

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1011 OF 2016

Mohit s/o Prashant Meshram and others

-vs-

State of Maharashtra, thr.its Secretary, Ministry of Irrigation & Water Conservation and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R.L.Khapre, counsel for the petitioners.
Mrs.Bharti Dangre, G.P.for the respondent Nos.1, 3 and 5 to 14.
Mr.R.S.Parsodkar, counsel for the respondent Nos.2 and 4.
Mr. S.G.Jagtap, counsel with Mr.S.S.Godbole, counsel for the respondent No.15.
Mr. A.M.Joshi, counsel h/f Mr.Rohit Deo, ASGI for the respondent No.16.

CORAM : SMT. VASANTI A. NAIK &
V. M. DESHPANDE, JJ.

DATE : 13th, 15th & 16th APRIL, 2016.

By this writ petition, the petitioners, who are Diploma and Degree-Engineers and who were appointed on contract basis for a period of 11 months by the Water Conservation Department of the State Government in the Vidarbha Region, in pursuance of the advertisement, dated 23/08/2013, have sought the regularization of their services. By an amendment to the writ petition, the petitioners have challenged the advertisement issued by the Irrigation Department of the State Government, dated 14/12/2015, so far as it advertises the posts on which the petitioners could be regularised.

With a view to implement the Vidarbha Intensive Irrigation Development Programme as per the Government Resolution dated 14/09/2012, the Water Conservation Department of the State Government issued an advertisement on 23/08/2013 inviting applications for appointment of Junior Engineers and Civil Engineering Assistants on contract basis. By the said advertisement, the Degree as well as Diploma-Engineers were entitled to be appointed on the said

posts on contract basis. The petitioners, who are the Degree and Diploma-Engineers applied in pursuance of the advertisement and were selected by the Regional Selection Board. The petitioners were appointed on 22/01/2014 for a period of 11 months purely on contract basis. At the time of appointment, the petitioners were required to tender an undertaking at the place of posting that they would not claim any other posts or permanency on the basis of their qualifications. On 14/12/2015, the State Government decided to discontinue the petitioners. Since according to the petitioners they were sought to be replaced by the employees hired by a contractor, they had filed this writ petition seeking the regularization of their services.

During the pendency of the writ petition, the Irrigation Department of the State Government has advertised 1256 posts of Junior Engineers in the State of Maharashtra of which 112 posts are earmarked for the Vidarbha Region, with which we are concerned. As per the advertisement published by the Irrigation Department, dated 15/02/2016, the aforesaid posts of Assistant Engineers Class-II, Group-B are sought to be filled from the 75% quota of Junior Engineers possessing diploma or an equivalent qualification, as mentioned in the advertisement. By the amendment to the writ petition, the petitioners have sought to challenge the said advertisement.

Shri Khapre, the learned Counsel for the petitioners submitted that the posts on which the petitioners were appointed by the Water Conservation Department on contract basis are permanent posts that were sought to be filled temporarily, to take advantage of the provisions of Section 2(o)(bb) of the Industrial Disputes Act. It is stated that it is clear from the Government Resolution, dated 25/09/2013 that permanent posts are available with the Water Conservation Department and the State Government is contemplating

framing of Rules for appointing the engineers in the Water Conservation Department. It is submitted that all the petitioners are selected by the Regional Selection Board and their entry in the service is not from the backdoor. It is submitted that Recruitment Rules are not framed by the Water Conservation Department and hence, the services of the petitioners are liable to be regularized, as the recruitment Rules of the Irrigation Department on which the State Government has relied while issuing the impugned advertisement, dated 15/02/2016, would not apply while making the appointment of the employees in the Water Conservation Department. It is stated that it is apparent from the material on record that the posts in the Water Conservation Department are sought to be filled, by the issuance of the advertisement, dated 15/02/2016. It is stated that the State Government, as an unscrupulous employer has sought to take advantage of the provisions of Section 2(o)(bb) of the Act by appointing the petitioners on contract basis only for a period of 11 months, though the posts on which the petitioners were appointed are permanent in nature. It is stated that the provisions of Section 2(o)(bb) of the Act are violative of the provisions of Articles 14 and 21 of the Constitution of India, as they deprive the petitioners of their right to life. It is stated that the petitioners are employed on contract basis on permanent posts under the garb of being appointed under the Vidarbha Intensive Irrigation Development Programme. It is stated that it is apparent from the material on record that the aforesaid scheme would continue for long. It is stated that the undertakings were signed by the petitioners in the absence of any bargaining power and the undertakings cannot be used against the petitioners to deny the relief to them. The learned Counsel relied on the decisions, reported in AIR 1986 SC 1680 (S.Govindaraju v. K.S.R.T.C. and another), AIR 2003 SC 3553 (S.M.Nilajkar and others v. Telecom District Manager, Karnataka), AIR 2006 SC 2427 (Haryana State Electronics

Development Corporation v. Mamni), AIR 1991 SC 101 (Delhi Transport Corporation v. D.T.C.Mazdoor Congress and others), AIR 1998 SC 1681 (Uptron India Ltd. v. Shammi Bhan and another), AIR 2013 SC 927 (Dipak Kumar Mukherjee v. Kolkata Municipal Corporation and Ors.), AIR 2008 SC 336 (BCPP Mazdoor Sangh & Anr. v. N.T.P.C. & Ors.) and 2013 (10) SCALE 162 (Nihal Singh & others v. State of Punjab and others) to substantiate his submissions. Also, it is stated that in similar set of facts this Court has by a judgment, reported in 2014 (2) Mh.L.J. 36 (Sachin Ambadas Dawale and others v. State of Maharashtra and another) directed the State Government to regularize the appointments of the lecturers in the Government Polytechnic Colleges though their selection was not made by the Maharashtra Public Service Commission, as required by the Rules.

It is submitted that by the impugned advertisement, the State Government has deprived the Degree-Engineers from participating in the selection process. It is stated that the posts of the Assistant Engineers Class-II, Group-B have wrongly been restricted for the Diploma-Engineers or the Engineers with equivalent qualifications. It is stated that the candidate with higher qualification cannot be disqualified. It is stated that the qualification of degree should be considered as a qualification equivalent to that of a diploma. The learned Counsel relied on the judgments, reported in (2000) 2 SCC 606 (Mohd. Riazul Usman Gani and others v. District & Sessions Judge, Nagpur and others), 2003 (3) ALT 518 (R. Venugopal v. State Bank of India), (2006) 11 SCC 153 (State of Haryana and another v. Abdul Gaffar Khan and another), (2012) 3 SCC 129 (Chandrakala Trivedi v. State of Rajasthan and others) and 2014 (10) SCC 346 (Life Insurance Corporation of India and others v. Triveni Sharan Mishra) to substantiate his submission. It is stated that the action of depriving the candidates with higher qualification

from participating in the selection process would be violative of the provisions of Article 14 of the Constitution of India.

Mrs. Dangre, the learned Government Pleader appearing on behalf of the Irrigation and Water Conservation Department of the State Government, submitted that the petitioners have no right whatsoever for seeking the regularization of their services on the posts on which they were appointed. It is submitted that in pursuance of the advertisement issued by the Water Conservation Department on 23/08/2013, the petitioners were appointed on contract basis as Junior Engineers and Civil Engineering Assistants for a period of 11 months, only to ensure that the irrigation projects in the region of Vidarbha are not hampered. It is stated that the State Government has not made any permanent appointments in the Water Conservation Department that has come into existence in October, 2013. It is stated that though the State Government has decided to frame separate Rules for recruitment of engineers in the Water Conservation Department, no Rules are framed by the Government till date. It is stated that the appointments are sought to be made by the impugned advertisement in the Irrigation Department of the State Government with a view to cater the needs of the Irrigation Department, the Water Works Department and the Water Conservation Department. It is submitted that the Junior Engineers Class-II, Group-B, that are sought to be appointed by the impugned advertisement would be appointed in the Irrigation Department of the State Government. It is stated that the recruitment Rules are framed under the provisions of Article 309 of the Constitution of India for recruitment of engineers in the Irrigation Department and appointments are sought to be made by the impugned advertisement, in accordance with the Rules, so framed and amended from time to time till 2009. It is submitted that the appointments are being made as per the recruitment Rules and Junior Engineers Class-II, Group-B (non-gazetted) are sought to be appointed in the 75% quota

for Diploma-Engineers, in the Irrigation Department. It is stated that the qualifications equivalent to diploma in civil engineering are already mentioned in the advertisement and hence, it cannot be said that a degree would be equivalent to diploma. It is stated that under the recruitment Rules framed for the Irrigation Department, Degree-Engineers and Diploma-Engineers could be appointed as Junior Engineers in 25% and 75% quota respectively. It is stated that appointments are made on the post of Junior Engineers by the Irrigation Department since the framing of the Rules in the year 1998 in the proportion of 3:1 vis-à-vis the Diploma and Degree-Engineers. It is stated that the channel of promotion for the Junior Engineers that possess diploma and are appointed in the 75% quota and the Junior Engineers that possess a degree and are appointed in the 25% quota is different. It is submitted that the Junior Engineers with a degree could be selected and appointed only through the Maharashtra Public Service Commission, whereas the Diploma-Engineers could be selected through the Regional Selection Board. It is stated that the procedure adopted for appointing the Degree and Diploma-Engineers is different, inasmuch as the Degree-Engineers are entitled to be selected by the Maharashtra Public Service Commission, whereas the Diploma-Engineers are required to be selected by the Regional Selection Board. It is submitted that the Diploma-Engineers could be promoted to the cadre of Deputy Engineer, as Sub-Divisional Officers to the extent of 33%, whereas the Degree-Engineers could be promoted as Assistant Engineers Class-II or Sub-Divisional Engineers to the extent of 33%. It is submitted, by taking this Court through the chart and schedule providing for promotion of Degree and Diploma-Engineers in the Irrigation Department that for further promotions to the post of Executive Engineers, the channel of promotion for the Degree and Diploma-Engineers is again different and the percentage for promotion is also different. It is stated that the Diploma-Engineers can never be

promoted to the post of Superintending Engineer and only the Degree-Engineers could be promoted to the said post. It is, thus, stated by referring to the Rules of 1998 as amended in the year 2009 that the Degree-Engineers cannot be permitted to compete along with the Diploma-Engineers, who can only be appointed on the post of Junior Engineers Class-II, Group-B in the 75% quota. It is submitted that the posts advertised by the Irrigation Department on 15/02/2016 are strictly meant for the engineers possessing a diploma in civil engineering or an equivalent qualification for appointment in the 75% quota. It is stated that 25% posts of Junior Engineers that are liable to be filled from the candidates possessing the degree in civil engineering would be filled separately by a separate selection process that would be conducted through the Maharashtra Public Service Commission. It is stated that in the circumstances of the case, the petitioners are not entitled to any relief. The learned Government Pleader relied on the judgments of the Hon'ble Supreme Court, reported in (2006) 4 SCC 1 (Secretary, State of Karnataka and others v. Umadevi (3) and others), 2012 (6) SCC 502 (Brij Mohan Lal v. Union of India and others), and 2012 (11) SCC 656 (Mahesh Chandra Verma v. State of Jharkhand) to substantiate her submissions.

It is stated that the petitioners were made aware by the first advertisement, dated 23/08/2013 that the posts were liable to be filled only temporarily on contract basis for the implementation of the scheme and the petitioners had, with open eyes offered for appointment on contract basis for a fixed term. It is submitted that the Water Conservation Department of the State Government has not appointed a single engineer on permanent basis and the Irrigation Department of the State Government has deputed the engineers to the Water Conservation Department from time to time. It is stated that the Water Conservation Department of the State Government could not have made regular appointments in pursuance of the advertisement,

dated 23/08/2013, specially when the appointments of the petitioners and others were made with a view to implement the “Vidarbha Intensive Irrigation Development Programme”. It is stated that the petitioners had tendered undertakings that they would not make any claim for regularization or further appointment on the expiry of the term of contract. It is submitted that the order of appointment of the petitioners also had a similar stipulation. It is submitted that the challenge to the provisions of Section 2(oo)(bb) of the Act is baseless. It is submitted that it is always permissible for an employer to prescribe the qualifications for appointment to a particular post and the prescription of such qualifications cannot be held to be bad in law, unless it is arbitrary or unconstitutional. It is submitted that the petitioners have not challenged the recruitment Rules of the year 1998 or 2009 and in the absence of challenge to the said Rules, the Degree-Engineers cannot be permitted to apply for the post of Junior Engineers, Class-II, Group-B in pursuance of the impugned advertisement.

Shri Jagtap, the learned Counsel for the Vidarbha Irrigation Development Corporation, supported the action on the part of the State Government and submitted that the appointments are strictly being made as per the Recruitment Rules framed under the proviso to Article 309 of the Constitution of India. It is stated that a challenge to the provisions of Section 2(oo)(bb) of the Industrial Disputes Act was raised before the Madras High Court and the Full Bench of the Madras High Court has, by the judgment, reported in **1993 LLJ (1) 1030 (Terminate Full Time Temporary LIC Employees Welfare Association v. Senior Divisional Manager LIC, Thanjavur)** upheld the validity of the provisions of Section 2(oo)(bb) of the Industrial Disputes Act. It is stated that it is held by the Full Bench of the Madras High Court that the provisions of Section 2(oo)(bb) are valid and constitutional. It is submitted that in any case, it would not

be necessary to consider the validity of the provisions of Section 2(oo) (bb) of the Industrial Disputes Act in the circumstances of the case, specially when the appointments of the petitioners were made on contract basis. The learned Counsel sought for the dismissal of the writ petition.

Shri Parsodkar, the learned Counsel for the respondent Nos.2 and 4, also supported the action of the respondents and reiterated that the impugned advertisement is issued, in accordance with the Recruitment Rules. The learned Counsel adopted the arguments advanced on behalf of the State Government by the learned Government Pleader and sought for the dismissal of the writ petition.

On hearing the parties, we find that “The Assistant Engineer (Civil) Grade-II in the Maharashtra Service of Engineers (Group B) Recruitment Rules, 1997” have been made by the Governor of Maharashtra in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India for regulating the recruitment to the posts of Assistant Engineers (Civil) Grade-II under the Public Works Department and the Irrigation Department of the State of Maharashtra. As per Rule 3 of the said Rules, while making recruitment to the post of Assistant Engineer Grade-II Group-B, 25% of the posts are liable to be filled from the candidates possessing a degree in civil engineering and the selection of these 25% posts is made through the recommendations of the Maharashtra Public Service Commission. 75% posts of Junior Engineer Grade-II, Group-B are liable to be filled from the candidates possessing the diploma in civil engineering or the qualification that is held to be equivalent thereto. It is, thus, clear from a reading of the Recruitment Rules of 1997, that are amended from time to time, that 25% posts of the Junior Engineer Grade-II Group-B are to be filled from the engineering graduates through the recommendations of the Maharashtra Public Service

Commission and 75% posts are required to be filled by the engineers possessing a diploma in civil engineering and the selection of such candidates is not through the Maharashtra Public Service Commission but through the Regional Selection Board. Also, it is not in dispute that a Junior Engineer with degree qualification and appointed in 25% quota is entitled to be promoted as a Sub Divisional Engineer to the extent of 33%, whereas a Junior Engineer with diploma is entitled to be promoted to the post of Sub-Divisional Officer. A Sub Divisional Officer is entitled to be promoted as an Executive Engineer only to the extent of 10% posts whereas a Sub Divisional Engineer is entitled to be promoted to the post of Executive Engineer to the extent of 25%. Admittedly, a Junior Engineer with diploma is not entitled to be promoted as Superintending Engineer and only a Junior Engineer, appointed with a degree, is entitled to be promoted as Superintending Engineer. Thus, it appears that only a Degree-Engineer is entitled to be promoted as Superintending Engineer and an engineer with a diploma would not be entitled to be promoted to the said post. It is, thus, apparent from a reading of the Rules of 1997, as amended from time to time, that a separate channel is provided while making the initial appointments and promotions and a separate and distinct class has been carved out for the degree and diploma engineers. In this background the submissions made on behalf of the petitioners are liable to be considered.

It is apparent from the documents annexed to the petition that with a view to implement the Vidarbha Irrigation Development Programme in accordance with the Government Resolution dated 14/09/2012, the Water Conservation Department of the State Government had issued the earlier advertisement, dated 23/08/2013, inviting applications for appointment of the Junior Engineers and Civil Engineering Assistants on contract basis. It appears that by the said advertisement, engineers were sought to be appointed for the

implementation of the Vidarbha Integrated Irrigation Development Programme. By the said advertisement, the posts of Civil Engineering Assistants and Junior Engineers were advertised and engineers possessing degree, diploma and some other qualifications mentioned in the advertisement were permitted to apply for the appointment on contract basis. In pursuance of the advertisement, dated 23/08/2013, several engineers possessing degree or diploma applied along with the petitioners and the petitioners and certain others were appointed on the posts of Civil Engineering Assistants and Junior Engineers on contract basis, only for a period of 11 months, by the Water Conservation Department of the State Government. It is apparent from the advertisement, dated 23/08/2013 that the appointments were sought to be made by the Water Conservation Department of the State Government on contract basis only due to administrative exigencies and with a view to ensure the progress of the incomplete irrigation projects. The petitioners continued for a period of 11 months on two occasions and the second contractual appointment of the petitioners was terminated on 15/12/2015. After the contract of the petitioners was sought to be terminated, the petitioners have filed the instant petition seeking their regularisation.

It would be necessary to bear in mind while considering the prayers made by the petitioners that the earlier advertisement dated 23/08/2013 was issued by the Water Conservation Department of the State Government and the advertisement dated 15/02/2016, that is impugned in the instant petition has been published by the Irrigation Department. It is stated that the Water Conservation Department of the State Government had not made any appointments on regular establishment till date, in the absence of any Recruitment Rules.

Most of the submissions, as canvassed on behalf of the petitioners have been elaborately dealt with by the Constitution Bench

of the Hon'ble Supreme Court in the case of the Secretary, State Of Karnataka and Others..vs.. Umadevi and Others (supra). It is held by the Supreme Court in the said celebrated judgment that regular appointments must be the rule and regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner. However, it is observed that a total embargo on 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 succor to them. It is thus observed by the Hon'ble Supreme Court that casual and temporary appointments are required to be made so as to meet the exigencies of administration. In the instant case, the Water Conservation Department of the State Government was brought into existence in the year 2013 and at that time, there were no Rules for making recruitment of engineers in the Water Conservation Department. With a view to ensure that the irrigation projects should not be hampered, it appears that the advertisement, dated 23/08/2013 was published. It is apparent from a reading of the advertisement that the petitioners were made to understand at the time of applying for the post of Civil Engineering Assistants and Junior Engineers that their appointments would be purely temporary and on contract basis. The petitioners were made aware at the time of their initial entry in the employment that they were securing it on contract basis in pursuance of the advertisement, dated 23/08/2013. In the circumstances of the case, it cannot be said that merely because certain permanent posts were available with the Water Conservation Department, they ought to have been filled by appointing the petitioners and the like, in the absence of Recruitment Rules. The

arguments like the one advanced in this case were also advanced before the Hon'ble Supreme Court in the case of Umadevi (supra) and every submission, like the one made on behalf of the petitioners herein, was rejected by the Hon'ble Supreme Court. It was also clarified in the said judgment that those decisions that run counter to the principles laid down in the judgment of Umadevi (supra) shall stand denuded of their status as precedents. The law laid down in the said judgment is followed by the Hon'ble Supreme Court in the judgments, reported in 2011 AIR SCW 1332 (State of Orissa & anr. v. Mamta Mohanty) and 2014 (2) SCALE 262 (Renu and ors v. District & Sessions Judge, Tis Hazari & Anr.).

It appears on hearing the Government Pleader that by the impugned advertisement, the appointments of Junior Engineers Class-II Group-B are sought to be made in the 75% quota meant for Diploma-Engineers. In this background, the submission made on behalf of the petitioners that the petitioners-Degree-Engineers, that were appointed on contract basis should be permitted to participate in the selection process initiated by the impugned advertisement, dated 15/02/2016 is liable to be rejected. The petitioners have not challenged the Recruitment Rules that are framed under the proviso to Article 309 of the Constitution of India. A degree in Civil Engineering cannot be termed as equivalent to a Diploma in Civil Engineering. A degree in Civil Engineering is a higher qualification. If a degree was secured by the petitioners, after securing the Diploma in Civil Engineering, the case of the petitioners could have been arguable. However, such is not the case of the petitioners. If a minimum qualification is prescribed and the candidate secures a higher qualification after securing the prescribed minimum qualification, then he may have a case, like a candidate securing a Masters Degree in Arts after securing the Bachelor Degree in Arts. In the instant case, the impugned advertisement is issued with a view to make the recruitment

in terms of the Recruitment Rules, 1997 as amended from time to time. The Recruitment Rules provide for the appointment of only Diploma holders in Civil Engineering on the post of Junior Engineer Class-II, Group-B in the 75% quota. Since the posts are sought to be filled in the 75% quota, by the impugned advertisement, the Degree-Engineers cannot claim a right of participation, more so, when they have not challenged the Recruitment Rules, providing 75% quota for Junior Engineers with diploma qualifications and 25% quota for Junior Engineers with degree qualifications. The judgments, reported in (2000) 2 SCC 606 (Mohd. Riazul Usman Gani and others v. District & Sessions Judge, Nagpur and others), 2003 (3) ALT 518 (R. Venugopal v. State Bank of India), (2006) 11 SCC 153 (State of Haryana and another v. Abdul Gaffar Khan and another), (2012) 3 SCC 129 (Chandrakala Trivedi v. State of Rajasthan and others) and relied on by the counsel for the petitioners cannot be helpful for claiming a right of participation for the Degree-Engineers in the 75% quota. As mentioned earlier, where two different qualifications are prescribed for appointment and their equivalent qualifications are also prescribed by the Recruitment Rules, it cannot be said that the candidates possessing a superior qualification should be permitted to participate in the selection process though they do not possess the requisite qualification, as per Rules.

The challenge, as raised by the petitioners to the provisions of Section 2(oo)(bb) of the Industrial Disputes Act need not be considered in this writ petition, in the circumstances of the case. Though we find that the validity of the provisions of Section 2(oo)(bb) of the Act has been upheld by the Full Bench of the Madras High Court in the judgment, reported in 1993 (1) LLJ 1030, in the admitted facts of this case, it would not be necessary for this Court to test the validity of the provisions of Section 2(oo)(bb). At the most, a ground that the provisions of Section 2(oo)(bb) of the Act would not be attracted to

the facts of this case, could have been raised by the petitioners in appropriate proceedings after proving the factual issues, though we doubt about the acceptability of the said ground, in the admitted circumstances of the case.

The submission made on behalf of the petitioners that the action on the part of the State Government is violative of the provisions of Articles 14 and 21 of the Constitution of India cannot be accepted. A similar argument was advanced before the Hon'ble Supreme Court in the case of Umadevi (*supra*) and the Hon'ble Supreme Court overruled the challenge to a similar action as being violative of the provisions of Articles 14 and 16 of the Constitution of India. It is observed in the said decision that 'a legal right cannot be established by an employee for seeking permanency when the appointment of such employee is not made in terms of the relevant Rules'. In this case, the appointment of the petitioners was made with a clear understanding that the appointment was temporary, under a scheme and for a limited period of eleven months. When a submission was made before the Hon'ble Supreme Court with reference to inequality in bargaining power, it was thus observed by the Hon'ble Supreme Court in para-50 of the judgment in the case of Umadevi (*supra*).

"It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an

opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all the employees accepted the employment at their own volition and with eyes open as to the nature of their employment.”

The argument that the right to life, protected by Article 21 of the Constitution would also include a right to employment, as made in the instant petition, was also rejected by the Hon'ble Supreme Court in para-51 of the said judgment. The Hon'ble Supreme Court observed thus –

“The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got

in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.”

Almost all the submissions made on behalf of the petitioners herein were made before the Hon'ble Supreme Court in the case of Umadevi (*supra*) and the said objections were overruled. Further, a word of “caution” was sounded in the decision in the case of Umadevi (*supra*), preventing or desisting the Courts from issuing directions for regularization or continuance of those that had not secured the employment as per the procedure prescribed. The Hon'ble Supreme Court observed :—

“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 of the Constitution 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.”

This Court has also on occasions issued directions which could not be said to be consistent with the Constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualisation of justice. The question arises, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin, has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the Constitutional scheme, certainly tend to water down the Constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.”

It was further observed that if Rules are made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the Rules, as the State is meant to be the model employer. In the instant case, the impugned advertisement is issued in accordance with the Recruitment Rules of the year 1997 and we do not find that the petitioners can effectively challenge the advertisement and seek the regularization of their

services.

In the decision of the Hon'ble Supreme Court in the case of Official Liquidator v. Dayanand, reported in 2008 (13) SCALE, 558 the Hon'ble Supreme Court observed that the binding effect of the judgment in the case of Umadevi (*supra*), which is a Constitution Bench decision cannot be watered down by the High Courts or the Supreme Court till the same is overruled by a Larger Bench. It was observed by the Hon'ble Supreme Court that when an advertisement was issued for appointing the company paid staff, more qualified and meritorious persons must have shunned from applying because they knew that the employment would be for a fixed term and on fixed salary and their engagement will come to an end with the completion of the liquidation proceedings. The Hon'ble Supreme Court went on to add that as a result of this, only mediocres must have responded to the advertisements and joined as company paid staff. In this scenario, it was observed that a direction for absorption of the company paid staff would be violative of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution. In the instant case also, since by the first advertisement, dated 23/08/2013 it was made known to all concerned that the appointment would be for a period of eleven months on fixed salary, more qualified and meritorious engineers may have shunned from applying.

Since the petitioners were not appointed as per the Recruitment Rules and were appointed under the scheme, on contract basis for a period of eleven months, the prayer made by the petitioners for regularization of their services cannot be granted. Also, the impugned advertisement cannot be quashed and set aside as the same is issued by adhering to the Recruitment Rules. If the petitioners are not entitled for regularization, they cannot challenge the advertisement to the extent of the number of posts on which the petitioners were appointed. Since, as per the concerned Recruitment Rules, an Engineer

with degree qualification is not entitled for appointment on the post of Junior Engineer Class-II, Group-B in 75% quota and only a Diploma-Engineer or an Engineer with equivalent qualification is entitled for appointment, the Degree-Engineers would not be entitled to participate in the selection process. The judgments reported in AIR 1986 SC 1680, AIR 2003 SC 3553, AIR 2006 SC 2427, AIR 1991 SC 101, AIR 1998 SC 1681, AIR 2013 SC 927, AIR 2008 SC 336, 2013 (10) SCALE 162, 2014 (2) Mh.L.J. 36, (2000) 2 SCC 606, 2003 (3) ALT 518, (2006) 11 SCC 153, (2012) 3 SCC 129 and 2014 (10) SCC 346 and relied on by the Counsel for the petitioners would not support the case of the petitioners for seeking regularization. Most of the judgments are rendered before the Constitution Bench judgment of the Hon'ble Supreme Court was rendered in the case of Umadevi (supra). The judgments relied on by the counsel for the petitioners cannot come to the rescue of the petitioners in seeking regularization. So also, the petitioners cannot seek regularization by resorting to the provisions of Clause-4C of the Model Standing Orders, in the circumstances of the case. We have already observed herein above that in the circumstances of the case, the claim of the petitioners for regularization cannot be granted, especially in view of the judgments in the case of Umadevi (supra) and Dayanand (supra). The judgment reported in 2014 (2) Mh.L.J. 36 on which great reliance has been placed by the counsel for the petitioners, cannot be made applicable to the facts of this case. In that case, the Lecturers in Government Polytechnic College in the State of Maharashtra were appointed on contract basis against permanent and full time posts by duly constituted selection committee and the selection process was not conducted at any point of time by the Maharashtra Public Service Commission, though required. In the instant case, the Maharashtra Public Service Commission undertakes the selection procedure for appointment of Degree-Engineers in 25% quota on the post of Junior Engineer Class-II, Group-B. Since the

appointment of the petitioners was not made as per the recruitment procedure, the petitioners would not have any right to claim the relief sought.

During the hearing of this petition, we had made a query to the learned Government Pleader as to whether the State Government would consider the regularization of the services of the Diploma-Engineers that are 28 in numbers in Vidarbha Region, as they were selected by the Regional Selection Board that recruits the Junior Engineers Class-II, Group-B as required by the Recruitment Rules. An affidavit in reply is filed on behalf of respondent No.1 that the State Government would consider the entitlement of the 28 Junior Engineers that were recruited on contract basis on the premise that they are eligible on the basis of educational qualification and also because they may enter into the cadre of Junior Engineer from the 75% quota. It is further stated that the State Government would be required to consider the other criteria like age, roaster point, etc. and the State Government would take an independent decision in the said matter. It is fairly stated on behalf of the State Government that presently the State Government would exclude 28 posts of Diploma-Engineers for the Vidarbha Region, from the impugned advertisement, dated 15/02/2016.

Though, we are of the view that the petitioners and the other Engineers that were appointed in pursuance of the first advertisement, dated 23/08/2013, are not entitled to regularization, we accept the statement made on behalf of the State Government that the State Government would exclude 28 posts of Junior Engineers for the Vidarbha Region from the advertisement, dated 15/02/2016 so that their cases would be considered on the basis of the criteria mentioned in the affidavit.

With these observations, we dismiss the writ petition with no order as to costs.

At this stage, a request is made by the learned Counsel for the petitioners for continuing the *ad interim* relief by a period of two weeks.

The prayer made on behalf of the petitioners is strongly opposed by the learned Government Pleader and the learned Counsel for the Vidarbha Irrigation Development Corporation. It is submitted that the selection procedure is already delayed in view of the interim direction. It is stated that the recruitment of Junior Engineers is required to be made on priority.

Considering the fact that the irrigation projects are required to be completed on priority, we reject the prayer made on behalf of the petitioners.

Order accordingly.

JUDGE

JUDGE