

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 1533 OF 2002
WITH
CIVIL APPLICATION NO. 3453 OF 2005

Madhukar s/o Gyanji Dhage,
Age 41 years, occu. Service,
R/o. Shendra, Post Karegaon,
Tq. and Dist. Parbhani.

... **PETITIONER**

VERSUS

- 1- Marathwada Agricultural University,
Parbhani, through its Registrar.
- 2- The State of Maharashtra.
(Copy served on Govt. Pleader,
High Court, Aurangabad).

... **RESPONDENTS**

Mr. S.V.Warad, Advocate for the Petitioner.
Mr. M.N.Navandar, Advocate for Respondent No.1.
Mrs.Y.M.Kshirsagar, AGP for Respondent No.2

CORAM : **A. V. NIRGUDE and
V. L. ACHLIYA, JJ.**

RESERVED ON : 04th December, 2014.

PRONOUNCED ON : 05th March, 2015.

ORAL JUDGMENT: (Per V. L. Achliya, J.)

1 Petitioner has preferred this writ petition under Article 226
read with Article 227 of the Constitution of India seeking the following

reliefs:

- “(A) This writ petition be kindly allowed.
- (B) By writ of mandamus or any other appropriate writ or directions in the like nature, the condition no. (4) and (14) stipulated in the appointment order dated 15-12-2001 (Exhibit- “B”) issued under the signature of the respondent no. 1 be relaxed or quashed and set aside.
- (C) By an appropriate order or directions the respondents be directed to grant the benefits of permanency and to pay all arrears to the petitioner of the post of labourer with 18% interest from the date when the Junior employees are made permanent in service.
- (D) Pending the hearing and final disposal of this writ petition, the respondents be directed to pay monthly regular salary of the post of “Skilled Tractor Driver” to the petitioner regularly.
- (E) Any other suitable and equitable relief to which the petitioner is entitled to may kindly be granted in the interest of justice.”

2 We have heard the learned counsel representing the respective parties as well as the learned AGP representing the State. Before adverting to appreciate the submissions, it is necessary to consider in brief, the facts leading to filing of this petition.

3 The Petitioner claims to be tractor driver employed in the employment of Respondent No.1 – Agricultural University on daily wage basis. In nutshell, it is the say of Petitioner that though the nature of the work, which he is performing is regular and permanent in nature, still the Respondent No.1 has not extended the benefit of permanency. In order to deprive him the service benefit as that of regular employee continue to work on daily wage employee. He is paid wages on daily wage basis for a period of five days in a week. He is deprived of holidays and leave and other benefits available to a regular employees. Although he is performing the work similar to person employed as driver appointed on regular basis, still the Respondent No.1 is paying him wages on daily rate basis. Large number of persons are employed on regular establishment of Respondent No.1 since after the Petitioner employed as daily wage worker.

4 It is the case of Petitioner that he is resident of village Shendra in Taluka and District Parbhani. Respondent No.1 – University was in need of land for its extension. The land belonging to Petitioner and his family was taken over by the Respondents for said purpose. They were assured to be provided with permanent employment with Respondent No.1 – University. However, Respondent No.1 has not fulfilled their assurance. The Petitioner was employed as daily wage labour. He continued to work in that capacity for a long time i.e. for the

period of more than 10 years. Abruptly, the service of Petitioner was terminated. Petitioner was again taken in employment with Respondent No.1 – University vide order dated 15.12.2001, by forcing him to withdraw his name from Court proceeding i.e. Writ Petition No.50 of 1996 and undertaking that he will not claim employment on regular basis either as skilled or unskilled worker with Respondent No.1 – University and also he will not claim the benefit of seniority and other related benefits including counting of past service. He was forced to submit the undertaking to that effect on a stamp paper. Since he was in dire need of employment, he had no alternative except to accept those conditions. On compliance of those conditions, Petitioner was taken back in the employment as skilled tractor driver and since 13.02.2002, he is working as skilled tractor driver without benefit of permanency and wages equal to the wages paid to the person employed on regular basis. It is the say of Petitioner that while regularizing the services of the persons working on the establishment of Respondent No.1, the principle of seniority has not been followed. The persons who were very much junior to the Petitioner, their services were regularized and they were made permanent by Respondent No.1 – University. According to Petitioner, (1) Amruta s/o Marotrao Shinde, r/o Balsa, (2) Ganesh Kondibarao Dhage, r/o Shendra, (3) Bapu Kishanrao Dhage, r/o Shendra and (4) Smt.Tanubai Shshrao Dhage, r/o Shendra, were

regularized in service though they were much junior to Petitioner. The Petitioner has made various representations and requested to extend benefit of permanency. However, Respondent Nos.1 and 2 neglected to consider those representations. It is the say of Petitioner that at the time of his appointment, he was fulfilling all the requisite criteria laid down for appointment as skilled tractor driver and his selection has been made on due consideration of those criteria i.e. age, educational and technical qualification for appointment to said post. It is the further say of Petitioner that he was also entitled to have been regularized in service from the category of project affected persons as his entire land was acquired in the project of Respondent No.1 – University, as per the then policy of the Government i.e. Government Resolutions dated 18.06.1990, 22.09.1993 and 03.01.1997, which were in force.

5 It is the say of Petitioner that as employees who were junior to Petitioner and similarly placed, were absorbed in service of Respondent No.1 – University and given benefits of permanency. The act of Respondent No.1 not to extend same benefit to the Petitioner, is unjust, improper, unfair, arbitrary, discriminatory, unreasonable and as against the rights guaranteed to the Petitioner under Articles 14, 16 and 21 of the Constitution of India.

6 Respondent No.1 has resisted the claim of Petitioner mainly on the ground that as Petitioner is employed on daily wage

basis, the services of Petitioner cannot be regularized without undergoing process of selection, as per the law laid down by the Apex Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others**, reported in **[(2006) 4 Supreme Court Cases 1]**. It is further say of Respondent No.1 that the case of Petitioner cannot be considered from the category of project affected persons for absorption in regular service in view of the judgment of Full Bench of this Court in the case of **Rajendra Pandurang Pagare and anr. Vs. State of Maharashtra & ors**, reported in, **[2009 (4) Bom. C.R. 928]**. So far as the case of Petitioner that the persons junior to him were regularized, it is the say of Respondent No.1 that as the Petitioner falls in category of class-III employees, he cannot claim parity with those employees who were working in class IV as daily wage labourers / mazdoors. According to Respondent No.1, the qualification prescribed for the post falling in category IV is different than the qualification prescribed for the post falling in category of class III to which the Petitioner belongs. The learned counsel for Respondent No.1 has also relied on the judgment of Apex Court in the case **Indian Drugs and Pharmaceutical Ltd. Vs. Workmen, Indian Pharmaceutical Ltd.**, reported in, **[2007 (1) SCC 408]** and unreported judgment in Writ Petition No.3917 of 2013 and order dated 02.05.2012 passed in Writ Petition No.2516 of 2010.

7 We have carefully considered the submissions advanced by learned counsel representing the parties and also perused the rival pleadings. Petitioner has claimed relief of regularization of service and benefit of permanency not only on the basis of his claim to be belonging to project affected persons, but he has also claimed the relief on the ground of discrimination being made amongst similarly placed persons as well as existence of clear vacancies and continuous work as that of regular employee.

8 The fact is not in dispute that the land of Petitioner was acquired for project of Respondent No.1 in the year 1984 and he was rendered landless. The fact is also not in dispute that initially the Petitioner was employed as a daily wage labourer alongwith other persons from the village and continued to serve in that capacity years together. The fact is also not in dispute that in the year 1999, the service of the Petitioner was terminated, which according to Respondent No.1 was made as by way of retrenchment on due compliance of the provisions of Section 25-F of the Industrial Disputes Act. After termination of Petitioner and other persons, the orders of appointment of 11 months period were issued to other persons to carry out the work, which the Petitioner and other persons were performing. The fact is also not in dispute that four persons who were junior to Petitioner were regularized in service in the year 2000. The Petitioner

and other employees had filed Writ Petition No.50 of 1996 seeking extension of benefit of regularization. The fact is also not in dispute that vide order dated 15.12.2001 (a copy of which is annexed as Exhibit – 'B' to the petition) the Respondent No.1 in consultation and approval of State Government taken a conscious decision to take back those skilled and unskilled persons in the employment of Respondent No.1 – University, whose services were earlier terminated by Respondent No.1 on fulfilling the requisite conditions as laid down in the order.

9 The condition Nos. 3 and 14, which are impugned by way of this petition, in its vernacular language, read as under:

“३. या कुशल/अर्धकुशल कर्मचाऱ्यांना, त्यांनी विविध न्यायालयात दाखल केलेली प्रकरणे परत घेऊन अशी प्रकरणे परत घेतली असल्याबाबतचा लेखी पुरावा १५ दिवसात या कार्यालयास सादर केल्यानंतर त्यास कामावर हजर होण्यास अनुमती देण्यात येईल कार्यालय प्रमुखांनी संबंधितास परस्पर रुजू करून घेवू नये.

१४. रोजंदारीवरील कुशल/अर्धकुशल कर्मचाऱ्यांना विद्यापीठात कायमस्वरूपी अस्थापनेवर नेमणूक मिळणे बाबतचा कुठलाही हक्क राहणार नाही. तसेच त्यांना कुठल्याही प्रकारच्या इतर सवलती / ज्येष्ठता इत्यादीचा लाभ मिळणार नाही. या नेमणुकीमुळे त्यांना विद्यापीठातील मागील सेवेचा लाभ मिळणार नाही. त्या अनुषंगाने विद्यापीठाचे विरोधात प्रकरणे दाखल करता येणार नाहीत. त्याकरीता त्यांनी रु.२०/- (रुपये वीस फक्त) किमतीच्या मुद्राकावर वरील आशयाचे सक्षम महसुल अधिकाऱ्याने अधिकृत/साक्षांकित करून दिलेले शपथपत्र रुजू होताना विद्यापीठास सादर करावे.”

In our consideration, to prosecute any legal proceedings, is a right of an employee, which cannot be denied,

curtailed or restricted by any employer. So also, no employer can put condition, which is against the law. To prosecute legitimate grievance before the Court of law, is a right of person, which cannot be denied or curtailed by obtaining an undertaking from the person. Even if such undertakings are obtained from any employee, same shall have no force of law. Irrespective of such undertaking is given, the person can ventilate his grievance and put forth his legitimate claim before any Court of law. There is no question of such legal right being surrendered by any person to his employer as a condition precedent to take him back in the employment. We are, therefore, of the view that both the aforesaid conditions are not only illogical but same are also illegal and not sustainable in law. Such conditions have no binding effect on any person, who is forced to accept such conditions. Therefore, we have no hesitation to hold that Petitioner is entitled to the relief claimed in terms of prayer clause (B) to the extent that such conditions shall not operate as against the Petitioner in ventilating his grievance and to exercise his legal right to approach appropriate forum to claim reliefs as permissible in law.

10 So far as the claim of Petitioner as regards the permanency is concerned, the fact is not in dispute that the Petitioner was initially working with Respondent No.1 since the year 1984 as daily wage labour. Petitioner continued to work in that capacity till the year 1999

when the services of the Petitioner terminated by Respondent No.1. Respondent No.1 has not denied the fact that initially the Petitioner was employed and worked as daily wage labour and subsequently, employed as tractor driver though in same category as daily wage labourer. It is also not disputed by Respondent No.1 that four persons, whose names referred in forgoing paras, were regularized in service by Respondent No.1 though they were juniors to the Petitioner. The only defence put forth by Respondent No.1 is that Petitioner cannot allege discrimination in the matter of regularization of services viz those four persons as they fall under category of class IV employees and not class III as that of Petitioner. The contents of para 2 of additional affidavit reads as under:

“2. I say and submit that, it has been alleged in the petition in Para.No.2 of the petition that, the deponents-University has have made services of Junior Employees on permanent establishment as compared to the petitioner which is discrimination and as such is in violation of Article-14 of the Constitution of India. The Employees are as under:-

1. Amrut S/o. Anantrao Shinde.
2. Ganesh S/o. Kondiba Dhage.
3. Bapu S/o. Kisanrao Dhage.
4. Smt. Tanubai Sheshrao Dhage.

I say and submit that, the allegations made as referred above are baseless and has no bearing in the issue involved in the present matter.

I say and submit that, the aforesaid employees are from Class-IV Cadre and petitioner is from Class-III Cadre. That, the Employees from Class-IV Cadre cannot be compared with the Employees from Class-III Cadre. That, vide order Dated. 6.5.2000, the Employees as stated hereinabove were taken on Regular Establishment and were made permanent from Category of Class-IV Cadre as Labourers/ Majdoors. They are from P.A.P. Category and are purely doing filed work as a Labour.”

11 In our view, the aforesaid stand taken by Respondent No.1 cannot be accepted for the sole reason that Petitioner was appointed as daily wage labourer as that of the persons regularized and continued to work in that capacity till he was terminated from service in the year 1999. The persons regularized and the Petitioner belong to same category of persons i.e. daily wage workers, who were employed from PAP category. The assignment of work of tractor driver no way make any distinction.

12 As per the facts pleaded in para 3 of the additional affidavit, it is the stand of Respondent No.1 that Petitioner is a skilled worker and discharging the duties as a tractor driver on daily wages. According to Respondent No.1, the qualification prescribed for class – IV cadre i.e. Labourers / Majdoors, is (i) passed 4th standard and (ii) labourers who

are working in the University as per the seniority. Whereas the qualification for class III cadre post as that of persons working as tractor driver is prescribed as 8th standard passed with heavy motor vehicle licence to drive tractor / bulldozer from the competent authority for vehicle with two years experience of driving independently. During the course of hearing, it was inquired from the Petitioner about his educational qualification and he has stated that he possessed qualification as passed 4th standard and he has not passed 8th standard examination. Learned counsel for Respondent No.1 has fairly conceded that the recruitment rules prescribing higher qualification i.e. 8th standard was subsequently modified. As per the facts pleaded in para 9 of the additional affidavit, the seniority list of all the workers working on daily wages was prepared and maintained by the University. The persons whose services were regularized and junior to Petitioner as well as Petitioner were belonging to same class of workers. The Petitioner had made representations on 23.09.1999, 07.07.2000, 28.01.2000, 08.09.2000 and 27.09.2000 to include his name in the seniority list. But the Respondent No.1 paid no heed to those representations.

13 Thus, if we consider the pleadings of Respondent No.1 and undisputed facts, then all the employees working on daily basis though performing different duties the seniority list was maintained and orders

were issued under the head of daily wage basis. The appointment of Petitioner itself made as daily wage labour and he continued to work in that capacity for years together. So also the order dated 15.01.2001, reflects that the Petitioner was employed as daily wage employee, though paid wages as that of skilled workers. Petitioner is paid wages as a skilled labourer after he reinducted in service w.e.f. 13.02.2002 pursuant to order dated 15.12.2001. The persons, who were working with Petitioner and juniors to him as referred in forgoing paras, were admittedly regularized by the Respondents in the year 2000. Therefore, it is clear case of discrimination made amongst similarly placed daily wage employees working with Respondent No.1 and whom the Respondent No.1 was extracting work of different in nature. Therefore, we have no hesitation to observe that the Petitioner has made out a case of arbitrariness as well as discrimination in the matter of regularization of service amongst the similarly placed persons and also established that four persons junior to Petitioner were regularized in the year 2000.

14 We are not inclined to accept the contentions of the learned counsel for Petitioner that the services of the Petitioner working as daily wage employee for years to together, cannot be regularized in view of the decision of the Apex Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi**, reported in **(2006) 4 SCC 1**.

According to us, the decision in said case have no bearing on the facts of the present case as the appointment of the Petitioner in the employment of Respondent No.1 cannot be termed as backdoor entry or illegal. So also, it is nowhere the case of Respondent No.1 that Petitioner has been appointed without any post and work that too by flouting the procedure prescribed for making regular appointment. So also it is no where the case of Respondent No.1 that the appointment of Petitioner is illegal and he is not eligible for regular appointment as tractor driver. The appointment of Petitioner at initial stage was need base. The continuation of Petitioner for years together to work as a daily wager, itself shows that the work of regular in nature is available with Respondent No.1. Respondent No.1 has not controverted the fact specifically pleaded by Petitioner that after making termination of service of the Petitioner and other persons, Respondent No.1 has employed other persons in their place by issuing orders of 11 months duration, which itself reflect the availability of continuous work and ill intention on the part of Respondent No.1 to terminate services of Petitioner and other employees to deprive them benefit of permanency.

15 From very face of the order dated 15.12.2001 issued by Respondent No.1 to take back those skilled and unskilled employees including Petitioner in employment of Respondent No.1 whose services were earlier terminated, on the basis of recommendation made by the

Committee appointed by Respondent No.1 and conscious policy decision taken in consultation with State Government, reveals that the work of regular and permanent in nature was available with Respondent No.1 to employ those persons. The conditions of appointments mentioned in order dated 15.12.2001 (Exhibit – B), provides instructions that the individual appointment order be issued only after examining the eligibility and fulfillment of conditions required for respective work of the persons to be reemployed. As per condition No.6, it is specifically mentioned that while reemploying the persons before issuing the order of appointment, skilled or unskilled employees, the officials of Respondent No.1 – University shall examine and verify as to whether such persons hold and possess the requisite eligibility criteria as that of electrician, wireman, motor driver and he is below the prescribed age limit for the post as well as his earlier performance. It also provides that medical examination and fitness certificates to be obtained from such person before joining him in service. So also it provides for consideration of past service record of such person. The order also lay down such other conditions in respect of other categories of the persons to be issued appointment order such as office assistant as to whether they are able to handle the computer. It also provides for writing of annual confidential reports of such employees and their transfer outside the headquarter. Thus, if we consider the overall conditions laid down

in the order dated 15.12.2001, by virtue of which the Petitioner has been reappointed alongwith other persons, then it leads to conclusion that the Respondent No.1 has verified the eligibility criteria of Petitioner and order was issued only after satisfying that Petitioner fulfills all the requisite criteria for the post of tractor driver as it was existing at the time of his employment. He was found to be fulfilling the criteria of age, education, experience and physical fitness for the post. Only after fulfilling the eligibility criteria for the post of tractor driver as that of regular appointee, the Petitioner was reemployed in the service of Respondent No.1.

16 The order dated 15.12.2001 also reflects that a conscious decision was taken by Respondent No.1 with due approval and concurrence of State Government to reemploy the skilled and unskilled workers working on the establishment of Respondent No.1, by subjecting them to undergo the process of screening as to whether they fulfill the requisite criteria or not. Only after the Petitioner found to have fulfilled the requisite criteria, the order of appointment was issued to him. Therefore, by no stretch of imagination, it can be said that the entry of the Petitioner in the employment of Respondent No.1 was backdoor entry or same was not in accordance with recruitment rules and procedure for appointment. So also, no one can say that Petitioner was employed without fulfilling the eligibility criteria to secure

appointment. Therefore, the decision in **Umadevi case** have no bearing upon facts of the present case. In this context, it is useful to refer the decision of the Apex Court in the case of **Maharashtra State Road Transport Corporation and another Vs. Casteribe Rajya Parivahan Karmchari Sanghatna**, reported in, **[2009 (8) SCC 556]**. The Court has observed that Umadevi's case is authoritative pronouncement for the proposition that the Supreme Court and High Court in exercise of powers under Article 32 and 226 respectively should not issue directions of absorption, regularization or permanent continuation of temporary, contractual, casual, daily wage or adhoc employees unless recruitment itself was made regularly in terms of constitutional scheme. The Court has further observed that by virtue of the decision in the said case, the Industrial and Labour Court does not denude the statutory powers under Section 30 read with 32 of the MRTP Act. The order of permanency of workers who have been victim of unfair labour practice on the part of employer under Item 6 of Schedule 4 of MRTP and PULP Act, as well as the post on which they have been working exist. The Court has further observed that the decision in the said case, cannot be held to have overriding powers over the powers of Industrial and Labour Court in passing the appropriate order under Section 30 of MRTP Act, once unfair labour practice on the part of employer under Item 6 of Schedule 4 is

established. In said case, after considering the provisions of MRTP and PULP Act, 1971 the Court has upheld the decision of regularization of service of persons working on piece rate basis as the work in the nature of regular and permanent in nature found to be available.

17 The decision in **Umadevi case** has mainly laid down that appointments made without following due process or the rules relating to appointment did not confer any right on the appointees to seek absorption, regularization. We have already discussed in forgoing paras that in the case of Petitioner, the appointment of the Petitioner cannot be said to be illegal as the Petitioner was appointed on fulfilling all the requisite criteria laid down in the order dated 15.12.2001. In **Umadevi case** itself, the Apex Court has made a distinction between illegal appointment and irregular appointment and directed the Government to undertake the exercise to regularize the services of such employees, whose appointment cannot be termed to be illegal and who are duly qualified and continued to work as temporarily, daily wagers for years together. The Petitioner was working for more than ten years prior to year 2005-06, when such exercise was to be carried out by the State. But, no such exercise appears to have been carried out and the case of the Petitioner has been considered for regularization. Therefore, Respondent – University cannot say that in view of the decision of **Umadevi case** that Respondent – University is unable to

consider the case of Petitioner for regularization. In the case of **State of Karnataka and others Vs/ M.L. Kesari and others**, reported in, **[(2010) 9 Supreme Court Cases 247]**, the Apex Court has observed in paras 8 to 11 as under:

“8. *Umadevi* (3) casts a duty upon the Government or instrumentality concerned, to take steps to regularise the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. *Umadevi* (3) directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10-4-2006).

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/those 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 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 regularization in terms of the above directions in *Umadevi* (3) as a one-time measure.”

18 Thus, in light of decision in the case of *State of Karnataka and others Vs. M.L. Kesari and others* (supra), there appears to be no justification on the part of Respondent – University to say that Petitioner is not entitled to be regularized in services. For the lapses on the part of Respondent – University to undertake the exercise of regularization in terms of the directives contained in **Umadevi case**, the Petitioner cannot be denied the right to seek regularization of services, in view of the fact that appointment of Petitioner cannot be termed as illegal or backdoor entry.

19 In this context, it is useful to refer the decision of the Apex

Court in the case of **H.S. Rajashekara Vs. State Bank of Mysore and another**, reported in, **[(2012) 1 Supreme Court Cases 285]**, wherein the Apex Court has considered the case based upon facts identical to the case in hand, wherein Petitioner has claimed regularization of services on the ground of discrimination. The Division Bench of the High Court refused to entertain the prayer of the Petitioner for regularization in the light of the decision in the case of *State of Karnataka Vs Umadevi* (3) (supra). The Special Leave Petition filed by Petitioner came to be allowed. The Apex Court in para 8 to 11 has observed as under:

“8. We have given our thoughtful consideration to the claim raised by the petitioner. The petitioner had approached the High Court, in the first instance, by filing Writ Petition No. 45932 of 1999. The issue raised by him as far back in the year 1999 remains unsettled till today. The claim of the petitioner as has been projected in the order passed by the respondents on 24-8-2005 was clear and unambiguous, namely, that he should be given the same benefit as was given to Shri Devaraju who had qualified the SSLC examination just like the petitioner, and despite thereof, he was absorbed as a permanent employee. The claim raised by the petitioner was primarily raised under articles 14 and 16 of the Constitution of India. The petitioner prayed for parity with the aforesaid Shri Devaraju.

9 The claim raised by the petitioner was primarily raised under Articles 14 and 16 of the Constitution of India.

The petitioner prayed for parity with the aforesaid Shri Devaraju. This claim of the petitioner was correctly appreciated, inasmuch as, the same was clearly noticed in the impugned order dated 24-8-2005. Unfortunately, even though the High Court by its order dated 14-12-2004 (while disposing of Writ Petition No. 45932 of 1999) had directed the Bank to decide the representation made by the petitioner, yet the claim of the petitioner based on a similar benefit having been granted to Shri Devaraju, was never adjudicated upon. The same claim was raised by the petitioner before the High Court in Writ Petition No. 22324 of 2005, (wherein the petitioner assailed the order passed by the Bank on 24-8-2005). Yet again, the contention remained unanswered. Thereafter, the learned Division Bench (in Writ Appeal No.24 of 2008) again rejected the claim of the petitioner without reference to his principal prayer viz. parity with Shri Devaraju.

10 The appeal preferred by the petitioner, assailing the order passed by the learned Single Judge in Writ Petition No. 22324 of 2005, was adjudicated upon with reference to the decision rendered by this Court in State of Karnataka Vs. Umadevi (3) even though the same had no relevance to the prayer made by the petitioner. The simple question raised by the petitioner was with reference to the decision of the Bank in absorbing Shri Devaraju as a permanent employee. The claim of the petitioner was founded under Articles 14 and 16 of the Constitution of India. Unfortunately, the aforesaid issue was not considered even in the second round of litigation. The matter has now been placed for our consideration, at the hands of the petitioner, through the instance petition for special leave to appeal.

11. We have given our thoughtful consideration to the claim raised by the petitioner. The learned Single Judge while deciding Writ Petition No. 22324 of 2005 acknowledged, that the petitioner had worked for 292 days from 8-7-1994 to 30-8-1995. That, coupled with the fact, that Shri Devaraju was absorbed as a permanent employee even though he had qualified the SSLC examination, in our view, should have been sufficient to examine the claim raised by the petitioner without reference to the disqualification of having qualified the SSLC examination.”

20 In the instant case, the Petitioner has claimed that four persons who were junior to Petitioner were regularized in service though they were also working as daily wage employees. Petitioner has alleged discrimination being made on the part of Respondent – University in the matter of regularization of services on the ground that the persons working junior to Petitioner were regularized in service without any justifiable cause and thereby violated Articles 14 and 16 of the Constitution.

21 The case in hand is a classic example of exploitation of worker as that Petitioner by Respondent No.1. The fact is not in dispute that the work of permanent in nature is available with Respondent No.1. The Petitioner has rendered services for fairly long time with Respondent No.1. He appears to be working with Respondent No.1 for

more than 20 years as daily wage employee. Initially, to deprive the Petitioner to claim the benefit of permanency, the services of the Petitioner were terminated under the guise of retrenchment and other persons were employed on 11 months contract basis. Subsequent thereto, the Petitioner was reemployed by virtue of order dated 15.01.2001 passed pursuant to recommendation of the Committee appointed in that behalf by Respondent No.1 to redress the grievance of the persons as that of Petitioner, whose services were abruptly terminated. While reinducting such persons, which includes the Petitioner, the onerous conditions were laid down compelling them to withdraw the Court case and to give undertaking not to claim the benefit of permanency, regularization of service, continuity in service etc. The conditions incorporated in the order dated 15.12.2001 discussed above, itself amount to an act of arbitrariness, colourable exercise of powers, exploitation by an employer as that of Respondent No.1, which is an instrumentality of State. The Petitioner being poor person had no option but to accept the conditions, which were imposed. We have already observed that such conditions cannot be acted upon in law as it amounts to taking away the right of a person to invoke legal remedy.

22 To keep the persons temporary, casual, Badli, fairly for long period that too for years together, itself amounts to unfair labour practice covered under Item 6 of Schedule 4 of MRTP and PULP Act. In fact,

the Petitioner could have approached the appropriate Court seeking the benefit of permanency. But because of pendency of this petition, the Petitioner could not knock the door of Labour / Industrial Court agitating his grievance. In view of undisputed facts, the act of Respondent No.1 to keep the Petitioner as temporary and daily wage for years together when the work of regular in nature was available and he fulfills the eligibility criteria, clearly amounts to unfair labour practice within the meaning of Item 6 of Schedule 4 of MRTP and PULP Act. Learned counsel for Respondent No.1 has urged that Petitioner could have approached for redressal of his grievance in respect of grant of regularization and permanency by availing alternate remedy in law. We are not inclined to accept this contention for the sole reason that the Petitioner is fighting for the cause since the year 2002 before this Court. The petition is pending for adjudication since last more than 12 years. The Petitioner is now at the verge of retirement. Now to direct him to approach Labour or Industrial Court for redressal of such grievance of permanency after he has rendered such long service would be most unfair in facts and circumstances this case, Respondent No.1 being instrumentality of State expected to have acted as a model employer and should not have indulged into such unfair labour practice in the matter of Petitioner to deny him his legitimate claim of permanency on par with the persons junior to him who were regularized in service way

back in the year 2000. Although the petition was admitted in the year 2002, Respondent No.1 has not filed affidavit in reply. Only after the petition was taken up for final hearing and notice was reissued, Respondent No.1 has filed affidavit in reply in the month of November 2014 and resisted the claim of Petitioner. It is, therefore, most unfair on the part of Respondent No.1 to say that the alternate remedy is available to Petitioner for seeking the benefit of permanency.

23 In the light of discussion made in the foregoing paras, we are of the view that it is a fit case wherein inherent powers under Article 226 of the Constitution of India deserves to be invoked to redress the grievance of Petitioner to undo the justice, which has been caused to him for years together. In the result, we pass the following order:

- I. Clause (14) in the order dated 15.12.2001 shall be treated as inoperative and quashed to the extent of Petitioner.
- II. Respondent No.1 is directed to absorb and regularize the services of Petitioner w.e.f. 13.02.2002 i.e. the date on which Petitioner was reemployed and joined the services as a tractor driver.
- III. The Petitioner be treated as regularly absorbed on

the post of driver w.e.f. 13.02.2002, and in continuous service from the said date till the date of attaining the age of superannuation.

- IV. The order of absorption on post of a tractor driver w.e.f. 13.02.2002 be issued in favour of Petitioner on or before 31.03.2015. However, in the facts and circumstances of this case, we direct the Petitioner shall be entitled to regular salary of the post of a tractor driver w.e.f. 01.04.2015 and he would not be entitled to claim any monetary benefit for the past services rendered by him from the date of his regularization i.e. 13.02.2002. Needless to state that he shall be entitled to continuity in service for all other purposes except monetary benefit from the date of his first appointment.
- V. It is clarified that the decision in the instant case shall not be treated as precedent as same has been rendered keeping in mind the peculiar facts and circumstances of this case.
- VI. Rule is made absolute in above terms. However, no order as to cost.

VII. In view of disposal of writ petition, pending Civil
Application No.3453 of 2005, stands disposed of.

ndm

[V. L. ACHLIYA, J.]

[A. V. NIRGUDE, J.]