

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE AMRITA SINHA

AND

THE HON'BLE JUSTICE BISWAROOP CHOWDHURY

MAT/75/2024

ANDAMAN AND NICOBAR RAJYA KARMACHARI

MAHASANGH AND ANOTHER

... APPELLANTS

VS.

THE HON'BLE LIEUTENANT GOVERNOR

AND OTHERS

... RESPONDENTS

For the appellants : Mr. Gopala Binnu Kumar
Ms. Vinita Devi

For the respondents : Mr. Rakesh Kumar

Heard on : August 24, 2026, August 25, 2026 &
August 27, 2026.

Reserved on : August 27, 2026

Judgment delivered on : September 03, 2026

Judgment uploaded on : September 03, 2026

AMRITA SINHA, J.

1. The judgment dated 12th November, 2024 passed by the Hon'ble Single Judge in the writ petition filed by the appellants

rejecting their prayers for either regularizing their service or to formulate a policy for regularization of their service is impugned in the present appeal.

2. By the said judgment the Hon'ble Single Judge held that the Court cannot direct the Administration to create sanctioned posts for regularizing the service of the petitioners or to formulate a policy for regularization of their services. The Court cannot also restrain the Administration from filling up the vacant posts following applicable recruitment rules. The Court, however, was pleased to observe that the petitioners would be at liberty to participate in the recruitment process sought to be initiated by the authority subject to the petitioners satisfying the eligibility criteria.

3. The brief facts of the case are that the petitioner no. 1 is a registered Association looking after the affairs of the members of the Association who are serving as contractual employees under the respondent no. 2. The petitioner no. 2 is the Secretary of the Association.

4. The respondent no. 2, Andaman and Nicobar Islands Medical Education and Research Society (hereinafter referred to as 'the Society') manages the respondent no. 3, Andaman and Nicobar Islands Institute of Medical Science (ANIIMS). Both the authorities

satisfy the definition of 'State' under Article 12 of the Constitution of India.

5. The object of the Society is to provide medical education, medical service and medical research in the Islands. The Society was set up as per the guidelines of the National Medical Commission.

6. In January 2015 and February 2015, notices for walk-in-interview were published and in April 2015, June 2015 and November 2015 vacancy notices were published by the Society for filling up certain posts on contractual basis. The essential educational qualification of the candidates and the age criteria was prescribed in the said notices. Several candidates participated in the walk-in-interview as well as responded to the vacancy notices. Regular Selection Committee verified the testimonials and the educational documents submitted by the candidates. Regular interview process by the Selection Committee was conducted. Thereafter, the members of the Association were selected for the job and were issued engagement letter on diverse dates.

7. The engagement letters were for a time bound period, renewable on extension on mutual consent and satisfactory performance of the candidate. The engagement letter clearly mentioned that the engagement was on short term contract basis

subject to execution of contact agreement. Such engagement will not confer any claim for future engagement or appointment to any post. As many as 139 persons were appointed on contract basis, but formal contract for engagement was never executed by and between the parties.

8. A couple of specialized Staff Nurses who were serving on contract basis under the respondent no. 2 was subsequently absorbed by the respondent no. 3. Though, the employees were termed as contractual, but in effect, all the employees were made to work as full time permanent employees of the authority. The services rendered by the employees are perennial in nature.

9. The respondent no. 3-ANIIMS could function only because of the satisfactory performance of the members of the appellant's Association. Had the appellants not performed their duties diligently, faithfully and sincerely, then ANIIMS and the Society both could not have functioned properly for such a long period of time.

10. In March 2020, the respondent no.2, in the meeting of its Executive Council, accorded approval for creation of 425 posts in ANIIMS in addition to the 107 posts already created by the Executive Council in its meeting held in November 2014. The Executive Council also accorded approval for creation of 5 posts of administrative and accounting staff of the Society.

11. The creation of posts was subject to certain conditions some of which are-

(a) The posts shall be filled up as per actual requirement of ANIIMS.

(b) The Society and ANIIMS shall ensure sufficient budgetary provisions for meeting the financial implication. If required, additional provision shall be kept in RE and BE through the Health Department.

(c) The recruitment rule of the posts created shall be framed and approved by the Society and ANIIMS before regular appointment of the staff.

(d) The administrative and account posts be filled up on priority basis so that the retired staff can be appointed to get the recruitment rules finalized and other works related to creation of posts and recruitment to be done.

(e) No excess retention of staff than the total numbers of posts created has to be ensured. If there is any excess staff, necessary steps shall be taken to curtail the staff strength.

12. The contractual period of the members of the Association was extended from time to time. During the contractual period of the employees, ANIIMS published a vacancy notice in December 2021

inviting online applications for contractual engagement in the same posts in which the members of the appellant Association were engaged.

13. The appellants challenged the said vacancy notice by filing writ petition being no. WPA/295/2021 on the ground that one set of contractual employees ought not to be replaced by another. In the writ petition, the Court was pleased to pass an interim order on 10th December, 2021 *inter alia*, restraining ANIIMS from engaging any contractual employee in place and instead of the members of the appellant Association who were already working in the subject posts for a considerable period of time. The writ petition was finally heard and dismissed by the Court and the judgment passed in the writ petition is impugned herein.

14. The sheet anchor of the appellants' submission is that though the members of the appellant Association were engaged on contractual basis, but they were made to perform duties at par as those of permanent regular employees. The services rendered by the contractual employees are integral and extremely vital for running the Society and ANIIMS. The contractual employees were all eligible to participate in the regular recruitment process had the same been conducted in the year 2014 when they were engaged as contractual employees.

15. The selection was conducted by a regular Selection Committee after verification of their testimonials and documents and after clearing the interview. Several candidates participated in the selection process and only after the subject contractual employees were found to be suitable for engagement, they were engaged in service. Their services were found to be satisfactory for which their contractual service period stood extended from time to time.

16. The appellants pray for regularization of service of the members of the Association.

17. In support of the prayer for regularization, learned counsel for the appellants relies on several decisions:-

- (i) ***Sheo Narain Nagar and Others vs. State of Uttar Pradesh and others*** reported in ***(2018) 13 SCC 432***.
- (ii) ***Vinod Kumar and Others vs. Union of India*** reported in ***2024 INSC 332***.
- (iii) ***Jaggo vs. Union of India*** reported in ***(2024) SCC OnLine SC 3826***.
- (iv) ***Union of India Rep by Government of Puducherry and Another vs. K. Velajagan and Others*** reported in ***(2025) SCC OnLine SC 837***.

- (v) ***Shripal & Another vs. Nagar Nigam Gaziabad*** reported in ***(2025) SCC OnLine SC 221***.
- (vi) ***Dharam Singh and Others vs. State of UP*** reported in ***(2025) SCC OnLine SC 1735***.
- (vii) ***Bhola Nath vs. State of Jharkhand and Others*** reported in ***(2026) SCC OnLine SC 129***.
- (viii) ***Mohammad Sagir and Others vs. Nagar Nigam Kanpur*** reported in ***(2026) SCC OnLine SC 473***.
- (ix) ***Sukhendu Bhattacharjee and Others vs. State of Assam and Others*** reported in ***(2026) SCC OnLine SC 909***.
- (x) Judgment dated April 28, 2026 passed in ***The Union of India and Others vs. Andaman Sarvajanik Nirman Vibhag Mazdoor Sangh and Others, MAT/70/2026, I.A. No. CAN/1/2026 and CAN/2/2026***.
- (xi) Judgment dated August 25, 2023 passed by the Hon'ble Division Bench of this Court in ***The Port Blair Municipal Council and Another vs. Shri A. Subramaniam and Others, MAT/14/2023***.
- (xii) Judgment/Order dated November 06, 2023 passed by the Hon'ble Supreme Court in ***The Port Blair Municipal Council and Another vs. Shri A.***

***Subramaniam and Another in Petition(s) for Special
Leave to Appeal (C) No(s). 23507/2023.***

18. Learned advocate representing the respondents opposes the prayer of the appellants. It has been submitted that the members of the appellant Association initially did not pray for regularization. They prayed for setting aside the vacancy notice that was published for engaging fresh set of contractual employees by replacing the existing ones.

19. It has been submitted that as the regular recruitment rules have not been published till date, accordingly, there is no scope to regularize the service of the contractual employees.

20. It has been argued that the contractual employees were engaged in posts which have not yet been sanctioned, hence, there is no scope to consider their prayer for regularization.

21. It has been stressed by the respondents that the contractual employees do not have a right to seek regularization. Their engagement letter clearly mentions that they do not have any right to seek regular employment. The employees accepted the contract by noticing the terms and conditions mentioned therein. At this stage they are estopped from seeking regularization.

22. The judgment passed by the Hon'ble Supreme Court in the matter of ***Secretary, State of Karnataka and Others vs. Umadevi (3) and Others*** reported in ***(2006) 4 SCC 1*** stands as a bar to seek regularization by contractual employees who were not appointed through a regular recruitment process. Since the members of the appellant Association were not appointed under any recruitment process, they do not have any legal right to seek regularization.

23. The learned advocate for the respondents relies on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Madan Singh and Others vs. State of Haryana and Others*** reported in ***2026 SCC OnLine SC 628***.

24. The respondents pray for dismissal of the appeal.

25. We have heard and considered the rival submissions made on behalf of both the parties and have perused the materials placed before the Court.

26. Both the parties admit that the service of the contractual employees is very much required and extremely essential for the day-to-day functioning of the Society and ANIIMS. The contractual employees acted as foundational/organizational staff of ANIIMS. It is only because of the services rendered by the contractual employees that ANIIMS is functioning for the last ten years. If the foundation

was not strong enough, it may not have been possible for the authorities to continue with their mission for such a long period of time.

27. The service rendered by the contractual employees cannot, under any stretch of imagination, be treated as temporary or time bound in nature. The service rendered by them is very vital and permanent in nature. It is true that the regular recruitment rules are yet to be framed and published by the respondents for which the regular recruitment process cannot be initiated by the authority, but the same ought not to be the ground for not considering the prayer of the petitioners for regularization.

28. It appears that as the purpose of the respondents is served by employing contractual employees, they are not feeling the necessity of framing and publishing the recruitment rules. What was perceived to be a stop gap arrangement is continuing for more than ten years by now. The very fact that the authorities are not taking steps for engaging permanent employees implies that the contractual employees are enough to fulfill the needs and demands of ANIIMS. Being satisfied with the performance of the contractual employees, their services were extended back-to-back on yearly basis.

29. In the instant case, the contractual employees were eligible for appointment against the regular sanctioned posts on the day the notice of interview and the vacancy notices were published. By now, many of the employees have crossed the age bar for appearing in the regular recruitment process. Not granting permanent status to the contractual employees after being appointed through a well publicized recruitment process and after rendering more than twelve years of uninterrupted, unblemished service is a glaring example of sheer exploitation of the weak in the hands of the mighty. The same is absolutely unfair and ought not to be allowed to be perpetrated.

30. The service of the members of the appellant Association against unsanctioned posts through a well-designed recruitment process cannot be said to be wholly illegal. The respondents ought to appreciate that the contractual employees have put in their glorious service years by providing satisfactory service to ANIIMS. All on a sudden, their service cannot be termed as illegal, thus, standing in their way seeking regularization.

31. Prolonged service, similar to regular permanent employees, after being appointed through a regular selection process in non-sanctioned posts also should not be a bar for according permanent status to the contractual employees.

32. The Hon'ble Supreme Court in Sheo Narain Nagar (supra) directed regularization and consequential benefits and the arrears of pay to the contractual employees in line with the law laid down in Umadevi (supra).

33. In Jaggo (supra) the Hon'ble Supreme Court categorically laid down that the nature of the work performed rather than the label assigned to the worker, should determine the employment status and their corresponding rights and benefits. The Court highlighted the judiciary's role in rectifying misclassifications and to ensure that the workers receive fair treatment. The Court held that the government departments should lead by examples in providing fair and stable employment.

34. The Court was of the opinion that engaging workers on 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 principle of justice and fairness. The Court directed regularization of service.

35. In Vinod Kumar (supra) the Hon'ble Supreme Court held that the essence of employment and the right thereof cannot be determined by the initial terms of appointment. The continuous service of the employees performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors regular recruitment, constitute a substantive departure from the temporary and scheme specific nature of their initial engagement. 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. The Court directed regularization of the employees.

36. In Shripal (supra), the Hon'ble Supreme Court directed regularization of workmen who were engaged without issuance of formal appointment letter. The Court after elaborate discussion of the law relating to regularization held that, the ratio laid down in Umadevi (supra) cannot serve as a shield to justify exploitative engagement persisting for years without the employer undertaking legitimate recruitment. The Court observed that Indian labour law strongly disfavours perpetual contractual engagement in circumstances where the work is permanent in nature.

37. In Velajagan (supra), the Hon'ble Supreme Court reiterated the proposition laid down in Shripal (supra) that Umadevi (supra)

cannot be used as a shield to justify exploitative engagement persisting for years without the employer undertaking legitimate recruitment process to deny relief of regularization.

38. In *Dharam Singh* (supra), the Hon'ble Supreme Court observed that the practices of long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. The observations in *Shripal* (supra) and *Velajagan* (supra) were reiterated once again. The Court directed regularization and creation of supernumerary posts along with pay protection. A compliance affidavit was directed to be filed by the respondents for ensuring compliance of the direction passed by the Court.

39. In *Bhola Nath* (supra), the Hon'ble Supreme Court directed regularization of the contractual employees. The Court concluded that the respondent-State is not justified in continuing contractual employees on sanctioned vacant posts for over a decade under the nomenclature of contractual engagements and thereafter denying them consideration for regularization. The Court held that contractual stipulation purporting to bar claims for regularization cannot override constitutional guarantees. Acceptance of contractual terms does not amount to waiver of fundamental rights and contractual stipulations cannot immunize arbitrary State action

from constitutional scrutiny. The State, as a model employer, cannot rely on contractual labels or mechanical application of Umadevi (supra) to justify prolonged ad-hocism or discard long serving employees in a manner inconsistent with fairness, dignity and constitutional governance.

40. In Mohammad Sagir (supra), the Hon'ble Supreme Court held that each case is to be decided on its own facts. In a case, where engagement is for a substantial length of time, a presumption arises that the work for which the workmen is engaged is of a perennial nature and there exists a vacant post. It is difficult to accept that workmen are engaged as substitutes for regular workers if they have worked for a long period of time.

41. In Sukhendu (supra) the Hon'ble Supreme Court, after noticing that the workers discharged their duties over a prolonged period of time, directed regularization even though they were not appointed against sanctioned posts and the decision in Umadevi (supra) prohibits such regularization. The Court was of the considered view that reliance on Umadevi (supra) for not regularizing the service of the workmen is misplaced.

42. Sukhendu (supra) took note of the Full Bench decision of the Hon'ble Gauhati High Court in matter of ***Jitendra Kalita & others vs. State of Assam & others*** reported in 2006 (2) GLT 654

wherein the Court held that the solution to the issue of regularization must be undertaken by the State as a policy measure. Regularization, where permissible in law, is an executive function and its falls within the domain of policy and administration. Courts do not grant prior approval to executive decisions. It is not for the Court to authorize the executive to exercise powers already vested in it. The Court was pleased not to accept the sweeping proposition that no regularization can be made in respect of employees not appointed against duly sanctioned posts.

43. The Court held that the State cannot rely upon the mere form of engagement to deny fair and equitable treatment to employees who have served for long years by discharging essential and recurring function of the State. Long and continuous service is a relevant consideration, and the State, as a model employer, is under a constitutional obligation to act with fairness, consistency and reasonableness. The practice of retaining employees for decades under deceptively titled designations, while simultaneously extracting regular work integral to the administration, has been disapproved. The Court directed regularization.

44. The Hon'ble Division Bench of this Court, in MAT/70/2026, I.A. No. CAN/1/2026 and CAN/2/2026 in the matter of The Union of India and others vs. Andaman Sarvajanic Nirman Vibhag

Mazdoor Sangh and others delivered judgment on 28th April, 2026 and reiterated the principle that the expression 'backdoor entry' cannot be wielded by the State as a shield to mask perpetual temporary engagement of a workforce to discharge sanctioned function of perennial nature which are integral and essential to the functioning of the concerned department/instrumentality of the State. The works performed, to be eligible for regularization, has to be integral and essential to the functioning of the employer. The engagement should be against sanctioned 'posts' or sanctioned 'functions' and the engagement should be for a substantial length of time in a work of perennial nature.

45. The judgment delivered by the Hon'ble Division Bench of this Court on 25th August, 2023 in MAT/14/2023 in the matter of the Port Blair Municipal Council and Another vs. Shri A. Subramaniam and Others was not interfered with by the Hon'ble Supreme Court on 06th November, 2023 in Petition(s) for Special Leave to Appeal (C) No(s). 23507/2023 in the matter of The Port Blair Municipal Council and Another vs. Shri A. Subramaniam and Another wherein the Court refused to interfere with the order of absorption passed by the Hon'ble Single Bench on 12th December, 2022 in WPA/27/2022 in the matter of A. Subramaniam vs. the Lieutenant Governor and others.

46. The learned advocate for the respondents stresses on the decision in Madan Singh (supra) wherein the Court was pleased to set aside the notification issued by the authority for regularizing the ad hoc employees. It is, however, noticed that the Hon'ble Supreme Court was pleased not to disturb the service of the employees who were regularized but directed their placement at the lowest pay scale admissible to the post.

47. In the case at hand, the Hon'ble Single Judge decided the issue in November, 2024. Since thereafter the law relating to regularization of contractual employees has evolved to a great extent. The embargo in Umadevi (supra) has been duly addressed and the ratio laid down therein has been interpreted in favour of regularization. The Hon'ble Supreme Court has repeatedly laid down the manner as to how the issue of regularization of contractual employees has to be dealt with. It has been held in no uncertain terms that Umadevi (supra) is not a complete bar to regularize service of the employees who have rendered uninterrupted continuous service to the State for more than a decade even in unsanctioned posts.

48. The Hon'ble Single Judge was pleased to disallow the prayer of the appellants primarily relying on the decision passed in the matter of Umadevi (supra).

49. Upon a relook of the prevailing law relating to regularization, we are inclined to allow the prayer seeking regularization of the appellants. It is held that the entry into service of the contractual employees of the members of the appellant Association cannot be said to be either illegal or backdoor appointment. The employees were engaged by the Selection Committee after a regular selection process was conducted where several candidates participated. The service of the contractual employees is absolutely integral to the functioning of the Society and ANIIMS.

50. The posts where the contractual employees are serving have been created by the Society and ANIIMS, which are autonomous bodies. The Office Order creating 425 + 107 posts is already in place since 4th March, 2020 and the recruitment rules have also been approved by the General Body of the Society as will be evident from the communication dated 14th June, 2024 by the Deputy Secretary, (Health) addressed to the Joint Secretary, Ministry of Health and Family Welfare. In fact, the aforesaid communication clearly mentions that there are 705 + 5 posts for creation on regular basis.

51. The aforesaid communication dated 14th June, 2024 distinctly mentions that ANIIMS is a premier National Medical Commission recommended medical institution established by the Society under the Andaman and Nicobar Administration. The

Society is presided by the Lieutenant Governor and Executive Council of the Society is chaired by the Chief Secretary, Andaman and Nicobar Administration. The letter further discloses that ANIIMS is managed by the Society since its inception in the year 2015. ANIIMS has all the facilities as per the National Medical Commission and serves 550 bed facility as the referral hospital for the entire Union Territory of the Andaman and Nicobar Islands.

52. It appears that after forwarding the letter dated 14th June, 2024, no follow-up steps have been taken to reach the recruitment process to its logical conclusion.

53. The Court has already come to a considered conclusion that the authority does not appear to be genuinely inclined to follow up with the regular recruitment process as the authority's demand is satisfied with the performance of the contractual employees. The urge and the necessity to hold regular recruitment process cannot be felt by the authority for which steps for conducting regular recruitment process appears to be deliberately delayed.

54. By merely placing reliance on the OM dated 4th January, 2024, issued by the Ministry of Finance laying down the compendium of instructions for creation, abolition of posts in autonomous bodies under Central Government, the respondents

cannot keep the issue of regularization pending for an indefinite period of time.

55. As already held by the Hon'ble Supreme Court that the issue of solving the problem of regularization has to be dealt with by the State, accordingly, we are of the opinion that the respondent nos. 2 and 3 ought to consider the prayer of the appellants to either regularize or absorb the contractual employees in regular service in a proper scale of pay on and from their initial date of appointment in line with the law laid down by the Hon'ble Supreme Court in the precedents mentioned hereinabove.

56. The aforesaid respondents are also directed to proceed for conducting regular selection process for filling up of the balance vacancies of the posts which was created in the meeting of the Executive Council after the contractual employees are regularized/ absorbed in service.

57. The respondents are directed to take a decision at the earliest but positively within a period of ninety days from the date of communication of this judgment.

58. **MAT/75/2024** is, accordingly, disposed of. The impugned judgment passed by the Hon'ble Single Judge stands set aside. There shall, however, be no order as to costs.

(**AMRITA SINHA, J.**)

BISWAROOP CHOWDHURY, J.

59. I have perused the judgment of my learned Sister and have agreed with the findings made therein. However, I make the following observations.

60. The issue of appointing casual workers, contractual workers and temporary workers in different Government Establishments and Undertaking is continuing for the last 55 years, giving rise to several litigations. At some point of time authorities regularized the casual workers, contractual workers and temporary workers and at some point refused to regularize them, for which the employees/workers had to go from pillar to post, by making representation to Authorities/Employers, moving Labour Court/Industrial Tribunal/Administrative Tribunal and Constitutional Courts.

61. The Hon'ble Supreme Court in the matter of **Secretary, State of Karnataka and Others vs. Umadevi (3) and Others** reported in **(2006) 4 SCC 1** observed a bar to regularisation of contractual employees who were not appointed through a regular recruitment. Thus, in the said decision the Hon'ble Supreme Court discouraged backdoor entry and directed appointment through regular recruitment process. Although the decision of the Hon'ble Supreme Court was in the year 2006 but subsequent thereto although employees in many establishments are appointed through regular

recruitment process but the same are made on contractual basis and are deprived of regularisation using the decision of *Umadevi (supra)* as a shield to avoid regularization and absorption.

62. In the instant case the appointment of the employees under the Respondent Authority was made by creating posts, framing recruitment procedure and thereafter appointing the employees/members of the appellant who participated in the interview/selection process having prescribed qualification. After being recruited and rendering satisfactory service and their contractual period being extended, if after ten years of service employees are made to undergo another selection process under new rules along with new incumbents and thereby causing harassment and hardship to them making their livelihood uncertain it will be nothing but a travesty of justice.

63. India being a welfare State, Social and Economic Justice is a part of the Preamble to the Constitution. Thus, the Government Authorities as well as Courts while deciding a Constitutional issue have to keep in mind the principles of social and economic justice. Labour Laws and Service Jurisprudence should be read and interpreted in a manner so that social and economic justice may be achieved.

64. In the case of ***Sudharam Bansal vs. Pulin Behari Sarkar*** reported in ***AIR 1984 SC 1471***, the Hon'ble Supreme Court observed that social justice is the recognition of greater good to a larger member without deprivation or accrual of legal rights of anybody. If such a thing can be done then social justice must prevail over any technical rule. As between two parties if a deal is made with one party without serious detriment to the other, than the Court would lean in favour of the weaker section of the society.

65. All parties are directed to act on a server copy of this judgment duly downloaded from the official website of this Court.

(BISWAROOP CHOWDHURY, J.)