

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) 5/2023**

1. Sri Satya Ranjan Dey,

S/O late Narendra Chandra Dey, resident of Natunnagar, Barjala,
Durjoynagar, West Tripura, 799009

2. Smt. Tara Pashi,

W/O Kunja Lal Pasi, resident of Barjala, near Khejur Bagan, Kunjaban,
Agartala, West Tripura, 799006

..... Petitioners

Versus

1. The State of Tripura,

to be represented by the Secretary, Department of Finance, Government
of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S.
New Capital Complex, Agartala, West Tripura, PIN-799010

2. Tripura State Electricity Corporation Ltd.,

to be represented by the Chairman-cum-Managing Director, Tripura State
Electricity Corporation Limited, Bidyut Bhavan, Banamalipur, P.S. East
Agartala, District- West Tripura, PIN-799001

3. The Chairman cum Managing Director

Tripura State Electricity Corporation Limited, Bidyut Bhavan, Banamalipur,
P.S. East Agartala, District- West Tripura, PIN-799001

4. The Deputy General Manager

Capital Complex, Electrical Division, 79 Tilla, Agartala, Tripura

5. The Senior Manager

Durjoynagar Electrical Sub-Division, Durjoynagar, Agartala, Tripura

----Respondent(s)

For Petitioner(s) : Ms. A. Debbarma, Advocate

For Respondent(s) : Mr. N. Majumder, Advocate
Mr. M. Debbarma, Addl. GA

Dates of hearing : **03.07.2023 / 04.09.2023**

Date of delivery of Judgment
and Order : **06.09.2023**

Whether fit for reporting : **Yes**

**HON'BLE MR. JUSTICE ARINDAM LODH
Judgment & Order**

The petitioners filed the instant writ petition for regularization of their services in the post of Group 'D' under the respondents. In a nutshell, it is the case of the petitioners that they were engaged as Contingent workers under the respondents in the year 2004. The petitioner no. 1 joined as Contingent worker on August, 2004 and petitioner no. 2 joined on

19.01.2004. It is the further case of the petitioners that their claim for regularization was matured in the year 2014 on completion of ten years of service i.e. on 01.09.2014 and 19.02.2014 respectively under the policy decision taken by the Government of Tripura vide memorandum dated 21.01.2009, but since first round of litigation (W.P(C) No.66 of 2022), till filing of the present writ petition, their claim for regularization have not been considered. While disposing of the earlier writ petition [WP(C) No.66 of 2022], vide judgment and order dated 27.06.2022, this court had passed the following order:

“[5] It is further submitted by the petitioners that the memorandum no. 10(2)-FIN(G)/2008 (Part), dated 01.09.2008, issued by the Joint Secretary to the Government of Tripura, Finance Department, was in respect to the regularization of service of DRW/Casual/Contingent workers on completion of 10 years as on 31.03.2008. By the aforesaid Memo it was made known, that Govt. has taken a policy decision to regularise the service of full time DRW/Contingent/Casual workers, who have completed 10 years service as on 31.03.2008. As per the said Memo, the regularization will take effect from 01.07.2008. The petitioners are squarely covered by the Memo dated 01.09.2008 according to the petitioners.

[6] Having perused the entire records, so placed before this court, this court is of the opinion that the respondents shall consider the letters dated 29.11.2021 of the petitioners within two months from the date of the receipt of the copy of this order.”

2. In compliance of the aforesaid directions, the respondents vide communication dated 14.12.2022 (Annexure 19 to the writ petition) informed the petitioner that under the policy decision dated 21.01.2009, there was complete ban on engagement of DRWs/Casual/Contingent etc. workers after 31.03.2003 without concurrence from the Finance Department. The contents of the entire communication (*supra*) may be reproduced here-in-below:

**“TRIPURA STATE ELECTRICITY CORPORATION LIMITED
(A Government of Tripura Enterprise)**

No.F.3(50)-TSECL/HRM/Court Case/2022/ 49647-83

Dated the 14th December, 2022

To

**Sri Satya Ranjan Dey,
Contingent worker (Technical) [Petitioner-01]
O/o Sr. Manager, ESD- Durjoynagar, Agartala**

Sub: Compliance to the Judgment & Order of Hon'ble High Court of Tripura bearing case no. WP(C) 66 of 2022 dated 27/06/2022 and Cont.Cas(C) No.140 of 2022-reg.

Ref.- Representation of Petitioner-01 dated 29/11/2021 & 20/09/2022.

Sir,

In compliance to the direction of Hon'ble High Court of Tripura bearing case no. WP(C) 66 of 2022 dated 27/06/2022, an Enquiry Committee consisting of higher level officials of TSECL was formed to enquire about the Service status of the Petitioners vide No.F.3(50)-TSECL/HRM/Court Case/2022/47735-45 dated 3rd December, 2022. In line to the Enquiry Committee Report it has been mentioned that you have been engaged under TSECL in August, 2004 as Contingent worker (Technical) and working on full time basis from the date of engagement record.

It is also found that you have not completed requisite period of 10 (Ten) years' of service as on 31/03/2008 from the date of joining in Service as per Memorandum vide No.F.10(2)-FIN(G)/2008(Part), Govt. of Tripura Department of Finance dated Agartala, the 1st September, 2008. Moreover, by Memorandum dated 21st January 2009 issued by the Finance Department, Govt. of Tripura in paragraph-3 it was the Policy Decision that there shall be a complete ban on engagement of DRW/Casual/Contingent etc. workers after 31/03/2003 without concurrence from the Finance Department, Govt. of Tripura. As per Enquiry Report', no financial concurrence was obtained and hence the regularization of service of the petitioner-01 cannot be considered.

Therefore, the representation of the petitioner is hereby regretted as you are not eligible for regularization as per the Memorandum dated 1st September, 2008.

This is for your information and ready reference.

Sd/- Illegible
(Debashis Sarkar)
Managing Director, TSECL

3. From the aforesaid communication dated 14.12.2022, it is further revealed that the petitioners had not completed the requisite period of ten years of service as on 31.03.2008 from the date of joining in service as per memorandum vide no. F.10(2)-FIN(G)/2008(Part), dated 01.09.2008, issued by the Government of Tripura, Department of Finance.

4. Heard Ms. A. Debbarma, learned counsel for the petitioner. Also heard Mr. N. Majumder, learned counsel appearing for the respondents-TSECL, and Mr. M. Debbarma, learned Additional GA appearing for the respondent-State.

5. I have considered the submissions advanced by learned counsel for the parties.

6. At the outset, I have perused the Memorandum dated 01.09.2008 (Annexure 9 to the writ petition), Memorandum dated 21.01.2009 (Annexure 10 to the writ petition), Memorandum dated 03.01.2014 (Annexure 11 to the writ petition) and Memorandum dated 31.07.2018

(Annexure 13 to the writ petition), which would be relevant to decide the questions involved in the instant petition.

7. From the Memorandum dated 01.09.2008 issued by the Government of Tripura, it comes to fore that the Government of Tripura had taken a policy decision to regularize the services of the “full time DRWs/Casual/contingent workers”, who had completed ten years of service as on 31.10.2008 subject to fulfillment of some parameters, as laid down under the said Memorandum.

8. Under the Memorandum dated 21.01.2009, some further decisions were taken for the purpose of regularization. One of the most important decisions, which was taken by the Government of Tripura under the said memo dated 21.01.2009 (Annexure 10 to the writ petition) is enumerated at paragraphs 3 and 4, which may be reproduced here-under, for convenience, in extenso:

“3. There shall be a complete ban on engagement of DRW/Casual/ Contingent etc. workers after 31.3.2003 without concurrence from Finance Department. Responsibility shall be fixed on the official found responsible for any irregular engagement henceforth. Such irregular engagement shall have to be instantly terminated. The wages, if paid any, shall be recovered from the official concerned.

4. The undersigned is directed to request all concerned to ensure strict implementation of the above decisions.”

9. Again, by way of issuance of another Memorandum dated 03.01.2014, the Government of Tripura instructed all the Heads of the Departments to furnish the list of workers who were serving as DRWs/Casual/contingent etc. workers **with concurrence of the Finance Department on or after 31.03.2003** in a prescribed format appended to the said Memorandum itself.

10. However, having continued the above policies of regularization for more than 10(ten) years, the Government of Tripura as a policy matter had repealed all the above policies under Memorandum dated 31.07.2018.

11. After careful consideration of the aforesaid Memorandums conjointly, it becomes clear that under the Memorandum dated 01.09.2008, the Government of Tripura decided that the workers who had completed ten years of service as on 31.03.2008 as full time DRWs/ Casual/Contingent etc. workers, would only be considered for regularization of their services. Under memorandum dated 21.01.2009, the Government of Tripura had declared total ban on the engagement of DRWs/Casual/Contingent etc. workers after 31.03.2003 without concurrence from the Finance Department. In addition, the responsibilities had been fixed upon the erring officials and the concerned authorities were instructed to strict implementation of the directives of the Government of Tripura under memorandum dated 01.09.2008. Under memorandum dated 03.01.2014, the Government of Tripura had informed all the concerned authorities to furnish the list of DRWs/Casual/Contingent etc. workers working under their jurisdiction who were engaged on or after 31.03.2003 with the concurrence of the Finance Department.

12. Now, the issue falls for consideration before this court, in the instant case, is to examine as to whether the claim for regularization of the petitioners comes within the ambit of the policy decisions of the Government of Tripura, as reproduced and discussed here-in-above.

13. It is evident that both the petitioners were appointed after the cut-off date 31.03.2003. Moreso, there is absolutely no evidence that the petitioners were engaged after 31.03.2003 with the concurrence of the Finance Department, Government of Tripura. Naturally, the petitioners had not completed requisite period of 10 (ten) years' of service as on 31.03.2008 from the date of their joining into service under the respondents, as provided

under the Memorandum dated 01.09.2008. On the above two scores, in the opinion of this court, the present writ petition merits no consideration.

14. Furthermore, the rights of the petitioners, if any, to claim regularization arose in the year 2014 during the life of the afore-discussed Schemes and within the realm of those schemes, but they had approached this court for the first time in the year 2022 to enforce their claims, that too, under the repealed schemes. Such claim, according to this court, by now has become stale, and thus, is absolutely barred by the doctrine of delay and laches. On this count also, the present writ petition is liable to be dismissed. It is re-iterated that the Schemes made for the purpose of regularization of irregular appointees, as noted here-in-above, were existed for more than 10 (ten) years.

15. Needless to mention, regularization or absorption is not a matter of right. It is a right to be considered by the employer and subject to availability of sanctioned vacant posts, etc. There is no material before this Court that the petitioners have been working against the regular sanctioned posts. Any appointments/engagements made not against duly sanctioned posts must not be treated as “irregular appointments but it would be treated as illegal appointments”.

16. It is also established proposition of law that the court cannot direct the Government to create posts. According to me, creation of post is a matter of policy, which is absolutely within the domain of the Government itself.

17. In the context of the case, I may gainfully refer the Constitution Bench judgment in *Secretary, State of Karnataka and others vs. Uma Devi (3) and others*, reported in (2006) 4 SCC 1, where-under it was held that *orders for absorption, regularization or permanent continuance of such*

employees are passed apparently in exercise of the wide powers under Article 226 of the Constitution. The wide powers under Article 226 are not 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 recognized by our Constitution. 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 emphasized that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 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. [SCC.p. 18, para 4]

It was further been held that this bypassing of the constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the constitutional validity of the interim and final orders of the Supreme Court and High Courts which have issued directions for regularization, permanent continuation or absorption without referring to the legal position obtaining thereby, and which have been relied on by the respondent employees to claim the same relief. While approaching the questions falling for decision before this Constitution Bench, it is necessary to bear this in mind and to bring about certainty in the matter of public employment. The claim to a parity of treatment based on such orders also

highlights the need for the Supreme Court to formally lay down the law on the question and ensure certainty in dealings relating to public employment. The very divergence in approach in the Supreme Court, the so-called equitable approach made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by the Supreme Court one way or the other. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down. This Constitution Bench has to lay down the law. It has to approach the question as a constitutional court should. [SCC.pp. 20, 23-24, paras 10 & 14]

In para 53 of *Uma Devi (3)(supra)*, it has been held that-

*“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore vs. S.V. Narayanappa, reported in (1967) 1 SCR 128, R.N. Nanjundappa vs. T. Thimmiah, reported in (1972) 1 SCC 409, B.N. Nagarajan vs. State of Karnataka, reported in (1979) 4 SCC 507, and referred to in paragraph 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 courts or of tribunals. The question of regularization 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 regularize 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 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 regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”*

18. In the instant case, there is no averment that the petitioners have been working in duly sanctioned vacant posts under the respondents. One of the pre-conditions as laid down by the Constitution Bench in *Uma Devi (3)(supra)*, is that the employees concerned apart from due qualification, should have worked for 10 (ten) years or more in a “**duly sanctioned vacant**

post” without the benefit or protection of any interim order from any court or tribunal.

19. Further, the direction of the Constitution Bench was that the Union of India, State Governments and their instrumentalities to take steps to regularize the services of irregularly appointed temporary employees or daily wagers as **“one time measure”**. In the line of the directions, the State of Tripura had formulated schemes as stated supra to regularize the services of the Daily Rated Workers (DRWs), Casual, and Contingent Workers. Those schemes were continued for long 10(ten) years. During the said period, the employees/workers who had completed 10(ten) years of service on 31.03.2008 were regularized either by the Government or by the order of this Court within the realms of the policy. As stated above, the Government also decided to regularize those classes of irregularly appointed employees who were engaged on or after the cut-off date (31.03.2003) with concurrence of the Finance Department. The schemes were existed for more than 10(ten) years till those were repealed vide Memorandum dated 31.07.2018.

20. In *Uma Devi (3) (supra)*, Hon’ble Supreme Court has extended the benefit of regularization as **“one time measure”** to the employees who were appointed irregularly, but, not illegally against duly sanctioned posts. In *State of Karnataka vs. M.L. Kesari*, reported in (2010) 9 SCC 247, the distinction between the illegal appointment and irregular appointment was made in the manner as under:

“7. It is evident from the above that there is an exception to the general principle against regularization enunciated in Uma Devi (3) 1, if the following conditions are fulfilled:

- (i) The employee concerned should have worked for 10 years or more in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.**
- (ii) The appointment should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the person appointed do**

not possess the prescribed minimum qualifications, the appointments will be considered illegal. But where the person possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

8. Umadevi (3) 1 casts a duty upon the Government or instrumentality concerned to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of interim orders of courts or tribunals, as a one time-measures, Umadevi (3)1 directed that such one time-measure must be set in motion within six months from the date of its decision.

9. The term 'one time-measure' has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi (3) 1, each department or instrumentality should undertake a one-time exercise and prepare a list of all casual, daily wage or ad-hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their service."

21. As I have said earlier, in the instant case, there is no material before this court that the petitioners were appointed against duly sanctioned regular posts and the said posts were vacant at the time of their appointment or are still lying vacant. That apart, since the appointments of the petitioners were not made in duly sanctioned posts, their appointments cannot be said to be irregular appointments, but, as per *Uma Devi (3)(supra)* and *M.L. Kesari (supra)*, their appointments were illegal appointments. In addition, the petitioners have merely stated that they have requisite qualifications for appointments against Group-D posts, but, did not furnish any documents in support of this statement.

22. Another interesting feature surfaced in the present case, is that the petitioners have not been able to produce any document that they were appointed as Contingent Workers under any order of the competent authority of the respondent-TSECL. Only they have annexed Certificates dated 05.06.2007 and 10.10.2011 issued by the Senior Manager (Elect.) of the Electrical Sub-Division under the Respondent no. 2 (TSECL), namely, Durjoynagar Electrical Sub-Division (Annexures 1 and 2 to the writ petition). Needless to say, that a Senior Manager of an Electrical Sub-Division is not the appointing authority. So, on this score also, the

appointments of the petitioners under the Respondents no. 2 and 3 were *per se* illegal.

23. In the instant case, it is revealed by this court that in compliance with the directions passed by this court while disposing of the writ petition being WP(C) 66 of 2022, the respondents had constituted an Enquiry Committee. The Enquiry Committee after examining all the records had found the petitioners not eligible for regularization, as stated and discussed here-in-above. In this situation, this Court in exercise of power of judicial review under Article 226 of the Constitution of India will not sit in appeal to re-evaluate the eligibility of the petitioners and review the correctness of the decision of the Enquiry Committee.

24. The Hon'ble Supreme Court in *State of Rajasthan and ors. vs. Daya Lal & ors.*, reported in (2011) 2 SCC 429, while dealing a case in respect of regularization or absorption of some of the temporarily appointed employees under the State of Rajasthan, had recast the well-settled principles relating to regularization, which is as under: [SCC pp. 435, 436, para 12]

"12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be

applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

(See : Secretary, State of Karnataka vs. Uma Devi - 2006 (4) SCC 1, M. Raja vs. CEERI Educational Society, Pilani - 2006 (12) SCC 636, S.C. Chandra vs. State of Jharkhand - 2007 (8) SCC 279, Kurukshetra Central Co-operative Bank Ltd vs. Mehar Chand - 2007 (15) SCC 680, and Official Liquidator vs. Dayanand - 2008 (10 SCC 1)”)

25. What emerges in *Daya lal (supra)* is that the appointments even if irregular must be against sanctioned posts. Sympathy and Sentiment cannot be a ground for passing any order of regularization in the absence of a legal right. Further, *whereas the scheme is formulated for regularization with cut-off date (i.e. a scheme providing that persons who have put in a specified number of years and continuing in employment as on cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date.*

[Emphasis supplied]

26. I have already discussed that in the instant case, the petitioners had, *firstly*, failed to assert or in other words, could not substantiate that they were appointed against “**sanctioned vacant posts**” and, *secondly*, both the petitioners were appointed after cut-off date 31.03.2003.

27. However, I am not unoblivious of the decisions and directions of the two-Judge Bench of the Hon’ble Supreme Court in *Narendra Kumar Tiwari and ors. vs. State of Jharkhand and ors.*, reported in (2018) 8 SCC 238, [though not referred by learned Counsel for the petitioner] where the Hon’ble Supreme Court directed the State of Jharkhand to take necessary steps for regularization of the irregularly appointed employees in the spirit of

the decisions of the Constitution Bench in *Uma Devi (3)*(*supra*). In the case of *Narendra Kumar Tiwari (supra)*, the Hon'ble supreme Court had referred and discussed the cases of *Uma Devi (3)*(*supra*) and *M.L. Keshari (supra)*. To evaluate the distinguishing features of the case in hand, than that of the case of *Narendra Kumar Tiwari (supra)*, it is necessary to reproduce the relevant paragraphs from the case of *Narendra Kumar Tiwari (supra)* :-
[SCC.pp.240, 241,242, paras 5,6,7,8,9,10,11 & 12]

“5. The decision in *Umadevi (3)* was intended to put a full stop to the somewhat pernicious practice of irregularly or illegally appointing daily wage workers and continuing with them indefinitely. In fact, in paragraph 49 of the Report, it was pointed out that the rule of law requires appointments to be made in a constitutional manner and the State cannot be permitted to perpetuate an irregularity in the matter of public employment which would adversely affect those who could be employed in terms of the constitutional scheme. It is for this reason that the concept of a one-time measure and a cut-off date was introduced in the hope and expectation that the State would cease and desist from making irregular or illegal appointments and instead make appointments on a regular basis.

6. The concept of a one-time measure was further explained in *Kesari* in paragraphs 9, 10 and 11 of the Report which read as follows: (SCC pp.250-51, paras 9-11)

“9. The term “one-time measure” has to be understood in its proper perspective. This would normally mean that after the decision in *Umadevi (3)*, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularise their services.

10. At the end of six months from the date of decision in *Umadevi (3)*, cases of several daily-wage/ad hoc/casual employees were still pending before courts. Consequently, several departments and instrumentalities did not commence the one-time regularisation process. On the other hand, some government departments or instrumentalities undertook the one- time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision in *Umadevi (3)*, will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six- month period mentioned in para 53 of *Umadevi (3)* has expired. The one-time exercise should consider all daily-wage/ad hoc/casual employees who had put in 10 years of continuous service as on 10-4-2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of *Umadevi (3)*, but did not consider the cases of some employees who were entitled to the benefit of para 53 of *Umadevi (3)*, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of *Umadevi (3)*, are so considered.

11. The object behind the said direction in para 53 of *Umadevi (3)* is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in *Umadevi (3)* was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual

basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in *Umadevi (3)*] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in *Umadevi (3)* or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in *Umadevi (3)* as a one-time measure.”

7. The purpose and intent of the decision in *Umadevi (3)* was therefore two-fold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in *Umadevi (3)* is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what *Umadevi (3)* and *Kesari* sought to avoid.

8. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in *Umadevi (3)*, is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15th November, 2000 and the cut-off date was fixed as 10 th April, 2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

9. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

10. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct etc.

11. The impugned judgment and order passed by the High Court is set aside in view of our conclusions. The State should take a decision within four months from today on regularisation of the status of the appellants. 13. The appeals are accordingly disposed of.

12. We may add that that it would be worthwhile for the State of Jharkhand to henceforth consider making regular appointments only and dropping the idea of making irregular appointments so as to short circuit the process of regular appointments.”

28. On meticulous reading of the above paragraphs, it is clear that the two-Judge Bench of the Hon’ble Supreme Court in *Narendra Kumar Tiwari (supra)* has approved the interpretation of the term “one-time measure” as explained in *M.L. Keshari (supra)* that the State or its instrumentalities had to undertake one-time exercise for regularization of all casual, daily wages or adhoc employees who had been working for more than ten years without

the intervention of the courts or tribunals and subject to a process of verification as to whether such employees were working **against sanctioned vacant posts**, and **possess requisite qualification** for the post they were holding. In the process of such regularization, if any employer had held the ‘one-time exercise’ in terms of para 53 of *Uma Devi (3) (supra)*, but did not consider the cases of some employees who were entitled to the benefit of para 53 of *Uma Devi (3) (supra)*, the employer concern who considered their cases also as a continuation of ‘one-time exercise’. Furthermore, the said ‘one-time exercise’ would be concluded only when all the employees who were entitled to be considered in terms of para 53 of *Uma Devi (3) (supra)* were considered.

29. In my opinion, the object behind the directions passed by the Constitution Bench in *Uma Devi (3)(supra)* was to save all daily-wage, ad hoc, casual employees from exploitations by the State and their instrumentalities and to bind the States and their instrumentalities to stop irregular appointments ignoring the established norms of employment as enshrined in Articles 14 and 16 of the Constitution of India. There are conditionalities. *Firstly*, the employees must have completed atleast 10 (ten) years of continuous service as on 10.04.2006 [the date of decision in *Uma Devi (3) (supra)*] without the protection of any interim orders of courts or tribunals; *Secondly*, those appointments, though irregular, but not illegal; *Thirdly*, the appointments must be against **sanctioned vacant posts**; and, *Fourthly*, they must possess requisite qualification commensurate the posts they held.

30. In the case of *Narendra Kumar Tiwari (supra)*, the Hon’ble Supreme Court had observed that the State of Jharkhand continued with the irregular

appointments for almost a decade after the decision of *Uma Devi (3)(supra)*. It was further observed that the State of Jharkhand had taken it granted that it is all right to continue with irregular appointments, and whenever required, could terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed, and in that context, it was held that the said process was nothing but a form of exploitation of the employees by not giving them the benefits of regularization and by placing the sword of Damocles over their head, contrary to the object, the Hon'ble Supreme Court wanted to achieve in the case of *Uma Devi (3)(supra)* and *M.L. Keshari (supra)*.

31. I am constrained to say that this is not the state of affairs in the case in hand. The Government of Tripura had come up with a policy decision in terms of the decision of the Constitution bench in *Uma Devi (3)(supra)* in respect to the regularization of the services of the DRWs/casual/contingent workers who had completed 10(ten) years of continuous services on 31.03.2008 subject to other eligible criterias enumerated in the said policy dated 1st September, 2008 (Annexure 9 to the writ petition). The process was carried out in terms of the said policy and the services of many employees were regularized in their respective posts. Many eligible employees who were excluded from the benefit of regularization of their services were regularized in terms of the direction of this court being approached this court by such employees. The policy decision of the Government of Tripura under Memorandum dated 01.09.2008 is reproduced here-in-below, for convenience, in verbatim:

**“No.F.10(2)-FIN(G)/2008(Part)
GOVERNMENT OF TRIPURA
DEPARTMENT OF FINANCE**

Dated, Agartala, the 1st September, 2008

MEMORANDUM

Subject: *Regularization of services of DRWS/ Casual/ Contingent Workers on completion of 10 years of service as on 31-03-2008*

The undersigned is directed to inform that the Government has taken a policy decision to regularize services of full-time DRWS/Casual/Contingent Workers who have completed 10 (ten) years of service as on 31-03-2008 and fulfill the following criterion as per Department-wise names and particulars attached herewith:

- i) DRW/Casual/Contingent workers who were engaged on a full time basis in different Departments with or without concurrence of Finance Department and have completed 10 years of service as on 31-3-2008 other than Permanent Labourers, Part-time workers, Anganwadi Workers and Helpers, Home Guards, Teachers and Workers engaged under SSA and other Schemes/programmes, may be considered for regularization as per names attached.*
- ii) Requirement of age as per Recruitment Rules will be deemed to be relaxed for the purpose of this regularization.*
- iii) Requirement of educational qualification as per Recruitment Rules will be deemed as relaxed for regularization under Group D only. In case of DRW/ and Contingent Workers who were appointed under Group-C category, educational qualification as required under concerned R.R. must be ensured while entertaining their cases for regularization.*
- iv) Except age and educational qualification mentioned in point (iii) all other criterion as per relevant Recruitment Rules including reservation roster will have to be followed strictly for this process of regularization.*
- v) Subject to fulfillment of above conditions, the eligible workers will be provided pay scale in the relevant grade for their regularization which will take effect from 1st July 2008.*

2. To facilitate quick action for implementation of the above decision, appropriate authorities of the concerned Administrative Departments of the State Government are authorized to take following actions:

- i) The Departments will scrutinize the records and particulars of the workers whose names and particulars are included in the annexure attached herewith to ascertain their eligibility for regularization. Only those workers out of the attached annexure who fulfills all the above criterion are to be regularized.*
 - ii) While ascertaining eligibility, other than relaxation made in respect of educational qualification and age, other requirements like nationality, reservation quota are to be followed strictly.*
 - iii) After ascertaining the number of eligible cases, the department will take steps for creation of required number of posts in the appropriate category including creation for post for SC and ST as per 100 point roster for accommodating them in the concerned pay scale for regularization. The computation is to be done to ensure 31% reservation for ST & 17% reservation for SC against the member of UR candidates as per list enclosed without bringing any previous backlog. Formal appointment orders are to be issued by concerned appropriate authority accordingly. After taking this step department will send proposal to the Finance Department for ex-post-facto concurrence for creation of posts.*
 - iv) Following regularization of the eligible cases out of list attached herewith, the Departments are required to take action to ensure recruitment of shortfall of candidates under ST & SC category to fulfill the roster. In respect of such shortfall under Group D category, the Tribal Welfare Department would act as the Nodal Department for selection of required number of candidates and sponsoring them to the respective Department. The Departments are requested to send a report within one month to the Finance Department indicating action taken as per the instant Memorandum and details of posts filled up/lying vacant on completion of the process.*
- 3. The undersigned is directed to request all concerned to ensure strict implementation of the above decisions.**

*Sd/- illegible
(N. Das)*

Joint Secretary to the Government of Tripura”

Thereafter, the State of Tripura had issued another Memorandum dated 21.01.2009 (Annexure 10 to the writ petition), which for convenience, may be reproduced here-under, in extenso:

**“No. F.10(2)-FIN(G)/2008(Part)
GOVERNMENT OF TRIPURA
DEPARTMENT OF FINANCE**

Dated, Agartala, the 21st January, 2009

MEMORANDUM

Subject: Regularization of services of DRW/Casual/Contingent Workers on the next date of completion of 10 years of service.

The undersigned is directed to inform that the Government has taken a policy decision to regularize services of full-time DRWS/Casual/Contingen Workers from the next date of completion of 10 years of service and fulfill the following criterion as per Department-wise names and particulars attached herewith:

(1) DRW/Casual/Contingent workers who were engaged on a full time basis in different Departments with or without concurrence of Finance Department other than Permanent Labourers, Part-time workers. Anganwadi Workers and Helpers, Home Guards, Teachers and Workers engaged under SSA and other Schemes/ programmes, may be considered for regularization as per names attached.

(ii) Requirement of age as per Recruitment Rules will be deemed to be relaxed for the purpose of this regularization.

(iii) Requirement of educational qualification as per Recruitment Rules will be deemed as relaxed for regularization under Group-D only. In case of DRW/ and Contingent Workers who were appointed under Group-C category, educational qualification as required under concerned R.R. must be ensured while entertaining their cases for regularization.

(iv) Except age and educational qualification mentioned in point (ii) & (all other criterion as per relevant Recruitment Rules including reservation roster will have to be followed strictly for this process of regularization.

(v) Subject to fulfillment of above conditions, the eligible workers will be provided pay scale in the relevant post on the following day of completion of 10 years of service(without any break) from the date of joining. In the event of revision of pay scales the revised structure will be followed as per Govt.'s decision

2. To facilitate quick action for implementation of the above decisions, appropriate authorities of the concerned Administrative Departments of the State Government are authorized to take following actions:

i) The Departments will scrutinize the records and particulars of the workers whose names and particulars are included in the annexure attached herewith to ascertain their eligibility for regularization. Only those workers out of the attached annexure who fulfills all the above criteria are to be regularized.

ii) While ascertaining eligibility, other than relaxation made in respect of educational qualification and age, other requirements like nationality, reservation quota are to be followed strictly. All original documents shall be checked by the Departments to ensure genuineness of records/documents.

iii) After ascertaining the number of eligible cases, the department will take steps for creation of required number of posts in the appropriate category including creation of post for SC and ST as per 100 point roster for accommodating them in the concerned pay scale for regularization. The computation is to be done to ensure 31% réservation for ST & 17% reservation for SC against the number of UR candidates as per list enclosed without bringing any previous backlog. Formal appointment orders are to be issued by concerned appropriate authority accordingly. After taking this step department will send proposal to the Finance Department for ex-post-facto concurrence for creation of posts.

iv) Following regularization of the eligible cases out of list attached herewith, the Departments are required to take action to ensure recruitment of shortfall of candidates under ST & SC category to fulfill the roster. In respect of such shortfall under Group D category, the Tribal Welfare Department would act as the Nodal Department for selection of required number of candidates and sponsoring them to the respective Department. The Departments are requested to send report to the Finance Department

within one month immediately after action taken as per the instant Memorandum alongwith list of workers regularized.

3. *There shall be a complete ban on engagement of DRW/Casual Contingent etc. workers after 31.3.2003 without concurrence from Finance Department. Responsibility shall be fixed on the official found responsible for any irregular engagement henceforth. Such irregular engagement shall have to be instantly terminated. The wages, if paid any, shall be recovered from the official concerned.*

4. *The undersigned is directed to request all concerned to ensure strict implementation of the above decisions.*

Sd/- illegible

(N. Das)

Joint Secretary to the Government of Tripura"

32. Noticeably, under the policy dated 21.01.2009, the Government of Tripura as a policy maker had declared a complete ban on engagement of DRWs/casual/contingent workers after 31.03.2003 without concurrence from the Finance Department. Even it was declared that the responsibilities would be fixed on the officials found responsible for any irregular employments henceforth, and such irregular engagement would have to be instantly terminated. It was further decided that the wages, if paid, would be recovered from the official concerned (Clause 3 of the Memorandum dated 21.01.2009) (Annexure 10 to the writ petition).

33. It is pertinent to mention here that both the petitioners of the present writ petition were appointed after 31.03.2003 and there is no material or evidence that they were appointed with concurrence from the Finance Department, Government of Tripura. Thereafter, the Government of Tripura had undertaken further exercise to regularize services of the DRWs/casual/contingent etc. workers having noticed that in some departments such workers were engaged with prior approval of the Finance Department on Full Time basis after 31.03.2003, and some of them by that time had completed 10 (ten) years of continuous service, and in this regard, a policy decision was taken on 3rd January, 2014 (Annexure 11 to the writ petition). In view of the aforesaid policy decision dated 03.01.2014, the Government of Tripura directed the Heads of all the Departments to send the names of

DRWs/casual/contingent workers to Finance Department who were engaged after 31.03.2003 with prior approval of the Finance Department, in prescribed format within 10th January, 2014.

34. On conjoint reading of the policy decision under Memorandums dated 21.01.2009 and 03.01.2014, I find two factors for the purpose of regularization of DRWs/casual/contingent workers. *Firstly*, the Government of Tripura had declared complete ban on engagement of such workers after 31.03.2003 without concurrence from the Finance Department and responsibility was also fixed on the erring officials. *Secondly*, the then existing policy being reviewed, the Government of Tripura found that in some departments the DRWs/casual/contingent workers were engaged with prior approval of the Finance Department with Full Time basis after 31.03.2003 and some of them by that time had completed 10(ten) years of continuous services.

35. As a matter of further exercise, the Government had decided to regularize the services of such workers and the Heads of the Department were directed to submit the list of the workers who fulfilled the above criteria within a stipulated date, i.e., within 10th January, 2014 in a prescribed format. On perusal of the writ petition and having heard learned counsel appearing for the parties, I find no evidence that the names of the petitioners had ever been considered by the Heads of the Department to the Government of Tripura for consideration of their regularization, though the process continued for a considerable periods. There is no evidence that the petitioners, though were appointed after 31.03.2003, but, were engaged with prior concurrence of the Finance Department. Thereafter, the Government of Tripura had come up with a Memorandum dated 31.07.2018 (Annexure 13

to the writ petition) whereunder all the policy decisions formulated for regularization of DRWs/casual/contingent workers had been repealed. It would be apposite to reproduce the Memorandum dated 31.07.2018 issued by the Finance Department, Government of Tripura, for convenience, in extenso:

**“GOVERNMENT OF TRIPURA
DEPARTMENT OF FINANCE**

Dated:- The 31st July, 2018

MEMORANDUM

Subject: Policy decision of regularization of service of DRWs/Casual/Contingent/PTW etc. Workers in Government Establishment and State PSUs and Autonomous bodies including AMC/NPS

Finance Department has issued instructions from time to time as given for regularization of service of DRWs/Casual/Contingent/PTW etc. workers on the date completion of 17 years/15 years/10 years of services. The memorandums are as follows:

Sl.No.	Memo No.	Issues
1	No.F.10(2)-Fin(G)/05, Dated 04.03.2006	Regularization of DRWs/Contingent etc. workers on completion of 17 years of service as on 31.03.2005 allowing effect from 01.02.2006
2	No.F.10(2)-Fin(G)/05, Dated 22.02.2007	Regularization of DRWs/Casual/Contingent etc. workers on completion of 15 years of service as on 31.03.2006 allowing effect from 01.01.2007
3	No.F.10(2)-Fin(G)/08(part), Dated 01.09.2008	Regularization of DRWs/Casual/Contingent etc. workers on completion of 10 years of service as on 31.03.2008 allowing effect from 01.07.2008
4	No.F.10(2)-Fin(G)/ 08(part), Dated 21.01.2009	Regularization of DRWs/Casual/Contingent etc. workers from the next date of completion of 10 years of service
5	No.F.34(3)-Fin(G)/2012, Dated 04.09.2012	Regularization of DRWs/Casual/Contingent etc. workers working in State PSUs and Autonomous bodies including AMC/NPs on completion of 10 years of service
6	No.F.10(12)-Fin(G)/7(part-1), Dated 07.11.2012	Engagement of PTWs etc. as DRWs (Group-D) working in different Departments of the Government for 2/3/4 hours who were engaged on or prior to 31.03.2003 and have completed 10 years of service w.e.f. 01.12.2012

2. Recently, the matter has been further reviewed it has been observed that there are some shortcoming in these instructions for regularization of the service of DRWs/Casual/contingent staff affecting institutional efficiency and individual productivity due to different reasons.

3. With a view to ensure transparent public employment policy for engagement of staff for such services, all the memorandums as mentioned above is repealed.

4. All the concerned are required to ensure the implementation of above decision with immediate effect.

**Under Secretary to
Government of Tripura
Finance Department”**

36. Now, reverting to the facts of the case of *Narendra Kumar Tiwari (supra)*, it comes to fore that the Hon’ble Supreme Court had noticed that the exercise undertaken by the State of Jharkhand for regularization of

irregularly appointed employees suffers from *doctrine of impossibility*. The State of Jharkhand came into existence only on 15.11.2000, but the cut-off date for the purpose of regularization of the irregularly appointed employees under the State of Jharkhand was fixed as 10.04.2006. It was noticed that the State of Jharkhand was preferring to continue with irregular appointments. In that context, the Hon'ble Supreme Court had held that when the State of Jharkhand came into existence only on 15.11.2000 it was impossible for any of the employees to complete 10 (ten) years of continuous service as on 10.04.2006, further holding that, such pernicious practice of indefinitely continuing of irregularly appointed employees would be perpetuated contrary to the spirit and intent of the decision of the Constitution Bench in ***Uma Devi (3)(supra)*** and directed the State of Jharkhand to take a decision within four months from the date of the judgment (decided on August, 1, 2018) for regularization of the services of the irregularly appointed employees who have completed 10 (ten) years of service.

37. In my opinion, any direction for regularization dehors the directions passed by the Constitution Bench in ***Uma Devi (3)(supra)***, will tantamount to show disrespect to the Constitution as well as the Constitution Bench of the Hon'ble Supreme Court where it directed the Union of India, the State and their instrumentalities to desist from appointing any person inconsistent to the constitutional schemes as enshrined under Articles 14 and 16 of the Constitution of India. According to this court, the Constitution Bench judgment in ***Uma Devi (3)(supra)*** is *obiter dicta* upon all the courts.

38. I have taken note of the decision of the Hon'ble Supreme Court in ***Nihal Singh & Ors. vs. State of Punjab & Ors.***, reported in **(2013)14 SCC 65**, where the State of Punjab was directed to regularize the services of the

Special Police Officers by creating necessary posts within a certain period. After perusal of the said judgment, in my opinion, in the said case, the Hon'ble Supreme Court did not decide any ratio, but, directed the Government of Punjab to regularize the services of the SPOs on consideration of the fact that requisition for engagement of SPOs was given by the bank authorities to guard and protect the banks operating in the State and expenditures including their salaries would be borne by those banks only, and not by the State Government.

Added to it, the Hon'ble Supreme Court in *Nihal Singh(supra)* categorically held that “ *the creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden.*”[SCC p.80, para 36].

39. More importantly, in *Divisional Manager, Aravali Golf Club & Anr. Vs. Chander Hass & Anr.*, reported in (2008) 1 SCC 683, the Hon'ble Supreme Court has settled the proposition that the courts cannot direct the creation of posts. Creation and sanction of posts is a prerogative act of the legislatures and executives. The Apex Court held thus:

“5. The court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organisation. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the courts cannot take upon themselves the power of creation of a post. Therefore, the directions given by the High Court and the first appellate court to create the posts of tractor driver and regularize the services of the respondents against the said posts cannot be sustained and are hereby set aside.”

40. In a later case, in *Maharashtra State Road Transport Corporation & Anr. vs. Casteribe Rajya Parivahan Karmchari Sanghatana* reported in (2009)8 SCC 556, the Hon'ble Supreme Court held thus:

"41. Thus, there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive. It is also true that the status of permanency cannot be granted by the Court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the courts."

41. I have also kept in mind the case of *Amarkant Rai vs. State of Bihar & Ors.*, reported in (2015) 8 SCC 265, where the Hon'ble Supreme Court directed the Government of Bihar to regularize the services of the petitioner, Amarkant Rai. In the said decision the Hon'ble Supreme Court had found that the petitioner/appellant Amarkant fell in exception carved out in *Umadevi(3)(supra)*. A two-Judge Bench of the Hon'ble Supreme Court in *Amarkant (supra)* had considered the fact that the engagement of Amarkant was irregular but not illegal. He served for 29 years. There were two sanctioned vacant posts of Class IV employees in the concerned college and Amarkant was appointed against the same. It was found that the Human Resources Development, Department of Bihar Government, vide its Letter dated 11.7.1989 intimated to the Registrar of all the Colleges that as per the settlement dated 26.4.1989 held between Bihar State University and College Employees' Federation and the Government, it was agreed that the services of the employees working in the educational institutions on the basis of prescribed staffing pattern are to be regularized. Besides, in terms of Resolution No. 989 dated 10.5.1991 issued by the Human Resources Development Department, employees working upto 10.5.1986 had to be adjusted against the vacancies arising in future. It was noticed that the petitioner was appointed in 1983 temporarily. In the context of the said case,

the Hon'ble Supreme Court held that though the initial engagement of the appellant was not against a sanctioned post, but, he was entitled to regularization pursuant to said resolution in one of the sanctioned posts subsequently fell vacant.[SCC p. 269, para 9].

42. In *State of M.P. and others vs Yogesh Chandra Dubey and others*, reported in (2006) 8 SCC 67, the Hon'ble Supreme Court while dealing with a claim of regularization and minimum of pay scale has held that the State within the meaning of Article 12 of the Constitution of India, while offering public employment, must comply with the constitutional as also statutory requirements. Appointments to the posts must be made in terms of the existing Rules. A person who had been appointed by State upon following the Recruitment Rules, enjoys a status. A post must be created and/or sanctioned before filling it up. As the respondents did not hold any post, they are not entitled to any scale of pay. It has further been held that regularization is not a mode of appointment. If any recruitment is made by way of regularization, the same would mean a back door appointment, which does not have any legal sanction [Ref. paras 9, 11 and 14].

43. In *M.P. State Coop. Bank Ltd. Bhopal vs Nanuram Yadav and others*, reported in (2007) 8 SCC 264, the Hon'ble Supreme Court held that: [SCC pp. 274, 275, Para 24]

"24) It is clear that *in the matter of public appointments*, the following principles are to be followed:

- 1) The appointments made without following the appropriate procedure under the Rules/Government Circulars and without advertisement or inviting applications from the open market would amount to breach of Arts. 14 & 16 of the Constitution of India.
- 2) Regularisation cannot be a mode of appointment.
- 3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization.
- 4) Those who come by back door should go through that door.

5) No regularization is permissible in exercise of the statutory power conferred under Art. 162 of the Constitution of India if the appointments have been made in contravention of the statutory Rules.

6) The Court should not exercise its jurisdiction on misplaced sympathy.

7) If the mischief played so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside."

44. Again, the Hon'ble Supreme Court in *Vibhuti Shankar Pandey vs. State of Madhya Pradesh & Ors.*, reported in (2023)3 SCC 639 had set aside the order of learned Single Judge of Madhya Pradesh High Court directing the State to regularize the service of the petitioner who was appointed on daily rated basis under a project and not against any sanctioned post as it was noticed that the initial appointment of the petitioner/appellant was not made by the competent authority and the appointment was not made against a sanctioned post. The Hon'ble Supreme Court in *Vibhuti Shankar(supra)* has reiterated the principle laid down in *Umadevi (supra)*. [SCC p 640 para 4]. As I said earlier, in the case in hand, the initial appointment of the petitioners was not made by the competent authority of the Corporation and there is no evidence that they were appointed against sanctioned vacant post.

45. In a recent decision, the Hon'ble Supreme Court in *Government of Tamil Nadu & Anr. vs. Tamil Nadu Makkal Nala Paniyalargal & Ors.*, 2023 SCC Online SC 393, relying upon the judgments of the Supreme Court in *Chander Hass(supra)* and *Maharashtra State Road Transport Corporation(supra)* reiterated the principles that the creation of posts is not within the domain of judicial functions and it pertains to the executive or legislature. In the case of *Government of Tamil Nadu(supra)*, the Hon'ble Supreme Court has categorically held that in absence of sanctioned posts,

the State cannot be compelled to create the post and absorb the persons who are continuing in service of the State.

46. I have also gone through the decision of the Hon'ble Supreme court in *Raman Kumar & Ors. vs. Union of India & Ors.* [decided on July 03, 2023 in SLP(C) No.7898/2020], where the Supreme Court has directed the regularization of 35 Group-D employees considering the fact that the Chief Commissioner of Income Tax had found that 65 persons were entitled to be regularized, but, the act of regularizing the services of only 35 employees and not regularizing the services of other employees including the petitioners was blatantly discriminatory or violative of Article 14 of the Constitution of India on the ground that some of the Group-D posts had been abolished.

47. The present case of the petitioners is clearly distinguishable from the cases of *Nihal Singh(supra)*, *Amarkant Rai(supra)*, *Narendra Kumar Tiwari(supra)* and *Raman Kumar(supra)* as regards the factual aspects are concerned.

48. On analysis of the above narrations of facts and the law enunciated in the decisions cited above, the following ratios have emerged out in matters related to regularization.

- (i) *The engagement/appointment must be made by a competent authority;*
- (ii) *The appointment must be against duly sanctioned vacant post;*
- (iii) *Regularization, if any, has to be made within the realm of the Government Rules/Circulars;*

- (iv) *The appointment should be irregular, but not illegal, to justify his/her claim that he/she falls within the exception carved out in para 53 of Uma Devi (3) (supra);*
- (v) *The court cannot direct the State or its instrumentalities in regard to creation of post/s;*
- (vi) *Such irregularly appointed employees must have requisite qualification for the posts they hold;*
- (vii) *The Courts should not be swayed with emotion and sympathy;*
- (viii) *Budgetary provision and sanction thereto against the post/s must be taken into consideration before passing any direction for regularization;*
- (ix) *If there is any cut-off date, such date cannot be elongated or extended;*

49. At the cost of repetition, in the instant case, the petitioners were neither appointed by the competent authority nor they have been able to justify that they were engaged against a **duly sanctioned vacant post**, nor they have been able to justify that they have requisite qualification to hold any post under the respondents.

50. Before concluding, I must deal with the argument advanced by learned senior counsel appearing for the petitioners that since they were engaged in the year 2004 (though, after cut-off date 31.03.2003 and without financial concurrence), and completed their 10(ten) years of service in the year 2014, their rights to claim regularization were ripened in the year 2014 itself when the scheme for regularization was existed before its repeal in the year 2018. I have considered the submission of learned senior counsel. As I said earlier, the petitioners herein have filed the writ petition on 03.01.2023.

The schemes for regularization have been repealed on 31.07.2018. In the opinion of this court, the argument advanced by learned counsel for the petitioners would have some force if the petitioners would have approached the court during the existence of the scheme because regularization must be made within the realm of the scheme. Moreso, the petitioners were engaged after the cut-off date i.e. after 31.03.2003 and that too without financial concurrence. The Hon'ble Supreme Court in *Daya Lal (supra)* has categorically held that where a scheme is formulated by the government for regularization with a cut-off date, the employees who are appointed subsequent to the cut-off date have no right to claim or contend that the scheme should be applied to them by extending the cut-off date.

51. Again, in my opinion, the person who enters through back-door at the whims of certain officers, and the government made provision to regularize the services of such irregularly appointed employees under certain Schemes, then, they undoubtedly acquire right for consideration of regularization of their services. However, in case of non-consideration or discrimination, they must agitate their right and claim the benefit of regularization before such scheme is repealed. The delayed approach and lackadaisical attitude should not be given a liberal view. As is well-known- "*vigilantibus non dormientibus jura subveniunt*"- equity helps the vigilant and not the indolent i.e. equity comes to the rescue of those who approach the court for their rights within time and not to the rescue of those who slumber over their rights. In the instant case, according to the petitioners, their right ought to have been considered in the year 2014 i.e. on completion of 10(ten) years of their services as per the regularization schemes. But they have not agitated their rights till the schemes are repealed in the year 2018. Repealing the

schemes was a policy decision of the Government and it is absolutely within their domain because they know the ground realities as regards the requirements and continuation of the scheme, which the courts do not have. Even they approached the court, as I said earlier, in the year 2023 to get the benefit of the repealed scheme, which according to this court cannot be entertained at all.

52. The persons appointed irregularly or illegally at the behest of some officers depriving large number of eligible and competent job aspirants are none but the offenders to societal as well as constitutional wrongs, which, according to me, should not be allowed to be perpetuated for an indefinite period, and after long ten years' of continuation thousands of job aspirants must expect to see it's end in line with the constitutional ethos as enshrined under Articles 14 and 16 of the Constitution of India. Here it is noticed that the Government of Tripura had declared total ban on engagement of DRWs/ Casual/Contingent, etc. workers under the Policy dated 21.01.2009 *supra* in the line of the Constitutional scheme for employment, and the schemes for regularization of irregularly appointees have been repealed under Notification dated 31st July, 2018.

53. For the reasons stated and discussed here-in-above, the services of the petitioners deserve no consideration for regularization, and I do not find any error in the findings of the Inquiry Committee, as reflected in the communication dated 14.12.2022, quoted *supra*, whereby and whereunder, the Managing Director of TSECL, by a reasoned order, informed the petitioners that their claims for regularization being taken into consideration could not be acceded to.

54. Accordingly, the instant writ petition stands dismissed being devoid of merit, and thus, disposed of.

JUDGE

**SAIKAT
KAR**

 Digitally signed by
SAIKAT KAR
Date: 2023.09.06
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