

IN THE HIGH COURT OF JUDICATURE AT PATNA

Amit Kumar & Ors.

vs.

The State of Bihar & Ors.

Civil Writ Jurisdiction Case No.8991 of 2022

7 May, 2025

(Hon'ble Mr. Justice Bibek chaudhuri)

Issue for Consideration

Whether the Petitioners, a batch of contractual employees, working under the functionary of the State for the last 12 years, are entitled to be regularised/absorbed as permanent employees or not?

Headnotes

Constitution of India----Article 226, 14, 16, 19, 21----Regularisation and Absorption of Contractual Employees----Outsourcing in Government Departments---Contractual Employee vis-à-vis Article 226---writ petition by a batch of contractual employees, working under the functionary of the State for the last 12 years, to quash the impugned notification by the State Government by which they have been made subject to fresh selection process to be conducted by BELTRON; for a declaration that the services of the petitioners are permanent in nature by virtue of State Government's notification contained in Memo No. 436 dated 31st July, 2019; and, for direction to Respondents to place petitioners on the vacant posts.

Held: indisputably the petitioners have been working since 2013---their initial appointment was made for a period of one year but the State Government, vide Notification No. 436, dated 31st July, 2019, extended their tenure of service till attainment of age of 60 years or completion of the project, whichever is earlier--- in view of such decision, the Executive Authority in the districts was directed not to renew the contract of the petitioners on year to year basis---furthermore, Respondents has enumerated valuable rights to the petitioners akin to the regular employees---the appointment of the petitioners was made by a selection process conducted by the Committee constituted by the District Magistrate, Purnea---as the petitioners were discharging their duties in the State-owned hospitals in the District

of Purnea since 2013, they cannot now be obligated to appear in examination conducted by BELTRON as per the impugned notification----incorporation of the above conditions vide notification, dated 31st July, 2019 by the General Administration Department, Government of Bihar does not permit the State Respondents to pass any order against the petitioners for their withdrawal from service--- in the year 2021, the State Government decided to man data centres in various government departments of the State of Bihar through outsourcing---- Outsourcing in government departments is legally permissible, but it is crucial to ensure compliance with Labour Laws and regulations----Government departments can outsource tasks and services, but they must ensure that the outsourced employees are treated fairly and their rights are protected---- the said policy decision of outsourcing cannot be made effective retrospectively, directing the contractual employees (Petitioners), who were discharging the similar duties for a long period of time, to submit themselves to a selection process to be conducted by BELTRON with fresh applicants, without terminating their job on the ground of efficiency---- a contractual employee, working under the functionary of the State can challenge the executive instruction under Article 226 of the Constitution of India, when his fundamental rights under Articles 14, 16, 19 and 21 are violated--- in the instant case, petitioners are treated differently from their fellow Executive Assistants, working in the district of Ara and Araria---writ allowed. (Para- 44, 45, 53, 55, 59, 60, 61, 63)

Case Law Cited

CWJC No. 5823 of 2020Held not applicable ; Chaudhary Charan Singh, Haryana Agricultural University, Hisar & ors. v. Monika & Ors. ; Civil Appeal No. 10800 of 2024 ; Jaggo v. Union of India & Ors., 2024 SCC OnLine SC 3826.....Relied Upon

List of Acts

Constitution of India

List of Keywords

Contractual Employee ; Functionary of State ; Regularisation and Absorption of Contractual Employees ; Outsourcing in Government Departments ; Contractual Employee vis-à-vis Article 226 ; Employment Contract ; Fresh Selection Process ;

Withdrawal of Service ; Permanent Employee ; Executive Instruction ; Violation of Fundamental Rights

Case Arising From

Letter contained in memo no. 956 dated 18.08.2021 by which the service of the petitioner has been returned to the Establishment, District Purnea due to paucity of fund and letter contained in Memo No. 1416 dated 23.12.2021 issued under the signature of District Magistrate, Purnea by which the list of the petitioners has been submitted to the BELTRON for taking appropriate action.

Appearances for Parties

For the Petitioner/s: Mr. Ashish Giri, Sr. Advocate ; Mr. Sumit Kumar Jha, Advocate ; Ms. Riya Giri, Advocate

For the Respondent/s: Mr. Prabhat Kumar Verma (AAG 3) ; Mr. Suman Kumar Jha, AC to AAG 3

For the Health Society: Mr. K.K. Sinha, Advocate

For the BELTRON: Mr. Grijeh Kumar, Advocate

For the Private Respondent No. 13: Mr. Deepak Kumar, Advocate ; Mr. Rajiv Kumar, Advocate ; Mr. Rajesh Ranjan, Advocate

Headnotes Prepared by Reporter : Ghanshyam, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8991 of 2022

1. Amit Kumar Son of Parmeshwar Prasad, resident of Nagar Panchayat Bhawan Road, Banmankhi, P.O. and P.S. Banmankhi, District Purnea, PIN 854202.
2. Shyam Nath Mehta, son of Shiv Nath Prasad Mehta, resident of New Shashtri Nagar, P.O. and P.S.- Madhubani, District Purnea, PIN 854301.
3. Raj Kumar Goswami, Son of Shankar Goswami, resident of Naka Chowk Purnea City, P.O.- Purnea City, P.S.- Sadar, District Purnea, PIN 854302.
4. Om Prakash Kumar, son of Arjun Roy, resident of Kali Prasad Tola Madhubani, P.O. - Purnea, P.S.- K.Hat, District Purnea, PIN 854301.
5. Kumar Rahul, son of Pradeep Kumar Sinha, resident of Madhubani Bazar, Near Sinha Public School, P.O. and P.S. Madhubani, District Purnea, PIN 854301.
6. Rahul Kumar, Son of Birendra Prasad Mehta, resident of at and P.O. Gadhiya Balua, Ward No. 6, P.S. K. Nagar, District Purnea, PIN 854304.
7. Rajeev Kumar, Son of Devendra Narayan Mallick, resident of Ward No. 8, Dharhara, Near Power Sub Station Banmankhi, P.O. and P.S. Banmankhi, District Purnea, PIN 854202.
8. Subhash Kumar, Son of Surya Narayan Sah, resident of Village Hanuman Nagar, P.O. Kajha, P.S. K. Nagar, District Purnea, PIN 854304.
9. Sanjeev Kumar Sinha, Son of Anil Kumar Sinha, resident of Ram Nagar Bank Colony, P.O.- Polytechnic, P.S. K. Hat, District Purnea, PIN 854301.
10. Sumit Kumar, Son of Binda Singh, resident of At, P.O. and P.S.- Bhawanipur, District Purnea, PIN 854204.
11. Anil Kumar Choudhary, Son of Sitaram Choudhary, resident of Nishiganj, Line Bazar, P.O.- Purnea, P.S. K. Hat, District- Purnea- 854301.
12. Chandan Kumar, Son of Dinesh Das, resident of Shivanagar Newalal Chowk, P.O.- Lalganj, P.S. Maraga, District Purnea, Pin- 854301.
13. Priti Deb, daughter of Rabindra Kumar Deb, resident of Near Durga Mandir, Purnea Court Station, P.O. Purnea, P.S.- K. Hat, District Purnea Pin 854301.
14. Binita Kumari, daughter of Umesh Kumar Paswan, resident of Barihat, Near Durga Mandir, P.O. Purnea, P.S. K, Hat, District Purnea, PIN 854301.
15. Ankush Kumar, Son of Lakhan Lal Yadav, resident of Village Baghmara, P.O. - Bela Rikabganj, P.S.- K. Nagar, District Purnea, Pin 854301.
16. Ravi Shekhar, Son of Vikram Prasad, resident of Anandpuri, P.O. Purnea, P.S. Shayak Khajanchi, District Purnea.
17. Shiv Kumar Das, Son of Madhav Narayan Das, resident of Vikash Nagar Maranga East, PO Polytechnic, P.S. K.Hat, District Purnea, PIN 854301.
18. Jitendra Kumar, Son of Sant Lal Rajak, resident of Sant Niwas, Ramnagar, PO Polytechnic, P.S. K. Hat, District Purnea, PIN 854303.
19. Shiv Shankar Kumar Mehta, son of Ashok Kumar Mehta, resident of At Balua (Amapur), P.O. - Garhiya Balua, PS.- K. Nagar, District Purnea, PIN



854304.

- 20. Prakash Kumar Chouhan, Son of Hari Prasad Chouhan, resident of Chouhan Tola, Khushkibagh, P.O. Khushkibagh, P.S.- Sadar, District Purnea, PIN 854305.
- 21. Saurabh Suman, Son of Hira Lal Mandal, resident of Subhash Nagar, P.O. and P.S. - Kasba, District Purnea, PIN 854330.
- 22. Md. Salim Zafar, Son of Md. Mohiuddin Qasmi, resident of Qasmi Manzil, Rahat Colony, Near Badi Masjid, Sipahi Tola, P.O. Purnea, P.S. Madhubani Top, District Purnea, PIN 854301.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Chief Secretary, General Administration Department, Government of Bihar, Patna.
- 2. The Additional Secretary to Government of Bihar, Patna.
- 3. The Managing Director, Bihar Administration Reforms Mission Society, Government of Bihar, Patna.
- 4. The Additional Director, Bihar Administration Reforms Mission Society, Government of Bihar, Patna.
- 5. The OSD, Bihar Administration Reforms Mission Society, Government of Bihar, Patna.
- 6. The Principal Secretary, Health Department, Government of Bihar, Patna.
- 7. Executive Director, State Health Society, Patna, Bihar.
- 8. The District Magistrate, Purnea, Bihar.
- 9. DDC, Purnea, Bihar.
- 10. Additional Deputy Collector (Establishment), Purnea, Bihar.
- 11. Civil Surgeon-Cum-Member Secretary District Health Society, Purnea, Bihar,
- 12. District Program Manager, District Health Society, Purnea, Bihar.
- 13. M/S Urmila International Services Pvt. Ltd. A Company registered under the Companies Act having its office at 31/A, 1st Floor, Banke Bihari Sadan, Sahdeo Mahto Srikrishnapuri, P.S. Srikrishnapur, Patna through its Managing Director.
- 14. Bihar State Electronics Development Corporation Ltd. (BELTRON), J442-64Q, Baldev Bhawan Rd, P.S.Shastrri Nagar, Beltron, Patna Bihar 800023 through its Managing Director.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Sr. Advocate Mr. Sumit Kumar Jha, Advocate Ms. Riya Giri, Advocate
For the Respondent/s	:	Mr. Prabhat Kumar Verma (AAG 3) Mr. Suman Kumar Jha, AC to AAG 3



For the Health Society : Mr. K.K. Sinha, Advocate
For the BELTRON : Mr.Grieh Kumar, Advocate
For the Private Respondent No. 13 : Mr.Deepak Kumar, Advocate
Mr.Rajiv Kumar, Advocate
Mr.Rajesh Ranjan, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 07-05-2025

1. The petitioners have invoked Constitutional Writ Jurisdiction of this Court under Article 226 of the Constitution of India for the following reliefs:-

“i. For issuance of appropriate writ/writs, order/orders, direction/directions in the nature of mandamus for directing the respondents to place the petitioners on the vacant post of Executive Assistant in the District of Purnea.

ii. For issuance of appropriate writ/writs, order/orders, direction/directions in the nature of mandamus for directing the respondents to pay the salaries of the petitioners from the period of August, 2021 uptill now with all consequential benefits.

iii. For issuance of appropriate writ/writs, order/orders, direction/directions in the nature of certiorari for setting aside letter contained in memo no. 956 dated 18.08.2021 by which the service of the petitioner has been returned to the Establishment, District Purnea due to paucity of fund.

iv. For issuance of appropriate



writ/writs, order/orders, direction/directions in the nature of certiorari for setting aside letter contained in Memo No. 1416 dated 23.12.2021 issued under the signature of District Magistrate, Purnea by which the list of the petitioners has been submitted to the BELTRON for taking appropriate action.

v. For a declaration that the office order contained in Memo No. 1347 dated 18.08.2021 issued by the Additional Mission Director, Bihar Prashashanik Sudhar Mission is not applicable to the petitioners.

vi. To hold and declare that the services of the petitioners are permanent in nature by virtue of notification contained in Memo No. 436 dated 26.02.2019 issued under the signature of Additional Mission Director, Bihar Prashashanik Sudhar Mission, Patna by which the services of the petitioners and others similarly situated persons have been enhanced till the sixty years of age or till lapse of scheme.

vii. To hold and declare that the petitioners have not been appointed for scheme basis rather the appointment of the petitioners are regular in nature.

viii. For any other relief/s to which the petitioners may be found entitled to by this Hon'ble Court."

2. On 6th of June, 2013, Bihar Prashashanik



Sudhar Mission, General Administration Department, Government of Bihar, Patna (hereinafter referred as “BPSM” for short), issued a notification for preparation of a panel for the appointment of Executive Assistants on contract basis. Clause-1 of the said notification provided the minimum eligibility criteria for the candidates, which was matriculation and basic knowledge of computer operation system (MS Word, MS Excel, MS Power Point, etc.). The notification also stated that the said contractual appointment would initially be for one year. However, there was stipulation for extension of the period of appointment for such candidates. The procedure of selection was stated in Clause-4 of the said Notification, which stipulated that on the basis of applications filed in the district level, a committee under the Chairmanship of the District Magistrate would prepare a panel keeping in mind the rules/roster relating to reservation and the candidates would be appointed on the basis of seniority against vacant posts.

3. Accordingly, a panel was prepared by the Committee under the Chairmanship of the District Magistrate for the District of Purnea, vide Memo No. 2487, dated 18th of October, 2013. Thereafter, vide a Memo No.



8592, dated 23rd of October, 2013 read with Memo No. 9842, dated 10th of December, 2013, issued by the Secretary, Health-cum- Executive Director, State Health Committee, Bihar, Patna, the District Magistrate vide an order, dated 20th of November, 2013 directed that the Executive Assistant from the panel would be posted at State Hospitals in the District of Purnea on the basis of counselling of the empaneled candidates. Counselling was held on 14th of December, 2013, where 34 candidates from the panel appeared and they were appointed on contractual basis to work under the District Health Committee, Purnea in different hospitals as an Executive Assistants.

4. Though it is not very relevant for the purpose of adjudication of the dispute in the instant writ petition, it is noted that the petitioners initially used to get monthly salary of Rs. 11,000/- by virtue of notification, dated 14th March, 2014, but, subsequently, the salary was reduced to Rs. 9,000/- per month on the basis of a notification, issued by the Civil Surgeon-cum-Member Secretary, District Health Committee, Purnea. Though, the petitioners were initially appointed for one year, but they were continuing their services for years together as Executive Assistants in



different hospitals in the District of Purnea. On 3rd of July, 2015, the Government of Bihar issued a notification, directing the District Magistrates, Divisional Commissioner and Principal Secretary of all Departments to treat all the Executive Assistants engaged in Government Offices equally, following the uniform service conditions and payment of salary. By a Notification No. 860, dated 18th of September, 2018, issued by the General Administration Department and published in Bihar Extraordinary Gazette, an order was passed relating to service conditions of contractual employees posted in different departments as per the recommendation of a High Level Committee, recommending execution of certain proposals. The relevant extracts of the said notification are quoted below:-

“2. The Committee has also given recommendations in respect of each category of contractual employees working under each scheme/department, mentioning exactly which of the policy recommendations given by the Committee will be applicable in respect of different employees.

The recommendations of the high level committee have been made in two circumstances-

(i) The tenure of some



projects/schemes is limited. These projects are usually projects/schemes financed by Central/Centrally Sponsored/International Financial Institutions and are approved for a limited period. Their implementation after the prescribed period is subject to acceptance by the Central Government/International Financial Institutions. Therefore, appointments are made on contract basis for the duration of the projects. This category also includes such appointments where the creation of posts is temporary and has been done for contractual appointment only.

(ii) In the second situation, the post is permanent, but appointments are made on contract due to the delay in giving recommendations for regular appointments by the Public Service Commission / Staff Selection Commission until the regular appointments are made. (Emphasis supplied)

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4. After due consideration of the recommendations of the committee, the following decisions are taken:

(i) The decision of the State Government on the recommendations of the Committee regarding the above two categories of contract employees is attached as Appendix 'A'.

(ii) The services of data entry



operators provided through Beltron are being availed by all the departments. Therefore, after consulting all the departments, this matter should be reconsidered and returned to the high level committee to submit recommendations.

(iii) Contractual employees working in the subordinate boards / corporations / authorities of certain departments, in respect of whom no recommendation has been made in the report under consideration submitted by the committee. The committee should be directed to reconsider and submit its recommendations in this regard.

(iv) In cases where irregular/illegal appointments have been discussed by the committee, the administrative department will take appropriate action after obtaining legal opinion.”

Appendix (A)

1.K- Regarding continuance of service of Contractual employees till the age of retirement or scheme period, whichever is earlier. (Committee Report page 276-278) (emphasis supplied)

The committee recommends that after the approval of the recommendations of the committee by the Cabinet, every concerned



department/authority/corporation/society can issue an office order to the effect that this appointment of contractual employees is completely temporary after obtaining the order of the competent authority and the scheme/post is till the period of acceptance or till regular appointment. It will also be clearly mentioned that on the grounds of ill-health or disciplinary grounds or due to unsatisfactory service or on attaining the normal age of retirement, the service will/may be terminated before the period of acceptance of the scheme/post or even before regular appointment. It will also be clearly mentioned in the office order that other conditions of contractual appointment will remain the same as mentioned in the appointment letter, agreement and indemnity bond letter (wherever applicable) issued at the time of appointment. This order will be issued separately for all the posts of contractual employees.

It is noteworthy here that there may be a delay in issuing different orders by different departments and in the meantime the current tenure of many contract employees may end. Therefore, to implement it with immediate effect, the relevant paragraphs of the guidelines issued by the General Administration Department vide



Memorandum No. 3/M-78/2005-No. 2401, dated 18.07.2007 can be amended. (emphasis supplied)

Apart from the above, the following three recommendations can also be included in the said memorandum -

(1) It is also worth mentioning here that sometimes it is possible that contract employees working on contract post/s are not required in the department where they are working but posts of the same designation and same qualification are vacant in other departments and appointment to those posts is necessary on contract basis. In such a situation, instead of making new appointments on those posts/posts, contract employees working on posts with similar designation and qualification in other departments, who are no longer needed in that department, can be appointed on contract basis on vacant posts in other departments. For this, a fresh agreement will have to be made with the concerned department. It is noteworthy here that this facility will not be available to those contractual employees who have been removed due to disciplinary reasons. (emphasis supplied)

(2) It is also noteworthy here that many contractual employees do not succeed in the examination/interview/other investigation



taken for regular appointments, in such a situation, if the posts are vacant even after regular appointments, then those employees who have not been selected in the process of regular appointment can be considered for regular appointment instead of appointment on contractual basis.

(3) Some cases have come before the Committee where contractual employees were removed despite availability of the post because the process of regular appointment has been started. Due to this, while on one hand the departmental work is disrupted, on the other hand the contractual employees have to face financial difficulties. Therefore, the committee recommends that where there are such cases, the removed contractual employees can be appointed till regular appointments are made. (emphasis supplied)

5. On the basis of the aforesaid Notification, dated 18th of September, 2018, BPSM under General Administration Department issued Notification No. 436, dated 26th of February, 2019, directing, inter alia that:-

(i) The IT Managers, I.T.Assistants-cum-Executive Assistants engaged on contractual basis under BPSM would continue to work till the completion of the scheme or till attainment of 60 years, whichever is earlier. Therefore, the



employment of contractual employees need not be ratified on yearly basis.

(ii) The appointment authority is empowered to terminate the services of contractual employees before attainment of 60 years or the completion of the scheme on the ground of his physical illness, administrative reason or incompetence.

(iii) All other conditions contained in the agreement for service which the employees executed by an agreement for service shall remain in force.

6. On or about 12th of February, 2021, the District Health Committee intimated the District Magistrate, Purnea that due to paucity of fund, the District Health Committee cannot make payment of the salary to Executive Assistants. Therefore, the service of the Executive Assistants were requested to be taken back for placing them in vacant posts of other departments.

7. The petitioners further contended that similarly placed Executive Assistants were absorbed in vacant posts of other departments in the Government, in the Districts of Ara and Araria, but the District Magistrate, Purnea directed the Managing Director, BELTRON to take steps to fill up the vacant posts of the Executive Assistants in the District



Purnea.

8. The petitioners filed representation before the authorities, praying for their absorption in the vacant posts lying in different departments in the District of Purnea as Executive Assistants but the District Magistrate acted illegally and contrary to the gazette notification, mentioned above as well as the order, dated 26th of February, 2019, whereby and whereunder, the age of superannuation of contractual Executive Assistants were fixed at 60 years, wrongly issued a letter, dated 23rd of December, 2021, through which he forwarded the list of the petitioners to the BELTRON for taking appropriate steps in the light of the Memo No. 1347, dated 18th of August, 2021.

9. The Respondent No. 2 has filed a counter affidavit on behalf of the State/Respondents. It is contended on behalf of the respondents that the Executive Assistants were appointed on contractual basis on the basis of a panel prepared by the District Committee under the Chairmanship of the District Magistrate for each districts. The recruitment process of the Executive Assistants varied from districts to districts. The Executive Assistants under BPSM had lesser remuneration as compared to Data Entry Operators



appointed by BELTRON through a process of examination. Both of them provide data entry services. Therefore, the Executive Assistants demanded parity of remuneration with the Data Entry Operators appointed through BELTRON, given the similar nature of work. While considering the demand of the Executive Assistants with regard to equality of pay for equal work, the State Government considered it necessary to standardize the recruitment process of the Executive Assistants across the districts and also viz-a-viz the Data Entry Operators selected through BELTRON by a uniform examination process. Thus, Governing Council of BPSM in its meeting, dated 8th of July, 2019, taking into consideration the lack of uniformity with respect to empanelment of Executive Assistants across the districts as against the uniform process of examination of empanelment of Data Entry Operators appointed through BELTRON, decided to do away with the recruitment of Executive Assistants from the districts panels and directed to fill up the further vacancies by requesting the BELTRON to provide the Data Entry Operators for the same.

10. The resolution of the meeting of the Governing Council of BPSM, dated 8th of July, 2019, is annexed with



the counter affidavit and marked with Annexure C.

11. On the basis of the above decision, BPSM issued a notification, dated 31st of July, 2019 / 2nd of August, 2019, directing, inter alia, that henceforth new vacancies as well as additional posts of Executive Assistants would be filled up by BPSM through BELTRON. As soon as there would be vacancy in the sanctioned posts of Executive Assistants in a district, the said vacancy would be filled up, maintaining reservation roster by the Data Entry Operators appointed through BELTRON. The salary of the Data Entry Operators engaged through BELTRON would be disbursed directly to BELTRON by BPSM and BELTRON would disburse the salary of the Data Entry Operators accordingly. Respondent No. 2 also annexed the resolution of the meeting of the Governing Council of BPSM under the Chairmanship of the Chief Secretary, Health, on 13th of December, 2019 among other documents.

12. It is contended on behalf of the Respondents that in view of urgent requirement of Executive Assistants/Data Entry Operators in various Government Departments and other offices during the ongoing panel preparation process by BELTRON, the Governing Council in



its meeting, dated 13th of December, 2019 decided to allow the recruitment of the Executive Assistants from the district panels as an interim measure till BELTRON complete its panel preparation process, subject to certain conditions, viz, the contract will be for three months only, subject to extension as per the requirement of the concerned Department/Offices, provided the candidates clear the examinations of Data Entry Operators conducted by the BELTRON. The said interim arrangement was extended from time to time and finally as per Clause-4 of the said interim arrangement, mentioned in Memo No. 2341, dated 23rd of December, 2019, it was terminated in January, 2021, when BELTRON completed the process of selection of Data Entry Operators. After the said selection by BELTRON, which was intimated to the State Government, vide letter, dated 8th of January, 2021, the Governing Council of BPSM resolved in its meeting, dated 5th of February, 2021 that the case of the candidates whose services was not required in the office of employment and needed reemployment was taken up in the light of the decision of the State Government's Memo No. 12534, dated 17th of September, 2018 and it was decided that since BPSM has stopped empanelment process, it cannot have a reemployment



process under the Society. Since the recruitment process has been vested with BELTRON, any reemployment should also be done by BELTRON. It was further decided that in the interest of the candidates, they would be provided opportunity of being empaneled under BELTRON for further placement/reemployment as per the provisions of selection by BELTRON with relevant relaxation in age as well as special educational requirements. The Respondents also urged that the BELTRON conducted eligibility test on 5th of July, 2023 and successful candidates have already been empaneled. Thus, the State Respondents under the facts and circumstances stated above supported the action taken by the District Magistrate, Purnea, referring the names of the petitioners to the BELTRON for their selection and empanelment after conducting necessary tests.

13. The District Magistrate, Purnea and the Civil Surgeon cum Member Secretary, District Health Society, Purnea have filed a separate counter affidavit stating, inter alia, that under policy decision, the Executive Director, State Health Society, Bihar, Patna informed vide letter no. 1187, dated 3rd of June, 2020, to all the Civil Surgeon cum Member Secretary, District Health Societies, Bihar that M/s Urmila



International Services Private Limited, Patna has been selected for establishment and functioning of Data Centres in all 38 districts of Bihar. Therefore, in terms of the said order, all consequential orders were passed, which do not require any interference by this Court. The above named Respondents also submits that similar matter was disposed of by this Court in C.W.J.C. No. 7250 of 2020, vide order, dated 21st of January, 2021, directing the petitioners to approach before the new outsourcing agency, namely, Urmila International Services Private Limited.

14. They also contend that the instant writ petition is bad for non-joinder of M/s Urmila International Services Private Limited as party Respondents.

15. Petitioners have filed a rejoinder to the counter affidavit, filed by the Respondent Nos. 8 and 11, on 23rd of January, 2023, refuting the contention, stating, inter alia, that in pursuance to the notification, dated 6th of June, 2013, issued by the BPSM, a panel of candidates by a committee, headed by the District Magistrate, Purnea, was prepared, which contain the names of the petitioners. After their empanelment, the District Magistrate, Purnea, vide order, dated 20th of November, 2013, directed the empaneled



petitioners to join at the State Hospitals in the district of Purnea on the basis of Memo No. 8592, dated 23rd of October, 2013 and Memo No. 9842, dated 10th of December, 2013, issued by the Health cum Executive Director of the State Health Committee. Further, vide Memo No. 436, dated 26th of February, 2019, issued by the Additional Mission Director, services of the petitioners and other similarly situated persons, were extended till the age of 60 years or till the culmination of the scheme/programme. However, vide impugned order, dated 18th of August, 2021, the services of the petitioners have been returned to the establishment due to paucity of fund and thereafter the petitioners have not been placed at the appropriate vacant posts by the District Magistrate, Purnea. It is also urged by the petitioners that the decision of this Court passed in C.W.J.C. No. 7250 of 2020, dated 21st of January, 2021, is not applicable under the facts and circumstances of this case.

16. Again on 13th of August, 2024, the Respondent No. 11 filed a supplementary counter affidavit and submits that vide letter no. 1187, dated 3rd of June, 2020, a communication was made from the Health Society that in all 38 districts, the Data Entry Operators outsourced by M/s



Urmila International Service Private Limited would be appointed in place of the petitioners and others in terms of an agreement between State Health Society and M/s Urmila International Service Private Limited. As the petitioners were not outsourced by M/s Urmila International Services Private Limited, they are not entitled to be posted in the offices under the control of District Health Society.

17. Respondent No. 11 filed 2nd supplementary counter affidavit on 23rd of August, 2024, referring to the same facts and circumstances and further stating that in view of the agreement executed by the State Health Society and M/s Urmila International Services Private Limited to the effect that they would provide the Data Entry Operators for rendering services of data entry in the offices under the control of State Health Society, the petitioners were removed and their services were returned back to the BELTRON vide memo no. 14161, dated 23rd of December, 2021, by the District Health Society, Purnea and in their places altogether 31 operators are functioning in the district of Purnea, whose services have been provided by the M/s Urmila International Service Private Limited.

18. The Respondent No. 7, Executive Director, State



Health Society, Purnea has filed a separate counter affidavit, stating similar factual circumstance as stated by the Respondent Nos. 8 and 11.

19. That on 6th February, 2025, the respondent no. 11 submitted a supplementary affidavit stating, *inter alia*, that on 3rd June 2020, the Department of Health, Government of Bihar, issued a communication that all 38 districts' Data Entry Operators would be recruited through outsourcing agency, namely, M/s Urmila Service Pvt. Ltd. with whom an agreement was executed by the State Health Society. Therefore, the respondent no. 11 had no other alternative but to remove the petitioners from their posts and 31 members of Data Entry Operators have been engaged as per the recommendation of M/s Urmila International Service Pvt. Ltd. The respondent no. 11 also submits that their candidature through M/s Urmila International Pvt. Ltd. and they were recommended for the post of Data Entry Operators in place of executive assistants by the said outsourcing agency and they have been engaged as Data Entry Operators in the District of Purnea.

20. The State Health Society (respondent no. 7) also filed 3rd supplementary counter affidavit on 5th April 2025 and



challenged the maintainability of the instant writ petition on the ground that the society is registered under the Societies Registration Act and the affairs of the society managed and regulated by the governing body of State Health Society. The State Health Society has been vested with power of outsourcing of any private agency to provide their services. In support of the above contention, the State Health society has filed the photocopy of the Minutes of 27th Governing body meeting dated 21st February 2018 and the relevant extract of HR Policy of the State Health Society along with the counter affidavit.

21. The petitioners have filed rejoinder to the supplementary counter affidavit filed by the respondents on 22nd February 2025, mainly, against the counter affidavit filed by the respondent no. 2. The petitioners have denied and disputed the contention of the State respondents as depicted in the counter affidavit shown by respondent no. 2 and submitted that the panel prepared through BELTRON was in addition to the executive assistants selected through the panel prepared by the District Magistrates of respective Districts. The State Government has failed to produce any document in the counter affidavit to show that the panels of executive



assistants prepared by the district magistrates for each district in the year 2013 were terminated/canceled by virtue of the above notification. On the contrary, the documents filed on behalf of the State respondents clearly show that BELTRON was directed to prepare panel of DEOs to fill up the vacant posts of executive assistants. The petitioners reiterated the relevant decision taken by the Government of Bihar *vide* Gazette Notification dated 18th September, 2018. The petitioners further state that the services of the petitioners have been returned by the District Health Society to the District Magistrate, Purnea *vide* memo no. 956 dated 18th August 2021 due to paucity of fund. Due to such circumstances, the District Magistrate, Purnea was duty bound to place the petitioners in vacant posts of executive assistants in other departments of the district or even in other districts in the State of Bihar. The petitioners have reiterated that when the executive assistants of other districts, namely, Ara and Araria were absorbed in other departments, denial of such right to the petitioners is violation of Article 14 and 16 of the Constitution of India.

22. These are all about pleadings by the contesting parties in the instant writ petition.



23. Mr. P. K. Verma, learned AAG 3 and Mr. K. K. Sinha, learned Advocate on behalf of the Health Society in course of their argument challenged the maintainability of the writ petition on the ground that the petitioners are contractual employees they were initially appointed for a period of one year but their terms were extended from time to time on the basis of the decision taken by the Health Society on the basis of various directions/orders passed by the BPSMS under the General Administration Department, Government of Bihar. However, extension of term of contractual employment does not confer any right to the petitioners to claim their entitlement to continue with the work till 60 years or till the end of the scheme/project, whichever is earlier. It is pointed out by the learned AAG 3 that at the time of their initial appointment, the petitioners executed an indemnity bond where they agreed that they would not make or raise any demand of permanent employment in the State Government. The petitioners are bounded by the said bond and they cannot claim permanent nature of their job as executive assistants in the District of Purnea or in any other District in the State of Bihar.

24. Secondly, it is submitted by the learned



Advocate on behalf of the State Health Society, respondent no. 7 herein, that admittedly panel of executive assistants were prepared by the District Magistrate, Purnea primarily for the work of data entry and their services were placed under the respondent no. 11 for conducting data entry work in respect of the patients, their treatment, medicine supplied to them, etc. in the State hospitals situated in the District of Purnea. The State Health Society is registered under the Societies Registration Act, 1860. A writ petition is not maintainable against a society registered under Societies Registration Act. Thus, the writ petition is not maintainable. The learned Advocate on behalf of the State Health Society refers to series of judgments passed by this Court on similar facts and circumstances. He first refers to an unreported decision of this Court passed in **CWJC No. 7250 of 2020** vide order dated **21st January 2021**, a Coordinate Bench while disposing of the writ petition observed that data management service of the Health Society is presently outsourced to newly added private respondent. Therefore, the petitioners should approach the private respondent in respect of their claim for being allowed to work as Data Entry Operators. In the aforesaid judgment it is recorded that the learned Senior counsel appearing on behalf



of the private respondent, namely M/s Urmila International Services Pvt. Ltd. (added respondent no. 13) undertook that as per requirement, and maintaining parity with other similarly situated as the petitioners, who were earlier discharging the duties on data management service, the claim of the petitioners would be considered. Thus, the writ court finally disposed of the said writ petition giving liberty to the petitioners to raise their claim before the added respondent no. 13. Another writ petition bearing ***CWJC No. 10938 of 2021*** was disposed of on ***3rd October, 2023*** by a Co-ordinate Bench holding, *inter alia*, that the relief prayed for by the petitioners was predominantly against a private individual, therefore, the writ petition is not maintainable and the said writ petition was dismissed again, giving liberty to the petitioners to avail appropriate remedy in accordance with law from the outsourcing agent, namely, Urmila International Pvt. Ltd. Similar order was passed in ***CWJC No. 6906 of 2020*** on ***03rd July 2020***. This Court disposed of ***CWJC No. 7092 of 2020*** on ***09th December 2021*** also, holding, *inter alia*, that the grievance of the petitioner is against the private entity and the writ petition is not maintainable. ***CWJC No. 9993 of 2021*** was disposed of by a Co-ordinate Bench on ***19th September,***



2023 with the following observations: -

“5. The petitioners have no privity of contract with the State or its Authorities, as is apparent from Annexure 1 Series, whereby they were engaged by the Private Entity Infosystem and Solution Pvt. Ltd, for being deputed at various centres as Data Entry Operators.

6. The petitioners cannot be said to be the persons aggrieved by Annexure 8, which only holds that instead of Infosystem and Solution Pvt. Ltd, Urmila International Services is to be allowed to perform in view of the contract entered with Urmila International on 28.02.2020. This letter does not affect any subsisting right of the petitioners, or any corresponding obligation on the State authorities for which the petitioners may be permitted to invoke the extraordinary and discretionary jurisdiction of this Court under Article 226 of the Constitution of India. The writ at the instance of the petitioner, therefore, is thus found to be devoid of any evidence and the same is dismissed.”

25. Similar order was passed in **CWJC No. 13500 of 2021** vide order dated **04th January, 2022**. **CWJC No. 10148 of 2021** vide order dated **1st December 2021**, **CWJC No. 17633 of 2024** vide order dated **21.11.2024** and **CWJC**



No. 9967 of 2024 vide order dated *18th July, 2024* passed by this Court.

26. It is submitted by the learned counsels for the State respondents that the above-mentioned orders passed in the writ petitions have reached its finality. In the line of the said orders referred to hereinabove, the instant writ petition is not maintainable.

27. Mr. Ashish Giri, learned senior counsel appearing on behalf of the petitioners, on the other hand, submits that the petitioners do not have any claim against the private respondents. The petitioners were empaneled by the District Administration, Purnea to discharge work as executive assistants in various departments admittedly on contractual basis. The services of the petitioners were placed under respondent no. 11 to discharge the functions of Data Entry Operator in different State hospitals in the district of Purnea. They were discharging the said work continuously and uninterruptedly till 12th February, 2021. Thereafter, the Surgeon-cum-Member Secretary, District Health Committee, Purnea informed the Deputy Collector (Establishment), Purnea that due to paucity of fund, the State Health Committee, Bihar, Patna has directed the District Health



Committee to take works of executive assistants/computer operators from a private agency under the name and style of M/s Urmila International Services Pvt. Ltd., Patna as the District Health Committee, Purnea could not make payment of the salary to the executive assistants, their services were placed at the disposal of the District Magistrate, Purnea *vide* a letter dated 12th February 2021. Thus, the petitioners were not terminated or removed till date. Their contractual employment was not severed. The instant writ petition has been filed with a prayer to issue a writ of mandamus directing the State respondents to allow the petitioners to work till they attain 60 years of age or completion/cessation of the scheme where they are posted to discharge their work, whichever is earlier.

28. In support of his contention, Mr. Giri refers to an order bearing no. 436 dated 26th February 2019 issued by the BPSM under the General Administration Department, Government of Bihar. Paragraph No. 1 of the said order (Annexure-7) runs thus: -

“1.बिहार प्रशासनिक सुधार मिशन सोसाइटी के
अधीन सृजित संविदात्मक पद परनियोजित
आई०टी०प्रबंधक,आई०टी०सहायकत कार्यपालक
सहायक की नियोजन अवधि के संबंध में:-



- i. बिहार प्रशासनिक सुधार मिशन सोसाइटी अंतर्गत संविदा पर नियोजित एवं कार्यरत आई०टी०प्रबंधक, आई०टी०सहायक तथा कार्यपालक सहायक का नियोजन पूरी तरह अस्थायी है तथा योजना अवधि समाप्ति अथवा 60 वर्ष की आयु, जो पहले लागू हो, तक के लिए है। फलतः संविदा कर्मियों का प्रत्येक वर्ष संविदा अवधि विस्तार किये जाने की आवश्यकता नहीं होगी।
- ii. अस्वस्थता या अनुशासनिक आधार पर अथवा सेवा असंतोषजनक होने के कारण योजना अवधि अथवा 60 वर्ष की आयु, जो पहले लागू हो. के पूर्व भी नियुक्ति प्राधिकार द्वारा सेवा समाप्तकी जा सकती है।
- iii. संविदा नियोजन की अन्य शर्तें नियोजन के समय निर्गत नियोजन पत्र/ एकरारनामा में अंकित यथावत रहेंगी।"

29. Thus, it was decided by the BPSM under the General Administration Department, Government of Bihar: -

(i) That the employment of IT Manager, IT Assistant and Executive Assistant employed and working on contract under BPSMS is completely temporary and would continue till the end of scheme or till the age of 60 years,



whichever is earlier. As a result, there will be no need to extend the contract period of contractual employees every year.

(ii) The service can be terminated by the authority even before the plan period or 60 years, whichever is earlier on account of ill health or disciplinary ground or unsatisfactory service.

(iii) Other conditions of contractual employment will remain the same as mentioned in the employment letter /agreement issued at the time of employment.

30. It is vehemently argued by Mr. Giri that the order dated 26th February, 2019 by its declaration takes away the effect of initial agreement executed by the petitioners by way of indemnity bond. Petitioners work was protected till the attainment of age of 60 years or completion or cessation of the scheme where they have been working and the petitioners cannot be terminated except on three grounds, viz. (a) ill health, (b) disciplinary ground and (c) unsatisfactory service. The petitioners were also granted Casual Leave, Earned Leave, Maternity Leave, Paternity Leave and Leave Without Pay by virtue of the above-mentioned notification no. 436, dated 26th February, 2019.

31. It is further contended on behalf of the



petitioners that subsequent decision by the State Government to engage DEOs through private outsourcing agency is violative of Articles 14 and 16 of the Constitution of India on the teeth of Notification No. 436, dated 26th February, 2019 and Extraordinary Gazette Notification dated 18th September, 2019 issued by the General Administration Department.

32. I have already stated the relevant portions of the said gazette notification.

33. The learned senior counsel on behalf of the petitioners in support of his submission refers to a decision of the Hon'ble Supreme Court in *Vinod Kumar v. Union of India*, reported in (2024) 9 SCC 327. In this reported decision, the appellants approached the Hon'ble Supreme Court claiming substantive nature of their duties, which align with regular employment rather than the temporary or scheme-based roles they were originally appointed for. They were also granted promotion on being recommended by the Departmental Promotional Committee. They were discharging their duties continuously for over a quarter of a century. On such factual background, they prayed for regularization before the High Court of Judicature at Allahabad. The writ petition being dismissed, they moved to Hon'ble Supreme Court in



Appeal. Under such factual background, the Hon'ble Supreme Court held in paragraph no. 5 of the aforesaid decision as hereunder: -

“5. Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement. Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status.

6. The application of the judgment in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1: 2006 SCC (L&S) 753] 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 Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1: 2006 SCC (L&S) 753].”

34. Finally, the Hon’ble Supreme Court in paragraph no. 8 held as under:

“8. In light of the reasons recorded above, this Court finds merit in the appellants’ arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognise the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations.”



35. The learned senior counsel on behalf of the petitioner next refers to another decision of the Hon'ble Supreme Court in the case of *Shripal v. Nagar Nigam*, reported in **2025 SCC OnLine SC 221**. This is also a case of contractual workmen who were pressing for regularization with further prayer to cancel the order issued by the respondent employer discontinuing their service. The Hon'ble Supreme Court found on examination of the materials on record that the employer failed to produce any document that the appellant workmen had been engaged solely through contractor, their works were supervised by the contractors. The employer also failed to establish that the wages were ever paid by any entity other than the Horticulture Department which strongly indicates direct control and supervision over the Workmen's day-to-day tasks which is a hallmark of an employer-employee relationship. Had there been a legitimate third-party contractor, there would have been details of tender notices, contract agreements, attendance records maintained by the contractor, or testimony from the contractor's representatives. In view of such circumstances, the Hon'ble Apex Court held that the respondents failed to prove that the appellants were "contractor's personnel". On the other hand,



the facts and circumstances of the said decision satisfactorily established that the appellant workmen performed duties integral to the respondent employer's municipal functions specially the up-keep of parks, horticultural tasks and city beautification efforts. Finally, the Hon'ble Supreme Court in paragraph no. 15 of the aforesaid judgment held as hereunder:

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“15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records—despite directions to do so—allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite “temporary” employment practices as done by a recent judgment of this



court in Jaggo v. Union of India in the following paragraphs:

“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 labelled 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.”*

36. In ***Shripal*** (supra), the Hon’ble Supreme Court relied on the earlier Bench’s decision in ***Jaggo v. Union of India***, reported in **2024 SCC OnLine SC 3826**. I have already quoted para no. 15 of ***Shripal*** (supra) were paragraph no. 22 and 25 of ***Jaggo*** (supra) is quoted, therefore, further discussion does not seem to be necessary.

37. The learned senior counsel on behalf of the petitioners next refers to an unreported decision of this Court, passed in **CWJC No. 13895 of 2021 (Gauri Shankar Sharma & Ors. Vs. The State of Bihar Through the**



Principal Secretary, Department of Home, Government of Bihar, Patna & Ors.) decided on **16th May, 2024**. In the above-mentioned judgment, this Court most respectfully considered the decision of the Hon'ble Supreme Court in ***Vinod Kumar*** (Supra) in paragraph no. 23. At the risk of repetition, this Court is tempted to record the observation of the Hon'ble Supreme Court in paragraph no. 53 of **Uma Devi** (supra).

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071], R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India,



the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not subjudice, 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.”

38. The learned senior counsel on behalf of the petitioners next submits that the decision passed by a Co-ordinate Bench in ***CWJC No. 13550 of 2021*** (Kumar Gautam Anand & Ors. Vs. The State of Bihar, through the Chief Secretary, General Administration Department, Government of Bihar, Patna & Ors.), relied on by the learned Advocate appearing on behalf of the State Health Society, cannot be



considered as *stare decisis* (precedent) because in the said case, the writ petition was dismissed on the ground that the petitioners failed to apprise the Court that they were entitled to be absorbed in their services.

39. The learned AAG, on the other hand, refers to a decision of this Court in **CWJC No. 5823 of 2020** passed by a Co-ordinate Bench (CORAM: Hon'ble Mr. Chakradhari Sharan Singh, as his Lordship then was) *vide* order, dated **23rd August 2021**. In the above-mentioned unreported decision, it is held by the Co-ordinate Bench that the policy decision of BPSM, as reflected in the order issued by General Administration Department on 31st July, 2019 before the petitioners were actually engaged cannot be said to be unreasonable, arbitrary, unauthorized or otherwise illegal which requires engagement of executive assistants from the panel made available by BELTRON which is a Government of Bihar undertaking and not a private body.

40. The Co-ordinate Bench was pleased to hold further that it is evident from the materials on record that the knowledge in computer is apparently a basic requirement for the performance of the duty by an Executive Assistant. Visibly, in the said background, a policy decision appears to



have been taken by the BPSM under the General Administration Department, Government of Bihar to engage executive assistants for panchayats on the basis of the names made available by the BELTRON. Thus, in paragraphs no. 15 and 16 of the judgment, the Co-ordinate Bench held as under:

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“15. It transpires that taking into account the fact that in some districts including in the district of Nalanda panels were prepared pursuant to an advertisement, a decision was taken to engage executive assistants from such panels with the condition that they have to clear an examination to be conducted by BELTRON. The said policy decision has apparently been taken to safeguard the interest of selected candidates on the basis of district level advertisement who could have been otherwise not engaged in view of earlier decision of BPSMS and subsequent order of the General Administration Department dated 31.07.2019. Had there been no decision in the nature of order dated 23.12.2019, the petitioners could not have had any claim for their engagement, only on the basis of inclusion of their names in the panel. The petitioners, unfortunately, are challenging the decision of BPSMS and the General Administration Department taken in their



interest. Requirement of passing of the examination of the standard of Data Entry Operator is apparently in public interest commensurate with the requirement of the post in question.

16. Further challenge to the impugned order and subsequent action on the ground of the same being violative of Articles 14 and 16 of the Constitution is not at all sustainable. No case of discrimination among similarly situated candidates of the selection process in question is made out. The petitioners cannot allege violation of Articles 14 and 16 of the Constitution on the ground that in other districts engagements were made prior to decision of BPSMS/ State Government as contained in the order dated 31.07.2019, since the said engagements were made out (si) different selection processes altogether.”

41. I have discussed the pleadings of the parties in detail. I have also considered the arguments advanced on behalf of the learned senior counsel on behalf of the petitioners and the State respondents and the learned Advocate for the State Health Society.

42. At the outset, this Court likes to mention that the decision of the Co-ordinate Bench in **CWJC 5823 of 2020** is not applicable under the facts and circumstances of the case.



Let me assign the reason. The factual circumstances of the above-mentioned decision passed by the Co-ordinate Bench of this Court *in CWJC No. 5823 of 2020* is that the Principal Secretary, Panchyati Raj Department, Government of Bihar requested the District Magistrates of the State by letter dated 28th July 2018 to prepare panels for engagement of executive assistants at Panchayati Raj level for implementing schemes of Central Government and the State Government. On the basis of such order passed by the Principal Secretary, Panchayati Raj, the District Magistrate, Nalanda issued an advertisement inviting applications for the post of executive assistants by 30th September 2018. The petitioners were qualified in the examination conducted for the selection process and the panel was published on 03rd June 2019. After preparation of panel but before the placement of the petitioners, BPSM came out with an order dated 31st July 2019 directing that the remaining sanctioned vacant post of executive assistants in the State of Bihar shall be filled up through BELTRON.

43. Under the above factual circumstances, the Co-ordinate Bench held that the decision of the BPSM for conducting examination through BELTRON is in the public



interest and since the petitioners were not engaged in any panchayat, mere empanelment does not give rise to any right in favour of the petitioners to challenge the decision of the State Government.

44. In the instant case, indisputably the petitioners have been working since 2013. Their initial appointment was made for a period of one year but subsequently, their tenure of service was extended till attainment of age of 60 years or completion of the project, whichever is earlier. They were granted other benefits of regular service like Casual Leave, Earn Leave, Maternity Leave, Paternity Leave and, Leave Without Pay. It is stated in the notification mentioned above that the order regarding leave of the petitioner was passed conferring right of the petitioners and they can avail their leaves according to their requirement. The said notification further states that the executive assistants cannot be terminated before attainment of age of 60 years or end of the project whichever is earlier. Except on the ground of (a) ill health, (b) disciplinary ground and, (c) unsatisfactory service. Thus, the said notification no. 436 dated 26th February 2019 has enumerated valuable rights to the petitioners akin to the regular employees. It is also stated in the said notification that



there would be no need to extend the contract period of contractual employees every year.

45. It is not in dispute that the appointment of the petitioners was made by a selection process conducted by the Committee constituted by the District Magistrate, Purnea. Therefore, it is not the case of the State respondents or the Health Society that empanelment of the petitioners was made without any selection process arbitrarily by the District Magistrate. As the petitioners were discharging their duties in the State-owned hospitals in the District of Purnea since 2013, they cannot now be obligated to appear in examination conducted by BELTRON as per Notification No. 1382 dated 31st July, 2019.

46. It is important to note that the Notification No. 1382 dated 31st July, 2019 speaks about the recruitment of additional (अतिरिक्त) posts and vacant posts (रिक्त) of executive assistants through BELTRON. Annexure-E to the counter affidavit filed on behalf of the State respondents is the Minutes of 25th Meeting dated 13th December, 2019 under the chairmanship of the Chief Secretary of the governing counsel of BPSM. In agenda one of the said Meeting it was resolved as hereunder:



“दिनांक-08.07.2019 को आहूत शासी परिषद की 23 वीं बैठक के कार्यावली बिंदु संख्या-04 पर लिए गए निर्णय के आलोक में बिहार प्रशासनिक सुधार मिशन सोसाइटी के आदेश ज्ञापांक-1382, दिनांक-31.07.2019 द्वारा यह आदेश निर्गत किया गया है कि बिहार प्रशासनिक सुधार मिशन सोसाइटी अंतर्गत कार्यपालक सहायक हेतु सृजित पदों पर नियोजित एवं कार्यरत कार्यपालक सहायकों के अतिरिक्त अब नये रिक्तियों के विरुद्ध नियोजन बेल्ट्रान के माध्यम से किया जायेगा। जिस जिला अंतर्गत कार्यपालक सहायक के सृजित पद के विरुद्ध रिक्तियां होंगी, वह जिला रिक्तियों के अनुरूप आदर्श आरक्षण रोस्टर का अनुपालन करते हुये बेल्ट्रान से डाटा इन्ट्री आपरेटरों की सेवा प्राप्त करने हेतु अध्याचना करेगा। बेल्ट्रान द्वारा मांग के अनुरूप डाटा इन्ट्री आपरेटरों की सेवा उपलब्ध कराई जायेगी। बेल्ट्रान द्वारा जिलों को उपलब्ध कराये गये डाटा इन्ट्री आपरेटरों का भुगतान बिहार प्रशासनिक सुधार मिशन सोसाइटी द्वारा बेल्ट्रान को किया जायेगा।

इस क्रम में पंचायती राज विभाग एवं कतिपय जिलों से प्राप्त यह अनुरोध कि सरकार द्वारा संचालित/क्रियान्वित योजनाओं के सुचारु रूप से



निष्पादन हेतु जिला स्तरीय विभिन्न कार्यालयों/ विभागों की मांग के आलोक में जिला स्तरीय पैनल से कार्यपालक सहायक की सेवा उपलब्ध कराने हेतु निदेश दिया जाय, शासी परिषद की दिनांक- 20.09.2019 को आहूत 24 वीं बैठक की कार्यावली बिंदु संख्या-06 के रूप में शासी परिषद की 23 वीं बैठक के उपरोक्त वर्णित निर्णय पर आंशिक संशोधन का प्रस्ताव रखा गया था जिस पर शासी परिषद द्वारा निम्नलिखित निर्णय लिया गया:-

"निर्णय: आगामी डेढ़ माह में बेल्ट्रान के द्वारा विभाग/जिलों की अध्यायना के आलोक में डाटा इंट्री आपरेटरों की सेवाएँ उपलब्ध कराने की कार्रवाई की जाएगी। आवश्यकतानुसार शासी परिषद की आगामी बैठक में इस प्रस्ताव को विचारार्थ रखा जाएगा।"

हाल की समीक्षा बैठकों में राजस्व एवं भूमि सुधार विभाग एवं पंचायती राज विभाग द्वारा बेल्ट्रान से डाटा इंट्री आपरेटर की सेवाएँ नहीं मिल पाने से उनके महत्वपूर्ण विभागीय कार्यों के बाधित होने का बिंदु उठाया गया है।
उपरोक्त के आलोक में बिहार प्रशासनिक सुधार



मिशन सोसाइटी के अधीन जिलों के कार्यपालक सहायक के पैनल से कार्यपालक सहायकों की सेवाएँ उपलब्ध कराए जाने के प्रस्ताव पर शासी परिषद का अनुमोदन प्रार्थित है।

निर्णय: अंतरिम व्यवस्था के रूप में बिहार प्रशासनिक सुधार मिशन सोसाइटी के अधीन जिलों के कार्यपालक सहायक के पैनल से विभागों / जिलों के कार्यालयों को उनकी अधियाचना के आलोक में कार्यपालक सहायकों की सेवाएँ निम्नलिखित शर्तों के साथ उपलब्ध कराई जाएगी:

1. यह नियोजन मात्र 3 माह के लिए होगा।
2. 3 माह के नियोजन अवधि में इस अंतरिम व्यवस्था अंतर्गत नियोजित सभी कार्यपालक सहायकों को बेल्ट्रान द्वारा आयोजित दक्षता परीक्षा में उत्तीर्ण होना अनिवार्य होगा। दक्षता परीक्षा का स्तर बेल्ट्रान के डाटा इंट्री ऑपरेटर (DEO) हेतु निर्धारित मापदंड के अनुरूप होगा।
3. दक्षता परीक्षा में उत्तीर्ण कार्यपालक सहायकों का नियोजन आवश्यकतानुसार 3 माह के उपरांत जारी रखा जा सकता है। अनुत्तीर्ण कार्यपालक सहायकों का नियोजन तत्काल प्रभाव से समाप्त कर दिया जाएगा। नियोजन के समय इस आशय का दायित्व



पत्र इन नियोजित कार्यपालक सहायकों से प्राप्त किया जाना अनिवार्य होगा।

4. नियोजन की कार्रवाई बेल्ट्रान द्वारा उसकी सूचीकरण प्रक्रिया सम्पन्न होने तक की जा सकेगी। उसके उपरांत किसी भी प्रकार का कोई भी नियोजन जिला स्तरीय पैनल से नहीं किया जाएगा।

5.- नियोजन की प्रक्रिया पूरी करने के साथ-साथ इन सभी नियोजित कार्यपालक सहायकों का दक्षता परीक्षा आयोजित करने हेतु जिला पदाधिकारियों द्वारा इन नियोजित कार्यपालक सहायकों का आन लाईन निबंधन हेतु बेल्ट्रान से अनुरोध किया जाएगा तथा उक्त क्रम में सभी आवश्यक कार्रवाई ससमय पूर्ण की जाएगी।

6. बेल्ट्रान द्वारा निर्धारित शुल्क रु.1000/- प्रति अभ्यर्थी का भुगतान बिहार प्रशासनिक सुधार मिशन सोसाईटी/ संबंधित विभाग / संबंधित कार्यालय द्वारा किया जाएगा।

7. बिहार प्रशासनिक सुधार मिशन सोसाईटी का आदेश ज्ञापांक 1382 दिनांक 31.07.2019 को इस हद तक संशोधित समझा जाएगा

47. The above resolution clearly states that BELTRON was directed to prepare panel in respect of the post



created by BPSM subsequently, and to fill up the vacancy caused on the post of executive assistants due to one reason or other. Therefore, the petitioners were not under obligation to be empaneled through a selection process by BELTRON.

48. Mr. Verma, the learned Additional Advocate General as strenuously argued that the petitioners are contractual employees. They were not empaneled or posted against any sanctioned post. They were temporarily appointed on year to year basis for the purpose of data entry job in State owned hospitals. Therefore, they do not have any right to claim any relief in the instant writ petition, because, if the employer wants efficient workers for a particular job, the employees may be directed to go through a selection test on the subject in which they would work. It is not the case that the petitioners would be freshly appointed through M/s Urmila International Services Private Limited. By a policy decision, Urmila International Services Private Limited is now service provider of data centres maintained in all the departments in the State of Bihar. Therefore, when the Respondent No. 11 returned the service of the petitioners due to paucity of fund, the District Magistrate, Purnea referred the case of the petitioners to BELTRON, directing them to clear



the test conducted by BELTRON for appointment of Data Entry Operators. There is nothing wrong in it because the employer always has the right to consider and test efficiency of its employees.

49. The above submission made by the learned AAG is elaborated during his argument when he submits that where the relationship of master and servant is purely contractual, such contract of personal service is not specifically enforceable, having regard to the bar contained in Section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement.

50. The above rule is of course subject to three well recognized exceptions. They are:

(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of



Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

51. According to the learned AAG, there is, thus, a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief, damages or reinstatement with consequential reliefs are based on determination of the question whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts.

52. In support of the above observation, this Court can rely on the decision of the Hon'ble Supreme Court in



State Bank of India & Ors. Vs. S.N. Goyal, reported in
(2008) 8 SCC 92.

53. In the instant case, however, factual position is something different. It is true that the petitioners were initially employed by a Committee, constituted by the District Magistrate, Purnea, on the basis of a direction, issued by the BPSM, initially for a period of one year. Subsequently, while the petitioners were working, the State Government, vide Notification No. 436, dated 31st July, 2019, extended the period of employment till 60 years or till the end of the project, whichever is earlier. In view of such decision, the Executive Authority in the districts was directed not to renew the contract of the petitioners on year to year basis. It was further directed that they could only be terminated from service on the grounds of ill health, disciplinary reasons or inefficiency in service. Incorporation of the above conditions vide notification, dated 31st July, 2019 by the General Administration Department, Government of Bihar does not permit the State Respondents to pass any order against the petitioners for their withdrawal from service.

54. It will not be out of place to mention that resolution of 25th meeting of the Governing Council of the



BPSM on 13th December, 2019 that services of the existing Executive Assistants would be extended for three months only is a glaring instance of executive arbitrariness because the said decision was taken in utter violation of the notification, dated 31st July, 2019.

55. I have a scrupulously gone through the pleadings of the parties. None of the respondents in their counter affidavits and supplementary counter affidavits alleged against any of the petitioners that the official functions discharged by them were not up to the mark or in other words, they are inefficient. It is not disputed that the petitioners have been performing their duties of data entry since the year 2013. If their work was found to be unsatisfactory, they or any of them could have been terminated by virtue of the government order, dated 31st July, 2019, but the respondents did not take any such step against the petitioners. The petitioners were appointed under the extant rules applicable in the year 2013. At the risk of repetition, it is stated that their conditions of service was greatly modified, nay changed, by virtue of notification, dated 31 July, 2019. Subsequently, in the year 2021, the State Government decided to man data centres in various government departments of the State of Bihar through



outsourcing. Outsourcing in government departments is legally permissible, but it is crucial to ensure compliance with Labour Laws and regulations. Government departments can outsource tasks and services, but they must ensure that the outsourced employees are treated fairly and their rights are protected.

56. In a very recent decision, in the case of ***Chaudhary Charan Singh, Haryana Agricultural University, Hisar & Anr. v. Monika & Ors.***, (Civil Appeal No. 10800 of 2024), decided on 29th of November, 2024, the Hon'ble Supreme Court, while dealing with the issue as to whether an outsourced employee is entitled to get weightage for regular employment in the University, held that outsourcing policy stipulates that the services may be outsourced as and when required partly or completely by the departments, where posts have not been sanctioned, on contract basis.

57. In the case of ***Jaggo v. Union of India & Ors.***, reported in ***2024 SCC OnLine SC 3826***, the Hon'ble Supreme Court of India in paragraph no. 14, held as hereunder:-

“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.”

58. Undoubtedly, the State Government is entitled to take policy decision that the Data Entry Operators would be deputed by the Government Departments through a service provider under outsourcing policy.

59. However, the said policy decision cannot be made effective retrospectively, directing the contractual employees, who were discharging the similar duties for a long period of time, to submit themselves to a selection process to be conducted by BELTRON with fresh applicants, without terminating their job on the ground of efficiency. Therefore, subsequent decision of outsourcing of service providers in data centres under various departments of the State Government through Mrs Urmila International Services Pvt.



Ltd., is not applicable in case of the petitioners.

60. Last, but not the least, law on this issue is absolutely clear that a contractual employee, working under the functionary of the State can challenge the executive instruction under Article 226 of the Constitution of India, when his fundamental rights under Articles 14, 16, 19 and 21 are violated.

61. In the instant case, petitioners are treated differently from their fellow Executive Assistants, working in the district of Ara and Araria.

62. This issue has not been decided in any of the writ petitions disposed of by different Benches of this Court in the light of the executive decisions taken time to time by the BPSM under the General Administration Department.

63. For the reasons stated above, I find that the instant writ petition is maintainable and the petitioners are entitled to the following reliefs:

A. Memo No. 1416, dated 23rd December, 2021, issued under the signature of the District Magistrate Purnea, by which the list of the petitioners has been submitted to the BELTRON for taking appropriate action is quashed and set aside.



B. it is declared that the petitioners are entitled to perform their duties as Executive Assistants on the basis of notification, contained in Memo No. 436, dated 26th February, 2019 till the attainment of 60 years of age or till the end of the scheme, whichever is earlier.

C. The District Magistrate, Purnea is directed to place the service of the petitioners in the vacant posts of Executive Assistants, if any, in any of the Data Centres, run by various Departments of the State Government within a period of four weeks from the date of this order. If no such vacancy is available, the petitioners may be posted in the Data Centres of other districts in the State of Bihar.

D. The petitioners, however, are not entitled to receive back-wages/salary from the month of August, 2021 as they did not render any service in any of the Department of the State Government.

64. With the above order, the instant writ petition is allowed on contest.

65. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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