

**THE HIGH COURT OF MANIPUR
AT IMPHAL**

Writ Appeal No. 69 of 2023

1. The State of Manipur through the Commissioner/Secretary (Veterinary & Animal Husbandry), Government of Manipur, Babupara, Imphal, Manipur – 795001.
2. The Director of Veterinary & Animal Husbandry Services, Babupara, Imphal, Manipur – 795001.

...Appellants.

-Versus-

1. Shri N. Apabi Singh, aged about 30 years, S/o N. Guno Singh, resident of Uripok Achom Leikai, P.O. & P.S. – Lamphel, Imphal West District, Manipur – 795004.
2. Shri Th. Sadananda Singh, aged about 31 years, S/o Th. Babu Singh, resident of Sagolband Moiranghanuba, P.O. – Imphal, P.S. – Lamphel, Imphal West District, Manipur – 795004.

.... Respondents

Writ Appeal No. 71 of 2023

1. The State of Manipur through the Commissioner/Secretary (Veterinary & Animal Husbandry), Government of Manipur, Babupara, Imphal, Manipur – 795001.

2. The Director of Veterinary & Animal Husbandry Services, Babupara, Imphal, Manipur – 795001.

...Appellants.

-Versus-

1. Shri Pavei Peter, aged about 31 years, S/o Low Doutaomai, resident of Purul Atongba, P.O. – Maram & P.S. – Mao, Senapati District, Manipur – 795015.
2. D. Christopher, aged about 31 years, S/o Dashu, resident of Khabung Karong, P.O. – Karong & P.S. – Senapati, Senapati District, Manipur – 795007.
3. W. Sunny Kumar, aged about 33 years, S/o W. Basanta, resident of Khurai Lamlong Bazar, P.O. & P.S. – Lamlong, Imphal East District, Manipur – 795010.

.... Respondents

BEFORE
HON'BLE THE CHIEF JUSTICE MR. SIDDHARTH MRIDUL
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU KABUI

For the Appellants	::	Mr. Sh. Yangya, GA
For the Respondents	::	Mr. Kh. Tarunkumar, Sr. Adv.
Date of Hearing and Judgment & Order	::	08.11.2023

JUDGMENT AND ORDER
(ORAL)

Siddharth Mridul (C.J.),

1. These two writ appeals raise common issues of fact and law, and are resultantly being disposed of by way of this common order.

2. In sum and substance, the State of Manipur assails the common judgment and order dated 18th July, 2022 rendered by the learned Single Judge in Writ Petition (C) No. 2 of 2017 and Writ Petition (C) No. 61 of 2019; whereby they were directed, to regularize the services of the private respondents herein, who were employed as Drivers in the Department of Veterinary & Animal Husbandry, Government of Manipur; on contracts extended *ex post facto* from time to time commencing from the year 2010 onwards.

3. The facts, as are necessary for the determination of these connected appeals are briefly elaborated as follows :

- i) the common case of the respondents herein is that vide a Notification dated 7th August, 2010, eight posts of Drivers to be engaged on contract basis was issued by the Directorate of Veterinary & Animal Husbandry Services, Government of Manipur (in short “the Directorate”);
- ii) on the 8th September, 2010, the respondents were initially engaged on contract basis as Drivers, pursuant to the recommendation made by the Screening Committee, constituted for the said purpose, by the Directorate. On the 9th September,

2010, they were all directed to be attached with the office of the Central Dairy Plant, Porompat.

4. It is an admitted case before us that, the services of the respondents were extended on contractual basis on similar terms till the 29.11.2016. It was the stated case of the private respondents that, on the 29th June, 2015, contractual services of 6 (six) other incumbents serving in the subject department, were duly regularized, pursuant to the policy decision taken in this behalf by the Cabinet of the Government of Manipur, with the concurrence of the Department of Personnel and Finance.

5. In this regard, it is observed that a representation dated the 3rd September, 2016, was submitted to the Directorate by the General Secretary of All Manipur Veterinary & Animal Husbandry Contractual Employees' Association seeking similar regularization for all contractual employees serving in the said department.

6. On the 21st September, 2016, the Government further approved an ex post facto extension of the contractual services of the private respondents w.e.f. 02.03.2015 to 29.02.2016.

7. However, on the 21st September, 2016, the Directorate simultaneously issued a Notification, for filling up of 13 (thirteen) posts of drivers on regular basis, from open competition. It would

be pertinent to observe that similar Notifications were issued by the Directorate for filling up of various other posts in the Directorate on regular basis from open competition.

8. It is an admitted position that two other incumbents, aggrieved by the said Notification dated 21.09.2016 instituted WP(C) No. 794 of 2016 wherein this Court was pleased to pass an interim order, directing the Government not to make any appointment against the advertised posts; held by the petitioners therein; till the disposal of the said writ petition instituted by them.

9. The private respondents who asseverate to have been serving in the same Department as drivers on contract basis, for a long period of time, approached this Court by way of **Writ Petition (C) No. 794 of 2016** *inter alia* impugning the said Notification dated 21st September, 2016, inviting applications for filling up of 13 (thirteen) posts from the open competition, as well as, seeking a direction to the appellants herein to regularize their services in the posts of drivers.

10. It is the unrebutted case of the private respondents that vide the decision dated 23rd December, 2016, the concerned Director issued an order regularizing 14 (fourteen) other incumbents, who were serving as LDC-cum-Computer Assistant in the same

Department; hitherto, on contract basis. It was furthermore their un rebutted assertion that on the 22nd April, 2017, the concerned Director had also issued an order whereby three incumbents serving as Milk Recorders in the same Department on contract basis, who had instituted the said Writ Petition (C) No. 794 of 2016 (supra), were regularized in their respective posts in the time scale of pay.

11. It was vehemently canvassed on behalf of the private respondents in the connected writ petitions that the aforesaid 26 (twenty-six) incumbents whose services were regularized by the Director vide the said decisions dated the 23rd December, 2016 and 22nd April, 2017 respectively, are axiomatically similarly situated as them and that consequently, the policy decision of the Government to regularize the formers' services ought to be extended to enure to the Respondent's benefit as well.

12. This Court vide the interim order rendered in **Writ Petition (C) No. 794 of 2016** as aforementioned, had been pleased to direct the official Directorate/Government to keep four posts, amongst the advertised 13 (thirteen) posts, unfilled during the pendency of the subject writ petition.

13. The learned Single Judge, having heard the learned counsel appearing on behalf of the parties and considered the affidavit-in-opposition filed on behalf of the writ appellants, rendered the impugned order dated the 18th July, 2022, allowing the writ petitions and further directing the Writ Appellants as follows :

“46. In the result,

- (i) W.P.(C) Nos.794 of 2016 is dismissed and W.P.(C) Nos. 2 of 2017 and 61 of 2019 are disposed of.*
- (ii) The official respondents are directed to regularize the services of the petitioners as has been done in respect of other similarly situated incumbents.*
- (iii) The said exercise is directed to be completed within a period of three months from the date of receipt of a copy of this order.*
- (iv) In view of 7 posts of drivers kept vacant (4 posts pursuant to the order of this Court in W.P.(C) No.794 of 2016 and 3 posts by the official respondents themselves), the respondent authorities are directed to consider the same in the case of the*

*petitioners in W.P.(C) Nos.2 of 2017 and 61
of 2019.*

(v) No costs.”

14. On behalf of the writ appellants, the following issues have been canvassed to assail the impugned common order dated **18th July, 2022** :-

i) whether by virtue of the contract engagement as drivers, for limited period against no sanctioned posts and without following the recruitment process prescribed under the existing rules; the writ petitioners had any legally vested right to claim regularization?

ii) Whether the private respondents were not estopped from claiming regularization to the post of drivers, in view of the express terms and conditions of the contract of service entered into between them and the department?

15. In so far as the first issue of law articulated hereinabove is concerned, our attention was invited to the judicial precedents referred to hereinafter.

16. In so far as the second issue herein is concerned, our attention was invited to the contract of service entered into between the department and the private respondents commencing with the

first contract dated 9th September, 2010 and in particular, conditions Nos. 5 and 6 thereof which stipulate as follows :

“5. The above parties agree that the service rules presently governing the State Government employees shall not apply to the 2nd party;

6. The 2nd Party shall have no right to claim or shall not make any claim for regular appointment/absorption on the basis of his/her engagement for the implementation of the Animal Health & Dairying (Name of Scheme/Work). His/her service shall automatically at the end of the contract period unless terminated earlier under clause 10.”

17. In this behalf, it was therefore, urged that the private respondents had not been engaged against sanctioned posts and had expressly waived their right to seek regularization against the post of drivers in clear and unequivocal terms. It would be further urged that in view thereof, it would not be open to the private respondents to assert any right seeking regularization in the subject post without participating in the recruitment process in pursuance to the impugned Notification dated 21st September, 2016 inviting applications for the same.

18. In order to buttress the submissions made on behalf of the writ appellants, our attention was invited to the decision of the Constitution Bench in the ***Secretary, State of Karnataka and Others Versus Umadevi (3) and Others*** reported in ***(2006) 4 SCC 1*** and in particular to paragraphs No. 52, 53 and 54 thereof, which are extracted in extenso herein below, for the sake of completeness :-

*“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*³⁴. 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. Narayanappa¹¹, R.N. Nanjundappa¹² and B.N. Nagarajan⁸ and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making*

permanent, those not duly appointed as per the constitutional scheme.

54. *It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.”*

8 (1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937

11 (1967) 1 SCR 128 : AIR 1967 SC 1071

12 (1972) 1 SCC 409 : (1972) 2 SCR 799

34 1962 Supp (2) SCR 144 : AIR 1962 SC 1210

19. In simple terms, it is the case of the writ appellants that contractual employees whose services have not been engaged against duly sanctioned posts are not entitled to seek regularization since their appointments are temporary and have been made without following the due recruitment process in accordance with the subject recruitment rules.

20. At this juncture, it has been urged on behalf of the private respondents that is not open to the writ appellants to raise that the issue that, their engagements on contractual basis were not against sanctioned posts; in the present appeals for the first time, since the said assertion had not been articulated on their behalf before the learned Single Judge.

21. In this behalf, our attention was invited to the following decisions :-

i) **(2011) 6 SCC 199** (paragraphs No. 19 and 20) **reported in Abdul Khader (dead) by Lrs. v. Tarabai and Others :**

“19. We are in complete agreement with the High Court that having failed to adduce any evidence before the Tribunal, which could enable it to invoke the prohibition contained in Section 79-A of the 1961 Act and having failed to raise this plea before the learned Single Judge, the appellants were not entitled to resurrect the same before the Division Bench. In any case, in the absence of any tangible evidence, the Tribunal or for that reason the High Court could not have denied occupancy rights to Basavannappa or his widow by relying upon Section 79-A of the 1961 Act.

20. The argument that Basavannappa was not entitled to occupancy rights in respect of service inam lands, which were governed by the Hyderabad Act, 1955 merits rejection because no such plea was raised either before the Tribunal or the High Court. We have carefully scrutinised the pleadings of the writ petition filed by Abdul Khader before the High Court and the writ appeals filed by his legal representatives and find that neither Abdul Khader nor the appellants challenged the order of the Tribunal on the ground that occupancy rights cannot be claimed in respect of the service inam lands, which are governed by the Hyderabad Act, 1955. The counsel, who appeared on behalf of the appellants and their predecessor before

the High Court, did not raise any such argument. Therefore, there is no tangible justification to allow the appellants to raise a new plea for the first time, the determination of which would require detailed investigation into the issue of facts.”

ii) AIR 1957 SC 912 reported in ***State of U.P. v. Manbodhan Lal Srivastava***, wherein in para 11, the Hon'ble Supreme Court held as follows :-

“11. An examination of the terms of Article 320 shows that the word “shall” appears in almost every paragraph and every clause or sub-clause of that article. If it were held that the provisions of Article 320(3)(c) are mandatory in terms, the other clauses or sub-clauses of that article, will have to be equally held to be mandatory. If they are so held, any appointments made to the public services of the Union or a State, without observing strictly, the terms of these sub-clauses in clause (3) of Article 320, would adversely affect the person so appointed to a public service, without any fault on his part and without his having any say in the matter. This result could not have been contemplated by the makers of the Constitution. Hence, the use of the word “shall” in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding,

would be invalid. On the other hand, it is not always correct to say that where the word “may” has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from Crawford on Statutory Construction — Article 261 at p. 516, is pertinent:

“The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other....”

22. In this regard, being mindful of judicial precedents and having considered the rival submissions, we opine that, legal issues can be articulated by the parties to the lis at any stage of the proceedings, so long as the facts are not disputed.

23. It was then vehemently urged on behalf of the private respondents on the legal issue that arises for consideration that; in relation to the policy decisions taken by the statutory authorities, it

is imperative to consider the reasonableness and non-arbitrariness in executive action. In other words, it was urged that although it is open to the Government to take or not to take a policy decision qua regularization of its employees, however, once a decision has been taken to regularize some employees, it is not open to them to exclude other employees belonging to the same department except by grossly violating the express mandate of Article 14 of the Constitution of India.

24. In order to buttress their contention as aforestated, our attention has been invited to the following decisions :-

- 1) *U.P. State Electricity Board –Versus- Pooran Chandra Pandey and Others reported in (2007) 11 SCC 92;***
- 2) *John Vallamattom and Another –Versus- Union of India reported in (2003) 6 SCC 611;***
- 3) *State of Haryana and Others –Versus- Gurcharan Singh and Others reported in (2004) 12 SCC 540;***
- 4) *Noida Entrepreneurs Association –Versus- Noida and Others reported in (2011) 6 SCC 508.***

25. In (2007) 11 SCC 92 in the case of ***U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others***, the Hon'ble Supreme Court held as follows :-

“11. Learned counsel for the appellant has relied upon the decision of this Court in *Secy., State of Karnataka v. Umadevi (3)*¹ and has urged that no direction for regularisation can be given by the Court. In our opinion, the decision in *Umadevi (3) case*¹ is clearly distinguishable. The said decision cannot be applied to a case where regularisation has been sought for in pursuance of Article 14 of the Constitution.

16. We are constrained to refer to the above decisions and principles contained therein because we find that often *Umadevi (3) case*¹ is being applied by courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in *Bhavnagar University*⁶ and *Bharat Petroleum Corpn. Ltd.*⁷ a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence, in our opinion, *Umadevi (3) case*¹ cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make *Umadevi (3) case*¹ inapplicable to the facts of that case.

17.

18. We may further point out that a seven-Judge Bench decision of this Court in *Maneka Gandhi v. Union of India*¹² has held that reasonableness and non-

arbitrariness is part of Article 14 of the Constitution. It follows that the Government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. *Maneka Gandhi case*¹² is a decision of a seven-Judge Bench, whereas *Umadevi (3) case*¹ is a decision of a five-Judge Bench of this Court. It is well settled that a smaller Bench decision cannot override a larger Bench decision of the court. No doubt, *Maneka Gandhi case*¹² does not specifically deal with the question of regularisation of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application.

19. In the present case many of the writ petitioners have been working from 1985 i.e. they have put in about 22 years' service and it will surely not be reasonable if their claim for regularisation is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularisation and are made to face the same selection which fresh recruits have to face."

1 (2006) 4 SCC 1 : 2006 SCC (L&S) 753

6 (2003) 2 SCC 111

7 (2004) 8 SCC 579 : AIR 2004 SC 4778

12 (1978) 1 SCC 248 : AIR 1978 SC 597

26. In **(2003) 6 SCC 611** in the case of **John Vallamattom and Another Vs. Union of India**, the Hon'ble Supreme Court held as follows :

“62. Article 14 of the Constitution states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The first part of Article 14 of the Constitution of India is a declaration of equality of civil rights for all purposes within the territory of India and basic principles of republicanism and there will be no discrimination. The guarantee of equal protection embraces the entire realm of “State action”. It would extend not only when an individual is discriminated against in the matter of exercise of his right or in the matter of imposing liabilities upon him, but also in the matter of granting privileges etc. In all these cases, the principle is the same, namely, that there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is the same. In my view, all persons in similar circumstances shall be treated alike both in privileges and liabilities imposed. The classification should not be arbitrary; it should be reasonable and it must be based on qualities and characteristics and not any other who are left out, and those qualities or characteristics must have reasonable relations to the object of the legislation.”

27. In **(2004) 12 SCC 540** in the case of **State of Haryana and Others Vs. Gurcharan Singh and Others**, the Hon'ble Supreme Court held as follows :

“8. That brings us to the challenge against the decision of the High Court. It has been submitted that Standing Order 28 and paragraph 493 do not create any right in favour of any person to get back possession of the land. There can be no dispute with that proposition. However, at the same time, it is clear that the Government, having taken a policy decision, must implement that policy decision fairly and uniformly. It is not open to the Government to discriminate between persons similarly situated. In this case it has been shown that the Government has acted on the policy decision and released land in favour of other persons. Nothing has been brought on record to show why the policy should not be applied in favour of the respondents. It is admitted that the land is no longer required by the Government. Thus, even though there may be no right in the respondents to claim back possession, we still do not think it fit to interfere as it has been clearly shown that the Government is acting discriminately. The appeal, therefore, stands dismissed. There will be no order as to costs.”

28. In **(2011) 6 SCC 508** in the case of **Noida Entrepreneurs Association Vs. Noida and Others**, the Hon'ble Supreme Court held as follows :-

“38. The State or the public authority which holds the property for the public or which has been assigned the duty of grant of largesse, etc. acts as a trustee and, therefore, has to act fairly and reasonably. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. Every holder of a public office is a trustee.

39. State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a “democratic form of Government demands equality and absence of arbitrariness and discrimination”. The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

40. The public trust doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of colourable exercise of power. The rule of law is the foundation of a democratic society. [Vide *Erusian Equipment & Chemicals Ltd. v. State of W.B.*²¹, *Ramana Dayaram Shetty v. International Airport Authority of India*²², *Haji T.M. Hassan Rawther v. Kerala Financial Corpn.*²³, *Shrilekha Vidyarthi v. State of U.P.*²⁴ and *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu*²⁵.]

41. Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. “Public authorities cannot play fast and loose with the powers vested in them.” A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, “in good faith” means “for legitimate reasons”. It must be exercised bona fide for the purpose and for none other. [Vide *Commr. of Police v. Gordhandas Bhanji*²⁶, *Sirsi Municipality v. Cecelia Kom Francis Tellis*²⁷, *State of Punjab v. Gurdial Singh*²⁸, *Collector (District Magistrate) v. Raja Ram*

Jaiswal²⁹, Delhi Admn. v. Manohar Lal³⁰ and N.D. Jayal v. Union of India³¹.]

- 21 (1975) 1 SCC 70 : AIR 1975 SC 266
- 22 (1979) 3 SCC 489 : AIR 1979 SC 1628
- 23 (1988) 1 SCC 166 : AIR 1988 SC 157
- 24 (1991) 1 SCC 212 : 1991 SCC (L&S) 742 : AIR 1991 SC 537
- 25 (1999) 6 SCC 464 : AIR 1999 SC 2468
- 26 1951 SCC 1088 : AIR 1952 SC 16
- 27 (1973) 1 SCC 409 : 1973 SCC (L&S) 207 : AIR 1973 SC 855
- 28 (1980) 2 SCC 471 : AIR 1980 SC 319
- 29 (1985) 3 SCC 1 : AIR 1985 SC 1622
- 30 (2002) 7 SCC 222 : 2002 SCC (Cri) 1670

29. Lastly, it was urged on behalf of the private respondents that the dictum laid down by the Constitution Bench of the Hon'ble Supreme Court in **State of Karnataka Versus Uma Devi** (supra) has no applicability in cases where the provision of Article 14 are attracted, in as much as, discrimination between similarly situated persons was not determined by the Constitution Bench in **Uma Devi** (supra).

30. Upon a conjoint and considered conspectus of the decisions afore-extracted the following legal position emerges :-

- i) the decision of the Hon'ble Supreme Court in **Secretary, State of Karnataka and Others Versus Umadevi** (supra) to the effect that : no direction for regularization can be given by the Court; has no application to a case

where regularization has been sought for in terms of the principles enshrined in Article 14 of the Constitution.

- ii) the guarantee of equal protection embraces within its fold the entire realm of “State action”. It axiomatically also extends in the matter of granting privileges etc. In other words, persons similarly situated cannot be accorded different treatment. Once the Government has taken a policy decision the same has to be applied uniformly and fairly and it is not open to them to discriminate between persons similarly situated. State actions are required to be not arbitrary and must be justified on the touchstone of equality enshrined in Article 14 of the Constitution of India; and all State action must be strictly in conformity with some principle which meets the test of reason and relevance. The rule of law prohibits arbitrary action and commands the State to act in accordance with law. Every action of the State has to be tested on the touchstone of arbitrariness and discrimination. The State cannot act in a manner that is suggestive of discrimination, or even apparently gives an impression of bias, favouritism and nepotism.

31. Viewed in the context of the facts and circumstances of the present case and in the backdrop of the settled legal position enunciated above, we are of the considered view that the issues struck hereinbefore are *a fortiori* to be determined in favour of the private respondents and against the writ appellants. In this behalf, we observe that the private respondents were similarly situated as the 26 incumbent employees, who had also been initially engaged on the contractual basis by the Government and who were admittedly regularized in their respective posts pursuant to the policy decision taken by the Government. It is not open, in our view, to the writ appellant to create a perverse distinction between 26 incumbents who were regularized on the one hand and the private respondents on the other, merely on the ground that while former were employed as **LDC cum Computer Assistants and Milk Recorders**; the latter were employed as drivers. This argument articulated on behalf of the writ appellants is specious and completely devoid of merit. As eloquently and unequivocally laid down by the Hon'ble Supreme Court; while it is open to the Government to take a policy decision to regularize contractual employees or not; it is not open to them to discriminate between one set of contractual employees and others, whilst regularizing contractual employees. The Government, as a model employer, is

expected to be held to the highest standards by which it professes its actions to be judged.

32. In so far as the argument relating to the private respondents being estopped from claiming regularization — in view of the terms stipulated in their respective contracts is concerned; to say the least, ‘what is sauce for the goose is sauce for the gander’. If the 26 incumbents regularized by the writ appellants could be relieved of the rigour and undertaking of their terms of engagement in their respective contracts to not claim regularization; so must the private respondents. This is the cardinal principle enshrined in Article 14 of the Constitution of India.

33. In view of the foregoing, the present writ appeals are bereft of merit, and are accordingly dismissed.

34. Pending applications, if there are any, also stand dismissed.

JUDGE

CHIEF JUSTICE

FR/NFR

Sushil