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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
ORDINARY ORIGINAL APPELLATE JURISDICTION

**WRIT PETITION (L) NO. 2401 OF 2014
WITH
WRIT PETITION (L) NO. 2402 OF 2014
WITH
WRIT PETITION (L) NO. 2403 OF 2014
WITH
WRIT PETITION (L) NO. 2404 OF 2014**

Bharat Sanchar Nigam Limited .. Petitioner

Vs.

The Vice President,
Navasheva Port and General Workers Union .. Respondent

Ms.Neeta VMasurkar, Advocate for Petitioner.
Mr. Jaiprakash Sawant, Advocate for Respondent.

**CORAM : R. G. KETKAR, J.
RESERVED ON : 10th MARCH, 2015
PRONOUNCED ON : 07th APRIL, 2015**

P.C. :

. Heard Ms.Neeta VMasurkar, learned Counsel for the petitioner and Mr.Jaiprakash Sawant, learned Counsel for the respondent at length. Rule. Mr.Sawant waives service. At the request and by consent of the parties, rule is made returnable forthwith and the petitions are taken up for final hearing.

2. By these petitions under Article 226 of the Constitution of India, the petitioner, hereinafter referred to as the First Party has challenged the judgments and awards dated 11/11/2013 passed by the learned Presiding Officer, Central Government Industrial Tribunal

No.2, Mumbai (for short 'Tribunal') in References. By the impugned awards, the Tribunal declared that the action of the First Party-management in not regularising the services of the workmen is illegal and improper. First Party is directed to regularise the services of the workmen after the probation period of 2 years from the date of their respective initial appointments and to give them pay and allowances at par with regular employees with all consequential benefits. First Party is also directed to pay difference in pay and allowance from the date of the respective workmen's regularisation till date.

3. Since common questions of law and facts arise in these petitions, the same can conveniently be disposed of by this common judgment. For the purpose of appreciating the controversy raised between the parties, facts from Writ Petition (L) No. 2401 of 2014 are taken into consideration.

4. Government of India, Ministry of Labour & Employment by its order dated 06/12/2004, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947 (for short 'I.D.Act'), referred the following industrial dispute to the Tribunal for adjudication:

“Whether the action of the Telecom District Manager, BSNL, Sindhduurg at Sawantwadi in not regularizing the service of Sh.Anand Vasudeo Parab, Driver is legal and justified ? If not to what relief the workman is entitled for ?”

5. After receipt of the Reference, notices were issued to the First Party as also to the respondent, hereinafter referred to as Second Party. In response to the notices, Second Party – Union filed its Statement of Claim at Exhibit 7 on 07/03/2005. It is the case of the Second Party that Shri Anand Vasudeo Parab, hereinafter referred to as a workman is serving with the First Party since 22/07/2002 as a driver. He is attending his duties which are of permanent nature. He was selected for the post after ascertaining his eligibility, qualification for the post as a driver. His work is satisfactory. As per the provisions of the Industrial Employment (Standing Orders) Act, 1946 as well as the principle of equity, he is deemed to have become a permanent workman. However, the First Party has deprived him from giving the status and privileges of a permanent workman and thus continued to engage in unfair labour practice within the meaning of item 10 of the Fifth Schedule to the I.D.Act. First Party is paying the wages to him at a very low rate. First Party has also not conferred other benefits in the nature of social security measures including benefits of provident fund, insurance, leave, bonus, medical treatment etc. Other similarly situated workmen including one Shri Margaonkar have been given permanency in the employment to the post of driver. However, the same benefits and pay scale are not given to the workman who is discharging the same

duties. Though he requested the First Party to confer the benefits, the same were not acceded to. Ultimately, he raised industrial dispute before the Assistant Labour Commissioner (Central). However, the conciliation failed. Accordingly, Assistant Labour Commissioner (Central) made report to the Labour Ministry. The Labour Ministry, in turn, has forwarded the dispute to the Tribunal for adjudication.

6. The Union prayed for declaration that action of the First Party in not regularising the workmen is illegal. The Union has sought the direction to the First Party to regularise the services of the workman as a permanent employee in the capacity of a driver in the pay scale of 3200-4900 right from 22/07/2002 with all consequential benefits.

7. The First Party resisted the Statement of Claim by filing written statement on 23/06/2005 at Exhibit 12. It was inter alia contended that the Union is not a registered union; that the workman was also not a member of the said union at the relevant time; that the First Party is a government undertaking and consequently, the Reference is not tenable. The workman was engaged for a short period for hourly driving assistance on various intermittent occasions at agreed price. It was a service contract to a casual worker. The Reference is not tenable and the workman is not entitled to regularisation. The dispute is not covered under

section 2(k) of the I.D.Act. There is a total ban imposed by the Government for new recruitment since 1982. The Court, therefore, cannot issue any direction to recruit or regularise the services of the workman. It was also contended that the Second Party is not a workman as defined under section 2(s) of the I.D.Act. He also cannot be regularised for want of satisfying eligibility criteria. He did not satisfy the eligibility criteria when he was engaged. A specific understanding was given to the workman that his job was of a temporary nature. He is, therefore, not entitled to claim regularisation. It was further contended that his employment was occasional engagement without following the recruitment rules. The regularisation of the workman would amount to a back door entry. The appointment of the workman was not on regular basis. First Party has framed recruitment rules for the post of the driver to fill up 50% of the total vacancy and remaining are to be filled up by promotion of the persons belonging to groups C & D. On these among other assertions, the First Party resisted the claim and prayed for dismissal of the Reference.

8. On the basis of the pleadings of the parties, the Tribunal framed the necessary issues. Parties led oral as well as documentary evidence. After considering the evidence on record, the Tribunal allowed the Reference as indicated earlier. It is against this order, First Party has instituted this petition under Article 226 of the

Constitution of India.

9. In support of this petition, Ms.Masurkar reiterated the submissions that were advanced before the Tribunal. She submitted that the Second Party was engaged as and when required for and on hourly basis as a daily wager driver. He was engaged as a contract worker. There exists no employer-employee relationship between the parties. The workman was not recruited by following the recruitment process laid down in the rules framed by the First Party. She submitted that the Tribunal completely misread the evidence and ignored the material evidence in holding that the workman was duly appointed by the First Party. The Tribunal also held that the workman has worked continuously for more than 240 days in a calender year and his services cannot be terminated without following the procedure laid down under section 25F of the I.D.Act. She submitted that the findings recorded by the Tribunal are based upon the conjuncture and surmises.

10. Ms.Masurkar submitted that in paragraph 8 of cross examination, the workman admitted that he does not have appointment letter. Though he deposed that there was advertisement in the newspaper for a vacancy, he did not produce it. Though he further deposed that advertisement was published mentioning about new vehicle and requirement of a driver on the said new vehicle and he applied in response to that advertisement,

he did not produce the copy of the application. He further admitted that there was no selection committee. He did not produce driving licence. He admitted that he did not have the evidence on the point of payment made by the First Party for the work done as the payment was made in cash. He also admitted that no fitness was checked. Though he stated that driving test was taken before selecting him, he does not have proof on that point. No terms of service conditions were given to him while appointing on that post.

10. She further submitted that the First Party examined Mr.M.Shridhar Murthy, working at the relevant time as SDE (MPS), B.S.N.L., Sindhudurga, Sawantwadi. In paragraph 3 of his examination-in-chief, he stated that there is a total ban of new recruitment since the year 1982 as per the directions of the Government of India. In paragraph 4, he stated that Second Party was engaged for a short period for hourly driving assistance on intermittent occasions confined to the call made for the purpose. In paragraph 5, he deposed that vide notifications dated 28/01/2002 and 01/02/2002, the First Party has framed the recruitment rules for appointment of drivers. The recruitment can be made through open advertisement prescribing standards of eligibility/educational qualifications and experience. In paragraph 8, he stated that in addition to notifying the vacancies of drivers to the Employment Exchange, recruitment notice is required to be published in the

employment news issued by the Publication Division of the Ministry of Information and Broadcasting, Government of India. The recruitment notice is also required to be displayed on the office notice boards. He stated that no advertisement was issued as per Recruitment Rules of Drivers framed by Department of Telecommunication or the First Party.

11. In paragraph 9, he further stated that according to letter dated 04/01/2000 of the Department of Telecommunication, (for short 'D.O.T.') New Delhi, Circles, Headquarters at Mumbai (for Maharashtra Circle) have only been permitted for recruitment of Drivers from open market, based on the Recruitment Rules, 1999 and not the Telecom District Manager (for short 'T.D.M.'), Sindhudurga. In paragraph 22, he denied that the Second Party passed 10th standard in 1994. He further stated that the Second Party did not file any documentary proof in support of his claim of qualification. No copy of log book was ever demanded by the Second Party nor was it supplied to him. The log book produced by the Second Party is a fabricated document and the same is not duly proved by the Second Party, though the authenticity of the log book was disputed by the First Party. She, therefore, submitted that the contractual appointment made between the party on agreed terms is not on regular basis and is not as per the recruitment rules. It does not give rise to a right to a contract labour to seek regularisation.

The said appointments are covered under section 2(o)(bb) of the I.D.Act. The Second Party has claimed the regularisation under the Industrial Employment (Standing Orders) Act, 1946. The same is not permissible in view of the section 13-B thereof. Though the Tribunal has recorded a finding that the Second Party worked continuously for more than 240 days in a calendar year, no issue was framed in that regard. The decision rendered by the Tribunal is one sided as the evidence of the First Party was not taken into consideration at all. She further submitted that the Second Party claims that he was appointed on 22/07/2002 and worked till 01/07/2005. She submitted that on 25/08/2003, the First Party has invited tenders for appointing contractors and the contract was awarded on 16/02/2004 to one M/s. Anand Shraddha Enterprises. The Second Party admitted that he worked under that firm. In support of her submissions, she relied upon the following decisions.

- i) *Secretary State of Karnataka Vs. Uma Devi, (2006) 4 SCC 1* to contend that the Apex Court has held that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract. If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee

can not claim to be made permanent on the expiry of his term of appointment. Merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

ii) *Accounts Officer (A and I) APSRTC Vs. K.V.Ramana*, **AIR 2007 SC 1166** to contend that even if contract labourers or casual workers or ad-hoc employees have worked for a long period, they cannot be regularised de hors the rules for selection as has been held in Uma Devi's case.

iii) *B.SMinhas Vs. Indian Statistical Institute* (1983) 4 SCC 582 to contend that if the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority, but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment.

iv) *B.N.Nagarajan Vs. State of Karnataka* **AIR 1979 SC 1676** to contend that when the rules framed under Article 309 of the Constitution of India are enforced, no regularisation is permissible in

exercise of executive powers under Article 162 of the Constitution in contravention of the rules.

12. On the other hand, Mr.Sawant supported the impugned order. He submitted that the workman has produced the log book. The same was produced before the Conciliation Officer as also before the Tribunal. The log book bears the counter signatures of the officers of the First Party. He submitted that the register maintained by the First Party shows payment of wages. He submitted that the Tribunal, after considering the evidence on record and in particular, i) log book entries verified and counter signed by the officer of the First Party ii) certificate issued by the Divisional Engineer (ACP) of TDM iii) driving charges bill produced along with list Exhibit 29 as also admission of Shri M.Shridhar Murthy examined by the First Party that the First Party has maintained the log books of the vehicle, has allowed the Reference. Mr.Murthy also admitted that he knows the Second Party. He further admitted that he has not seen log book pertaining to the vehicle No. MH-07 G 2015. Though he denied that initially the First Party used to pay wages to the Second Party, he admitted that the First Party used to pay from contingency fund to the Second Party as per the assistance taken by the First Party. He, however, did not produce any document regarding the said payment. The witness volunteered that the First Party is not keeping those documents. He further submitted that the Second Party was

appointed on 22/07/2002 and tenders were invited on 25/08/2003 and the contract was awarded on 16/02/2004 that is much after the Second Party joining the First Party. He submitted that the contract between the First Party and the contractor is sham and bogus. In support of submissions, he relied upon the following decisions.

- I) Bhilwara Dugdh Utpadak Sahakari Society Ltd. Vs. Vinod Kumar Sharma, 2011 III CLR 386 to contend that there was subterfuge by the First Party to avoid its liabilities under various labour laws.
- II) Bhavnagar Municipality Vs. Alibhai Karimbhai, 1977 I LLJ 407 SC to contend that the First Party has contravened section 33 of the I.D.Act. The Government of India had referred the decision for adjudication by order dated 06/12/2004 to the Tribunal, the services of the workman were terminated from 01/07/2005 that is to say during the pendency of the Reference.
- III) Bharat Sanchar Nigam Limited Vs. The Registrar Central Administrative Tribunal CDJ 2011 MHC 3782 to contend that the First Party is covered by the Industrial Employment (Standing Orders) Act, 1946
- IV) Devinder Singh Vs. Municipal Council, Sanaur 2011 II CLR 461 to contend that termination of the workman is not covered by section 2(o)(bb) of the I.D.Act.
- V) Jaswant Sugar Mills Ltd., Meerut Vs. Badri Prasad, 1961 I LLJ 649 SC to contend that the workman is entitled to permanency and the benefits flowing therefrom.
- VI) U.P.State Electricity Board Vs. Pooran Chandra Pandey, (2007) 11 SCC 92 to contend that Umadevi's case has to be read in conformity with Article 14 of the Constitution and not in conflict with it.
- VII) Maharashtra State Road Transport Corporation Vs. Casteribe Rajya PKarmachari Sanghatna, 2009 III CLR 262 SC to contend that the decision of the Apex Court in Umadevi's case is not applicable as it is authoritative pronouncement for the

proposition that under Article 32, the Apex Court and under Article 226, the High Court should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc employees unless the recruitment itself was made regularly in terms of constitutional scheme. Umadevi does not denude the Industrial and Labour Courts of their statutory power under the provisions of the I.D.Act to order permanency of the worker.

- VIII) Executive Engineer, Public Works Department Vs. Parashram Mukunda Malode, 2002 II CLR 113 Bom to contend that the First Party has contravened section 33 of the I.D.Act. The Government of India had referred the decision for adjudication by order dated 06/12/2004 to the Tribunal, the services of the workman were terminated from 01/07/2005 that is to say during the pendency of the Reference.

13. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. Ms.Masurkar submitted that the witness examined by the First Party, Mr.Murthy deposed that since 1982, there was a total ban of new recruitment with First Party as per the directions issued by the Government of India. The workman was engaged for a short period, for hourly driving assistance on intermittent occasions confined to the call made for the purpose. The workman was paid from the contingent funds the agreed rate before giving contract to M/s.Anand Shraddha Enterprises. The witness further stated that occasional engagement of the workman was neither by following rules of recruitment nor being made by competent authority. She submitted that vide notifications dated 28/01/2002 and 01/02/2002, the First Party have framed the rules

for recruitment of regular drivers. According to that notifications, recruitment for 50% of the total vacancies (inclusive of SC/ST/OBC reserved vacancies) on a particular date of the recruitment year can be done through open advertisement prescribing standards of eligibility/educational qualifications and experience. The balance 50% of total vacancies are to be filled in by promotion by persons belonging to Groups C & D posts having three year regular service in the eligible cadre in the unit of recruitment and whose scale of pay is lower than that of driver and possessing driving licence for light and heavy motor vehicles. She further submitted that as per letter dated 04/01/2000 of D.O.T., Headquarters at Mumbai (for Maharashtra Circle) have only been permitted for recruitment of drivers from open market, based on the recruitment rules, 1999 and not T.D.M., Sindhudurg. Ms.Masurkar submitted that the workman, during the course of his cross examination, in paragraphs 8 & 9 deposed as under :

8. I passed Syd.X in 1994. I had prayed for permanency since I worked with first party. I have log book to show that I worked with first party. (The said log book was disputed by the Party No.1. He failed to prove the said log book) I have no appointment letter. Even I have no call letter since I was called orally. There was advertisement in the newspaper about vacancy. I have not produced it. I applied with first party as per said advertisement. I have not produced copy of said application. I was only called for that post. There was no selection committee. C.R.Kothale selected me. No letter was issued of any type appointing me on that post. I have not produced driving licence. I have driving licence of heavy

vehicle. I applied in 1997. I can produce it. I was having previous experience when I joined the post. (no document produced as pleaded) Payment was given of the work done. I have no evidence on that point since payment was made in cash. No fitness was checked. Driving test was taken by selecting me. I have no proof on that point. No terms of service conditions were given while appointing me on that post. I cannot say on which basis I am claiming that service conditions were changed. Not true to say that no appointment was given and I was called as and when work was available. Not true to say that payment was made on hourly basis. Not true to say that I made false statement to claim permanency. I can produce evidence about my membership with Nhava Sheva Union. I can produce copy of complaint. Not true to say that I was not appointed as per the recruitment rules of BSNL. I do not know whether I was appointed by Headquarters. Not true to say that I did not work from 22/07/2002 continuously. Not true to say that fabricated log book is produced to support my demand.

9. I am aware of the tender given by Anand Shraddha Enterprises on 16/02/2004. It is true that I worked under that proprietorship. Not true to say that I was simply contract worker of Anand Shraddha Contractor. Not true to say that by virtue of completion of period of Anand Shraddha Contractor, my service also had come to an end. It is true that my service book is not maintained by BSNL. No employee number is issued by BSNL. Not true to say that my name is not displayed in employees roll. Not true to say that since post of driver is Class-III it cannot be filled by local authority. It is true that contractor made payment of work done.”

14. She further submitted that the workman instituted complaint before the Tribunal under section 33-A of the I.D.Act being Complaint No. CGIT-2/1/2005. In paragraph 8 of his evidence in that complaint, he deposed as under :

I am IX passed. I have driving license. I have driving license of heavy goods vehicle as well as light motor vehicle. I have obtained driving license in 1997. I

have not produced the driving license in the Court. It is not true that I had no driving license in the year 1997. My birth date is 2.12.1977. I have no document to show that was appointed by TDM. It is not true that I have contended falsely that Telecom District Manager has appointed me as a Driver. It is not true that I was not appointed and have filed this false complaint. It is not true that as I was not appointed no service conditions were applicable to me. It is not true that as I was not appointed, therefore, I do not have any document. It is not true that I was never paid any salary/wages by BSNL. It is not true that the log book, I have produced before court is false one. It is not true that no officer of BSNL has signed the log book. It is not true that as I have never driven any vehicle of BSNL, therefore, log book does not bear my signature. I had filed complaint before ALC in respect of change of service conditions. I do not know whether ALC has not referred the complaint to Govt. It is true that on 01/07/2006, I was working with one contractor Anand Shraddha. It is not true that as BSNL invited tenders from contractors on 13/09/2003 thereafter we have filed these various false complaints against BSNL. It is not true that I was called casually as and when work was available as per the need. It is not true that I have never worked continuously with BSNL. It is not true that therefore I have no evidence or document to show continuity of work. It is not true that we have filed such number of false cases to pressurize the officers for backdoor entry in the service. It is not true that Mr.Jambli was not TDM in 1996. It is not true that I have falsely implicated him in this matter. It is not true that the vehicle no.have given was not with BSNL in 1996. It is not true that the complaint is totally false.

15. Ms.Masurkar submitted that in paragraph 8 of his cross examination, the workman admitted that he does have appointment letter. He does not have call letter as he was called orally (for selection). Though he stated that there was advertisement in the newspaper about the vacancy, he did not produce it. Though he deposed that he applied with the First Party as per the said

advertisement, he did not produce copy of the application. He admitted that there was no Selection Committee. One Mr.C.R.Kothale selected him. No letter was issued of any type appointing him on the post of the driver. He did not produce driving licence. He further deposed that he has driving licence of heavy vehicle for which he made application in 1997. Though he deposed that he can produce the driving licence as also he was having previous experience before joining the post, he did not produce any document in support of these statements. Though he deposed that payment was given of the work done, he did not produce any evidence on the ground that payment was made in cash. He admitted no fitness was checked. Though he stated that driving test was taken before selecting him, he did not have proof on that point. No terms of service conditions were given while appointing him on the post of the driver. He could say on which basis, he is claiming that service conditions were changed. He further admitted that tender was given to M/s.Anand Shraddha Enterprises on 16/02/2004 and he worked under that proprietorship. He admitted that service book is not maintained by B.S.N.L. No employee number is issued by B.S.N.L.

16. In the complaint filed under section 33-A of the I.D. Act, during the course of his evidence, he deposed that he did not produce driving licence in the Court. He did not have any document to show that he was appointed by T.D.M. He further admitted that

he does not have evidence or document to show continuity of work. Ms.Masurkar further submitted that the evidence on record clearly established that there was no employer-employee relationship between the First Party and the workman.

17. On the other hand, Mr.Sawant submitted that Second Party had submitted application dated 11/04/2005 (Exhibit 11) for issuing directions to the First Party to produce the following basic documents before the Tribunal.

“ i) The document including log-books showing movement of BSNL vehicle driven by the workman since his appointment.

ii) The documents including the documents in respect of payment of wages made to the workman for his work of driving the BSNL vehicle since his appointment.”

18. He further submitted that the Second Party, by its application dated 11/04/2005 (Exhibit 10) submitted copies of the following documents

“ I. Union's letter dated 09.2.2004 raising an industrial dispute before the Asstt. Labour Commissioner-Central.

II. Union's letter dated 24/02/2004 addressed to the Asstt. Labour Commissioner -Central.

III. Minutes of conciliation proceedings held on 04/03/2005.

IV. Union's letter dated 05/03/2004 to the management.

V. Management's reply dated 23/03/2004.

VI. Minutes of conciliation proceedings held on 23/03/2004.

VII. Minutes of conciliation proceedings held on 13/04/2005.

VIII. The Union's letter dated 28/06/2004 addressed to the Second Party. ”

19. He submitted that the First Party deliberately withheld the information by not producing the documents asked for by application Exhibit 11 and more particularly in respect of the log book of vehicle in question and the payment made to the workman. He submitted that initially the workman was paid wages by the First Party directly and subsequently, he was paid wages through so called contractor of the First Party. It is immaterial whether the payment of wages was made to the workman from the contingency fund or through the so called contractor of the First Party. The workman was driving the vehicle of the First Party for the business of the First Party. The First Party withheld the documents asked for. He, therefore, submitted that an inference has to be drawn that the workman was attending the work of the First Party in the capacity of the driver. The said fact was admitted by the First Party during the course of conciliation proceedings. He submitted that the source of payment, method of payment and the agency appointed by the First Party for driving its vehicle and making payment to the Second Party is immaterial as amount received by the workman amounts to “wages” as defined under section 2(rr) of the I.D.Act.

20. Before I consider these submissions, it is material to note the case made out by the parties. The First Party came with the case that there was a total ban of new recruitment since the year 1982 with the First Party as per the directions of the Government of India. The workman was engaged for a short period, for hourly driving assistance on intermittent occasions confined to the call made for the purpose. As against this, the workman came with the case that he was employed by the First Party as a driver from 22/07/2002 onwards and that he is in continuous service of the First Party. It has come on record that on 25/08/2003, the First Party invited tenders for appointing contractors. The contract was awarded on 16/02/2004 to M/s.Anand Shraddha Enterprises. In other words, the Second Party was working with the First Party prior to even inviting tenders on 25/08/2003 and awarding contract on 16/02/2004 to M/s.Anand Shraddha Enterprises.

21. By the application dated 11/04/2005 (Exhibit 11) , the Second Party called upon the First Party to produce documents including log books showing the movement of B.S.N.L. vehicle driven by the workman since his appointment as also document including the documents in respect of payment of wages made to the workman for his work of driving B.S.N.L. vehicle since his appointment. Perusal of the evidence on record as also evidence of Mr.Murthy, witness examined by the First Party indicates that the First Party did

not produce these documents. In paragraph 13, the Tribunal noted that while appointing a technical person like a driver, it is obvious for the employer to take his driving test. At least the driver is not expected to be appointed without taking his driving test. The workman is poor. He is poorly literate person. He was not given any appointment order. He did not maintain any document except copy of log book.

22. Ms.Masurkar submitted that the log book produced by the workman is not a log book maintained by the First Party. She submitted that the log book produced by the workman is a fabricated document. Perusal of the affidavit of examination-in-chief of Mr.Murthy and in particular, paragraph 22 thereof, shows that he stated that no copy of log book was ever demanded by the workman nor it was supplied to him. He further stated that the log book produced by the workman is a fabricated document and the same is not proved by the party No.2 inspite of being disputed by party No.1. Perusal of his cross examination shows that he denied to have signed the log book of vehicle driven by the workman. He had not seen the log book pertaining to vehicle No. MH-07-G 2015. He denied that initially the First Party used to pay wages to the workman. The First Party used to pay from contingency fund to the workman as per the assistance First Party had taken. The First Party does not have any document regarding the said payment. The

witness volunteered that the First Party was not keeping those documents. He did not know whether vehicle No.MH-07-G 2015 was being driven by the workman. He did not know whether the work was not given to the workman since 01/07/2005 by the First Party. He did not know whether the workman has a driving licence. He denied the suggestion that the contract between the contractor and the management was sham and bogus.

23. In the present case, the workman specifically came with the case in the statement of claim that he was driving vehicle bearing registration No. MH-07-G-2105. He had made application dated 11/04/2005 (Exhibit 11) calling the First Party to produce documents including log books showing the movement of B.S.N.L. vehicle driven by the workman since his appointment. It is evident from the record that the First Party did not produce the documents sought for by the Second Party. The workman has produced the log books on record. Perusal of the log books shows that the entries are made from July 2002 till 31/01/2004 (pages 226 to 239 of the Writ Petition).

24. Perusal of the evidence of Mr.Murthy and in particular, paragraph 29 of the his cross examination shows that he did not know whether vehicle bearing registration No. MH-07-G-2105 was driven by the workman. He had not seen the log books pertaining to the said vehicle. In paragraph 22 of his examination-in-chief, he

merely stated that no copy of the log books was ever demanded by party No.II nor it was supplied to him. The said statement is factually incorrect and contrary to the record as by application dated 11/04/2005, Second Party – Union has specifically called upon the First Party to produce the log books. He, however, stated that the log books produced by the Party No.II are a fabricated document and the same are not proved by the Party No. II inspite of being disputed by the Party No.I. It is relevant to note that the said witness did not utter a single word about the initials appearing on the log books produced by the workman. The statement that the log books produced by Party No.II is a fabricated document is not substantiated by the First Party. Merely labelling the documents produced by the workman as a fabricated document, that by itself does not mean that the First Party has substantiated that the log books produced by the workman is a fabricated document. Perusal of the log books shows that they bear initials of the officers of the First Party. Understood thus, I do not find that the Tribunal committed any error in paragraph 13 of the impugned judgment in holding that there is no reason to doubt the copy of the log books the workman has produced to show that he was working with the First Party.

25. The Tribunal further observed that in the circumstances, it cannot be said that the workman was engaged on hourly basis and as and when required for. The Tribunal also observed that after

examining his capability as a driver, he was appointed in the year 2002. In paragraph 13, the Tribunal observed that while appointing a technical person like a driver, it is quite obvious for the employer to take his driving test. At least the driver is not expected to be appointed without driving test. The Tribunal observed that after 2003, the First Party seems to have played mischief and called tenders and since 2004, the workman was shown as a contract worker. The Tribunal also held that service contract was bogus and mere camouflage to deprive the workman from getting benefit of permanency. It amounts to unfair labour practice by the management. Furthermore, the workman has worked continuously for more than 240 days in a calendar year and his services cannot be terminated without following the procedure laid down under section 24-F of the I.D.Act. The First Party did not follow the conditions laid down under section 25-F of the I.D.Act.

26. In paragraph 15, the Tribunal also recorded a finding that officials of the First Party have taken disadvantage of the need, ignorance and poverty of the workman. It is exploitation of poor class as workman was working for meagre amount to meet their two ends and it was for years together. The Tribunal thereafter referred to the decision of the Apex Court in the case of *Bhilwara Dugdh Utpadhak Sahakari S.Ltd. V/s. Vinod Kumar Sharma*, **2011 III CLR 386** wherein the Apex Court observed thus:

“Labour Statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term or casual employees. When in fact they are doing the work of regular employees. This court cannot countenance such practice anymore. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers.”

27. The Tribunal thereafter observed in paragraph 16 that the workman was working with the First Party as a driver since 2002. He had worked for about 2 years for meagre amount. The work of a driver cannot be said to be casual or temporary. It is work of permanent nature. The Tribunal further held that the workman was recruited by the First Party as a driver. He had worked continuously for about 2 years with the First Party.

28. Ms.Masurkar relied upon Umadevi's case to contend that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is the contractual appointment, the appointment comes to an end at the end of the contract. If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.

Similarly, a temporary employee cannot claim to be made permanent on the expiry of his term of appointment. Merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

29. Ms.Masurkar submitted that the workman did not produce appointment letter. He did not produce advertisement in the newspaper. He also did not produce copy of the application made by him in response to the advertisement allegedly issued. The workman admitted that there was no selection committee. He did not have any evidence on the point of the payment made by the First Party for the work done as payment was made in cash. No terms of the service conditions were given to him while appointing on that post. She further submitted that there was a total ban of new recruitment since the year 1982 as per the directions of the Government of India. As per the notifications dated 28/01/2002 and 01/02/2002, the First Party has framed recruitment rules for appointment of the drivers. The recruitment can be made through open advertisement prescribing standard of eligibility/educational qualifications and experience. On 04/01/2000, D.O.T. had issued

letter setting out therein that Headquarters at Mumbai (for Maharashtra Circle) have only been permitted for recruitment of drivers from open market, based on the Recruitment Rules, 1999 and not the T.D.M.

30. I have perused the Recruitment Rules of drivers of 2001. Rule 5 thereof lays down method of recruitment, age limit, qualification. It provides that it shall be as specified in columns 5 to 13 which are as under :

SCHEDULE

DRIVER (ORDINARY GRADE)

Whether selection by merit or selection-cum-seniority or non-selection post	Age limit for Direct Recruits	Whether benefit of added years of service admissible	Educational and other qualification required for Direct Recruits	Whether age and educational qualification prescribed for direct recruits will apply in the case of promotees	Period of probation, if any
5	6	7	8	9	10
Not applicable	Between 21 and 30 Years. (Relaxable for departmental candidates up to 42 years in respect of General candidates, up-to 47 years in respect of Scheduled Caste/Scheduled Tribes candidates and 45 years in respect of OBC candidates in accordance with instructions of orders issued by the Central Government. Note: 1. The crucial date for determining the age limit shall be the closing date of receipt of application from candidates in India (and not the closing date prescribed for those in Assam, Nagaland, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Tripura, Sikkim, Ladakh Division of Jammu and Kashmir state, Lahaul and spiti District and Pangi sub division of Chamba District of Himachal Pradesh, Andaman and Nicobar Islands or Lakshdweep). <u>Note :-2. The crucial date of determining the age limit in the case of candidates from employment exchange shall be the last date up-to which the Employment Exchanges are asked to nominate candidates. The date of reckoning for eligibility and counting of service both for Competitive and qualifying examinations will be 1st July of the Recruitment Year.</u>	Not applicable	a) Should have passed 8th Class from a recognised School; b) Possessing a valid Driving Licence for Light and Heavy motor vehicles, and c) 4 years's experience of driving Light and Heavy motor vehicles, of which there shall be a minimum of one year's experience of driving Heavy Motor Vehicle	Age: No Educational qualification YES	Two years

Method of recruitment whether by direct recruitment or by promotion or by deputation/absorption and percentage of posts to be filled by various methods	In case of recruitment by promotion/deputation /transfer grades from which promotion/deputation/transfer to be made	If a Departmental Promotional Committee exists, what is its composition (for considering confirmation of direct recruits)
11	12	13
i) 50% by Direct Recruitment ii) 50% by Promotion.	<u>Promotion:</u> Persons holding Group 'C' and Group 'D' posts having 3 year's regular service in the eligible cadre in the unit of recruitment and whose scale of pay is lower than that of Driver and possessing Driving Licence for light and heavy motor vehicles, Selection shall be made from amongst candidates possessing the above qualification and licence on the basis of a driving test to assess their competency to drive light and heavy vehicle. Note: Despatch Riders of Telegraph Offices within the jurisdiction of the Engineering Division or Telephone District or Electrical Circle will also be eligible for recruitment by transfer in that unit or Division or District or Telecom Circle/Electrical circle.	Departmental Promotion Committee consisting of the following officers :- i) An officer of JAG of I.T.S.-- Chairman ii) An officer of STS of Group 'A' – Member iii) An officer of STS of Group 'A' – Member

DRIVER (Grade – II)

Whether selection by merit or selection-cum-seniority or non-selection post	Age limit for Direct Recruits	Whether benefit of added years of service admissible	Educational and other qualification required for Direct Recruits	Whether age and educational qualification prescribed for direct recruits will apply in the case of promotees	Period of probation, if any
5	6	7	8	9	10
Not Applicable	Not Applicable	Not applicable	Not Applicable	Not Applicable	NIL

Method of recruitment whether by direct recruitment or by promotion or by deputation/absorption and percentage of posts to be filled by various methods	In case of recruitment by promotion/deputation /transfer grades from which promotion/deputation/transfer to be made	If a Departmental Promotional Committee exists, what is its composition (for considering confirmation of direct recruits)
11	12	13
100% by promotion.	<u>Promotion:</u> Drivers (Ordinary Grade) with 9 years regular service in the grade subject to passing of a trade test to practically test whether he is able to read English numerals and figures, has good knowledge of Traffic regulations, is able to locate faults and carry out minor running repairs, and is able to change wheels and correctly inflate tyres.	Departmental Promotion Committee consisting of the following officers :- i) An officer of JAG of I.T.S.-- Chairman ii) An officer of STS of Group 'A' – Member iii) An officer of STS of Group 'A' – Member

DRIVER (Grade – I)

Whether selection by merit or selection-cum-seniority or non-selection post	Age limit for Direct Recruits	Whether benefit of added years of service admissible	Educational and other qualification required for Direct Recruits	Whether age and educational qualification prescribed for direct recruits will apply in the case of promotees	Period of probation, if any
5	6	7	8	9	10
Not Applicable	Not Applicable	Not applicable	Not Applicable	Not Applicable	Not Applicable

Method of recruitment whether by direct recruitment or by promotion or by deputation/absorption and percentage of posts to be filled by various methods	In case of recruitment by promotion/deputation /transfer grades from which promotion/deputation/transfer to be made	If a Departmental Promotional Committee exists, what is its composition (for considering confirmation of direct recruits)
11	12	13
100% by Promotion.	<u>Promotion:</u> Drivers with 6 years regular service in grade-II or a combined regular service of 15 years in grade-II and in Ordinary grade put together, subject to passing of a trade test practically if he has good knowledge of petrol and diesel engine working and is able to locate faults and rectify minor running defects, and is also able to clear, carburetor, plug etc.	Departmental Promotion Committee consisting of the following officers :- i) An officer of JAG of I.T.S.-- Chairman ii) An officer of STS of Group 'A' – Member iii) An officer of STS of Group 'A' – Member

DRIVER (Special Grade)

Whether selection by merit or selection-cum-seniority or non-selection post	Age limit for Direct Recruits	Whether benefit of added years of service admissible	Educational and other qualification required for Direct Recruits	Whether age and educational qualification prescribed for direct recruits will apply in the case of promotees	Period of probation, if any
5	6	7	8	9	10
Non Selection	Not Applicable	Not applicable	Not Applicable	Not Applicable	Not Applicable

Method of recruitment whether by direct recruitment or by promotion or by deputation/absorption and percentage of posts to be filled by various methods	In case of recruitment by promotion/deputation /transfer grades from which promotion/deputation/transfer to be made	If a Departmental Promotional Committee exists, what is its composition (for considering confirmation of direct recruits)
11	12	13
100% by Promotion.	Promotion to Special Grade shall be by non-selection (seniority -cum-fitness) from Grade-I with 3 years regular service on Grade I of Staff Car Driver.	Departmental Promotion Committee consisting of the following officers :- i) An officer of JAG of I.T.S.-- Chairman ii) An officer of STS of Group 'A' – Member iii) An officer of STS of Group 'A' – Member

31. Perusal of these rules shows that these rules do not prescribe for issuing advertisement for appointing drivers. Ms.Masurkar was not in a position to show any rule laying down requirement for issuing advertisement. She submitted that in terms of Government of India, Ministry of Personnel and Public Grievances DO P & T ON No.14024/2/96-Estt(D) dated 18/03/1990 that in addition to notifying the vacancies of drivers to the Employment exchange, recruitment notice has to be published in the employment news issued by the Publication Division of the Ministry of Information and Broadcasting, Government of India and recruitment notice should also be displayed on the office notice boards.

32. In my opinion, reliance placed by Ms.Masurkar on instructions issued on 18/03/1990 is misplaced. In case of **Maharashtra State Road Transport Corporation** (*supra*) on behalf of the Corporation, reliance was placed on General Standing Order

No. 503 dated 19/06/1959 to contend that no permanent status to employees working as casual workers/daily wagers whose appointments were made without following procedure prescribed in General Standing Order. This contention was repelled by the Apex Court in paragraph 34 which reads as under:

The question, now, remains to be seen is whether the recruitment of these workers is in conformity with Standing Order 503 and, if not, what is its effect? No doubt, Standing Order 503 prescribes the procedure for recruitment of Class IV employees of the Corporation which is to the effect that such posts shall be filled up after receiving the recommendations from the Service Selection Board and this exercise does not seem to have been done but Standing Orders cannot be elevated to the statutory rules. These are not statutory in nature. We find merit in the submission of Mr. Shekhar Naphade, learned Senior Counsel that Standing Orders are contractual in nature and do not have a statutory force and breach of Standing Orders by the Corporation is itself an unfair labour practice. The concerned employees having been exploited by the Corporation for years together by engaging them on piece rate basis, it is too late in the day for them to urge that procedure laid down in Standing Order No. 503 having not been followed, these employees could not be given status and principles of permanency. The argument of the Corporation, if accepted, would tantamount to putting premium on their unlawful act of engaging in unfair labour practice. It was strenuously urged by the learned Senior Counsel for the Corporation that industrial court having found that the Corporation indulged in unfair labour practice in employing the complainants as casuals on piece rate basis, the only direction that could have been given to the Corporation was to cease and desist from indulging into such unfair labour practice and no direction of according permanency to these employees could have been given. We are afraid, the argument ignores and overlooks the specific power given to

the Industrial/Labour Court under S. 30(1)(b) to take affirmative action against the erring employer which as noticed above is of wide amplitude and comprehends within its fold a direction to the employer to accord permanency to the employees affected by such unfair labour practice.

(emphasis supplied)

33. In view thereof, I do not find any merit in the submissions of Ms.Masurkar as the instructions issued on 18/03/1990 cannot be said to have a statutory force. The said submission overlooks the specific power given to the Industrial/Labour Courts under the I.D.Act.

34. That apart, the decision of the Umadevi (*supra*) was extensively considered by the Apex Court in the case of **Maharashtra State Road Transport Corporation** (*supra*). In paragraph 26, the Apex Court observed that “careful and complete reading of decision in Umadevi leaves no manner of doubt that what this Court was concerned in Umadevi was the exercise of power by the High Courts under Article 226 and the Apex Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognized by the rules or procedure and yet orders of their regularization and conferring them status of permanency have been passed. Umadevi's (*supra*) is an authoritative pronouncement for the proposition that Supreme Court

(Article 32) and High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc employees unless the recruitment itself was made regularly in terms of constitutional scheme. **Umadevi does not denude the Industrial and Labour Courts of their statutory power under section 30 read with section 32 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'MRTU & PULP Act') to order permanency of the workers who have been victim of unfair labour practice on the part of the employer under item 6 of Schedule IV where the posts on which they have been working exists. Umadevi cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order under section 30 of the MRTU & PULP Act, once unfair labour practice on the part of the employer under item 6 of Schedule IV is established."**

(emphasis supplied)

35. It is in this context necessary to consider the statutory powers conferred on the Industrial and Labour Courts under the I.D.Act. Section 2(ra) of the I.D.Act defines the expression "unfair labour practice" to mean any of the practices specified in the Fifth Schedule. Item 10 of the Fifth Schedule reads as under :

“to employ workmen as “badlis”, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workman.”

36. Section 2(k) of the I.D Act defines the expression “industrial dispute” to mean any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

37. Section 10(1)(d) of the I.D.Act enables the appropriate Government where it is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication.

38. Section 11-A of the I.D. Act lays down powers of the Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workman. Under that, Court can direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit.

39. Section 14 lays down the duties of the Courts to inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the

commencement of its inquiry.

40. Section 15 deals with the duties of Labour Courts, Tribunals and National Tribunals. Section 17 provides for publication of reports and awards. Section 17-A lays down commencement of the award. Section 18 provides for persons on whom settlements and awards are binding. Section 25-B defines the expression “continuous service”. Section 38 enables the appropriate Government to make Rules for the purpose of giving effect to the provisions of the Act.

41. In paragraph 26 of the **Maharashtra State Road Transport Corporation** (*supra*), the Apex Court observed thus:

The question that arises for consideration is: have the provisions of MRTU & PULP Act denuded of the statutory status by the Constitution Bench decision in *Umadevi* (*supra*). In our judgment, it is not. The purpose and object of MRTU & PULP Act, inter alia, is to define and provide for prevention of certain unfair labour practices as listed in Schedule II, III and IV. MRTU & PULP Act empowers the Industrial and Labour Courts to decide that the person named in the complaint has engaged in or is engaged in unfair labour practice and if the unfair labour practice is proved, to declare that an unfair labour practice has been engaged in or is being engaged in by that person and direct such person to cease and desist from such unfair labour practice and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate policy of the Act. The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or

temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer. The provisions of MRTU & PULP Act and the powers of Industrial and Labour Courts provided therein were not at all under consideration in the case of *Umadevi* (supra). As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in *Umadevi* (supra). Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in item 6 of Schedule IV and the power of Industrial and Labour Courts under Section 30 of the Act did not fall for adjudication or consideration before the Constitution Bench. It is true that the case of *Dharwad District PWD Literate Daily Wage Employees Assn.* 1990 I CLR 534 SC 396 arising out of industrial adjudication has been considered in *Umadevi* and that decision has been held to be not laying down the correct law but a careful and complete reading of decision in *Umadevi* (supra) leaves no manner of doubt that what this Court was concerned in *Umadevi* (supra) was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognized by the rules or procedure and yet orders of their regularization and conferring them status of permanency have been passed. *Umadevi* (supra) is an authoritative pronouncement for the proposition that Supreme Court (Article 32) and High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc employees unless the recruitment itself was made regularly in terms of constitutional scheme. *Umadevi* does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of MRTU & PULP Act to order

permanency of the workers who have been victim of unfair labour practice on the part of the employer under item 6 of Schedule IV where the posts on which they have been working exists. Umadevi cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order under Section 30 of MRTU & PULP Act, once unfair labour practice on the part of the employer under item 6 of Schedule IV is established.”

42. In my opinion, what is stated by the Apex Court in paragraph 26 of the **Maharashtra State Road Transport Corporation** (*supra*) in relation to the statutory powers conferred on the Industrial and the Labour Courts under sections 30 & 32 of the MRTU and PULP Act, is equally applicable on all fours while exercising the statutory powers by the Industrial and Labour Courts under the I.D.Act.

43. In the light of the aforesaid discussion, I do not find that the decision in the case of Umadevi advances the case of the First Party. Ms.Masurkar relied upon the decision of the Apex Court in the case of **Accounts Officer (A and I) APSRTC**. In that case also respondents 1 to 3 therein had filed Writ Petition in Andhra Pradesh High Court. They submitted representations to the appellants No. 1 & 2 for regularization of their services claiming that they had completed 240 days of continuous service without any break but since 10/05/1998, the appellants were not giving them work. By order dated 17/10/1997, the High Court directed the Corporation to consider the case of these employees for

regularization of the service. By order dated 31/03/1998, the representation was rejected. Aggrieved by that decision, respondents instituted Writ Appeal which was allowed by the learned Single Judge. After referring to the decision of Umadevi, the Apex Court reiterated the proposition laid down in Umadevi's case. Thus, that was a case arising under Article 226 of the Constitution of India.

44. Ms.Masurkar relied upon the decision of the Apex Court in the case of **B.S.Minhas** (*supra*). In that case also petition under Article 32 of the Constitution of India was filed by the petitioner before the Apex Court challenging the appointment of one Mr.B.P Adhikari as a Director of the Indian Statistical Institute.

45. In case of **B.N.Nagarajan** (*supra*), Writ Petitions were instituted challenging the promotions. All these decisions were rendered either by the High Court or by the Apex Court while exercising powers under Articles 226 and 32 as the case may be.

46. In view of the decision of the Apex Court in case of **Maharashtra State Road Transport Corporation** (*supra*), reliance placed by Ms.Masurkar on these judgments does not advance the case of the First Party.

47. After considering the material on record, I do not find that the Tribunal committed any error in passing the impugned awards. Ms.Masurkar was not in a position to demonstrate that findings recorded by the Tribunal are perverse being based upon no

evidence or that they are contrary to the evidence on record. Merely because another view is possible, that by itself is not sufficient to invoke powers under Article 226 of the Constitution of India. This Court is not exercising appellate jurisdiction over the order passed by the Tribunal.

48. It is settled principle of law that under Article 226 of the Constitution of India, the High Court does not sit or act as an Appellate Authority over the decisions of the Tribunal. The jurisdiction under Article 226 is supervisory in nature. It has to confine itself to correcting any error of jurisdiction by the authorities and cannot assume suo motu jurisdiction of the Appellate Court and attempt to correct every mistake assumed to have been made by the Tribunal. The Court sits in judgment in correctness of the decision making process and not on the correctness of the decision itself. The Court cannot sit as Court of Appeal and substitute its own decision. The Court will interfere where the decision of the Tribunal is vitiated by an error of law apparent on the face of the record.

49. In the light of the above discussion, the petitions fail and the same are dismissed. Rule is discharged in all the petitions. However, in the circumstances, there shall be no order as to costs.

50. At this stage, Ms. Masurkar orally applies for stay of this order for a period of 4 weeks from today. Mr. Sawant opposes the application.

51. Having regard to the fact that petitioner intends to challenge this order before the higher Court, I find that the request made by Ms. Masurkar is reasonable. Hence, notwithstanding dismissal of these Petitions, this order shall remain stayed for the period of 4 weeks from today.

(R. G. KETKAR, J.)