the period of service which the employee had to undergo in order to be entitled to the benefits of the said scheme had to be regular service. *Ad hoc* service, prior to regularisation could not, therefore, count towards qualifying service for ACP or MACP. This was also clarified by the DOPT in its OM dated 10 February 2000, with respect to point of doubt No.11, the query and the response whereof read thus:

11.	In the case of an employee appointed on ad-hoc basis and	No. In terms of para 3.2 of the Office Memorandum dated August 9, 1999
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¹⁷ (2012) 8 SCC 633



who is subsequently regularised, the ad-hoc service is counted towards increment. Whether the ad-hoc service may be counted for the ACPS also?.	(ACPS), only regular service which counts for the purpose of regular promotion in terms of relevant Recruitment / Service Rules shall count for the purpose of upgradation under ACPs.
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45. Insofar as the aspect of recovery is concerned, Mr. Amitesh Kumar submits that the learned Single Judge has correctly relied on the decision in *Jagdev Singh*, in view of the undertakings provided by the appellant, authorising recovery of any excess payment made to her.

46. In these circumstances, Mr. Amitesh Kumar submits that no case for interference with the impugned judgment of the learned Single Judge can be set to exist.

47. Dr. S.S. Hooda, appearing for the CAGI, has drawn our attention to paras 10 to 12 of the counter affidavit filed by the CAGI before this Court in response to the writ petition, which read thus:

“10. That it is submitted that the Respondent No.1/ICSSR is an autonomous body which receives 100% Government funds as Grants-in-aid. Hence, the provisions of General Financial Rules, 2005 (“GRF, 2005”) particularly, provisions of Chapter 9 of GFR 2005 applies to it. In this regard it is submitted that Rule 209 (6) (iv)(a) of GFR, 2005 states that all grantee institutions receiving more than 50% of their expenditure in form of grants-in-aid should formulate their terms and conditions of service of their employees in a manner not higher than those applicable to similar central government employees. Moreover, any derogation/deviation from the said provision shall be made in consultation with the Ministry of Finance. Rule 209(6) (iv)(a) of the GFR 2005 is reproduced herein:



Rule 209(6)(iv)(a) of the GFR, 2005

All grantee Institutions or Organisations which receive more than fifty percent of their recurring expenditure in the form of grants-in-aid, should ordinarily formulate term and conditions of service of their employees which are, by and large, not higher than those applicable to similar categories of employees in Central Government. In exceptional cases relaxation may be made in consultation with the Ministry of Finance.

11. That it is submitted that the classification of posts in Recruitment Rules of Respondent No.1/ICSSR is different from the classification of posts done in Recruitment Rules of Central government employees. As per the Recruitment Rules of the Respondent 1 the posts of Director, Deputy Director and Assistant Director have been classified as Group V however, the Respondent No.1 treats these posts in terms of Group 'A' central government employees. Therefore, since the Respondent No.1 treats these posts as Group 'A' central government employees, it needs prior approval from the Ministry of Finance to bestow any benefit to employees of these posts which is not granted to Group 'A' central government employees.

12. That it is submitted that the answering respondent in terms of the Office Memorandum dated 09.08.1999 and the GFR, 2005 while carrying out audit of The Respondent No.1/ICSSR for the period 2009-2011 raised the objection that in violation of the GFR, 2005 the Respondent No.1/ICSSR without prior approval of the Ministry of Finance granted benefits of ACP scheme to Group 'A' officers which is in contravention to the said Office Memorandum dated 09.08.1999. It was further observed that the Respondent No.1/ICSSR granted the said benefits to employees on completion of 12/8 years whereas, the said Memorandum granted benefits of ACP scheme to employees only on completion of either 24 or 12 years of service.”

Analysis

48. As per the submissions recorded above, the parties have joined issue, broadly, on the following subjects:



48.1 The nature of the appellant's initial *ad hoc* appointment as a Research Assistant, and its implications on her plea for regularisation with effect from 13 July 1989.

48.2 The bearing of the Malimath Committee's recommendations, pertaining to the appellant, on her plea for regularisation from 13 July 1989.

48.3 The appellant's absence from 11 March 1996 to 25 September 1997 and its consequences.

48.4 The correctness of the grant of the appellant's 1st ACP and 2nd MACP, or more specifically, the date from which her ACP and MACP grants ought to have been reckoned.

48.5 The implication of the lack of prior approval by the Ministry of Finance to the grant of ACP to Group 'A' officers of ICSSR, whether being in contravention to the General Financial Rules, 2005, and the OM dated 9 August 1999.

49. At the outset, before we delve into our analysis of the submissions advanced by parties, it is imperative to comment upon the evolution of judicial authorities on the subject of regularisation of contractual / *ad hoc* employees.

50. The law on the subject, for the longest time, had been dictated by *Umadevi*, which essentially held, *inter alia*, that contractual / *ad-hoc* employees could not claim a vested right to be absorbed /



regularised without fulfilling the requisite conditions for regular appointment to the relevant post.

51. The object of the decision in *Umadevi* was to curb back door entries to posts. The Hon'ble Supreme Court also distinguished, for this purpose, between “irregular” and “illegal” appointments, clarifying that it was specifically the latter of which that was sought to be prevented.

52. Unfortunately, the safeguards laid down to preserve the sanctity of service appointments in *Umadevi*, have, in certain instances, been fashioned into a tool to prejudice long standing temporary employees from ever aspiring to benefit from the security and career progression enjoyed by their regularised counterparts. This unfolds in the backdrop of these employees watching their years go by, as age limits for regular appointments to sanctioned posts preclude them from even participating in selection processes, assuming that they had mustered the courage to pivot career pathways at a considerably belated stage.

53. It is this very emphasis, on the principle that no vested right to regularisation accrues to an employee merely on account of their long-standing service, that conveniently skirts *Umadevi's* acknowledgment of those cases where regularisation would be the appropriate decision. It is on this note that para 53 of the decision merits reproduction :

“53. One aspect needs to be clarified. *There may be cases where irregular appointments (not illegal appointments) as explained*



in S.V. Narayanappa¹⁸, R.N. Nanjundappa¹⁹ and B.N. Nagarajan²⁰ 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 abovereferred 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.”

(emphasis supplied)

54. While *Umadevi* intended to foreclose on practices of illegal appointments and backdoor entries, the Hon’ble Supreme Court in future decisions acknowledged that it had unfortunately been weaponised to deny regularisation to employees who had rendered indispensable services over extended periods.

55. Fortunately, *Umadevi* has been interpreted and clarified by the Hon’ble Supreme Court in more recent judgments. In this context, Mr. Ganesh has rightly placed reliance upon the Hon’ble Supreme Court in *Jaggo v UOI*, which ought to be discussed, owing to its relevance to the facts before us.

¹⁸ AIR 1967 SC 1071

¹⁹ (1972) 1 SCC 409

²⁰ (1979) 4 SCC 507



Jaggo

56. The appellants before the Hon'ble Supreme Court were engaged as *safaiwalis* and *khallasis* by the Central Water Commission on part-time, *ad hoc* terms. They sought regularisation of their services *qua* an appropriate application before the Central Administrative Tribunal²¹.

57. Arguing before the CAT, they contended that their work comprised ongoing and core functions which were integral to the operations of their employer, and that, being long serving employees with unblemished service records having appointments in their favour that were not illegal, that they ought to have been regularised.

58. Both the CAT as well as the High Court denied relief to the appellants, observing that they were part-time workers who had not been appointed against sanctioned posts, nor had they performed a sufficient duration of full-time service to meet the criteria for regularisation. Relying on *Umadevi*, both fora denied to issue directions to the extent of regularisation on the principle that no vested right of absorption / regularisation may be claimed on account of long service periods without fulfilling requisite conditions, as stipulated by criteria to be satisfied before regular appointment to the relevant posts.

²¹ "CAT", hereinafter



59. The appellants argued their uninterrupted service histories exceeding a decade, the discharge of responsibilities that were central to the functioning of their employer-organisation, unblemished service records, “irregular” yet not “illegal” appointments, discrimination due on account of regularisation of similarly placed employees, irrelevance of their non-meeting of requisite educational qualifications, and also placed reliance on the principles of equity and fairness.

60. The respondents argued that the appellants had been engaged purely on a part-time / contractual basis, that their appointments were not against sanctioned posts, that they don’t meet the requisite conditions to be regularly appointed to the relevant posts and lack the relevant educational qualifications, and that no vested right to regularisation exists merely on account of the long-term engagement of the appellants’ services.

61. Analysing the submissions advanced, the Hon’ble Supreme Court went on to observe as follows –

“10. Having given careful consideration to the submissions advanced and the material on record, we find that the appellants’ long and uninterrupted service, for periods extending well beyond ten years, cannot be brushed aside merely by labelling their initial appointments as part-time or contractual. The essence of their employment must be considered in the light of their sustained contribution, the integral nature of their work, and the fact that no evidence suggests their entry was through any illegal or surreptitious route.

11. The appellants, throughout their tenure, were engaged in performing essential duties that were indispensable to the day-to-



day functioning of the offices of the Central Water Commission (CWC). Applicant Nos. 1, 2, and 3, as Safaiwalis, were responsible for maintaining hygiene, cleanliness, and a conducive working environment within the office premises. Their duties involved sweeping, dusting, and cleaning of floors, workstations, and common areas—a set of responsibilities that directly contributed to the basic operational functionality of the CWC. Applicant No. 5, in the role of a Khallasi (with additional functions akin to those of a Mali), was entrusted with critical maintenance tasks, including gardening, upkeep of outdoor premises, and ensuring orderly surroundings.

12. Despite being labelled as “part-time workers,” the appellants performed these essential tasks on a daily and continuous basis over extensive periods, ranging from over a decade to nearly two decades. Their engagement was not sporadic or temporary in nature; instead, it was recurrent, regular, and akin to the responsibilities typically associated with sanctioned posts. Moreover, the respondents did not engage any other personnel for these tasks during the appellants' tenure, underscoring the indispensable nature of their work.

13. The claim by the respondents that these were not regular posts lacks merit, as the nature of the work performed by the appellants was perennial and fundamental to the functioning of the offices. The recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled. It is also noteworthy that subsequent outsourcing of these same tasks to private agencies after the appellants' termination demonstrates the inherent need for these services. This act of outsourcing, which effectively replaced one set of workers with another, further underscores that the work in question was neither temporary nor occasional.

14. The abrupt termination of the appellants' services, following dismissal of their Original Application before the Tribunal, was arbitrary and devoid of any justification. The termination letters, issued without prior notice or explanation, violated fundamental principles of natural justice. It is a settled principle of law that even contractual employees are entitled to a fair hearing before any adverse action is taken against them, particularly when their service records are unblemished. 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.



16. The appellants' consistent performance over their long tenures further solidifies their claim for regularization. At no point during their engagement did the respondents raise any issues regarding their competence or performance. On the contrary, 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. The respondents' belated plea of alleged unsatisfactory service appears to be an afterthought and lacks credibility.

17. As for the argument relating to educational qualifications, we find it untenable in the present context. The nature of duties the appellants performed—cleaning, sweeping, dusting, and gardening—does not inherently mandate formal educational prerequisites. It would be unjust to rely on educational criteria that were never central to their engagement or the performance of their duties for decades. Moreover, the respondents themselves have, by their conduct, shown that such criteria were not strictly enforced in other cases of regularization. The appellants' long-standing satisfactory performance itself attests to their capability to discharge these functions, making rigid insistence on formal educational requirements an unreasonable hurdle.

19. It is evident from the foregoing that the appellants' roles were not only essential but also indistinguishable from those of regular employees. Their sustained contributions over extended periods, coupled with absence of any adverse record, warrant equitable treatment and regularization of their services. Denial of this benefit, followed by their arbitrary termination, amounts to manifest injustice and must be rectified.

20. It is well established that the decision in *Uma Devi (supra)* does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly “irregular,” and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in *Vinod Kumar v. Union of India*⁵, 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.

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.

28. In view of the above discussion and findings, the appeals are allowed. The impugned orders passed by the High Court and the Tribunal are set aside and the original application is allowed to the following extent:

- i. The termination orders dated 27.10.2018 are quashed;
- ii. The appellants shall be taken back on duty forthwith and their services regularised forthwith. However, the appellants shall not be entitled to any pecuniary benefits/back wages for the period they have not worked for but would be entitled to continuity of services for the said period and the same would be counted for their post-retiral benefits.”

62. Applying these observations to the submissions advanced before us, the following *sequitur* emerges thus :

62.1 Submissions to the extent of the appellant’s initial appointment to the post of Research Assistant being in an *ad hoc* capacity, and thereby not conferring any right upon her to claim regularisation, must meet paragraphs 10, 12, and 13 of the decision in *Jaggo*, reproduced above. Long and uninterrupted service of over 30 years in the present case, significantly crossing the minimum threshold of a decade’s service as per *Jaggo*, cannot be brushed aside merely on account of initial appointments being labelled as part-time / *ad hoc*.

62.2 It is for the Court to go beyond the labelling assigned at the time of an employee’s initial appointment, where tasks



performed comprise essential activities that contribute to the functionality of their employer-organisation, and to ascertain the true nature of the roles performed and subsequent evolution over time.

62.3 It goes without saying that a Research Assistant does discharge work in the nature of that which is fundamental and perennial to an organisation such as the ICSSR. This is buttressed by the appellant's promotion all the way up to the post of Deputy Director in 2018, speaking to the quality of her contribution her employer-organisation.

62.4 As to arguments to the extent of the appellant's initial appointment not being in accordance with selection procedures as contained within relevant recruitment rules, para 26 of the observations in *Jaggo*, discussing *Umadevi*, unequivocally condones such irregular appointments where a temporary / ad-hoc employee has been retained for over 10 years in a duly sanctioned post.

62.5 Challenges to whether the requisite qualifications, educational or otherwise, were possessed by the appellant at the date on which her regularisation ought to date back to, and the averment as to the lack thereof being in contravention of relevant recruitment rules, cease to be relevant in light of para 17 of *Jaggo*. The very fact that duties were carried out by the appellant, who possessed a long-standing satisfactory service record, sans any complaints, is held to attest to her capability to



discharge relevant functions and ought not to have been construed with rigidity. There is a degree of hands-on experience that is gained after sufficient time has been spent at an organisation, which cannot be discounted owing to a deficiency with respect to qualifications prescribed for regular appointment to the relevant post.

62.6 The appellant's period of absence, from 11 March 1996 till 25 September 1997, does not warrant regularisation of her services only from 1 January 1996, in view of para 28 of *Jaggo*, wherein continuity of services even for periods of absence had been granted, and had been included for the purpose of computation of post retiral benefits. However, such periods of absence do not create an entitlement for monetary benefits that may have arisen, had employee been in actual rather than deemed service.

62.7 Given that we have held, for the aforesaid reasons, that the appellant's regularisation ought to date back to her original appointment, i.e., 13 July 1989, her 1st ACP and 2nd MACP have been granted correctly, after the crossing of the thresholds of 12 years and 20 years, respectively.

62.8 As to the recommendations of the Malimath Committee, we do not deem them fundamental to our assessment of the appellant's entitlement to the dating back of her regularisation. The Committee's recommendations, though vital in charting the



course of reliance on the principles of equity and fairness during the adjudication of regularisation disputes, do not carry binding sanction, and the Hon'ble Supreme Court has sufficiently analysed the law surrounding on the subject in *Jaggo*, which forged the metrics by which we have assessed the appellant's case.

62.9 Accepting that the appellant ought to have been regularised from the date of her initial appointment in light of the Hon'ble Supreme Court's observations in *Jaggo*, it is to rationally follow that grant ACP and MACP benefits were correctly computed as per the appellant's qualifying service, as the appellant's regular service now dates back to 13 July 1989. Therefore, no question of recovery arises therefrom, and the matter is laid to rest here.

62.10 As to Dr. Hooda's submissions alleging that the grant of the appellant's 1st ACP being in contravention of Rule 209 (6) (iv) (a) of the GFR, 2005, we fail to understand its relevance where the order rescinding the of grant of ACP / MACP benefits to the appellant on account of an incorrect computation of her qualifying service did not make the slightest mention of these grounds. The decision in *Jaggo* aligns with the object and purpose behind the establishment of the Malimath Committee, basing its view on the subject of regularisation on the principles of equity and fairness, rather than strict adherence to applicable rules.



63. On this note, it would be relevant to reiterate our recent observations in the judgment of *Deen Bandhu Garg v South Delhi Municipal Corporation*, wherein the principles precipitated in the Hon'ble Supreme Court's decision in *Jaggo* have been summarised:

“28.7 From the afore-extracted passages from *Jaggo*, the following principles emerge:

(i) The Supreme Court held that the long and uninterrupted service rendered by Jaggo etc., extending well beyond 10 years could not be brushed aside by levelling their initial employments as part time or contractual. Importantly, the Supreme Court held that the “essence of their employment” had to be “considered in the light of their sustained contribution, the integral nature of their work and the fact that no evidence suggests their entry was through any illegal or surreptitious route”. This passage denotes an important development in the law, by which the Supreme Court has effectively lifted the veil of the nomenclature conferred to the appointment of the employees. The Supreme Court had held that it is not the nomenclature of the appointment which is of relevance, but the nature of the service rendered by the employees. The nature of the service by the employees would in turn determine the actual nature of their employment. The Supreme Court has identified, for this purpose, the relevant considerations as being (a) the sustained contribution of the employees, (b) the integral nature of their work and (c) whether any evidence exists to indicate that their entry was through any illegal or surreptitious route.

(ii) Where the employees had been engaged in performing essential duties, indispensable for the day to day functioning of the office, on a daily and continuous basis over an extended period, the responsibilities undertaken by the employees had to be treated as akin to those typically associated with sanctioned posts.

(iii) In such circumstances, it could not be sought to be contended by the establishment that the posts held by the employees on ad hoc/part time/casual basis were not regular posts, as the nature of work rendered by the



employees was perennial and fundamental to the functioning of the offices. Significantly, the Supreme Court holds that “the recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled”.

(iv) Subsequent outsourcing of the same tasks to private agencies fortified the conclusion that the services rendered by the employees were inherently needed by the establishment, and that the work undertaken by them was neither temporary nor occasional.

(v) Consistent satisfactory performance, by the employees, over a long period of time, further solidified their claim for regularization.

(vi) Where the job rendered by the employees was menial in nature, such as cleaning, sweeping, dusting and gardening, the establishment could not seek to contend that the employees did not possess the necessary educational qualifications for the post. The educational criteria were never central to the engagement by the employees or to the performance, by them, of their duties. Insisting on formal educational requirements would amount, in such circumstances, to “an unreasonable hurdle”.

(vii) Where, in such circumstances, the employees' roles were essential and indistinguishable from the roles of other regular employees, the employees had rendered sustained service over extended period and there was no adverse report regarding their performance, equitable treatment and regularization of the services of the employees was warranted. Denial of such regularization amounted to manifest injustice, and required rectification.

(viii) The decision in *Uma Devi* did not intend to penalize employees who had rendered long years of service, fulfilling ongoing and necessary functions of the establishment. It was intended to prevent back door entries and illegal appointments, which circumvented constitutional requirements.

(ix) Where the appointments were not illegal, but possibly “irregular” and where the employees had rendered sanctioned functions continuously over a long period, the need for a fair and humane resolution became paramount. Thus, held the Supreme Court, “prolonged, continuous and



unblemished service performing tasks inherently required on a regular basis (could), over the time, transform what was initially ad hoc or temporary into a scenario demanding fair regularization”.

(x) Where the initial appointment of the employee was termed “temporary”, but the employee had performed the same duties as performed by regular employees over a considerable period, procedural formalities could not be used to deny regularization by service.

(xi) The Court was required to look beyond the surface label of the work being undertaken by the employee and to consider the realities of employment, which included continuous, long term service, indispensable duties and absence of any mala fides or any illegalities in their appointments. Refusing regularization to such employees, merely because the original terms of their employment did not explicitly provide for regularization, or because an outsourcing policy had been belatedly introduced, would be contrary to principles of fairness and equity.

(xii) Among the ways in which such temporary employees were exploited were:

- (a) misuse of “temporary” labels,
- (b) arbitrary termination,
- (c) lack of career progression,
- (d) using outsourcing as a shield, and
- (e) denial of basic rights and benefits

(xiii) *Uma Devi* was intended to curtail the practice of back door employments and ensure that appointments adhere to constitutional principles. It was regrettable that *Uma Devi* was being interpreted and misapplied to deny legitimate claims of long serving employees. The judgment distinguished between “illegal” and “irregular” appointments. It provided for regularisation, as a one-time measure, of employees who were engaged in duly sanctioned posts, and had served continuously for more than 10 years, but whose initial appointment was “irregular”, in that it lacked adherence to procedural formalities.



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Conclusion

64. It would be appropriate to mention here that most of the arguments advanced by the respondents were constructed in opposition to regularisation of the appellant's services as a whole, rather than the specific period from 1989 to 1995, save certain submissions placing reliance on Officer Orders dated 24 August 1999, 31 May 2000, and 29 October 2002, which falter under the immense weight of the Hon'ble Supreme Court's decision in *Jaggo*.

65. The appeal stands allowed for the aforementioned reasons.

66. Judgment dated 22 February 2024 passed by the learned Single Judge in WP (C) 9434/2022 is quashed and set aside.

67. WP (C) 9434/2022 stands allowed, to the extent of prayers (iv) and (v), owing to the appellant's submissions before the learned Single Judge, and we direct the following :

67.1 The appellant's notional pay be fixed, along with other consequential benefits excluding arrears / back wages, from 13 July 1989.

67.2 For the purpose of arrears / monetary benefit / back wages, the appellant shall derive benefits from the date of her initial appointment, i.e., 13 July 1989, to the exclusion of her



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period of absence from 11 March 1996 until 25 September 1997, which shall be treated as a technical break.

67.3 No steps shall be taken to initiate any recovery against the appellant on the grounds of alleged incorrect fixing of her 1st ACP and 2nd MACP benefits, owing to our observations.

67.4 Any recoveries initiated shall have their proceeds returned to the appellant within eight weeks of this judgment being uploaded on the website of the High Court, failing which, interest at the rate of 8% shall accrue.

68. Pending applications, if any, do not survive, and are disposed of accordingly.

69. No orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MAY 30, 2025/sk