

REPORTABLE

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

+ WRIT PETITION (CIVIL) NO. 1246/2002

% Reserved on: 24th January, 2011
Date of Decision: 13th May, 2011

UNION OF INDIA & ORS. Petitioners
Through Mr. J K Singh, Advocate.

VERSUS

SHRI BANNU & ORS. Respondents
Through Sh. Bannu, Sh. Dharampal Singh
and Sh. Raj Paul, Respondents in person.

CORAM:
HON'BLE MR. JUSTICE DIPAK MISRA, THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes.
3. Whether the judgment should be reported in the Digest ? Yes.

SANJIV KHANNA, J.

Union of India through General Manger, Northern Railway, Divisional Personnel Officer, Northern Railway and Divisional Railway Manager has filed the present writ petition assailing the orders dated 24th September, 2001 and 18th December, 2000 in R.A. No. 124/2001 and O.A. No. 2075/1999, respectively, passed by Central Administrative Tribunal, Principal Bench, Delhi ('Tribunal' for short).

2 (a) The respondent no.1-Bannu joined Northern Railway as *khalasi* on 6th September, 1981 and was promoted as *mate* w.e.f. 1st January, 1983. The respondent was declared surplus on 23rd June, 1997 and transferred to New Delhi as *cleaner* with pay protection.

(b) Respondent No. 2-Dharampal Singh joined Northern Railway as a *carpenter* on 20th March, 1978. He was then made *mason* and then *gang-khalasi* where he acquired temporary status on 1st January, 1983. Respondent no. 2 was promoted as blacksmith vide order dated 31st July, 1995 w.e.f. 1st August, 1985 after passing the requisite trade test. He was declared surplus vide order dated 21st March, 1997 and was transferred to New Delhi as a cleaner with pay protection.

(c) Respondent no. 3-Raj Paul joined Northern Railway as *gangman*. He was then made *gangmate* on 5th January, 1981 and acquired temporary status on 1st January, 1983. He was then transferred to Ambala, then to Jind and then to Tughlaqabad in 1995. Respondent no. 3 was declared as surplus by order dated 13th March, 1997 and was transferred to New Delhi as *cleaner* with pay protection.

3. It is stated by the respondents that they were due for regularization in group 'C' post as they had acquired temporary status in group 'C' post as *mates*.

4. The respondents were posted to C&W department at New Delhi Railway Station as cleaners in group 'D' post with pay protection in the scale of Rs. 750-940 which was reduced from Rs. 950- 1500. The pay protection was subsequently withdrawn.

5. The respondents had filed an O.A. No. 2075/1999 for setting aside and quashing the order dated 20th May, 1999 and seeking the extension of benefits in terms of the judgment dated 9th September, 1993 passed in the case of Shri Ram and Ors vs UOI. The learned tribunal, vide the first impugned order dated 18th December, 2000 disposed of the O.A. directing the petitioner to extend the benefits in accordance with the order dated 21st July, 1997.

6. By the second impugned order dated 24th September, 2001 the review application filed by the petitioner was dismissed. The petitioner had contended that the order dated 21st June, 1997 had been passed in pursuance of judgment dated 9th September, 1993 which had become per incurium in

view of the subsequent order of Tribunal dated 8th March, 1999 passed in OA No.3217/1992, Dhanna Ram and Ors. Vs. UOI & Ors. While dismissing the review application it was observed that there was no error apparent on the face of record or material that justified the review within the scope of Section 22(3)(f) of the Administrative Tribunals Act, 1985.

7. By order dated 20th February, 2002 while issuing notice in the present writ petition it was directed that there shall be stay of the impugned orders passed by the Tribunal.

8. The respondents have relied upon decision of the Supreme Court in ***Badri Prasad & Ors. Vs. UOI & Ors., (2005) 11 SCC 304***. In the said case it was noticed that the appellants therein had been working in group C posts for more than 10 years but were subsequently reverted to group D resulting in drop in their emoluments. The Supreme Court upheld the finding of the High Court that the appellant therein could not be granted relief of regularization of service merely on the basis of their ad-hoc promotion. However, the practice adopted by Railways to take work from employees in group D posts on a higher group C post was depreciated. Accordingly, without disturbing the

finding of the High Court, it was directed that the appellants therein would be given pay protection even after they were repatriated to group D posts in their parent cadre. It was further directed that they shall, in their turn, be considered for promotion to group C posts and the period of service spent by them on ad hoc basis shall be given due weightage and counted towards length of requisite service, if any, prescribed for higher post in group C. If there was any age bar, the same shall be relaxed.

9. The law on the said subject has undergone a substantial change in view of the decision of the Supreme Court in ***State of Karnataka versus Uma Devi, (2006) 4 SCC 1***. In the said case Supreme Court has examined the earlier ratio on the subject and the Constitutional Bench has held that appointments made contrary to any selection process and contrary to the rules cannot give any vested right to an employee to seek regularization. The constitutional scheme of public employment must be adhered to in a larger public interest and that it should be ensured that the validity of the constitutional scheme for employment should not be watered down by the courts by issuing directions for regularization without referring to the legal

position. It has been observed that such regularization defeats the principle of equality enshrined in Article 14 of the Constitution. Mere fact that a temporary employee has worked for a long duration does not automatically entitle such persons to be regularized on that post as they ought to have been aware of the nature of such employment and the fact that by the very nature of their appointment, they do not acquire any legal right to that post. The Supreme Court has categorically held that such regularization of temporary employees would create simultaneous mode of employment which cannot be permitted as this would give judicial acceptance to inequality and illegalities which were committed when wrongful appointments were made. Thus the legal right of a person must be established before such regularization. It was held as under:

“3. A sovereign Government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages. Going by a law newly enacted, the National Rural Employment Guarantee Act, 2005, the object is to give employment to at least one member of a family for hundred days in a year, on paying wages as fixed under that Act.

But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule.

4. But, sometimes this process is not adhered to and the constitutional scheme of public employment is bypassed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment", has risen

like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over. It is time, that the courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasised that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

5. This Court has also on occasions issued directions which could not be said to be consistent with the constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualisation of justice. The question arises, equity to whom? Equity for the

handful of people who have approached the court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the constitutional scheme, certainly tend to water down the constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

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11. In addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for

the Union and the Public Service Commissions for the States. Article 320 deals with the functions of the Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognised by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the Scheduled Castes and Scheduled Tribes for employment. The States have made Acts, rules or regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, rules and regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognised and there is nothing in the Constitution which

prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognised and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

13. What is sought to be pitted against this approach, is the so-called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of the courts to ignore, encourage or approve appointments made or engagements

given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in *State of Punjab v. Jagdip Singh*. It was held therein:

“In our opinion where a government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status.”

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26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent—the distinction

between regularisation and making permanent, was not emphasised here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of *Piara Singh* is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognised in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

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33. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularisation. The cases directing regularisation have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after

discussing the constitutional scheme for public employment.

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39. There have been decisions which have taken the cue from *Dharwad* case and given directions for regularisation, absorption or making permanent, employees engaged or appointed without following the due process or the rules for appointment. The philosophy behind this approach is seen set out in the recent decision in *Workmen v. Bhurkunda Colliery of Central Coalfields Ltd.* though the legality or validity of such an approach has not been independently examined. But on a survey of authorities, the predominant view is seen to be that such appointments did not confer any right on the appointees and that the Court cannot direct their absorption or regularisation or re-engagement or making them permanent.

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43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the

appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled

to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

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52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College*. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus

may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa*, *R.N. Nanjundappa* and *B.N. Nagarajan* 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 aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are

undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

10. The ratio laid down in ***Uma Devi*** (supra) has been reiterated in ***Pinaki Chatterjee versus Union of India***, (2009) 5 SCC 193 and it has been observed that recruitment cannot be made contrary to the statutory requirements and in violation of Articles 14 and 16 of the Constitution. It has been held:-

“10. The appellants, indisputably, were appointed as daily-rated casual labourers for project work. The said project having been undertaken for electrification of the Railways at Ranchi was a time-bound one. It did not have its own cadre. Engagement of any casual labour under the said project, therefore, did not amount to any regular recruitment. It may be that the Railway Administration had committed serious illegalities in making recruitment directly to the said posts, the same by itself would not confer any right upon the

appellants for being regularised in Group C post.

11. The question, however, which arises for consideration is as to whether in the peculiar facts and circumstances of this case, the High Court should have directed regularisation of the services of the appellants. It has not been denied or disputed that railway electrification was a temporary project. As noticed hereinbefore, the posts held by the appellants, indisputably, were purely on a casual basis and not against any cadre post. The appellants furthermore have not been appointed upon compliance with the provisions of Articles 14 and 16 of the Constitution of India and/or the recruitment rules framed under the proviso appended to Article 309 of the Constitution of India.

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17. In the facts and circumstances of this case, as noticed hereinbefore, in our opinion, the decision of this Court in *Union of India v. Moti Lal* would be applicable wherein regularisation on a promotable post has been held to be impermissible in law, stating:

“9. So far as the first question is concerned, on examining the relevant provisions of the rules as well as the administrative instructions issued by the Railway Authorities we are of the considered opinion that it is not permissible to appoint a person directly as a mate and it

is only a promotional post from Class IV post of gangman and keyman. These gangmen and keymen can be promoted to the post of mate in Class III subject to their suitability and efficiency being tested through trade test. It is no doubt true that these respondents under certain circumstances had been appointed directly as casual mates and they continued as such and further by virtue of their continuance they acquired temporary status but that by itself does not entitle them to be regularised as mates since that would be contrary to the rules in force. In our considered opinion the respondents did not acquire a right for regularisation as mates from mere fact of their continuance as casual mates for a considerable period.”

11. The ratio and the legal principles stand affirmed in **Satya Prakash versus State of Bihar**, (2010) SCC 179 and **Mohd. Ashif versus State of Bihar**, (2010) 5 SCC 475. In **Satya Prakash** (supra), the Supreme Court opined that a temporary employee is not entitled to be absorbed in regular service or to be made permanent merely on the basis that he has continued for a time beyond the term of his appointment. In **Mohd. Ashif** (supra), the Supreme Court held that the most important

condition precedent for such regularization is that the initial entry of such employee should have been made against sanctioned vacancy in tandem with statutory requirements governing such entry. The Supreme Court had again applied the test laid down in ***Uma Devi*** (supra) to the case in hand and observed that where due process of appointment according to the constitutional scheme has been violated, courts cannot allow such illegality to continue. It has been observed:-

“7. We have heard the learned counsel for the parties at considerable length. The legal position regarding the right of an employee to seek regularisation of his services stands settled by a long line of the decisions of this Court. In *Ashwani Kumar case* this Court declared that the question of regularisation of the services of an employee may arise in two contingencies. It may arise firstly in situations where against an available clear vacancy an appointment is made on ad hoc or daily-wage basis by an authority competent to do so and such appointment is continued from time to time without any artificial break in service. Any such appointment may be regularised giving him security of tenure. The all important condition precedent for such regularisation is that the initial entry of such an employee must be made against a sanctioned vacancy and by following

the rules and regulations governing such entry.

8. The second situation in which regularisation could be granted was where the initial entry of the employee against an available vacancy was found suffering from some flaws in the procedure in making the appointment though the person appointing was competent to make such initial recruitment and had otherwise followed the procedure prescribed for such recruitment. A need may then arise for regularisation of the initial appointment by the competent authority with a view to curing the irregularity if any in the same and with a view to granting security of tenure to the incumbent. It is necessary in such situations that the initial entry of the employee is not totally illegal or in breach of the established rules and regulations governing such recruitment.

9. The law regarding regularisation of employees was on a comprehensive review authoritatively declared by a Constitution Bench of this Court in *State of Karnataka v. Umadevi* (3). This Court in that case drew a distinction between an irregularity and an illegality in the making of an appointment and declared that where the due process of appointment has been deviated from, the Court can regularise the same. In cases where the process itself is completely violative of the constitutional scheme underlying public employment and no procedure has been followed while granting such

appointments the Court cannot allow such an illegality to continue irrespective of the length of time for which it has continued.

10. The above decision has been followed by this Court in *Mohd. Abdul Kadir v. Director General of Police* where this Court held that employees who were recruited in connection with a scheme could not claim continuance or regularisation in service even when they may have worked on ad hoc basis for as long as two decades.

11. The decision of this Court in *State of Karnataka v. G.V. Chandrashekar* once more reiterated the legal position and declared that the observations made by a three-Judge Bench of this Court in *U.P. SEB v. Pooran Chandra Pandey* were only in the nature of obiter dicta. In *Pooran Chandra Pandey case* a two-Judge Bench of this Court had tried to distinguish the ratio of the decision of this Court in *Umadevi (3) case*⁶ and held that the said decision had to be read in conformity with Article 14 of the Constitution and that the same could not be applied mechanically. The decision in *G.V. Chandrashekar case* did not find that reasoning to be correct as is evident from the following passage appearing in the said decision:

“32. ... ‘90. We are distressed to note that

despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

92. In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judge Bench in *U.P. SEB v. Pooran Chandra Pandey* should be read as obiter and the same should neither be treated as binding by the High Courts, tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.’*”

SEB v. Pooran Chandra Pandey should be read as obiter and the same should neither be treated as binding by the High Courts, tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.’*”

12. Reference at this stage may also be made to the decisions of this Court in *Pinaki Chatterjee v. Union of India* and *Uttaranchal Jal Sansthan v. Laxmi Devi* where this Court has followed *Umadevi (3) case* and declared that regularisation cannot be granted if the same would have the effect of violating Articles 14 and 16 of the Constitution.

13. Applying the test laid down by this Court in *Umadevi (3) case* and the cases referred to above, to the case at hand, there is no gainsaying that the appointments of the appellants as Primary Health Workers were totally illegal and violative of Articles 14 and 16 of the Constitution which guarantee equality of opportunity to all those who were otherwise eligible for such appointments. The Chief Medical Officer who had made the appointments was not vested with the power to do so nor were the claims of

other candidates eligible for appointments against the posts to which the appellants were appointed, considered. Surprisingly, the appointments had come by way of absorption of the appellants who were working as Voluntary Health Workers on a monthly honorarium of Rs 50 only.”

12. In the present case it is accepted fact that the respondents were engaged as casual workers on purely temporary basis in PQRS Organization. They continued to work in grade 200-250 and then subsequently in grade 300-350 purely on temporary posts sanctioned on TLA basis for a particular project according to day-to-day requirements. They were declared surplus from PQRS Organization. They expressed their desire and willingness to be appointed on regular basis in the Delhi division. They were accordingly given regular appointment in group D in terms of Railway Board instructions in letter dated 5th November, 1976. group C is a promotion post. It is the case of the petitioner that respondents will be promoted to group C as per their turn and in accordance with their seniority. It is noticed that the respondents were not at any time appointed after regular selection process. They were made to work on ad hoc and purely temporary basis in group C. While working in group C

they were given certain benefits in pay scales. It is not the case of the respondents that they were appointed in group C after proper selection or after passing through a selection test. Group C posts, as noted above, are promotional posts. In view of the decision of the Supreme Court in ***Uma Devi*** (supra) it is not possible to accept the contention of the respondents that they are entitled to be appointed as regular group C employees or given pay protection. As stipulated by the Supreme Court, a person who accepts a temporary or casual engagement is aware of the nature of such employment and the consequences flowing from it. As of now we have to decide the case on the basis of the ratio and the law as expounded by the Supreme Court in ***Uma Devi's case*** (supra) wherein it has been observed:-

“45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be

true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real

sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

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47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary,

contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

13. In the instant case too, the respondents were well aware of the nature of the employment entered into by them and after being declared surplus they on showing their willingness, were absorbed in the Delhi division. They knew that they were being absorbed in group D posts. Thus the submission by the respondents that they were due for regularization in group ‘C’ posts as they had acquired temporary status in group ‘C’ post as *mates* cannot be accepted. The respondents cannot be regularized in group ‘C’ posts as it would adversely affect the legitimate chances of others to be promoted to group ‘C’.

14. Accordingly the present writ petition is allowed and the directions given in the order dated 18th December, 2000 are set aside. Consequently, order dated 24th September, 2001 becomes infructuous.

15. It is clarified that this order shall not affect the appointment and service of the respondents in group D as the same was not the subject matter of the original application. The respondents will be entitled to be considered for promotion as per the recruitment rules. No costs.

(SANJIV KHANNA)
JUDGE

(DIPAK MISRA)
CHIEF JUSTICE

May 13, 2011/vld