

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.4595 OF 2004

ORDER:

This writ petition is filed seeking Writ of Mandamus declaring the action of the respondents in not regularizing the services of the petitioners and in converting them as contract labour though they were initially selected by following the due selection process, as illegal, arbitrary and violative of Articles 14, 16, 21 and 300-A of the Constitution of India and consequently direct the respondents to regularize the services of the petitioners with full back wages.

2. Heard the learned counsel appearing for the petitioners and the learned Counsel appearing for the respondents.

3. The case of the petitioners is that all of them were selected and appointed by the respondent University through regular process on being sponsored by the Employment Exchange between 1999 and 2000 and they have been continuing in service till 2004. Pursuant to their selection and appointment, their names were deleted from the Employment Exchanges concerned. Despite several representations and reminders, the services of the petitioners were not regularized.

While so, in the 1st week of February, 2004 they were informed that the respondent University had engaged a Labour Contracting Agency and they were deemed to have been contract labourers engaged in the service of the Respondent University through the said contractor, which is arbitrary in nature and contrary to the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994 (for short "Act 2 of 1994). Though the petitioners have been working since long time, their services have not been regularized. The petitioners have attended the duties of "Janma Bhoomi" as regular staff along with other staff. The respondent University has absorbed several similarly placed persons and put them on time scale, but did not consider the cases of the

petitioners. It is stated that the device adopted by the respondent University to ask the petitioners to work under a contractor, with whom they have nothing to do, is nothing but an unfair trade practice and violative of Section 25F of the Industrial Disputes Act. The grievance of the petitioners is that attaching their services arbitrarily to a contractor amounts to termination of their services in the University without notice and also amounts to altering their service conditions unilaterally without notice to them.

4. The respondents filed counter denying the contentions of the writ petitioners and further stated that the provisions of the Act 2 of 1994 and Section 25(f) of the I.D.Act, 1947 are not applicable to the petitioners. Petitioners 1 to 12 and 17 are all Ex-Servicemen and getting pension and they are being paid consolidated amount. Petitioners 14 and 15 are men Mazdoors who were engaged on daily wage basis to look after garden work. Petitioner No.13 is engaged on daily wage basis to look after electrician works. Petitioner 16 is engaged on consolidated pay. Some of the petitioners executed an agreement with the University admitting to work on consolidated pay of Rs.2,000/- per month for a period of 89 days and further agreeing to the terms and conditions that the University has every right to terminate their services without any notice or without assigning any reasons whatsoever.

5. The respondents further stated that there are no sanctioned posts in the University and the petitioners were engaged only on temporary basis as and when there is exigency of work. The petitioners were not engaged through a selection committee. There was no training for the petitioners for regularization of their services. Participation in "Janma Bhoomi" and other social activities along with other university staff is not a training for regularization of service in a non-sanctioned post. At the time of engagement of the petitioners, a clear indication was given that the engagement is only on a consolidated amount and the continuation is not for confirmation of

their engagement. The University has never given an impression to the petitioners that they will be absorbed on regular basis. The University asked the District Sainik Welfare Office to sponsor the candidates only for engaging them on temporary basis, not for on regular basis. If the names of the petitioners are struck down from the employment exchange, the University is not at all responsible and it is for the petitioners to get their names renewed in the employment exchange. It is further contended by the respondents that under Section 49 of the Universities Act, the Government is the authority for sanction of the posts and to permit for filling up of the posts. The Government through letter No.06408/UE.I/2001-3 dated 22.07.2002 directed the University to engage the 4th class employees through “out source” whenever their services are required on temporary basis. In view of the non-sanctioning and not permitting to fill up the posts as well as not releasing the funds, the question of regularization of services of the petitioners does not arise. In view of the directions of the Government, the petitioners were engaged through contract agencies.

6. It is the further contention of the respondents that attaching the services of the petitioners to an agency does not mean to termination of their services or removal from the place of work. As the petitioners are not regular employees appointed against a sanctioned post, giving a notice under the circumstances does not arise. The University is always adopting a method to engage daily wage employees whenever new temporary scheme is introduced or for conducting the seminars and at the time of examinations etc. The petitioners are not at all entitled to be regularized under the Act 2 of 1994 when it has totally prohibited for engaging the employees on temporary basis. The petitioners are only purely temporary employees and that they were never engaged more than 240 days. The petitioners are seeking to enter into employment of the University by adopting back door method without undergoing the regular selection and when no sanctioned

posts are available. It is further contended by the respondents that in view of the *status quo* order passed by this Court, they are bound to pay salaries of the petitioners to the contractor for engaging the petitioners, even though there is no sufficient work for them to be entrusted by the University.

7. The petitioners filed reply affidavit denying the stand taken by the University. The petitioners stated that they never entered into any agreement with the University agreeing that their appointments are on contract basis. It is stated that they have been selected by 3 Man Committee constituted for the purpose of appointments and they were appointed in or around 1997 to 2002, when the 1st respondent University came into existence. They have been working continuously without any break of service from the date of their initial appointments. It is stated that the Government Orders dated 22.07.2012 cannot be made applicable retrospectively in case of the petitioners depriving their legal right of regularization. The 1st respondent is a State Instrumentality and hence Act 2 of 1994 is applicable.

8. The point for consideration is as to whether the petitioners are entitled to the relief of regularization of their services in the respondent/university?

9. The writ petition was originally filed by 17 persons. Out of them, T.Govindappa and C.Armugam (petitioners 15 and 16) who were appointed along with the other writ petitioners in respondent/university have got the relief which they wanted and hence the writ petition against them was dismissed as withdrawn. Vide proceedings No.DU/Estt(NT)/E1/395/2007, dated 07.07.2007, T.Govindappa (petitioner No.15) was appointed as a regular Attender in the scale of pay and similarly in proceedings No.DU/Estt/E1/40/2008, dated 31-07-2008, C.Armugam (petitioner No.16) was appointed as Junior Assistant in the regular pay scale. It is also on record that subsequently by proceedings dated 30-12-2011, C.Armugam (petitioner No.16) has even been promoted as Senior Assistant by the

2nd respondent. The other 15 petitioners were not as fortunate as petitioners No.15 and 16 are concerned and still they are continuing as contract employees working as Security Guards and Watchmen etc., in the respondent/university.

10. Having perused the pleadings of the parties and the documents that were produced, the genuineness of which is not in controversy, the following facts emerge as not being in controversy.

11. The respondent/university was established by the State in the year 1997. Pending the finalization of rules etc., the Vice-Chancellor was authorised to make temporary recruitments for running the university on day-to-day basis. Accordingly, the 2nd respondent addressed letters to the Zilla Sainik Welfare Officer, Chittoor District, on 21-05-1999, seeking for list of the ex-servicemen enrolled with the authority for being appointed as the watch and ward staff in the university. The writ petitioners were all the ex-servicemen having served the nation in the army as Havaldars, Sepoys etc. The Zilla Sainik Welfare Officer through his letter Dis.No.549/99-WO, dated 28-05-1999, has furnished a list of ex-servicemen who were enrolled with the Zilla Sainik Welfare Officer. The letter of the Zilla Sainik Welfare Officer, referred to above, reads as under:-

“List of eligible ex-servicemen for the post of watch and ward is sent herewith in triplicate.

The educational qualification, caste, experience/category may be verified at the time of interview with reference to the original certificates.

Individuals may be called for interview and the details of selected candidates may please be communicated to the undersigned soon after joining the duty of the selected person.”

12. On the letter of the Zilla Sainik Welfare Officer, extracted above, there is an endorsement of the authorities which reads as under:-

“We will constitute a Committee with the following:-

- 1) C.I. of Police, Kuppam,
- 2) C.I. of Excise, Kuppam

3) M.D., RESCO, Kuppam

4) Registrar

And that the above Committee will interview the candidates sponsored by the Zilla Sainik Welfare Officer.”

13. In pursuance to the said list, the respondent/university has issued call letters to the writ petitioners on 15-06-1999 calling upon them to appear for interview on 21-06-1999. This was issued in reference ROC No.DU/Estt/99 dated 15-06-1999. All the writ petitioners have got similar call letters and the specimen thereof reads as under:-

“Sub:- Dravidian University, Kuppam – Ex-servicemen – Selection of Watch & Ward – Reg.

...

You are hereby called on to be present in this office by 9.30 a.m., on Monday, the 21st June, 1999 with your bio-data and all original documents including discharge certificate besides Xerox copies (one set) of these certificates for interview for the selection of watchman.

No T.A. and D.A. will be paid.”

14. Accordingly, on 21-06-1999, interviews were held and the selection Committee comprised of Sri KrishnaPrasad, C.I. of Police, Kuppam; Sri B.Sai Prasad, C.I. of Excise, Kuppam; Sri V.Ramachandraiah, M.D., KRECSO, Kuppam and Prof.B.Ramakrishna Reddy (convenor), Registrar, interviewed the candidates and selected some of the persons and the Committee has recommended their appointment on a honorarium of Rs.2,000/- per month as consolidated amount. In pursuance to the orders, some of the petitioners and others have reported to duties.

15. Subsequently also, another selection Committee was constituted consisting of Prof.B.Ramakrishna Reddy, Registrar; Sri P.S.Nagarajan, M.D., KRECS; Sri Sai Prasad, C.I. of Excise; and Sri B.R.Subramanyam, Dy.Executive Engineer, and the said Committee

interviewed some of the writ petitioners on 13-10-1999 and recommended their appointments. In pursuance to that selection also, the candidates joined and they had been working in the respondent/university ever since the year 1999-2000 as watch and ward staff and security guards. Subsequently, the emoluments were also increased and the same was being paid directly by the respondent/university to the petitioners.

16. As per Section 49 of the Dravidian University Act, 1997 (Act 17 of 1997) it is provided that it shall be the duty of the first Vice-Chancellor to make arrangements for constituting the Executive Council and such other authorities of the university within six months from the commencement of the Act or such longer period not exceeding one year as the Government may, by notification, direct. Sub-clause (5) reads that notwithstanding anything contained in this Act, and the statutes and until such time an authority is duly constituted, the first Vice-Chancellor may appoint any Officer or constitute any Committee temporarily to exercise and perform any of the powers and duties of such authority under this Act and the statutes.

17. In exercise of the power conferred under Section 49 of the Act, the Vice-Chancellor constituted the Committee which selected the writ petitioners.

18. While the matter stood thus, the Government issued a memo stating that there should be no appointment of Class-IV employees on regular basis and that appointments should be only through outsourcing or on contract basis. The letter of the Government, No.06408/UE.I 1/2001-3, dated 22-07-2002, reads as under:-

“Sub:- Universities – Outsourcing the services of Class IV category – Regarding.

...

I am directed to inform you that Government have taken a policy decision to out source such services which are being run by IV class employees progressively. Therefore, the universities are advised to out-source such services which are being run by IV Class

employees in a phased manner. Further under any circumstances there shall be no appointments to the IV Class category.

Yours faithfully

Sd/-

For PRL.SECRETARY TO GOVERNMENT

19. In pursuance to the above, the university has contacted with a private agency to supply the man power. Thereafter, unilaterally, the respondent/university has transferred the services of the writ petitioners from under their direct control to the said contractor. This was noticed by the writ petitioners in the year 2004 when there is a reduction of Rs.100/- in their salaries. When they enquired from the authorities, they came to know that their services have been transferred to a private contractor by name Ghousia Agency and hence the deduction in their wages. Immediately, all the writ petitioners gave a detailed representation to the respondent/university which was not considered. Hence, the writ petition is filed.

20. The consistent stand of the writ petitioners is that they have been appointed as Watch and Ward staff and Class IV employees in the university at the inception and they were all the ex-servicemen having retired from the army after short service and have enrolled themselves with the Sainik Welfare Officer for suitable placements. It is also contended that some of their ex-colleagues on the rolls of Sainik Welfare Officer have been sponsored to other departments like Banks etc., and their services have been regularized. Unfortunately, the writ petitioners still continued to be treated as daily wage employees or contract employees. Even though they are fully eligible and qualified and there are existing vacancies, they have not been appointed regularly. Material is also placed on record to show that in the year 2006-2007, some persons were appointed in Class IV category, but the writ petitioners were not considered. Only two of them have been appointed and rest of them are not accommodated. It is also their case that the action of the respondent/university in transferring their services

from under their direct control to the control of a private contractor unilaterally is against the principles of natural justice and they having been appointed long prior to there being any contract in between the university and the contractor, their services cannot be transferred and treated as the personnel being provided by a contractor. There can be a contract for supply of manpower for future vacancies but such of the employees are already working for nearly 4 to 5 years prior to there being a contract, and who were being paid directly by the university, their services cannot be placed at the disposal or mercy of a private contractor with whom the writ petitioners have got nothing to do. It is also on record that even without their consent or knowledge, not only their services were transferred, but there was a deduction of Rs.100/- in their emoluments ostensibly for being paid to the contractor towards his commission.

21. The writ petitioners have also placed on record the proceedings of the respondent/university No.DU/Estt(NT)/E1/395/2007, dated 26-06-2007, and in these proceedings, as many as six persons were appointed by the university as Attenders in the Time Scale of Rs.3850-8600. In view of these proceedings, the respondent/university cannot be heard saying that there were no vacancies for regularizing the services of the writ petitioners, who were all ex-servicemen have been sponsored by the Zilla Sainik Welfare Officer and who were appointed after duly being interviewed by a Selection Committee which was constituted by the authorities of the university, and who had been serving the university right from 1999 in different capacities. The writ petitioners also produced certain correspondence which show that the authorities of the university were treating the writ petitioners as part of their establishment and they were being regarded as non-teaching staff for ancillary purposes.

22. The contention of the respondent/university that the writ petitioners were appointed on contract basis/daily wage basis and that they are trying to get their services regularized having entered through

backdoor methods is unfathomable. As already noticed, it is the university which addressed an authority competent to sponsor the names of the candidates for being considered for employment to a public office and such an agency has sponsored the names of the candidates on the rolls of the Zilla Sainik Welfare Officer and when the Vice-Chancellor has constituted a Selection Committee exercising the powers conferred under Section 49 of the Act, and such Selection Committee conducted an interview and recommended for appointment of the writ petitioners to the posts of Watch and Ward/Security Guard etc., such persons cannot be termed as the persons having entered the university through any illegal means or any backdoor methods.

23. Learned Counsel appearing for the respondent/university vehemently opposed the prayer of the writ petitioners contending that since they were appointed on contract basis without conferring any right of continuation or confirmation, they cannot now be heard saying that they are entitled to be regularised since their initial appointments cannot be said to be regular appointments.

24. This contention of the university is refuted by the learned Counsel appearing for the writ petitioners by submitting that there are catena of authorities of this High Court and the Supreme Court, which say that appointments temporarily though made irregularly cannot be taken as denuding the rights of such employees who have put in long years of service for being regularized. Learned Counsel fairly submits that the matter will be different if the initial appointments were illegal, but the appointments which can be termed as irregular cannot be treated as illegal appointments so as to deprive the petitioners of their legitimate rights. It is further submitted that having put in long service of more than 10 to 15 years in the university and about 15 to 20 years in the cause of the nation by working in the army, the writ petitioners now having been age barred cannot even think of securing any alternative employment and therefore they have to be considered for being regularized in the respondent/university. It is also submitted that

it is not that they made any backdoor entry in the university but they were selected after duly following the procedure laid down by the Vice-Chancellor in exercise of the powers conferred on him by virtue of Section 49 of the Act. As a matter of fact, it is submitted that the writ petitioners after their short tenure in the army, have been getting the nominal pension as ex-servicemen and they have enrolled themselves with the Zilla Sainik Welfare Officer for being considered for appointment in any suitable post with the State or its instrumentalities. In pursuance to a request made by the respondent/university, the names of the ex-servicemen were sponsored by the Zilla Sainik Welfare Officer and after duly constituting the Selection Committee and conducting the interviews, the writ petitioners were selected and appointed as Watch and Ward staff. As a matter of fact, in view of their experience as being army men, having served the nation in remote place such as Jammu & Kashmir, they were thought suitable persons for working as Security Guards in the university and therefore they were appointed as such. Now after having taken their services and when they have crossed their prime youth, they cannot be left out by the authorities, while appointing fresh candidates directly on the regular pay scales leaving the writ petitioners to sustain themselves with a meagre consolidate salaries which are far below that of the regular employees of the university.

25. Learned Counsel appearing for the writ petitioners relied upon several authorities of this High Court as well as the Supreme Court. As long back as in the year 1990, a Division Bench of our High Court in a decision reported in **BESANT THEOSOPHICAL COLLEGE v. J.JAHANARA BEGUM**^[1], after referring to various authorities on the subject, held that when once a candidate appeared for the interview before the properly constituted Selection Committee, the said candidate is entitled to be appointed as a Lecturer on a regular basis. In that case, the 1st respondent who was appointed as a part-time lecturer was deemed to have been selected on a regular basis holding

that the 1st respondent therein was entitled to be appointed as a lecturer on regular basis. The Division Bench directed that the 1st respondent therein/lecturer shall be deemed to have been appointed on regular basis as a lecturer from the date of interview and she is entitled to all other consequential benefits which flow therefrom.

26. In the year 1997, another Division Bench of our High Court in a decision reported in **N.SANJEEVAIAH v. A.P.AGRL.UNIVERSITY**^[2] held as under:-

“The authorities of the University and the State Government cannot shirk from their duty to adhere to the principle of ‘equal pay for the equal work.’ We have said enough about the constitutional obligation of the State and the University in this regard by drawing support from the decisions of the Supreme Court. The cases on hand are fittest cases in which the principle of ‘equal pay for equal work’ should be translated into action. The skilled labour (petitioners in W.P.No.3780/88) are getting about Rs.60/- per day and the petitioners in other writ petitions are getting about Rs.45/- per day. These are the minimum wages prescribed by the State Government for various zones. The Permanent Class IV (last grade) employee doing a similar work in the same establishment gets indisputably much more by way of salary. There is absolutely no reason why the petitioners who have been working for more than a decade and who had, so to say, dedicated their service to the University for several years should be denied wages on par with the pay drawn by regular last grade employees. Even if there is delay for genuine reasons in regularising their services, the least the respondents are expected to do is to step up their wages to the level of a Class-IV employees doing similar jobs. Keeping in view the directions given in similar matters by the Supreme Court as well as this Court, we direct that the petitioners should be paid wages for the work done by them proportionate to the pay drawn by regular last grade service employee engaged in similar work on the basis of the minimum time scale of pay attached to the post plus D.A. thereon. It is needless to say that the casual labour who are

seniors to the petitioners in the same Unit should also be extended the same benefit.

The relief granted by us should be given effect to from 1st October, 1997 onwards. The State Government represented by the concerned Secretaries to Government, Food & Agriculture and the Finance Departments should take all necessary steps for the release of necessary sanction order in this behalf, as and when approached by the University. We grant three months time from the date of receipt of this Judgment to give effect to the direction and the differential wages due to the petitioners for their engagement from the month of October, 1997 onwards shall also be paid to them within that time. We further direct that the concerned authorities of University should not engage fresh casual labour without giving work to the petitioners merely for the purpose of avoiding payment of higher wages.

The employment of casual labour was inevitable in the agricultural farms etc., and the interests of such casual labour who have put in long spells of service should be taken care of. Though the respondents have taken the stand that the employment of the petitioners was only intermittent or seasonal, from the particulars of the service, it is clear that they were engaged almost throughout the year. Otherwise, it was not possible to work for so many days in a year excluding the holidays. IN fact, it is admitted in the note annexed to the statement filed by the Registrar of the University in W.P.No.16134 of 1988 that the concerned Principals and Heads of Research Stations engaged casual labour even during off-season due to exigencies of work. Having regard to the peculiar nature of work in the Research Stations and the Farms maintained by the University, as already observed, the engagement of workers almost on continuous basis seems to be inevitable. Instead of realising this stark reality and appreciating the needs of the University and without approaching the problem from a proper perspective, the State Government turned down the proposals of the University in a summary and mechanical manner. The existing scheme provided in the Regulations for absorption of casual labour is not by itself adequate enough to take care of the interests of

large number of casual labour working since more than a decade or decade and half. In order to fulfil the constitutional obligations and to act in conformity with the law laid down by the Supreme Court in various cases, it is necessary to augment the existing cadre strength by creating additional Class-IV posts. But, unfortunately, the State Government took a stand and adopted an attitude which does not behave a model employer.

As the number of staff of permanent establishment are not sufficient to enable the University to carryout the operations in the farms and there is need to engage the casual labour in addition to the permanent employees almost regularly and that is being done for years and decades together, there is hardly any justification not to create additional posts. The rule of presumption enunciated by the Supreme Court in the passages quoted above would apply with great force to the facts of these cases. It may be that the creation of about 2800 posts at a time may not be possible in view of financial constraints on the State or so many number of posts may or may not be required on a realistic appraisal of the workload and the needs of employer. Instead of deliberating with the University officials and conceding to the minimum needs of the University atleast in a phased manner, the Government made a blanket refusal to agree for the sanction of additional Class IV posts, oversimplifying the whole issue as 'limitless problem'.

We direct the State Government to reconsider the request of the A.P.Agricultural University for sanction of additional posts in Last Grade Service in order to facilitate the absorption of casual labour working for a long time in the Fruit Reasearch station, Sangareddy, Agricultural Research Station, Amberpet and Agricultural Research Institute, Rajendra Nagar. This should be done expeditiously. It is needless to mention that the observations made in this Judgment shall be kept in view while taking appropriate decision. We further direct that the University Authorities shall not disqualify any of the petitioners on the ground of over-age unless they are physically unfit to do the jobs, while considering them for regular appointment. We are giving this direction as we feel that in view of the long passage of time, relaxation in age provided for by the Regulations is not adequate

enough to do justice to some of the petitioners (women) who have been working as casual labour for more than two decades.”

27. A Constitutional Bench of the Supreme Court in the decision reported in **SECY., STATE OF KARNATAKA v.UMADEVI**⁽³⁾^[3], elaborately dealt with the position of the contract/daily wage employees *vis-à-vis* the regular employees. The Constitutional Bench held as under:-

“Persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, have been approaching the Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The Courts have not always kept the legal aspect in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases even directed that these illegal, irregular, or improper entrants be absorbed into service. A class of employment which can only be called “litigious employment”, has risen like a phoenix seriously impairing the constitutional scheme. While directing that appointments, temporary or casual, be regularised or made permanent, the Courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. Such an argument fails when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution. 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. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment do not acquire any right.

It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not

at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the Court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the Court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it.

When the Court is approached for relief by way of a writ, the Court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the temporary, contractual, casual or daily-wage employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. It is therefore not possible to accept the argument that the State action in not regularising the employees was not fair within the frame work of the rule of law.

Order for absorption, regularization or permanent continuance of such employees are passed apparently in exercise of the wide powers under Article 226 of the Constitution. The wide powers under Article 226 are not intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as

recognized by our Constitution. It is time that the Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasised that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

The High Courts acting under Article 226 should not, therefore, ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the Court, under "litigious employment" he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

On a survey of Judgments of the Supreme Court on the point, the predominant view is seen to be that appointments made without following the due process or the rules for appointment did not confer any right on the appointees and that the Court cannot direct their absorption or regularisation or re-engagement or making them permanent. Those decisions which run counter to the principles settled in this decision, or in which directions running counter to what has

been held herein have been given, will stand denuded of their status as precedents.

There may be cases where irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of Tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by the Supreme Court in the cases affirmed in this Judgment and in the light of this Judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of Tribunals. The process must be set in motion within six months from the date of this Judgment. Regularisation, if any already made, but not sub judice, need not be reopened based on this Judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent those not duly appointed as per the constitutional scheme.

The Union of India, the State Governments and their instrumentalities should ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily-wagers are being now employed. The process must be set in motion within six months from the date of the Judgment.

When the regular recruitment is undertaken, the respondents employees in CAs No.3595-612 and those in the Commercial Taxes Department similarly situated will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the department concerned for a significant period of time. That would be the extent of the exercise of power by the Supreme Court under Article 142 of the Constitution to do justice to them. This relief, however, cannot be granted to the appellant employees in CAs Nos.1861-2063 of 2001.”

28. Applying the principles enunciated by the Supreme Court in the

above authority to the facts of the present case, and taking into consideration the facts and circumstances, the appointments that were made by the respondent/university appointing the writ petitioners cannot be said to be illegal appointments and in my considered opinion, it may not even come within the category of irregular appointments.

29. The above decision of the Constitutional Bench was considered by the Supreme Court in a decision reported in **NIHAL SINGH v. STATE OF PUNJAB**^[4]. The Supreme Court made the following observations in paras 19, 20, 22, 23, 24, 26, 27, 28, 29, 38 and 39:-

“No doubt that the powers under Section 17 are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts.

But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the Appellants for decades to say that there are no sanctioned posts to absorb the Appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.

It was further declared in **Umadevi's case (2006) 4 SCC 1**) that the jurisdiction of the Constitutional Courts under Article 226 or Article 32 cannot be exercised to compel the State or to enable the State to perpetuate an illegality. This Court held that compelling the State to absorb persons who were employed by the State as casual workers or daily-wage workers for a long period on the ground that such a practice would be an arbitrary practice and violative of Article 14 and would itself offend another aspect of Article 14 i.e. the State chose initially to appoint such persons without any rational procedure recognized by law thereby depriving vast number of other eligible candidates who were similarly situated to compete for such employment.

Even going by the principles laid down in **Umadevi's case (2006) 4 SCC 1**), we are of the opinion that the State of Punjab cannot be heard to say that the Appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.

In our opinion, the initial appointment of the Appellants

can never be categorized as an irregular appointment. The initial appointment of the Appellants is made in accordance with the statutory procedure contemplated under the Act. The decision to resort to such a procedure was taken at the highest level of the State by conscious choice as already noticed by us.

It is also asserted by the Appellants that pursuant to the requisition by the police department options were called upon from ex-servicemen who were willing to be enrolled as Special Police Officer (SPOs) under Section 17 of the Police Act, 1861³.

Such a procedure making recruitments through the employment exchanges was held to be consistent with the requirement of Articles 14 and 16 of the Constitution by this Court in ***Union of India and Ors. v. N. Hargopal and Ors.*** (1987) 3 SCC 308.

The abovementioned process clearly indicates it is not a case where persons like the Appellants were arbitrarily chosen to the exclusion of other eligible candidates. It required all able bodied persons to be considered by the SSP who was charged with the responsibility of selecting suitable candidates.

Such a process of selection is sanctioned by law under Section 17 of the Act. Viewed in the context of the situation prevailing at that point of time in the State of Punjab, such a process cannot be said to be irrational. The need was to obtain the services of persons who had some experience and training in handling an extraordinary situation of dealing with armed miscreants.

For all the abovementioned reasons, we are of the opinion that the Appellants are entitled to be absorbed in the services of the State. The appeals are accordingly allowed. The judgments under appeal are set aside.

We direct the State of Punjab to regularise the services of the Appellants by creating necessary posts within a period of three months from today. Upon such regularisation, the Appellants would be entitled to all the benefits of services attached to the post which are similar in nature already in the cadre of the police services of the State. We are of the opinion that the Appellants are entitled to the costs throughout. In the circumstances, we quantify the costs to Rs. 10,000/- to be paid to each of the Appellants.

In coming to the above conclusions, a detailed reference is made by the Supreme Court to the decision reported in ***Uma Devi's case***

(referred 3 supra), observed as under:-

“It can be seen from the above that the entire issue pivoted around the fact that the State initially made appointments without following any rational procedure envisaged under the Scheme of the Constitution in the matters of public appointments. This Court while recognising the authority of the State to make temporary appointments engaging workers on daily wages declared that the regularisation of the employment of such persons which was made without following the procedure conforming to the requirement of the Scheme of the Constitution in the matter of public appointments cannot become an alternate mode of recruitment to public appointment”

30. Following the above authoritative pronouncement of the Supreme Court, I have no hesitation in holding that the observations made by the Supreme Court in the decision reported in **Nihal Singh’s case (referred 4 supra)**, clearly applies to the facts of the present case. In the case in hand also, even at the cost of repetition, it may be stated that the writ petitioners were appointed after following the due procedure and they were selected on being sponsored by the Zilla Sainik Welfare Officer which is equivalent to Employment Exchange, which is required to enrol the unemployed persons and to sponsor the suitable candidates as and when requisitions are sent by the authorities concerned. Such sponsoring of candidates cannot be said to violate the principles of the equal opportunity to all as enshrined in the Constitution of India. The appointing authority do not have the option of choosing the persons of their choice but it is obligatory on their part to select only such of the persons from out of the list, who have been sponsored or nominated by an independent agency such as Sainik Welfare Board or the Employment Exchange., The writ petitioners were some of such persons whose names were sent by the Zilla Sainik Welfare Officer and after issuing call letters, fixing the date of interview as 21-06-1999 and duly constituting a Selection Committee and after following due procedure, the writ petitioners were

selected and appointed as Watch and Ward staff on a contract basis. Since the writ petitioners were all ex-servicemen i.e., hawaldars and sepoy etc., in the army and since the nature of duties were such that people who are capable of handling emergencies and exigencies were required to be selected, the Vice-Chancellor has constituted a Selection Committee which consisted of four persons, two of whom were the Circle Inspectors of that area. When such a Selection Committee selects the persons and on that basis, the writ petitioners were appointed, their selection and appointment cannot be said to be illegal or in violation of any principles of natural justice.

31. The contention of the respondent/university that there are no regular posts to be filled up by regularizing the services of the writ petitioners do not appear to be correct for two reasons. Firstly, as already referred to above, in the year 2007, several persons were appointed on regular basis without considering the candidature of the writ petitioners. Secondly, on behalf of the writ petitioners, an affidavit is filed as recently as on 23-11-2015 swearing to the fact that as at present, there are '7' vacant posts of Attenders, one post of driver, one post of gardener and one post of electrician in the university and writ petitioners are all eligible for the said posts. This averment of the writ petitioners is not denied. Therefore, there exists vacancies in the respondent/university in which the writ petitioners, who are numbering 15, can be absorbed and for the remaining posts, the university can address the Government to accord sanction. Direction can be issued to the respondent/university to regularize the services of the writ petitioners either in the existing vacancies or in the vacancies that may arise hereafter.

32. It is further held that the act of the respondent/university in transferring the services of the writ petitioners from under their direct control to the private contractor in the year 2004 is improper and the same cannot be sustained. Either it be on permanent basis or temporary basis or as daily wage worker, the writ petitioners should be

continued to be treated as the personnel having been appointed by the university but not any private contractor. The memorandum issued by the Government in the year 2004, which is referred to above, cannot be taken as having any retrospective effect. Admittedly, the writ petitioners were working long prior to the issuance of the said memo by the Government, which directs the university to appoint persons to Class IV posts only on the basis of our-sourcing or contract. The university cannot transfer the services of the writ petitioners, having appointed them directly in the year 1999, to the contractor in the year 2004, purported to be acting under the memo issued by the Government in the year 2004.

33. In the result, the writ petition is allowed and respondent/university is directed to provide employment to the writ petitioners on regular basis in the existing vacancies, if any, or in the vacancies that may arise hereafter, subject to their eligibility/suitability, within a period of six months. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M.S.K.Jaiswal, J

16th December, 2015

Dsr/smr

[\[1\]](#) 1991(I) An.W.R. 99

[\[2\]](#) 1998(1) ALT 436 (D.B.)

[\[3\]](#) (2006) 4 SCC 1

[\[4\]](#) (2013) 14 SCC 65