

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.11.2015

Date of Reserving the Order	Date of Pronouncing the Order
28.10.2015	20.11.2015

Coram

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.A.Nos.299, 1289 & 1473 of 2010

W.A.No.299 of 2010

1 M. RAJAN
2 R VENKATESAN
3 L. SEKAR
4 R GNANAOLI
5 G MUTHUKRISHNAN
6 S PARTHIBAN
7 B. RAJKUMAR
8 T KUMARESAN
9 R. MOHANASELVAM
10 S THALATHIAH
11 KP KUMAR
12 S ARULRAJ
13 M SUNDARAMURTHY
14 K PITHCAIPILLAI
15 V GANAPAANDITHAN
16 GA NADHESWARAN

... Appellants

vs

1 OIL AND NATURAL GAS
COMMISSION REP BY ITS REGIONAL DIRECTOR
SOUTHERN REGION, CMDA TOWER, EGMORE ,
CHENNAI- 8.
2 G. MURUGAVEL
3 A KALIMULLAH
4 T DEVARAJ
5 R GURUMURTHY
6 R PUSHPARAJ
7 E RAJAGOPAL
8 D MAHENDRAN (Deceased)
9 R ARJUNAN

10 K RAVIKUMAR
11 W SOWSHADH
12 P MANI
13 J. RAVISANKAR
(R2 to 13 Given up)

... Respondents

W.A.No.1289 of 2010

1 M.D. IQBAL BASHA
2 K. ARULSELVAN
3 B.PACHIAPPAN
4 L. JANARTHANAM
5 S.B. MANOHARAN
6 D. ERNEST THYAGARAJAN
7 K. NARAYANA
8 K. KOTILINGAM
9 V. GOVINDARAJ
10 R. VADIVELU
11 E. NAGARAJAN
12 T.S. RAVIKUMAR
13 S. SELVAKUMAR
14 G.SANKARASUBRAMANIAM
15 K. VENKATESWARLU
16 S. JEEVANANDAM
17 S. RAMAMOORTHY
18 K. RADHAKRISHNAN NAIR
19 ANIL KUMAR SINGH
20 C.H.B.KOTEESWARA RAO
21 P.D. PRASAD RAO
22 A.S. CHANDA RAO
23 K. SIVUDU
24 I. MINASON
25 G.KALIAMURTHY
26 R. CHELLAPANDIAN
27 V.KRISHNAN

... Appellants

(WP Dismissed as withdrawn as per order dated 17.06.2006 as against Appellants/Petitioners 4 and 13)

[Appellants 7 to 23 are working as Security Guards at ONGC Regional Office, CMDA Towers, No.8, Gandhi Irwin Road, Egmore, Chennai - 8]

[Appellants 24 to 27 are working as Security Guards at ONGC Field Stores, Kumbakonam, Tajore District.]

Vs

1 OIL AND NATURAL GAS
CORPORATION LTDREP BY CHAIRMAN CUM MANAGING
DIRECTOR JEEVAN
BHARATHI TOWER -II 124
CONNAUGHT CIRCUS NEW DELHI 110 001.

2 REGIONAL DIRECTOR SOUTHERN
REGION OIL AND NATURAL GAS CORPORATION
LTD. THALAMUTHU NATARAJAN MALIGAI (CMDA
TOWERS), NO.1. GANDHI IRWIN ROAD, EGMORE,
CHENNAI 600 008.

3 THE GENERAL MANAGER, HEAD REGIONAL OFFICE,
OIL AND NATURAL GAS CORPORATION,
THALAMUTHU NATARAJAN MALIGAI (CMDA TOWERS)
NO.1. GANDHI IRWIN ROAD EGMORE CHENNAI
600 008.

... Respondents

W.A.No.1473 of 2010

1 A.KALIMULLAH
2 T.DEVARAJ
3 R.GURUMURTHY
4 R.PUSHPARAJ
5 R.ARJUNAN
6 K.RAVIKUMAR
7 W.NOWSHADH
8 J.RAVI SHANKAR

... Appellants

Vs

1 OIL AND NATURAL GAS COMMISSION
REP BY ITS REGIONAL DIRECTOR PRESENTLY
KNOWN AS BASIN MANAGER , SOUTHERN REGION CMDA
TOWER , EGMORE, CHENNAI 600 008.

2 M.RAJAN
3 G.MURUGAVEL
4 R.VENKATESAN
5 L.SEKAR
6 R.GNANA OLI
7 G.MUTHUKRISHNAN
8 S.PARTHIBAN
9 B.RAJKUMAR
10 T.KUMARESAN
11 E.RAJAGOPAL (RETD)
12 R.MOHANASELVAM
13 S.THALAIAH
14 K.P.KUMAR
D.MAHENDRAN (DECEASED)
15 S.ARULRAJ
16 M.SUNDARAMURTHY
17 K.PICHAIPILLAI

18 V.GNANAPANDITHAN

19 G.A.NANDHEESWARAN

... Respondents

(Respondents 2 to 17 are not necessary parts in this Appeal)

Prayer in W.A.No.299 of 2010 :-Writ Appeal filed under Section 15 of the Letters patent against the order dated 04.01.2010 passed by learned single Judge in W.P.No.7906 of 1999.

Writ petition filed under Article 226 of the Constitution of India, praying for a writ of Mandamus directing the respondent to regularise the petitioners services retrospectively on completion of two years of service and consequently pay the petitioners Monetary benefits, award costs.

Prayer in W.A.No.1289 of 2010 :-Writ Appeal filed under Section 15 of the Letters patent against the order dated 23.02.2010 passed by learned single Judge in W.P.No.870 of 2004.

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified Mandamus calling for the records relating to the order passed by the 3rd respondent dated 24.03.2003, quash the same and further direct the respondents 1 to 3 to regularise the services of the petitioners with effect from 13/01/1988 with all consequential benefits including equal pay.

Prayer in W.A.No.1473 of 2010 :-Writ Appeal filed under Section 15 of the Letters patent against the order dated 04.01.2010 passed by learned single Judge in W.P.No.7906 of 1999.

Writ petition filed under Article 226 of the Constitution of India, praying for a writ of Mandamus directing the respondent to regularise the petitioners services retrospectively on completion of two years of services and consequently pay the petitioners Monetary benefits, award costs.

For Appellant .. Mr.R.Krishnaswamy and
Mr.V.Ajoy Khose in W.A.No.299/2010
Mr.T.R.Rajagopalan Senior counsel for
Mr.C.V.Vijayakumar
in W.A.No.1289 & 1473 of 2010

For Respondents .. Mr.G.Masilamani Senior counsel for
Mr.M.Vijayan for
M/s.King & Partridge for all W.As.,

C O M M O N J U D G M E N T

These Appeals are directed against the order dated 04.01.2010 in W.P.No.7906 of 1999 and W.P.No.870 of 2004, dated 23.02.2010.

2. W.A.Nos.299 & 1473 of 2010 are against the same order in W.P.No.7906 of 1999, dated 04.01.2010 and in W.A.No.1473 of 2010, the Appellants are the petitioners 3, 5, 6, 13, 21, 22, 24, 28 in W.P.No.7906 of 1999, and in W.A.No.299 of 2010, the Appellants are the petitioners 1, 7 to 12, 15 to 17, 19, 20, 23, 25 to 27. The issue involved in all these Appeals are common, they were heard together and are disposed of by this common judgment.

3. W.P.No.7906 of 1999 was filed by 28 Security Guards, who have been engaged by the respondent and they sought for a direction to regularise their services on completion of two years of service and for payment of consequential monetary benefits.

4. W.P.No.870 of 2004 was filed by the 27 petitioners, who were also engaged as Security Personnel by the respondent and they sought for issuance of a Writ of Certiorarified Mandamus to quash the order dated 24.03.2003, passed by the General Manager of the respondent organisation and for a direction to regularise their services with effect from 13.01.1988 with all consequential benefits. By the order impugned in the said Writ Petition, the respondent rejected the demand made by the petitioners for regularisation of their services. Both the Writ Petitions were dismissed primarily on the ground that the High Court under Article 226 of the Constitution should not ordinarily issue direction for absorption, regularisation or permanent continuance unless the recruitment itself was made regularly in terms of the constitutional scheme. W.P.No.7906 of 1999 was also dismissed on the same lines, however, the Court observed that it is open to the petitioners therein to approach the statutory Authorities to redress their grievances.

5. The case of the appellants in W.A.Nos.299 & 1473 of 2010, arising out of the order passed in W.P.No.7906 of 1999 is that the respondent has been engaging them directly for more than a decade as Security Guards without regularising their services. The appellants are stated to be engaged as Security Guards at the Regional Office, Chennai, Harbour Stores inside Chennai Port, Madhavaram Tape Library and residences of the Regional Director, Deputy General Manager (Security) and General Manager (Security) and Stores at Kumbakonam. It is submitted

that totally there are 64 term based Security Guards including the appellants, in the Southern Region of which 45 employees are in Chennai. The appellants were initially employed through a private contractor and after contract labour system was abolished, the respondent continued to engage the contract labour through the agency called 'Priyadarshni Indira Gandhi Co-operative Labour Contract and Society'. At that juncture, a Writ Petition was filed by an Employees Union in W.P.No.7651 of 1986 for regularisation of contract labourers. The said Writ Petition was withdrawn in the light of a settlement, dated 16.12.1986, providing for engagement of contract labourers through a co-operative society and thereafter the said organisation was registered under the Tamil Nadu Co-operative Societies Act, 1993. During 1987, the respondent decided to utilize the services of the Central Industrial Security Force (CISF), which was challenged by the Employees Union in W.P.No.9688 of 1987, stating that having agreed to engage the services of the appellants through a co-operative society, the respondent should not employ CISF personnel. Further relief of absorption as permanent employees was also sought for. The said Writ Petition was dismissed. The appellants contended that in the light of the decision of the Hon'ble Supreme Court in the case of Air India Statutory Corporation vs. United Labour Union & Ors., reported in AIR 1997 SC 645, erst while contract labourers should not be placed in a worse position of losing their employment, which they had and that the contract labourers are to be absorbed.

6. It was further submitted that with effect from 13.01.1988, the appellants were made as a direct employees of the respondent and they have been continued as such. The appellants contended that they were paid consolidated wage of Rs.98/- per day and were denied other benefits. With these facts, the appellants contended that they are entitled for being regularised in service and retaining them as a term based employee is an unfair labour practice and the respondent being a "State" under Article 12 of the Constitution of India should function as a model employer. It was further submitted that the appellants are entitled for regularisation as per the provisions of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, (hereinafter referred to as the 'Act') and should have been made permanent on completion of 480 days of service in two years, more particularly when the work done by the appellants is permanent in nature and it is also an essential service.

7. The appellants in W.A.No.1289 of 2010, the petitioners in W.P.No.870 of 2004, were working as Security Supervisors, Security Guards at the Regional Office at Chennai and some of

them are Security Guards at the Field Stores at Kumbakonam. The appellants contended that they were originally employed through an agency called as "Thai Security Service" and after the abolition of the contract labour system, they were employed directly under the respondent. It was further submitted that the Cleaners and Messengers were also employed by the respondent through a contract labour agent called "Dial Tone" and after the abolition of the contract labour system, they were absorbed by the respondent. It is further submitted that the appellants and other term based employees submitted representations to the respondents for regularisation of their service and a committee was constituted under the Chairmanship of Mr.Kapoor and the Committee submitted its report on 15.06.2001, recommending regularisation of the appellants and the other term based employees. Further, the respondent by office memorandum, dated 29.07.1967, recommended regularisation of the contingent workers like the appellants on certain terms. It is therefore submitted that the action of the respondent is arbitrary, unreasonable and discriminatory.

8. The respondent resisted the Writ Petition filing counter affidavit contending that the Writ Petition is not maintainable as the appellants were not appointed into the service of the respondent in terms of the Recruitment and Promotion Rules, 1980 as amended and such a dispute cannot be resolved in a Writ Petition that too filed after inordinate delay and laches and liable to be dismissed. It was further contended that the respondent on account of exigency engaged ad hoc Security Guards/Security Supervisor through an agency as an interim arrangement, as they were taking active steps to permanently engage the CISF and at that juncture, W.P.No.7651 of 1986 was filed seeking regularisation of their services and an agreement was entered into on 16.12.1986, by which it was agreed that the Security Guards/Supervisors would form a co-operative society and meet the requirement of the respondent whenever necessary and from time to time. Ultimately, the Writ Petition was dismissed as not pressed. Thereafter, during 1987, another Writ Petition was filed in W.P.No.9688 of 1987 after the first batch of CISF was deployed. In the said Writ Petition, this Court permitted the CISF to be inducted without any reduction of manpower availed from the co-operative societies. However, the relief of regularisation of such personnel was negated by order dated 15.01.1988 and the matter attained finality. The term based engagement of the appellants was purely temporary for a specific period and the Standing Orders of ONGC are not applicable to the appellants. The appellants unequivocally accepted these conditions and are now estopped from contending to the contrary. It is submitted that these facts have not been placed before this Court and have been suppressed. Further, it

is submitted that since there is no drilling operation in and around Chennai ever since 1988, there is no requirement of Security Guards/Supervisors and the appellants are continuing under Court orders. It was further contended that all the appellants have been paid other allowances and contributions apart from the wages paid to them. Further, it is stated that the decision in the case of Air India Statutory Corporation vs. United Labour Union & Ors., (supra), was overruled by the Constitution Bench in the case of Steel Authority of India & Ors., vs. National Union Water Front Workers & Ors., reported in (2001) 7 SCC 1. It was further submitted that regular Security Personnel are recruited following the procedure under the Recruitment and Promotion Rules, 1980, which provides for requisite qualification, physical standards and the performance is assessed by interview. Further, it was submitted that the appellants are not governed by the CDA Regulations of ONGC and cannot be entrusted with any responsibility and having been deployed only in the offices and not in the installations and drilling rigs, for which they do not possess the qualifications. Further, it is submitted that the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen Act, is not applicable to the facts and circumstances of the case.

9. With regard to "M/s.Dial Tone", it is submitted that they were contractors who provided House Keeping and Messenger services prior to the formation of Priyadharshini Co-operative Society and in the light of the orders passed in W.P.No.9688 of 1987, they were offered term based engagement as term based Messenger and term based Sanitary Cleaners. The Office Memorandum referred to by the appellants dated 29.06.1967, has no connection with the facts of the present case, as several subsequent events have taken place. It was further submitted that regular vacancies should be filled up as per the ONGC Recruitment and Promotion Regulation, 1980, ("R&P Regulations"). As per clause 3 of the R & P Regulations, all posts in ONGC should be filled up through direct recruitment or promotion of employees who are already in service of the Corporation or borrowing the services of persons from Central Government or State Government or Public Sector undertaking or any other method as may be decided by the Corporation for reasons to be recorded in writing. Clause 6 of the R & P Regulations governs the procedure of filling up the vacancies by direct recruitment. As per Clause 6(12)(c) of the R & P Regulations, priority will be given to contingent casual labourers. Since the appellants are not appointed as regular employees in accordance with the rules and regulations governing the service conditions of the employees of ONGC, the appellants are not entitled for regularisation. On the above grounds, the respondents prayed for

dismissal of the Writ Petition.

10. Both the Writ Petitions were dismissed by separate orders, dated 04.01.2010 and 23.02.2010. There are three Writ Appeals because out of the 28 petitioners in W.P.No.7906 of 1999, all of them have not filed a single Writ Appeal, but have preferred two Writ Appeals namely, W.A.Nos.299 & 1473 of 2010.

11. Mr.T.R.Rajagopalan, learned Senior counsel appearing for the appellants and Mr.V.Ajoy Khose reiterated the factual averments set out above and submitted that the legal issue involved in this case is squarely covered by the decision of the Hon'ble Supreme Court in the case relating to the respondent corporation and pertaining to employees similarly placed like that of the appellants. The said decision in the case of ONGC vs. Petroleum Coal Labour Union & Ors., reported in (2015) 6 SCC 494, (hereinafter referred to as 'PCLU case') squarely covers the issue. In this regard, the learned Senior counsel referred to the paragraphs 28, 36 & 37 of the judgment. Therefore, it is the submission on behalf of the appellant, the issue having been already decided by the Hon'ble Supreme Court, the necessity of approaching the Labour Court for relief does not arise and the appellants are entitled to the relief prayed for. The learned Senior counsel submitted that though the appellants were not parties to the award passed by the Industrial Tribunal in I.D.No.66 of 1991, which was affirmed by the Hon'ble Supreme Court in the case of PCLU (supra) in the light of Section 18(3) (d) of the Industrial Disputes Act (I.D. Act), all workmen who are employed in the establishment or subsequently become employed in that said establishment, would be bound by the award made by the Industrial Tribunal as the management as also the workmen were parties to the award and the respondent cannot state that the award was not binding on them only because they were not parties. In support of such contentions, reliance was placed on the decisions of the Hon'ble Supreme Court in the case of Punjab National Bank vs. Manjeet Singh reported in (2006) 8 SCC 647.

12. Mr.V.Ajoy Khose, learned counsel appearing for the appellants submitted that out of 28 Petitioners in W.P.No.7906 of 1999, 16 have filed W.A.No.299 of 2010 and the remaining Petitioners have filed W.A.No.1473 of 2010. The appellants are employed by ONGC both in Chennai and Karaikal Region as Security Guards and Security Supervisors. The appellants are qualified and they have passed 8th standard and some of them have higher qualification except one person as held by the Tribunal in the earlier case as per the recruitment Rule, which was in force at the time of their appointments. Further it is submitted that in terms of the order passed by the respondent, dated 02.09.2010,

there are 68 vacancies/sanctioned posts in Chennai, so as to regularise all the appellants in the three Writ Appeals. It is further submitted that the only impediment pointed out by the respondent to term the appointments of the appellants as illegal is that they were not appointed through the employment exchange. Referring to the decision of the Division Bench of this Court in the case of The School Committee, Tilak Vidya Higher Secondary School vs. District Educational Officer and Anr., reported in 1991-1-TLNJ-1, it is submitted that non-sponsorship from the employment exchange cannot be termed to be illegal. It is further submitted that at the most the appointments of the appellants could be termed as irregular appointments and in terms of the decision in Uma Devi (supra), they are entitled to regularisation since they have been directly employed for about 27 years i.e., from 1988. Therefore, it is submitted that the main part of the decision in Uma Devi (supra), is not applicable to the appellants as their appointments are not illegal.

13. Further, it is submitted that the same contention was considered and rejected by the Hon'ble Supreme Court in the case of PCLU (supra), and the judgment is binding on the respondent. It is further submitted that the respondent cannot take a stand that regularising the appellants would be contrary to the judgments in Uma Devi and Uma Rani (supra), when they have accepted the judgment in PCLU (supra), and the respondent cannot be selective and grant regularisation to one set of workmen and deny the same to the others, who are similarly placed and this would be arbitrary and discriminatory. In support of such contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the case of Indira Paul Yadava vs. UOI reported in (1985) 2 SCC 648, and Harinanthan Prasad vs. Food Corporation of India, reported in (2014) 7 SCC 190. Referring to paragraph 39 in Harinanthan Prasad (supra), it is submitted that when there is unfair labour practice, the Labour Court or Tribunal can grant relief of regularisation and wherever it is found that similarly situated workmen are regularised by the employer themselves by a scheme or otherwise and the workmen, who approached the Tribunal or Labour Court are similarly placed to them, direction for regularisation in such case would be legally justified and otherwise non-regularisation of such left out worker itself would amount to invidious discrimination qua them in such cases and it would be violative of Article 14 of the Constitution. Therefore, it is submitted that the respondent cannot apply Uma Devi and Uma Rani (supra), selectively and deny benefit to the appellants. Further, by referring to paragraph 5 of Indira Paul Yadava (supra), it is submitted that the Hon'ble Supreme Court held that those who do not come to Court need not be at a comparative disadvantage to those, who rush to Court and they are entitled for similar

treatment. Thus, the scheme of regularisation framed by the Tribunal having been upheld by this Court and the Hon'ble Supreme Court and implemented by the respondent should also be extended to the appellants as they are similarly placed. It is further submitted that there is no factual dispute between the workmen, who were covered in the award of the Industrial Tribunal which has been upheld by the Hon'ble Supreme Court and the appellants and by applying the said decision, the appellants are to be regularised and there is no need to drive the appellants to take recourse to alternate remedy.

14. It is further submitted that the respondent cannot contend that Standing Orders are not applicable to them, as they are working in Chennai, when their own Standing Order says it is applicable to all Units including their Chennai Units and incorporating a clause in their term based appointment order stating that Standing Order will not apply is only to deny them the benefit of regularisation. It is further submitted that the appellants are workmen as defined under Section 2(s) of the I.D.Act and when this fact was not disputed, the appellants would automatically be workmen within the meaning of Section 2 (i) of the Industrial Employment (Standing Orders) Act and therefore, they are covered by the Standing Orders of the respondent and entitled to the benefit of regularisation under clause 2(1)(ii) of the Standing Orders of the respondent, which was extended to the other 240 Security Guards. It is further submitted that even assuming without admitting the Standing Orders are not applicable to the appellants, the relief given to 240 Security Guards in the other case can be extended, since the employment of the appellants for more than 24 years and to retain them as temporary term based employees is an unfair labour practice. It is further submitted that all the three enactments namely, the I.D.Act, Standing Orders Act and the Tamil Nadu Act 46 of 81, does not make any distinction in the definition of workmen based on mode of payment, status, mode of recruitment. When the workmen in private employment are entitled to the benefits of permanence without reference to mode or method of employment, the same would apply to the respondent, a private sector undertaking. In support of such contention, reliance has been placed on the decision of the Hon'ble Supreme Court in the case of Ajay Pal Singh vs. Haryana Warehousing Corporation reported in (2015) 6 SCC 321, and the decision of a Division Bench of this Court in the case of Superintending Engineer, Nagapattinam Electricity Distribution Circle vs. Inspector of Labour reported in 2009-4-MLJ-472, and the decision of the Division Bench in the case of R.Lakshmi vs. Chief Engineer (Personnel), TNEB, reported in 2012-6-MLJ-480. It is further submitted that the appellants do not rely upon the judgment in Air India Statutory Corporation, (supra), and hence

overruling of the decision in the case of Steel Authority (supra), will not affect the right of the appellants to get permanence on par with the other similarly placed persons.

15. Further, it is submitted that there is no conflict between the three enactments and the Constitution of India in providing permanence/regularisation. Further, the validity of Tamil Nadu Act 46 of 81 has been upheld by the Hon'ble Supreme Court in the case of State of Tamil Nadu, vs. Nellai Cotton Mills Ltd., reported in (1990) 2 SCC 518, referring to the decision of the Hon'ble Supreme Court in the case of General Manager, ONGC vs. ONGC Contractual Workers Union, reported in 2008-2-LLJ-1071(SC), it is submitted that the Hon'ble Supreme Court in the said case held that the employees were direct employees of ONGC and not contract labourers and entitled for regularisation without reference to Uma Devi (supra). Thus, it is submitted that the decision in the case of Uma Devi (supra), cannot be taken as euclid's formula in every case. It is further submitted that there are no disputed questions of fact requiring any factual adjudication and the present case requires only application of the three enactments based on the admitted facts. Therefore, the appellants need not be driven to seek alternate remedy as contended by the respondent particularly after about 16 years after filing of the Writ Petition and the appellants having crossed the age of 50 years or more. Reliance was also placed on the decision in the case of Manager ONGC vs. G.Radhakrishnan, reported in 2005-2-LLJ-881, where similarly placed Security Supervisors was held to have acquired a valuable right and should be treated as a regular employee and entitled to continue upto 60 years as in cases of regular employees of the respondent. Further, it is submitted that alternate remedy is not a bar to entertain a Writ Petition, since it is only a Rule of continence and not a Rule of law. To support such contention, reliance has been made to the decision of this Court in Arasu Viraivu Pokkuvarathu Oozhiyar Sangam vs. State Express Transport Corporation Ltd., Chennai & Ors., reported in 2006-3-LLJ-245, it is submitted that the High Court under Article 226 and the Hon'ble Supreme Court under Article 136 can grant the same relief as the one which was granted by the Labour Court and reliance has been placed on the decision of the Hon'ble Supreme Court in the case of Gujarat Steels Tubes Ltd., vs. Gujarat Steel Tubes Mazdoor Sabha, reported in 1980-1-LLJ-137. It is submitted that though the Hon'ble Supreme Court in the case of Official Liquidator vs. Dayananth (supra), held that the judgment in the case of U.P. SEB vs. Pooran Chandra Pandey, reported in (2007) 11 SCC 92, is contrary to the Constitution Bench judgment in Uma Devi (supra), the said decision does not deal with the power of the Labour Court and Tribunal to grant the relief of regularisation particularly in case of unfair

labour practice. Hence, it is submitted that the judgments which have been referred to by the Hon'ble Supreme Court in the case of PCLU (supra), regarding the power of the Labour Courts and Tribunals to grant the relief of regularisation alone will apply to the case of the appellants and Uma Devi & Uma Rani (supra) have no application to their case.

16. Mr.G.Masilamani, learned Senior counsel appearing for the respondent submitted that the Writ Petitions were filed by the appellants without approaching the Industrial Tribunal and there is no order of reference to decide a dispute and the Writ Petitions were filed after delay of nearly nine years. The Writ Petitions were dismissed by relying upon the decision of the Hon'ble Supreme Court in the case of State of Karnataka vs. Uma Devi reported in (2006) 4 SCC 1, and four of the petitioners/appellants did not file any Writ Appeal against the said order. Reliance has been placed on the decisions of the Hon'ble Supreme Court in the cases of ACC Ltd., vs. Their Workmen, reported in AIR 1961 SC 777, Ram Nagar Cane and Sugar Company vs. Jatin reported in AIR 60 SCC 1012 and the decision in the case of BNC Mills Employees Union vs. Commissioner of Labour and Ors., reported in 1964-2-MLJ-357.

17. With regard to W.P.No.870 of 2004, two of the petitioners withdrew their Writ Petitions and as such were not parties to W.A.No.1289 of 2010. It is further submitted that the Writ Petition was filed based on the decision of the Hon'ble Supreme Court in the case of Air India Statutory Corporation, (supra), and the said decision has been overruled by the Constitution Bench of the Hon'ble Supreme Court in the case of Steel Authority of India & Ors., (supra). Further, it is submitted that the contention that the appellants are entitled to rely upon the provisions of the Act is not tenable, since the Hon'ble Supreme Court in the case of Uma Rani vs. Registrar of Co-operatives reported in (2004) 7 SCC 112, held that the said enactment cannot be pressed into service by those who got appointment dehorse the Rules. Relying upon paragraph 34 of the decision in the case of Uma Devi (supra), it is submitted that when appointments were made in contravention of mandatory provisions of the Act and statutory Rules framed thereunder and by ignoring essential qualifications, the appointments would be illegal and cannot be regularised by the State and that regularisation is not and cannot be a mode of recruitment by any State under Article 12 of the Constitution and regularisation cannot give permanence to the employee whose services are ad hoc in nature and merely because some persons are working for a long time would not mean that they acquired a right for regularisation. It is further submitted that the continuation of the appellants' employment is a litigious employment which

has been deprecated by the Hon'ble Supreme Court in the case of Uma Devi (supra).

18. It is further submitted that in all the three Writ Appeals' arguments were advanced only by placing reliance on the decision of the two Judges Bench of the Hon'ble Supreme Court in the case of PCLU case. It is submitted that the said judgment is not applicable to the facts of the case. Elaborating on the said submission, it is stated that the question before the Hon'ble Supreme Court was whether the award passed by the Industrial Tribunal can be interfered or not? The Hon'ble Supreme Court relied upon an earlier decision in the case of Bharat Bank Ltd., vs. Employees reported in AIR 1950 SC 188, wherein it was held that the adjudication of the Tribunal is an extended form of collective bargaining and is more akin to administrative than to judicial function and that the Tribunal can confer the rights and privileges on either party, which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It is submitted that in the cases on hand, there is no award passed in favour of the appellants and the decision in the case of PCLU (supra), is not applicable to the present cases, more particularly when both this Court as well as the Hon'ble Supreme Court decided that there was no error in the award passed by the Industrial Tribunal. It is further submitted that this Court is bound by the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of Uma Devi (supra), wherein it was clarified that those decisions, which run counter to the principles settled in Uma Devi's case or in which directions running counter to the decision in Uma Devi (supra), will stand denuded of their status as precedents. Therefore, a judgment contrary to the law laid down in the case of Uma Devi (supra), cannot be considered as a binding precedent. On facts, it is submitted that the appellants are working in the administrative office, residence at Chennai and stores at Kumbakonam as Security Guards and not working in an industrial establishment, unlike those concerned in the decision of the Hon'ble Supreme Court in the case of PCLU (supra), since those employees were working in Karaikal asset of ONGC which is an industrial establishment and therefore, the Industrial Standing Orders shall not apply to the appellants which was strongly relied upon in PCLU case.

19. It is further submitted that the two Judges Bench decision of the Hon'ble Supreme Court in the case of PCLU (supra), is contrary to Uma Rani (supra), Uma Devi (supra), and in the case of Official Liquidator vs. Dayanand & Ors., reported in (2008) 10 SCC 1, (three Judges Bench) and hence, the decision can at the most be considered as a judgment on facts of the said case. It is further submitted that Uma Devi's case, was decided

on the premise of equality of opportunity and non-discrimination under Article 14 of the Constitution of India. However, in PCLU case, a distinction is sought to be made to the effect that employment in industrial establishment shall not be governed by Uma Devi's case. Therefore, it is submitted that Article 14 shall apply to all citizens and hence employment in Industrial Establishment cannot be carved outside Article 14 and no law including the I.D.Act, cannot be held to be outside the sweep of Article 14 and the Industrial Tribunal is also amenable to Article 14. It is further submitted that the decision in the case of PCLU (supra), should be read as obiter and not as a binding precedent. In support of such contention, reliance has been placed on the decision in the case of Official Liquidator (supra).

20. The learned Senior counsel also referred to the decision of the Hon'ble Supreme Court in the case of Indian Drugs & Pharmaceuticals Ltd. v. Workmen, reported in (2007) 1 SCC 408, and the said decision has dealt with all the contentions raised with regard to the regularisation. Therefore, it is submitted that the relief claimed by the appellants in the Writ Petition is clearly violative of Article 14 and 16 of the Constitution of India and no such relief can be granted in violation of the Constitutional provisions and the appeals are liable to be dismissed.

21. We have elaborately heard the learned counsels appearing for the parties and have carefully perused the materials placed on record and the decisions cited at the bar.

22. We have set out the factual matrix in the opening part of this judgment and we find that some of the facts are admitted and what would be relevant is that all the appellants were engaged by the respondent Corporation as term based employees after the contract labour system was abolished, wherein the services of the appellants were utilized through a labour contract society. One more aspect which is clear is that none of the appellants were subjected to a process of recruitment conducted by the respondent for the post, which they hold at present. The respondent organisation is a Government of India enterprise, which has framed its own service Rules and there are also certified Standing Orders which bind the Industrial Establishments of the respondent Corporation. Though several contentions were raised in the Writ Petition, in these appeals the learned counsel appearing for the appellants after referring to the factual details rested their entire arguments on the decision of the Hon'ble Supreme Court in the case of PCLU (supra). The other contentions raised are supplemental to this contention. It is their contention that the decision cover the

cases on hand and there is no difference or distinction between the employees who were subject matter of said litigation and the appellants.

23. Before going into the factual aspect, which was dealt with by the Hon'ble Supreme Court in the case of PCLU (supra), we may note the submission of the learned Senior counsel appearing for the respondent that the decision should be read as obiter and not as a binding precedent and at best, it could be considered a judgment on facts of the said case.

24. One of the contentions raised by the appellants at the time of filing the Writ Petition is that their services are to be regularised following the decision in the case of Air India Statutory Corporation vs. United Labour Union & Ors., (supra). This contention has to necessarily fail in the light of the fact that the said decision was overruled by the Constitution Bench of the Hon'ble Supreme Court in the case of Steel Authority of India & Ors., (supra), wherein the Hon'ble Supreme Court held as follows:-

125(4). We overrule the judgment of this Court in Air India case [(1997 9 SCC 377)], prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case [(1997 9 SCC 377)], shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

25. Mr.V.Ajoy Khose, learned counsel appearing for the appellants concedes to the point and submits that they do not rely upon the judgment in Air India Statutory Corporation (supra).

26. In Uma Rani vs. Registrar of Co-operatives (supra), the primal question decided was whether the State has requisite authority to direct regularisation of the services of the employees of co-operative society by reason of a Government Order by which the Government of Tamil Nadu sought to regularise the appointments made in Co-operative Societies without notifying the employment exchange in respect of those employees who had completed 480 days of service in two years purported to be in terms of the Act. The said question was answered on the following terms:-

39. Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any "State"

within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed thereunder. It is also now well settled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. (See State of H.P. v. Suresh Kumar Verma reported in (1996) 7 SCC 562)

40. It is equally well settled that those who come by back door should go through that door. (See State of U.P. v. U.P. State Law Officers Assn., reported in (1994) 2 SCC 204)

41. Regularisation furthermore cannot give permanence to an employee whose services are ad hoc in nature.

42. The question came up for consideration before this Court as far back in 1967 in State of Mysore v. S.V. Narayanappa reported in (1967) 1 SCR 128, wherein this Court observed:

"Before we proceed to consider the construction placed by the High Court on the provisions of the said order we may mention that in the High Court both the parties appear to have proceeded on an assumption that regularisation meant permanence. Consequently it was never contended before the High Court that the effect of the application of the said order would mean only regularising the appointment and no more and that regularisation would not mean that the appointment would have to be considered to be permanent as an appointment to be permanent would still require confirmation. It seems that on account of this assumption on the part of both the parties the High Court equated regularisation with permanence."

43. This Court yet again in R.N. Nanjundappa v. T. Thimmiah [(1972) 2 SCR 799], it was held:

"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. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

44. The said decisions of this Court have received approval of a three-Judge Bench of this Court in B.N. Nagarajan v. State of Karnataka wherein it was held that the procedures for appointment as contained in the Rules framed under Article 309 of the Constitution of India must be complied with.

45. No regularisation is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules.

In terms of the above decision, an appointment made in violation of the mandatory provisions of the statute and in particular ignoring the minimum educational qualification and other essential qualification would be wholly illegal and such illegality cannot be cured by taking recourse to regularisation; Regularisation cannot give permanence to an employee whose services are ad hoc in nature; procedures for appointment as contained in the Rules framed under Article 309 of the Constitution of India must be complied with; no regularisation is permissible in exercise of statutory power conferred under Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules.

27. The decision of the Hon'ble Supreme Court in the case of State of Karnataka vs. Uma Devi (3) & Ors., (supra), held as follows:-

In A. Umarani v. Registrar, Coop. Societies a three-Judge Bench made a survey of the authorities and held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointments would be illegal and cannot be regularised by the State. The State could not invoke its power under Article 162 of the Constitution to regularise such appointments. This Court also held that regularisation is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution or any body or authority governed by a statutory Act or the rules framed thereunder. Regularisation furthermore cannot give permanence to an employee whose services are ad hoc in nature. It was also held that the fact that some persons had been working for a long time would not mean that they had acquired a right for regularisation.

28. The learned Senior counsel appearing for the respondents submitted that the decision of the Hon'ble Supreme Court in the case of PCLU (supra), should be read as obiter and not a binding precedent in the light of the decisions in the cases of Uma Rani (supra) and Uma Devi (supra), at the most the decision could be considered as a judgment on facts of the said case. This submission is emphasised by referring to the observations made by the Hon'ble Supreme Court in the case of Uma Devi (supra), in paragraph 54, wherein it was held that those decisions which run counter to the principles settled in the said case or in which, directions running counter to what has been held therein, will stand denuded of their status as precedent. The observations made by the Hon'ble Supreme Court in the case of Official Liquidator (supra), is also pressed into service to support the contention that the decision in PCLU case is obiter.

29. The learned Senior counsel appearing for the appellants heavily relied upon the decision in the case of PCLU (supra), contending that the employees who were parties to the said litigation are similarly placed as that of the appellants herein and those employees whose cases were subject matter of consideration in the said decision were also initially engaged through the labour co-operative societies and thereafter, they were brought under the respondent as term based employees.

30. In the light of the above submissions two questions would fall for consideration firstly whether the case of PCLU (supra), is identical to that of the cases of the appellants herein and the cases are covered by the said decision. If the answer to this question is in affirmative, then we would be required to answer the second question as to whether the decision in PCLU (supra), is a binding precedent or to be read as obiter or at the most considered as the judgment of the facts of the case. Thus, the necessity to decide the second question would largely depend upon the answer or conclusion which we may arrive at on the first question.

31. The workmen whose case was canvassed by their labour union namely PCLU, were employed by the respondent Corporation as Security Personnel for their project and initially they were employed as Security Guards and Security Supervisors through contractors. Consequent upon abolition of the contract labour by notification, dated 08.12.1976 issued by the Government of India under Section 10(1) of the Contract Labour (Abolition and Regulation) Act, 1970, abolishing contract labour for watch and ward, dusting and cleaning jobs in the respondent Corporation, the workmen concerned were employed as per the settlement

arrived at between the Trade Union and the Management of the respondent under Section 18(1) of the I.D., Act, under which it was agreed to form a Co-operative Society for the welfare of the erstwhile contract workmen and their services be utilised by the respondent Corporation through the Co-operative Society to meet its requirements for the time period for which required, thus dispensing intermediary contractors. Decision was taken by the respondent on 24.11.1982, to entrust security work to CISF to protect their installations subject to sanction by the Government of India and this policy decision taken by the respondent corporation was sanctioned by the President of India on 16.12.1985 for creation of posts for security coverage of the respondent corporation. After induction of the CISF personnel into security force of the respondent Corporation, the contract employees were issued memorandum of appointment directly to each one of the workmen concerned appointing them to the posts of 'Watch and Ward Security' on term basis from 13.1.1988 to 29.2.1988 and also on the condition that the Certified Standing Orders for Contingent Employees of ONGC will not apply to them. After completion of the above mentioned term, the workmen concerned were continued by the respondent Corporation in their respective posts as a stop gap measure without formal written orders, as a result of which, the workmen concerned who were engaged through contractors and those who were members of the Co-operative Society became employees of the respondent Corporation on temporary basis. Those workmen raised an industrial dispute claiming regularisation of their services in the respondent Corporation and on 10.10.1991, the Central Government in exercise of its power under Section 10 of the I.D. Act referred the dispute to the Industrial Tribunal, Chennai to adjudicate the dispute on the following two questions:-

"(i) whether the management of ONGC is justified in not regularising the workmen in the instant dispute, and, if not, to what relief the workmen are entitled to?

(ii) whether the management of ONGC is justified in not paying equal wages to the workmen in the instant dispute on par with that of the regular workmen and, if not, to what relief the workmen are entitled to?"

32. Before the Industrial Tribunal, the Trade Union filed a memo stating that question No.(ii) above had been settled out of Court and no further adjudication was required by the Tribunal. The Tribunal proceeded to adjudicate question No.(i) on the facts and circumstances and evidence placed on record and passed an award dated 26.05.1999, directing the respondent Corporation to regularise the services of those workmen by relying on the legal principles laid down by the Hon'ble Supreme Court in the case of Air India Statutory Corporation & Ors., (supra), and

further held that the workmen concerned were entitled for regularisation of their services, since they had completed 480 days of work as required under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen Act, 1981. Aggrieved by the award of the Tribunal, the respondent Corporation filed a Writ Petition before this Court in W.P.No.1846 of 2000, raising several contentions and placing reliance on the decision of the Hon'ble Supreme Court in the case of Uma Devi (3) (supra). The Workmen submitted that the dispute falls within the jurisdiction of the Industrial Tribunal under the provisions of the I.D.Act and the Tribunal had sufficient jurisdiction to adjudicate the dispute referred to it and to continue their services on temporary basis from 1988 is an unfair labour practice on the part of the respondent Corporation. Therefore, it was contended that the Industrial Tribunal was right in directing the workmen concerned to be regularised and the law laid down in the case of Uma Devi (supra) had no application to the cases of industrial adjudication. The learned Single Judge who heard the Writ Petition on appreciation of the facts, circumstances and the legal contentions urged by both parties, held that the dispute between the parties regarding non-regularisation of the workmen concerned falls within the scope of industrial dispute as defined under Section 2(k) of the I.D. Act. Consequently, the Writ Petition was dismissed by judgment and order dated 04.01.2011. Aggrieved by the same, the respondent Corporation filed Writ Appeal before the Division Bench of this Court in W.A.No.1006 of 2011. The Division Bench after considering the facts, circumstances and nature of the evidence on record, which was placed before the Tribunal and appreciated by the learned Single Judge, dismissed the appeal holding that the appointment of those workmen cannot be termed as illegal appointment, but was only an irregular appointment and therefore, entitled for regularisation in their services having been employed on temporary basis and having completed more than 240 days in the calender year subsequent to 13.01.1988. Challenging the said order, the respondent Corporation preferred appeal before the Hon'ble Supreme Court which ultimately lead to the decision in the case of PCLU (supra). From the above facts, it is clear that the workmen therein raised an industrial dispute in 1991. The Central Government on being satisfied that there exists a dispute, exercised its power under Section 10 of the I.D. Act and referred the matter to the Industrial Tribunal for adjudication. Thereupon the Tribunal adjudicated the dispute considered the facts of the case, the circumstances and the evidence on record and passed the award on 26.05.1999.

33. It is not in dispute that the appellants herein did not raise a dispute along with the other workmen who raised the dispute as early as in the year 1991. It is only in April 1999, some of the appellants approached this Court and filed the Writ Petition in W.P.No.7906 of 1999, the other Writ Petition in W.P.No.870 of 2004, was filed only during January 2004, at which point of time, the Writ Petition filed by the respondent Corporation challenging the award of the Tribunal in I.D.No.66 of 1991, was pending before this Court. The delay of nine years in approaching this Court for the first time i.e., during 1999, by one set of Appellants remain unexplained. Equally the delay in approaching this Court while filing the second Writ Petition in 2004, has also not been explained.

34. The Hon'ble Supreme Court in the case of PCLU (supra), framed two questions for consideration namely,

(i) whether jurisdiction of the Tribunal to direct the Corporation to regularise the services of the workmen concerned in the posts is valid and legal?

(ii) whether the appointment of the workmen concerned in the services of the Corporation is irregular or illegal?

35. Thus, we find both these questions, which were taken up for consideration by the Hon'ble Supreme Court revolve on the facts of the said case. In other words, the Hon'ble Supreme Court examined as to whether the Industrial Tribunal on facts, properly adjudicated the case and whether the ultimate conclusion culminating in the award dated 26.05.1999, was just and proper. The evidence placed before the Tribunal was taken note of and the Hon'ble Supreme Court has given reasons to come to the conclusion that the award passed by the Industrial Tribunal as confirmed by this Court is just and proper and the reasons recorded in the judgment of this Court are legal and valid. Further, the Hon'ble Supreme Court proceeded to issue certain directions as the industrial dispute between the parties has been litigated for 25 years. Therefore, the Hon'ble Supreme Court considering the facts of the said case examined the correctness of the decision of the Industrial Tribunal and the decision of the Industrial Tribunal was based on the facts and the evidence placed before it.

36. On a perusal of the award dated 26.05.1999, in I.D.No.66 of 1991, we find that witnesses were examined both on the side of the workmen as well as the management and the

workmen exhibited 25 documents and on the side of the management 12 documents were exhibited. On appreciation of the entire facts, the award came to be passed. In such circumstances, we have very little doubt in our mind that the appellants herein cannot by-pass the procedure, which they ought to have followed as that of the workmen in the said case and straightaway could not have approached this Court and sought regularisation, which is being opposed on several grounds and also on the ground of delay and laches.

37. In the preceding paragraphs, we have noted the submissions of the learned counsel appearing for the appellants contending that their appointments are not illegal, but may amount to be an irregular appointment and merely because their names were not sponsored by the employment exchange cannot be a reason to term their employment as illegal. Based on such contention, it is submitted that the main part of the judgment in the case of Uma Devi (supra) is not applicable to their cases. We are unable to accept the said contention, since the proper method to understand and interpret any judgment is to read the judgment as a whole. Whether an appointment was irregular or illegal could be decided based on the facts of each case. A distinction is sought to be drawn by the respondent regarding the nature of appointment of the appellants. It is their contention that the appellants are not workmen covered by the Standing Order of the respondent. The appellants do not dispute that their orders of appointment as term based employees specifically states that Standing Orders are not applicable to them. This is sought to be got over by contending that the respondent inserted such a condition in the offer of appointment only with a view to deny the benefit of permanence. Another contention raised by the respondent is that the appellants never worked in an industrial establishment for being entitled to the benefit of the statutes, as they were employed in the Offices and other places in and around Chennai. In the background of these facts, it has to be seen as to whether this Court exercising powers under Article 226 could adjudicate such disputes as done by the Industrial Tribunal in the case of PCLU (supra), where oral and documentary evidence were placed before the Tribunal. The definite and only answer shall be in the negative, as these aspects require examination of facts coupled with oral and documentary evidence. Therefore, we cannot give a finding as to whether the appointments of the appellants were irregular and not illegal solely based on the decision in the case of PCLU (supra), which was rendered after the Tribunal recorded a finding of fact on such issue.

38. The appellants have claimed that they are continuing as term based employees for over two decades and most of them have crossed the age of 50 years and it would be harsh to drive them to resort to alternate remedy. At the first blush, the argument appears to be convincing, but we cannot ignore the objection raised by the respondent stating that the appellants for the first time approached this Court only during 1999 and there was a delay of more than 9 years. Another set of appellants came much later when the award was to be pronounced by the Tribunal. This factor also requires to be considered, as to whether this delay by itself would disentitle the appellants to any relief, this again is a question to be adjudicated and not in a summary manner under Article 226. The Hon'ble Supreme Court in the case of Harinanthan Prasad (supra), pointed out that in the absence of any unfair labour practice, the Labour Court would not give direction for regularisation only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years and giving direction to regularise such a person only on the basis of number of years put in by such a worker as a daily wager, etc., may amount to back door entry into service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the Recruitment Rules. It was further pointed out that wherever it is found that similarly situated workmen are regularised by the employer itself under some schemes and workmen who have approached the Labour Court are on par with them, direction of regularisation in such cases may be legally justified.

39. Thus, the question would be whether the appellants are back door entrants, whether they fulfilled the eligibility requirement of the post as per the Recruitment Rules of the respondent and whether they are identically and similarly placed as that of the workmen, who were granted relief by the Industrial Tribunal or questions of fact to be determined not for the High Court, but by the Tribunal. It is to be noted that the decision in the case of Harinanthan Prasad (supra), arose out of an award passed by the Central Government Industrial Tribunal.

40. It is reiterated by the learned counsel appearing for the appellants that all the appellants are entitled to the relief granted to the 240 Security Guards, who were covered by the award of the Industrial Tribunal, which was confirmed by the Hon'ble Supreme Court. We do not propose to convert our jurisdiction into one that could be exercised by the Tribunal to render a factual finding as regards the similarity of the terms and conditions of employment. This exercise has to be

necessarily done by a forum created under the Industrial Disputes Act which remedy those 240 Security Guards availed of at the earliest point of time. They raised an industrial dispute, conciliation having been failed, failure report was considered by the Government and the Government on being satisfied there exists an industrial tribunal made an order of reference to the Tribunal to adjudicate the same.

41. As pointed out earlier, two issues were referred for adjudication of which one issue was settled out of Court and a memorandum to the said effect was recorded by the Tribunal. The sole issue with regard to the right of regularisation was adjudicated by the Tribunal both on facts as well as on law and an award was passed. Therefore, the appellants have to necessarily avail the remedy provided under the Act not only for seeking regularisation of the services, but also to establish that there is no difference between them and the 240 Security Guards, who were granted relief by the Tribunal in the earlier litigation.

42. The decision in the case of Gujarat Steel Tubes (supra), arose out of an award passed by the Labour Court wherein the workmen were discharge simplicitor on the ground that their strike was illegal and unjustified. While testing the correctness of the award, one of the questions was regarding the "sweep" of Article 226 of the Constitution in which a contention was raised that the High Court could not under Article 226 of the Constitution direct reinstatement, and even if it is felt that the Arbitrator had gone wrong in refusing reinstatement, the Court could only demolish the order and direct the Arbitrator to reconsider the issue. It was further contended that what belonged as a discretionary power to a Tribunal or other adjudicatory body could not be wrested by the Writ Court. Thus, it was argued that relief of reinstatement could be granted by the Arbitrator, but not the High Court. While considering the said submission, the Hon'ble Supreme Court pointed out that without examining the correctness of the traditional limitations woven around high prerogative writs, they disregard it because while Article 226 has been inspired by the royal writs, its sweep and scope exceed high-bound British processes of yore. So broad are the expressive expressions designedly used in Article 226 that any order which should have been made by the lower authority could be made by the High Court.

43. In the light of the above, it is doubtful as to how the observations made in the said decision would advance the case of the petitioner, when the Writ Petition was not one challenging the award of the Tribunal, but for issuance of a

Writ of Mandamus to direct the respondents to regularise their services. One more factor, which we should note is that on the date when the first Writ Petition was filed, the dispute raised by the other set of workmen was on the verge of being finally disposed of. The first Writ Petition being W.P.No.7906 of 1999, was filed during April/May, 1999, the exact date of filing is not readily available, but the affidavit filed in support of Writ Petition is dated 29.04.1999, the award in I.D.No.66 of 1991, was passed on 26.05.1999. Thus presumably the appellants were inspired to approach this Court directly in the light of the proceedings before the Industrial Tribunal which had by then culminated. The prayer in the Writ Petition was not to extend the benefit of the award of the Tribunal to them, but for a positive direction to direct regularisation. This is all the more a reason why this Court cannot entertain the Writ Petition and embark upon an exercise and convert itself into an adjudicator and exercise power, exerciseable by the Tribunal.

In the light of the above conclusion, there would be no necessity to refer to the other decisions cited at the bar.

44. It was argued by the learned Senior counsel that in terms of 18(3)(d) of the I.D.Act, the award passed by the Tribunal binds all parties in the industrial dispute and all persons who were employed in the establishment or part of the establishment and therefore, the benefit would automatically accrue to the appellants. Though couple of decisions were referred on this point, it would suffice to take note of the decision in the case of Ram Nagar Cane and Sugar Company vs. Jatin, (supra). The question that was decided by the Hon'ble Supreme Court was regarding the construction and effect of the provisions of Section 22(1)(d) of the I.D.Act. The appellants therein was declared as a public utility concern by a notification issued by the Government. Majority of the workmen employed belonged to a particular union and a minority belong to a rival union. The majority workers union presented a charter of demands to the management and a similar charter of demand was also presented by the minority workers union. The majority workers union served a notice of strike on the management and a meeting was held before the Conciliation Officer which was attended by the minority workers union also. Ultimately, the Conciliation Officer submitted his failure report with regard to the Conciliation with the majority workers union and the management arrived at a settlement with the minority union which was recorded. Meanwhile, the majority workers union commenced strike and it resulted in criminal prosecution being initiated and the workmen were acquitted of the criminal charge. The management challenged the order of acquittal before the Calcutta High Court which was dismissed holding that the strike was not illegal, agreeing with the conclusion of the Trial Magistrate

and on Special Leave, the only point which was raised by the management before the Hon'ble Supreme Court is that in coming to the conclusion that the strike in question was not illegal, the Courts below have misconstrued the provision of 22(1)(d) of the I.D.Act. While considering such question, the Hon'ble Supreme Court considered the scope of Section 18(3)(d) and held that the said provision makes it clear that where a party referred to in clauses (a) or (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons, who subsequently, become employed in that establishment or part, would be bound by the settlement. It was further pointed out that in order to bind the workmen, it is not necessary to show that the said workmen belong to the Union which was a party to the dispute before the Conciliator. The whole policy of Section 18 is to give an extended operation to the settlement arrived at in the course of Conciliation proceedings and that is the object with which the four categories of persons bound by such settlement or specified in Section 18 sub-section (3). In the said decision of the Hon'ble Supreme Court there was no dispute as to whether the two sets of workmen, those, who had entered into a settlement with the management and those who had gone on strike resulting in criminal prosecution being initiated against them were similarly placed and while deciding the correctness of the judgment of the Trial Magistrate acquitting the workmen of the criminal charge, the Hon'ble Supreme Court considered the effect of the settlement between the management and the minority employees union. However in the case on hand, the fundamental issue would be whether the appellants are similarly placed to that of the workmen, who have the benefit of the award of the Industrial Tribunal.

45. In the light of the submissions made on either side, as observed earlier we do not propose to assume the role of an adjudicator and it is best left to the authority under the Industrial Disputes Act to decide the said question on facts and based on evidence available. Therefore, the contention advanced by the learned Senior counsel by placing reliance on Section 8 (3)(d) of the I.D.Act does not in any manner advance the case of the appellants.

46. As pointed out by the Hon'ble Supreme Court in the case of Uma Devi (supra), it would not be just and proper to pass an order in exercise of jurisdiction under Article 226 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Further, it was held that the High Court acting

under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regular and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which was described as 'litigious employment', he would not be entitled to any right to be absorbed or made permanent in service. Thus in our view, the appellants would not be justified in seeking for issuance of a Writ of Mandamus to regularise their services.

47. In the light of the above discussion, we hold that the decision rendered by the Hon'ble Supreme Court in the case of PCLU (supra), was rendered while testing the correctness of the award passed by the Industrial Tribunal as affirmed by this Court. Therefore, the said decision cannot ipso facto apply to these facts of these case and no Writ of Mandamus, could be issued as prayed for by the appellants. Accordingly, Question No.1 framed by us is answered against the appellants. In the light of the conclusion we have arrived at on Question No.1, there would be no necessity to decide the second question as to whether the decision in the case of PCLU (supra), is obiter and not a binding precedent or to be considered as a judgment on the facts of the case, as we have concluded that the decision was rendered while examining the correctness of an award passed by the Industrial Tribunal which was based on facts and circumstances and evidence placed before the Tribunal and not as one claimed by the appellants herein.

48. In the result, the appellants have not made out any case for interference with the orders passed in the Writ Petitions. Accordingly, the Writ Appeals fail and they are dismissed.

49. While dismissing the Writ Petition in W.P.No.7906 of 1999, by order dated 04.01.2010, an observation was made that it is open to the appellants/petitioners to approach the statutory authority to redress their grievances. However, this liberty was not extended while dismissing the Writ Petition in W.P.No.870 of 2004. We preserve the liberty granted to the appellants who were the petitioners in W.P.No.7906 of 1999, leaving it open to them to approach the statutory authorities to redress their grievance and extend such liberty to the appellants who were the petitioners in W.P.No.870 of 2004 also. The appellants are directed to approach the statutory authority within a period of three months from the date of receipt of a copy of this order and the status quo as regards service conditions of the appellants shall be maintained by the

respondent for the said period. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/
ASSISTANT REGISTRAR (CS-V)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

pbn

To

1. THE REGIONAL DIRECTOR,
OIL AND NATURAL GAS
COMMISSION, SOUTHERN REGION, CMDA TOWER,
NO.1, GANDHI IRWIN ROAD, EGMORE ,
CHENNAI- 8.
2. THE GENERAL MANAGER, HEAD REGIONAL OFFICE,
OIL REGIONAL OFFICER ONGC.
THALAMUTHU NATARAJAN MALIGAI (CMDA TOWERS)
NO.1. GANDHI IRWIN ROAD EGMORE CHENNAI
600 008.
3. THE CHAIRMAN CUM MANAGING DIRECTOR,
OIL AND NATURAL GAS CORPORATION,
JEEVAN BHARATHI NAGAR-I,
124, CONNAUGHT CIRCUS, NEW DELHI - 110 001.

+1 CC to MR.V.Ajoy Khose Advocate. SR.NO. 62918
+3 CC to M/S.King & Partridge Advocate. SR.NO. 63018,
63019 & 63020
+1 CC to MR.C.V.Vijayakumar Advocate. SR.NO. 63028

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