

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA
PRADESH**

**W.P.Nos.29116, 30749 and 31644 of 2014, 16092, 34390, 19627,
27237, 34123, 34222, 34124, 34052, 34082, 34060, 34314, 34522,
34036, 34057, 34664, 34347, 31522, 33033, 28212, 16318 of 2015
and 10924 of 2016**

Between:

ONGC Field Operators Union,
Regd.No.G.3048/3.C.1, Zone-II,
Rajahmundry Asset, K.G. Basin,
Adhikarivari Street, Narsapur,
East Godavari District.

...Petitioner

and

Oil and Natural Gas Corporation Limited,
Southern Sector Recruitment & Promotion,
Section, 8th Floor (E-Wing), CMDA Towers-I,
Egmore, Chennai – 600 008,
Represented by its Manager (H.R.),
and others

...Respondents

Judgment pronounced on : 30-12-2016

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the judgments? : No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals? : **Yes**
3. Whether their Lordship wish to see the fair copy
of the Judgment? : No

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

W.P.Nos.29116, 30749 and 31644 of 2014, 16092, 34390, 19627, 27237, 34123, 34222, 34124, 34052, 34082, 34060, 34314, 34522, 34036, 34057, 34664, 34347, 31522, 33033, 28212, 16318 of 2015 and 10924 of 2016

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Versus

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Represented by its Manager (H.R.),
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...Respondents

< **GIST:**

> **HEAD NOTE:**

!Counsel for petitioner : Sri C.V. Mohan Reddy, learned Senior Counsel.

^ Counsel for respondents : Sri B. Adinarayana Rao, learned Senior Counsel appearing on behalf of Sri Kakara Venkata Rao.

? **Cases referred**

1. (2009) 6 SCC 339
2. (1999) 6 SCC 439
3. (2009) 8 SCC 556
4. (2013) 14 SCC 65
5. (2015) 6 SCC 494
6. (2015) 8 SCC 265
7. (2015) 2 SCC 317
8. (2007) 11 SCC 92
9. L.P.A.No.797 of 2013 and batch dt.29-04-2015
10. Judgment dt.12-10-2015 in L.P.A.654/2010
11. (2006) 4 SCC 1
12. (2011) 4 SCC 200

13. (2011) 11 SCC 441
14. Order dt.20-11-2015 in W.A.No.299 of 2010 and batch.
15. (2004) 3 SCC 553
16. (1969) 3 SCC 769
17. AIR 1974 SC 2105
18. (2012) 12 SCC 170
19. (1981) 1 SCC 315
20. (1995) 5 SCC 75
21. AIR 1979 SC 1889.
22. (2014) 1 SCC 603
23. AIR 2008 SC 1867
24. (2014) 7 SCC 190
25. (2015) 6 SCC 321
26. Order dt.12-10-2015 in LPA No.654 of 2010
27. Order dt.29-04-2015 in L.P.A.No.797 of 2013 and batch
28. Order dt.20-11-2015 in Writ Appeal Nos.229 of 2010 and batch
29. AIR 1978 SC 1410



THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.Nos.29116, 30749 and 31644 of 2014, 16092, 34390, 19627, 27237, 34123, 34222, 34124, 34052, 34082, 34060, 34314, 34522, 34036, 34057, 34664, 34347, 31522, 33033, 28212, 16318 of 2015 and 10924 of 2016

COMMON ORDER :

The petitioners in all these Writ Petitions except W.P.No.29116 of 2014 are working as Field Operators in the Oil and Natural Gas Corporation Limited (for short 'ONGC'), Rajahmundry Asset. They are working in the Krishna Godavari Basin operations at ONGC, Rajahmundry Asset and EOA, Kakinada. They question the action of the respondents/ONGC in not regularizing their services and instead notifying vacancies to the post of Field Operators through Circular dt.01-09-2014 in order to fill them up by in service candidates as well as outsiders through a fresh selection process as illegal, unreasonable and unconstitutional.

2. The facts in W.P.No.29116 of 2014 are set out in para 21 below.

3. The ONGC is an undertaking of the Government of India and is a premier public sector undertaking and was awarded the status of a Maharatna.

4. For the sake of convenience, the facts and pleadings in W.P.No.34664 of 2015 and in W.P.29116 of 2014 are taken into account.

Position prior to 1998 (Contract labour)

5. The ONGC originally engaged Field Operators through private contractors on contract basis and petitioners were also working through such contractors prior to 1998. Through a Union called ONGC Contract Workers' Union, they were agitating for regularization of their services. After prolonged negotiations, the ONGC agreed to form Cooperative Societies with these workmen and to engage them through the respective Cooperative Societies by eliminating labour contractors.

1998-2002 (as members of Co-operative societies) & agreement dt.11.12.1997

6. An agreement was entered into on 11-12-1997 between the ONGC on one side and the said Union in the presence of the then Member of Parliament, Narsapur. In the interest of industrial harmony, it was agreed that from 01-01-1998 all contractual jobs of ONGC would be rendered through Cooperative Societies formed by the contractual workers for a period of five years.

2003-2008 (Term based employment) & Agreement dt.12.1.2003

7. The above arrangement of 1998-2002 continued up to December 2002 when the issue of regularization/absorption in the service of ONGC was again raised and a fresh agreement dt.12-01-2003 was arrived at in the presence of the then Minister of State of Consumer Affairs-Food and Public Distribution, Government of India and the Minister for Energy, Coal and Boilers, Government

of A.P. Under the said agreement it was resolved that the contracts with the Cooperative Societies consisting of workmen members would again be entered into with effect from 01-01-2003 for a further period of five years. In particular, it was also agreed by the ONGC to:

(a) create and fill up 60 posts to meet the operational requirements in the first phase and to start the process of recruitment immediately;

(b) that the process of recruitment of the second phase will be initiated by January 2004; and (c) that the ONGC would make efforts to fill up 60 posts per year and a total of 300 posts during the period of five years. It was agreed that members of the Societies, whoever suitable for such identified posts as per ONGC Modified Recruitment and Promotion Rules, 1980 and is registered with the Employment Exchange, will be considered for such appointments by granting age relaxation wherever required.

8. Thus at every stage, the workmen were demanding for regularization of their services since they have put in more than ten years of service in the ONGC between 1998-2008 and contending that the posts in which they were working were, in fact, permanent in nature.

2008-12 (term based employment) & Meeting dt.8.1.2008

9. A strike notice was given on 11-12-2007 over the charter of demands by the contract workers union and it resulted in conciliation proceedings before the Regional Commissioner of Labour (Central), Hyderabad. The decisions taken in the meeting held on 08-01-2008

between the management of ONGC and the ONGC Limited Contract Workers Union in the presence of Regional Commissioner of Labour were reduced to writing and it was agreed by the ONGC to consider around 280 society workers for term based employment. Under this understanding, the ONGC agreed to give age relaxation in providing term based employment to those Society workers who were technically qualified and it was informed that workers eligible on the date on which the applications were called for, would be taken for term based employment. The first phase of the term based employment was to be implemented within six months from the date of signing of the minutes *and* in the case of Society workers who were having non-technical qualifications, they will be taken for term based employment within three years on acquiring the technical qualifications during this period *and till* that time, they would be given opportunity to continue as Society workers.

Breach of Understanding dt.8.1.2008

10. However, giving a go-bye to the Understanding dt.08-01-2008 between the parties, ONGC conducted open general recruitment and a written examination for 280 Society workers and outsiders which was followed by oral interview and medical examination. Some of the petitioners in these cases were subjected to the said process and having gone through the same were successfully engaged by orders dt.05-07-2008 as “Field Operators” for 4 years on tenure basis subject to the conditions mentioned therein.

Post 2012

11. On expiry of the said four year period in 2012, these very persons as well as some more Society workers who were subjected to similar process of written test, oral interview and medical examination were also issued letters dt.25-05-2012 and 05-07-2012 appointing them as “Field Operators” for a further period of 4 years.

12. In 2013, petitioners alleged that ONGC notified posts of Field Operators and called for applications from departmental candidates as well as outsiders and that only 10 of the term based Field Operators were selected while 60 outsiders were recruited. They contend that another Circular dt.01-09-2014 has been issued contemplating selections to certain posts in A-1, A-2 and W-1 levels mentioned therein from qualified departmental candidates even though the petitioners are already working in those very posts on term basis and they are eligible for being regularized in the same posts.

13. Thus the petitioners in these Writ Petitions have gone through the process of written test, oral interview and medical examination and have been working as Field Operators in the ONGC at the KG Basin. Prior to these term based appointments, they had been working for more than a decade as contract labour and thereafter for 10 years as Society members and have put in more than 20 years of service under the ONGC.

CONTENTIONS OF PETITIONERS

14. Petitioners contend that they have been discharging the essential and core operations which are permanent in nature, that the post of Field Operator is indispensable in the ONGC, that there are clearly sanctioned vacancies, and only with a view to pay consolidated amounts and to deny various benefits to them as workmen, the management of the ONGC has been appointing them either through labour contractors, Societies or on term based appointments.

15. They allege that this constitutes an “*unfair labour practice*” as defined in Section 2(ra) read with item 10 of Schedule V of the Industrial Disputes Act, 1947 (for short ‘the Act’). They contend that this is prohibited under Section 25-T of the Act, and under Section 25-U of the Act, penalty of imprisonment of six months or fine extending up to Rs.1,000/- or both could even be imposed on the management of the ONGC.

16. Petitioners contend that the ONGC is acting unreasonably in not regularizing the services of Field Operators like the petitioners though they have put in more than 20 years of uninterrupted service and are fully qualified to be regularized.

17. Sri C.V.Mohan Reddy, learned Senior Counsel appearing for the petitioners reiterated the said contentions. He asserted that the above conduct of the ONGC in not regularising the services of the

petitioners and employing them initially as contract labour, later through Cooperative Societies and on term based employment for about 20 years or more clearly amounts to “**unfair labour practice**” as defined in Section 2(ra) of the Act. He contended that these facts are not disputed anywhere in the counter-affidavit filed by respondents and though petitioners through their Union also attempted to invoke the provisions of the Act and commence conciliation, nothing was done by the Dy. Commissioner of Labour (Central), Hyderabad for more than 2 years, and therefore they are entitled to approach this Court under Article 226 of the Constitution of India. He further contended that the petitioner Union in W.P.No.29116 of 2014 initiated proceedings under the act in 2014, but nothing came of it till date. He also contended that the plea of the respondents that this Court cannot entertain a plea of “unfair labour practice” in these circumstances, is only an act of dilatory tactics to harass the petitioners. He placed reliance on the judgments of the Supreme Court **National Thermal Power Corporation Limited Vs. Mahesh Dutta and others¹**, **Indian Petrochemicals Corporation Limited and another Vs. Sharamik Sena and others²**, **Maharashtra State Road Transport Corporation and another Vs. Casteribe Rajya Parivahan Karmachari Sanghatan³**, **Nihal Singh and others Vs. State of Punjab and others⁴**, **Oil and Natural Gas Corporation**

¹ (2009) 6 SCC 339

² (1999) 6 SCC 439

³ (2009) 8 SCC 556

⁴ (2013) 14 SCC 65

**Limited Vs. Petroleum Coal Labour Union and others⁵,
Amarkant Rai Vs. State of Bihar and others⁶, Sudarshan Rajpoot
Vs. Uttar Pradesh State Road Transport Corporation⁷, U.P. State
Electricity Board Vs. Pooran Chandra Pandey and others⁸.** (The
fifth one above concerns the ONGC)

18. He relied on 2 other judgements of the Gujarat and Delhi High Courts concerning the ONGC. The Division Bench of High Court Gujarat in **the Executive Director/Basin Manager Oil and Natural Gas Corporation Ltd Vs. ONGC Employees Mazdoor Sabha and two others⁹** held that when the question arises for regularisation of workmen under the Act by Industrial Tribunal, ONGC cannot be allowed to contend that the appointment of the workmen was made without following due procedure under the Recruitment Rules and that their appointments were illegal. The Court had also rejected the contention of ONGC that absence of public advertisement at the time of recruitment of such workmen should be also a ground to deny them regularisation and that their recruitment be treated as illegal. It held that if the appointments were irregular, the Tribunal under the Act could grant relief of regularisation. It was pointed out that this judgment of the Division Bench was confirmed by the Supreme Court in S.L.P.No.22467-22469/2015 dt.17-08-2015 and has become final in Gujarat State as against the ONGC.

⁵ (2015) 6 SCC 494

⁶ (2015) 8 SCC 265

⁷ (2015) 2 SCC 317

⁸ (2007) 11 SCC 92

⁹ L.P.A.No.797 of 2013 and batch dt.29-04-2015

19. The Delhi High Court In **Krishan Gopal and Others Vs. ONGC and another**¹⁰ reversed the decision of the learned Single Judge of that Court, who had held that relief of regularisation cannot be granted to contingent employees who were engaged by the ONGC who had put in more than 15 years of unblemished service. The Bench declared that the action of the ONGC in permanently recruiting persons who were juniors to the appellants, was patently illegal in view of Standing Orders of ONGC prescribing consideration of contingent employees who had put in more than 240 days of service in 12 consecutive months for regularisation on occurrence of vacancy, and that the ONGC had indulged in 'unfair labour practice'. The Court had directed regularisation of the services of the appellants in terms of the Standing Order dt.15-07-1962. It is pointed out that that on 26-02-2016, the Special Leave Petition No.4 of 2016 filed against the said judgment is pending in the Supreme Court and interim stay was granted.

THE INTERIM ORDER DT.21.10.2014 IN W.P.NO.31644 OF 2014

20. On 21-10-2014 in W.P.No.31644 of 2014, this Court granted an interim direction restraining the ONGC from not finalizing the selection process until further orders, observing that the petitioners may also apply for the said posts advertised on 01-09-2014.

¹⁰ Judgment dt.12-10-2015 in L.P.A.654/2010

PLEA IN W.P.NO.29116 OF 2014 FILED BY THE FIELD OPERATOR'S UNION

21. In this batch of Writ Petitions, only W.P.No.29116 of 2014 is filed by the ONGC Field Operators' Union essentially with similar pleadings as in W.P.No.31644 of 2014 and the other connected Writ Petitions. It is contended that the said Union was registered in 2013 and represents 43 Field Operators. It is stated that it had represented on 9.6.2014 to the Labour Department as well as Ministry of Petroleum, Government of India seeking regularization of its members, that the same was forwarded to the Chief Labour Commissioner (Central), New Delhi and he called for remarks from the ONGC; and the same was forwarded on 22-07-2014 by the said official to the Deputy Chief Labour Commissioner (Central), Hyderabad for necessary action.

22. It is not in dispute that no further action was taken by the Deputy Chief Labour Commissioner (Central), Hyderabad and he did not report any failure of conciliation to the Union of India till date and consequently no reference of dispute of regularization was made to an Industrial Tribunal for adjudication.

23. Thus, the machinery under the Industrial Disputes Act, 1947 also failed for more than 2 years to give any solution to the grievance of the petitioners who sought regularization of their services in the ONGC.

THE ORDER DT.11.3.2016 IN W.P.29116 OF 2014 AND BATCH

24. On 11-03-2016, W.P.No.29116 of 2014 and batch were allowed by a learned Single Judge and he directed the Corporation to regularize the services of the petitioners in all the cases in the posts of Field Operators with effect from 07-07-2008, the date on which they were engaged as Field Operators, with all consequential benefits, after selecting them through an open and direct recruitment process. The Corporation was given liberty to fill up the remaining vacancies after absorbing the petitioners in the regular posts.

THE ORDER DT.14.7.2016 IN W.A.NO.530 OF 2016

25. The ONGC filed W.A.No.530 of 2016 and batch before the Division Bench. The Division Bench on 14-07-2016 allowed the said appeals, set aside the order of the learned Single Judge and remitted the matter back directing a fresh hearing on all relevant aspects. Interim orders, if any, passed in the Writ Petitions were however restored and in view of the urgency to fill up the notified posts for meeting operational requirements, it advised both parties to move the Single Judge for expeditious disposal.

26. Thereafter, on a mention made by counsel on both sides, the matter was taken up and heard on 17-10-2016, 02-11-2016, 03-11-2016 and 14-11-2016.

COUNTER-AFFIDAVIT FILED BY RESPONDENTS

27. In the counter-affidavit, the respondents admit that the petitioners were appointed by selection against an advertisement as Field Operators on a tenure basis for 4 years in 2008 and 2012, but they contend that they have no right for continuance beyond this period and there is no statutory or constitutional obligation on the part of the ONGC to regularise their services. They contend that no Writ of Mandamus can be issued as sought by the petitioners.

28. It is also stated that the representation dt.09-06-2014 of the ONGC Field Operators Union to the Government of India seeking regularisation/conversion of the existing Field Operator post as regular post's in ONGC and earmarking of 50% of the posts notified for direct recruitment to the Field Operator treating them as in-service candidates was forwarded to the Dy.Chief Labour Commissioner (Central), Hyderabad on 22-07-2014 and that the said Officer had written a letter on 18-08-2014 to the ONGC to offer its comments and that such comments were submitted and in the meantime the said Union filed W.P.No.29116 of 2014. They contend that once the Union raised the issue, Writ Petitions can't be entertained.

29. Reference is made to clause (B) (iii) of the Appointment letters issued to the petitioners which states that on completion of tenure engagement, they will not be entitled for any regular or other employment in the ONGC. It is contended that the petitioners, who were engaged for fixed term of four years only in the temporary posts,

have no right to claim regularization of their services as their employment comes to an end automatically with the end of the said term and that the petitioners having accepted the said appointment, being fully aware of the nature and the tenure of the post, cannot be granted any relief in the Writ Petitions,

30. It was denied that post of Field Operator comes under level A-I, A-II and W-I which had been notified by the ONGC in 2014 and 2015 for recruitment. The other allegations made by the petitioners were denied.

CONTENTIONS OF COUNSEL FOR THE RESPONDENTS

31. Sri B.Adinarayana Rao, learned Senior Counsel appearing for Sri Kakara Venkata Rao, learned counsel for ONGC/respondents reiterated the above contentions. He contended that the relief of regularisation of services claimed by the petitioners or a declaration that any “unfair labour practice” was committed by the ONGC cannot be granted in a Writ Petition filed under Article 226 of the Constitution of India and can only be granted by an Industrial Tribunal constituted under the Act. He placed strong reliance on the decision of the Supreme Court in **State of Karnataka Vs. Umadevi (3)**¹¹, **Union of India and others Vs. Vartak Labour Union (2)**¹², **State of Uttar Pradesh and others Vs. Rekha Rani**¹³ and the unreported judgment of the Madras High Court in **M. Rajan and**

¹¹ (2006) 4 SCC 1

¹² (2011) 4 SCC 200

¹³ (2011) 11 SCC 441

others Vs. ONGC¹⁴, which judgment according to him, was confirmed by Supreme Court by dismissal of the S.L.P. filed against it. He also gave a statement regarding some of the petitioners in each of this Batch of cases and contended that due to the reasons mentioned as against the said individuals, they would not be entitled to any relief.

THE POINTS FOR CONSIDERATION

32. Having regard to the contentions of the parties, the following points arise for consideration in the case :

(a) *Whether the contention of the respondents that the cases involve disputed questions of fact and cannot be entertained under Art.226 of the Constitution of India is correct?*

(b) *Whether the existence of a remedy of seeking a reference through the ONGC Field Operator Union under Section 10 of the Industrial Disputes Act, 1947 is, in the facts and circumstances of these cases, a bar for entertainment of these Writ Petitions by this Court ?*

(c) *Whether, in the facts and circumstances of these cases, it can be said that the ONGC is guilty of 'unfair labour practice' as defined in Sec.2(ra) r/w Item 10 of Schedule V of the Act?*

(d) *Whether, on the facts of these cases, the relief of regularization of their services sought by the petitioners in these Writ Petitions can be granted by this Court exercising power under Article 226 of the Constitution of India ?*

¹⁴ Order dt.20-11-2015 in W.A.No.299 of 2010 and batch.

(e) *Whether the decision in Uma Devi (11 Supra) is a bar for grant of any relief of regularization to the petitioners ?*

(f) *What is the relief to be granted ?*

The summary of facts :

33. Before I deal with each of the above points, I will first summarise the facts. The fact that the petitioners in the Writ Petitions other than WP.No.29116 of 2014 (where the Union of Field Operators is a party) were initially engaged prior to 1997 through private contractors in the K.G. Basin operators at ONGC Rajahmundry Asset and E.O.A., Kakinada, that there was an agreement entered into on 11.12.1997 *in the interest of industrial harmony* between the ONGC Limited Contract Workers Union, Narsapur and the ONGC after conciliation under the Industrial Disputes Act, 1947, that all contractual jobs of ONGC at Narsapur would be executed through co-operative societies formed by the workers themselves and this would continue for five years, is not denied by the ONGC.

34. It is also admitted that this agreement was in force for ten years and was followed up by another agreement on 12.01.2003 in the presence of the Honourable Minister of State for Consumer Affairs, Food and Public Distribution, Government of India and the Minister for Energy, Coal and Boilers, Government of Andhra Pradesh. This subsequent agreement contemplated in clause 9 that the societies would commence contractual services from 13.01.2003; clause 8

stated that ONGC would create and fill up 60 posts to meet operational requirements and would start the process of recruitment immediately; that the second phase of recruitment would be initiated by January, 2004; and the ONGC would make efforts to fill up 300 posts in all at the rate of 60 posts per year during a period of five years; but the assurance in clause 8 was not acted upon by the ONGC.

35. Though this plea was denied by the ONGC in para 12 (a) of the counter filed in WP.No.34664 of 2015, copy of the minutes of meeting held on 12.01.2003 filed by the petitioners have not been denied which mentions in para.8 the promise made by the ONGC. Further, no evidence is placed by ONGC to establish that it fulfilled the promise either. Therefore it has to be taken that the denial of the plea by the ONGC is untenable.

36. On 08.1.2008, there was another agreement between the ONGC and the ONGC Limited Contract Workers' Union, Narsapur in the presence of public representatives and the Regional Labour Commissioner (Central), Hyderabad to consider only 280 society workers for term-based employment. It was agreed that the ONGC would give age relaxation in providing term-based employment to those society workers who are technically qualified subject to verification of certificates of various skills / qualifications. It was also agreed that society workers having non-technical qualifications would be taken for term-based employment within three years for acquiring the technical qualification during this period and till that time they

will be given opportunity to continue as society workers. The ONGC also agreed that the remaining society workers will be given opportunity to continue as society workers on contract basis for a period of five years w.e.f. 09.01.2008 or from the date of joining duties whichever is later, with enhanced rates of wages for skilled and semi-skilled as agreed therein.

37. Giving a go-by to this understanding dt.08.01.2008, the ONGC conducted open general recruitment and a written examination for 280 society workers and outsiders which was followed by oral interview and medical examination. Some of the petitioners were subjected to the said tests and, having been successful therein, were engaged by order dt.05.07.2008 as Field Operators for four years on tenure basis subject to conditions mentioned therein.

38. On expiry of the said period of four years in 2012, these very persons as well as some more society workers who were subjected to similar process of written test, oral interview and medical examination were also issued letters dt.25.05.2012 and 05.07.2012 appointing them as Field Operators for four years.

39. The petitioners assert that they had gone through the process of written test, oral interview and medical examination and are working as Field Operators in the ONGC at the K.G. Basin. Thus, from prior to 1997 till date for about 20 years, the petitioners are working in the ONGC. There being no specific denial of these facts, and since it is

admitted that the petitioners were given term based appointments, I shall proceed on the premise that these facts are proved.

Point (a) :

40. Now I will consider the question raised by the respondents, namely, whether there are any disputed questions of fact arising in this case coming in the way of the Court entertaining the Writ Petitions.

41. In **ABL International v. Export Credit Guarantee Corporation of India Limited**¹⁵, the Supreme Court declared that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. It quoted its own decision in **Gunwant Kaur v. Municipal Committee, Bhatinda**¹⁶ wherein the Court even went to the extent of holding that in a Writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the Writ court has the jurisdiction to entertain a Writ petition involving disputed questions of fact and there is no absolute bar for entertaining a Writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

42. As long back as in 1974, a Three-Judge Bench of the Supreme Court in **Babu Bhai v. Nandlal**¹⁷ declared that the High Court is not

¹⁵ (2004) 3 SCC 553

¹⁶ (1969) 3 SCC 769

¹⁷ AIR 1974 SC 2105

deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined and that in a petition under Article 226, the High Court has jurisdiction to try issues both of fact and law. It however stated that when the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and if the High Court on that account, is of the view that the dispute should not appropriately be tried in Writ Petition, the High Court may decline to try the petition. It clarified that if, however, on consideration of the nature of the controversy, the High Court decides that the facts are not complex, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, the Supreme Court would not interfere in appeal with the order made by the High Court on this respect.

43. In **National Thermal Power Corporation Limited** (1 supra) also the Supreme Court held that there is no rule of law that the High Court is denied or debarred from entering into a disputed question of fact and if a disputed question can be determined on the basis of documents and/or affidavit, the High Court may not ordinarily refuse to do so and that in a given case it may also examine witnesses.

44. The above principles has been reaffirmed recently in 2012 and followed in **Real Estate Agencies v. State of Goa**¹⁸.

¹⁸ (2012) 12 SCC 170

45. The decision of the Supreme Court in **Petroleum Coal Labour Union Case** (5 supra) which dealt with a plea of “unfair labour practice” is of particular importance in this case. There the Supreme Court held that even if the plea of unfair labour practice was not raised, the Labour Court as well as the High Court have the power to record a finding of fact on the basis of the record and pleadings of parties to ensure that there is effective adjudication of the industrial dispute to achieve industrial peace and harmony in the industry in the larger public interest, which is the prime object and intendment of the Industrial Disputes Act. This decision will be discussed in more detail at the appropriate stage.

46. I have already set out in paragraph nos.33 to 39, the basic summary of facts. The facts are not complex. The facts stated are not in dispute.

47. I therefore hold on Point (a) that there are neither disputed questions of fact nor any complex facts and this Court is not precluded from deciding the issues in these Writ petitions. I also hold, as decided by the Supreme Court of India in **Petroleum Coal Labour Union Case** (5 Supra), that this Court can also deal with the issue of “unfair labour practice”. By employers. Point (a) is answered accordingly.

Point (b) :

48. The point is whether, on the facts, the existence of a remedy of seeking a reference through the ONGC Field Operator Union under

Section 10 of the Industrial Disputes Act, 1947 is a bar for entertainment of these Writ Petitions by this Court.

49. The purpose of the above Act is to provide a speedy remedy to workmen. This was pointed out by the Supreme Court in a number of cases. But where, as in the present case, the said remedy was invoked and as I shall point out, proved to be wholly unfruitful, the petitioners are, in my opinion, certainly entitled to move the High Court particularly if there is an “unfair labour practice” as stated in the **Petroleum Coal Labour Union Case** (5 Supra). I shall presently demonstrate how the statutory remedy invoked by the ONGC Field Operators’ Union was rendered otiose by total non-action for more than two years upto date.

50. It is an admitted fact that the ONGC Field Operators’ Union, a registered Trade Union represented to the Ministry of Labour and Employment, Government of India on 09.06.2014 demanded regularization / conversion of existing Field Operator posts as regular posts in the ONGC with appropriate designation, pay scales in the concerned departments and pending completion of the said process, earmarking of 50% of the posts notified for Direct Recruitment to the Field Operators treating them as in-service candidates; that the Government of India sent the said demand to the Deputy Chief Labour Commissioner (Central), Hyderabad by letter dt.22.07.2014 to take necessary action in the matter and the General Secretary of the Union was directed to pursue the matter with the said Officer. The

Deputy Chief Labour Commissioner (Central), Hyderabad through letter dt.18.08.2014 requested the Asset Manager of ONGC, Rajahmundry to take further action in the matter and the Labour Enforcement Officer (Central), Rajahmundry was requested to enquire into the matter by way of inspection and submit a detailed report. The ONGC submitted its comments to the same on 03.09.2014. Since nothing happened thereafter, the said Union filed on 24.09.2014 WP.No.29116 of 2014. Even thereafter nothing happened till date.

51. The Labour Department Officials of the Government of India do not appear to have sent any report of failure of conciliation to the Government of India even though two years have elapsed since the raising of the dispute by the Union and no reference under Sec.10 of the Act of any dispute on the issue of regularization of the Field Operators has been referred to any Central Industrial Tribunal to adjudicate. Thus, the intended speedy mechanism prescribed under the Industrial Disputes Act, 1947 for adjudication of the disputes between the ONGC and the petitioners and the ONGC Field Operators' Union which had been invoked, utterly failed on account of the unhelpful attitude of the authorities in providing a resolution to the claim for regularization raised by them for two years.

52. Here I may recall that the purpose of enactment of the Act as explained by the Supreme Court in **LIC v. D.J. Bahadur**¹⁹. The Court

¹⁹ (1981) 1 SCC 315

stated it was to provide a speedy remedy to workmen(but, as stated above, that was not achieved). The Supreme Court declared :

*“ 22. The ID Act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure so that the energies of partners in production may not be dissipated in counter-productive battles and assurance of industrial justice may create a climate of goodwill. Industrial peace is a national need and, absent law, order in any field will be absent. Chaos is the enemy of creativity sans which production will suffer. Thus, the great goal to which the ID Act is geared is legal mechanism for canalising conflicts along conciliatory or adjudicatory processes. The objective of this legislation and the component of social justice it embodies were underscored in the **Bangalore Water Supply and Sewerage Board v. Rajappa** thus: [SCC p. 232: SCC (L&S) p. 234, para 18]*

“To sum up, the personality of the whole statute, be it remembered, has a welfare basis, it being a beneficial legislation which protects labour, promotes their contentment and regulates situations of crisis and tension where production may be imperilled by untenable strikes and blackmail lock-outs. The mechanism of the Act is geared to conferment of regulated benefits to workmen and resolution, according to a sympathetic rule of law, of the conflicts, actual or potential, between managements and workmen. Its goal is amelioration of the conditions of workers, tempered by a practical sense of peaceful coexistence, to the benefit of both — not a neutral position but restraints on laissez faire and concern for the welfare of the weaker lot. Empathy with the statute is necessary to understand not merely its spirit, but also its sense.”

53. The Supreme Court again explained in **Rajasthan SRTC v. Krishna Kant**²⁰ the purpose as follows in more detail:

“ 28. ... we must emphasise the policy of law underlying the Industrial Disputes Act and the host of enactments concerning the

²⁰ (1995) 5 SCC 75

workmen made by Parliament and State Legislatures. The whole idea has been to provide a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedures followed by civil courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and re-make the contracts, settlements, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them.”(emphasis supplied)

54. If the policy of the Act is to provide a speedy, inexpensive and effective forum for resolution of disputes, the facts in the present case prove beyond doubt that these objectives have not been achieved due to the lethargy of the Labour department of the Union of India in the matter for the two years since the petitioners/their Union raised the issue of their regularisation. The silence / inaction of the Labour Department of the Union of India on this issue is very unfortunate.

Though the Department was conferred a statutory responsibility by the Act to maintain industrial peace and harmony by taking a proactive role for settlement of industrial disputes, it is tragic that for more than two years the said Department has not moved its little finger in the matter. More so, in a case where the petitioners have been pleading “unfair labour practice” by ONGC.

55. In these circumstances, can it be said that the existence of a mechanism under the Act is a bar for entertaining the present batch of Writ Petitions? Can the ONGC take advantage of the apathy of the Labour Department of the Government of India for more than two years in processing the request of the ONGC Field Operators’ Union of India and now insist that this Court has no choice but to direct the said Department to wake up from its slumber and do something on the issue? The answer is ‘No’.

56. Normally, this Court would be reluctant to exercise jurisdiction under Article 226 of the Constitution of India if there is an effective alternative remedy available to a party. But, if the alternative remedy was invoked and was not given any response, and has not yielded speedy redressal, then it would not be a bar to a Writ Petition (**Assistant Collector of Central Excise v. Jainson Hosiery Industries**²¹).

57. If the alternative remedy is not effective, then also this Court can entertain the Writ Petition.

²¹ AIR 1979 SC 1889.

58. In **CIT v. Chhabil Dass Agarwal**²², the Supreme Court declared:

“11. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226....”

16. ... The remedy under the statute, however, must be effective and not a mere formality with no substantial relief”(emphasis supplied)

59. Summarising the factual position in regard to existence of an alternative remedy, I may state,

- (i) the non entertainment of petitions under the Writ Jurisdiction by the High court when an alternative remedy is provided, is a self imposed limitation and not a rule of law;
- (ii) in the present case the alternative remedy was invoked by the petitioners but the Labour Department of the Union of India has done nothing in the matter for 2 years since the issue of regularisation of Field Operators was raised;

²² (2014) 1 SCC 603

- (iii) the statutory remedy has proved ineffective;
- (iv) since the workmen have been employed for about 20 years in the ONGC and are pleading “unfair labour practice” being adopted by the ONGC; and
- (v) they cannot be compelled to wait for more number of years for resolution of the issue,

hence, these cases fall within the accepted rules of exception where the Writ Petition can and ought to be entertained and decided without relegating the petitioners to continue to pursue the remedy under the Act for more number of years.

60. Point (b) is answered accordingly.

Points (c)

61. The point is whether, in the facts and circumstances of the case, it can be said that the ONGC is employing ‘unfair labour practice’ as defined in Sec.2(ra) r/w Item 10 of Schedule V of the Act.

62. The term “*unfair labour practice*” is defined under Section 2 (ra) of the Act. It states that “*unfair labour practice*” means “any of the practices specified in the Fifth Schedule”.

63. Schedule V to the Act describes that various actions which can be termed as “*unfair labour practices*” on the part of employers as well as employees.

64. Item 10 thereof states that “*to employ workmen as ‘badlis’, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen*” is an unfair labour practice on the part of employers.

65. I have earlier referred to the decision in **Petroleum Coal Labour Union Case** (5 Supra) wherein the Supreme Court held that even if the plea of “unfair labour practice” was not raised, the Labour Court as well as the High Court have the power to record a finding of fact on the basis of the record and pleadings of parties to ensure that there is effective adjudication of the industrial dispute to achieve industrial peace and harmony in the industry in the larger public interest, which is the prime object and intendment of the Industrial Disputes Act.

Unfair labour practice in the matter of regularisation

66. In **Indian Petrochemicals Corporation Limited** (2 supra), a 3 Judge Bench of the Supreme Court considered the question of regularisation of services of workmen employed in statutory canteens managed by contractors. The workmen filed a Writ Petition in the High Court contending that the factory of the Management (IPC) where the workmen were employed was governed by the provisions of the Indian Factories Act, 1948 and that the canteen where they were employed was a statutory canteen established by the Management (IPC) and maintained for the benefit of the workmen

employed in the factory. They contended that the Management (IPC) had direct control over the said workmen and the contractor had no control over the management, administration and functioning of the said canteen; that the canteen is a part of the establishment of the Management (IPC) and the workers working in the canteen are the workmen of the said Management (IPC); that the work carried on by them in the said canteen is perennial in nature and the canteen is incidental to and is connected with the establishment of the Management; and consequently, the workmen ought to be treated regular workmen of the said Management.

67. The Management (IPC), however, contended that it is a public sector undertaking and it cannot appoint any person in contravention of the Recruitment Policy which requires the Management (IPC) to follow a roster system. It also contended that the workmen were not in the regular employment of the said Management and the absorption or regularisation of the services of the said workmen would contravene Article 16(4) of the Constitution of India as well as the Reservation policy applicable for recruitment.

68. The High Court allowed the Writ Petition holding that since the workmen were working in the statutory canteen of the Management, they were entitled to be absorbed in the employment of the said Management.

69. This was questioned in the Supreme Court by the Management. Before the Supreme Court, it was conceded by the counsel for the Management that the respondent-workmen would fall within the definition of the term “worker” in Section 2(l) of the Factories Act and have to be treated as the employees of the appellant-Management for the purposes of the said Act. It was also conceded that Section 46 of the said Act mandated provision of canteen facilities to workers employed by the Management, and therefore, it is a statutory canteen but it was contended that only for the purposes of the Factories Act, they would be employees of the Management but not otherwise.

70. But the Supreme Court held that though normally workmen hired by a contractor to work in a statutory canteen established under the Factories Act, 1948 would normally be the workmen of the establishment for the purpose of the said Act only and not for all other purposes and that the Factories Act does not govern the rights of employees with reference to recruitment, seniority, promotion, retirement benefits etc., which are governed by other statutes, Rules, contracts or policies, *the material on record* indicated that the workmen were in fact employees of the Management *for all purposes*. It observed that though normally, this being a question of fact, the Court would have been reluctant to examine this question which should be first decided by a fact finding Tribunal, since the parties had filed detailed affidavits and documents, without the need for any oral evidence, and that the material was sufficient for it to decide the said

question. It considered the affidavits filed before it and concluded that

- (a) The Canteen had been there since the inception of the appellant's factory.
- (b) The workmen have been employee for long years and despite a change of contractors the workers have continued to be employed in the canteen.
- (c) The premises, furniture, fixture, fuel, electricity, utensils etc. have been provided for by the appellant.
- (d) The wages of the canteen workers have to be reimbursed by the appellant.
- (e) The supervision and control on the canteen is exercised by the appellant through its authorised officer, as can be seen from the various clauses of the contract between the appellant and the contractor.
- (f) The contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and directions of the appellant.
- (g) The workmen have the protection of continuous employment in the establishment by virtue of an Industrial Tribunal Award which held that the Management was indulging in an **“unfair labour**

practice”, that they were in fact employed by the Management (IPC) and declared that they were entitled to continue in the employment irrespective of the change in the contractor.

71. It rejected the contention of the Management that there is no abolition of contract labour in the Canteen of the appellant's establishment and it is therefore open to the Management to manage its Canteen through a contractor. It held that on the facts of the case, the Management had not engaged a contractor who was wholly independent of the Management and that the contractor was pressed into service only for the purpose of record. It therefore held that they were entitled to regularisation not as a matter of right under any statute *but with a view to eradicate “unfair labour practices” and in equity to undo social injustice and as a measure of labour welfare.*

72. It is thus clear that the Supreme Court ruled as a matter of principle that in cases where the employer indulges in ‘unfair labour practice’ for long periods, the workmen can be granted relief of regularisation.

73. This case was followed and applied in **Hindalco Industries Limited Vs. Association of Engineering Workers**²³. The respondent-Union filed a complaint of unfair labour practice against the appellant under item 9 of Schedule IV of the Maharashtra Act of 1971 referred to in the **Indian Petrochemicals Corporation Limited**

²³ AIR 2008 SC 1867

case (2 supra) before the Industrial Court on the ground that in order to avoid giving the workmen working in the canteen permanency and benefits, the appellant was illegally treating them as contract workmen. It also raised the demand that all the 27 workmen should be absorbed in the Company from the initial date of their employment in the appellant and pay them wages and other benefits that are applicable to permanent workmen of the appellant. The appellant opposed it on the ground that working of the canteen is distinct and separate and is neither incidental nor connected with the manufacturing process of the factory and that the canteen was exclusively run and managed by the contractor, an outside agency. The Industrial Court allowed the complaint and directed the appellant to seize and desist unfair labour practice. It also directed the appellant to absorb and make the canteen employees referred to in the annexure to the complaint as permanent employees of the appellant from the date of its order. It also directed the appellant to pay them wages and other benefits in the last category of unskilled workmen in the appellant company. This was confirmed by the High Court. The appellant then approached the Supreme Court. The Supreme Court applied the judgment in the **Indian Petrochemicals Corporation Limited** case (2 supra) and confirmed the view of the Industrial Court. It held that evidence on record indicated that the wages of the employees of the canteen were being reimbursed by the appellant and thus in fact it was the company which paid all the amount; that the activities of the workmen in the canteen, their suitability to work,

physical fitness were ultimately controlled by the appellant; and so the Industrial Court was correct in arriving at the conclusion that the contract was nothing but a paper agreement. It further held that in spite of change of several contractors, neither the workmen were replaced nor fresh appointments were made and on the other hand, they were continuing even on the date of the filing of the complaint. These facts coupled with the fact that most of the employees were working for more than 10 to 15 years and there was no valid reason for the appellant to deny their permanency, the Industrial Court rightly concluded that the appellant had committed unfair labour practice under item 9 of Schedule IV of the Maharashtra Act of 1971. It directed the directions of the Industrial Court to be implemented within 3 months.

74. The aforesaid two judgments of the Supreme Court treat non-regularisation of workmen engaged for long periods as 'unfair labour practice' directly apply to the present case entitling this Court to grant relief under Art.226 of the Constitution of India.

75. In **Sudarshan Rajpoot** (7 supra) decided in 2015, the Supreme Court held that extracting work of permanent nature continuously for more than 3 years on the plea that the employment is on contract basis is wholly impermissible and this amounts to an "unfair labour practice" as defined under Section 2(ra) of the Act r/w Section 25-T which is prohibited under Section 25-U and Chapter V-C of the Act.

76. The present case demonstrates that the ONGC, which is an instrumentality of the State, employed the petitioners initially through private contractors prior to 1997 and later through labour societies, and then term-based appointments *from 2008 till date* (2016) (nearly 20 years) after a process of selection, and it had deprived them of the status and privileges of a regular workmen such as a scale of pay, increments, security of tenure, etc. *Only in the interest of industrial peace*, the ONGC had entered into the agreements dt.11-12-1997, 12-01-2003 and 08-01-2008 with the workers Unions, but it has used their services all these 20 years without giving them the status of regular workmen and all attendant benefits which would have accrued on that count to them.

77. These facts, in my opinion, leave no manner of doubt that the ONGC has been adopting unhealthy practices involving exploitation of the petitioners and these facts would undoubtedly come within the definition of the term “*unfair labour practice*” defined under Section 2 (ra) of the Act read with item 10 of Schedule V to the Act i.e employing them as casuals or temporaries and continuing them as such for a number of years with object of depriving them of the status and privileges of permanent workmen.

78. Therefore on point (c), following the decisions of the Supreme court referred to above, I hold in favour of the petitioners and against the respondents, that the ONGC had indulged in ‘unfair labour practice’.

Points (d),(e) and (f) :

79. Before I deal with the issues / points under these heads, it is important to notice and explain the decision in **Uma Devi (3)** (2006) (11 supra) and other cases decided by the Supreme Court, on which the counsel for respondents placed reliance.

The decision in Umadevi (3)

80. The judgment was delivered by a Constitution Bench of the Supreme Court.

81. The Supreme Court held in para 2 that public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder; that our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf; equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated as equals; and that, any public employment has to be in terms of the constitutional scheme.

82. In paragraph no.6 of the judgment, the Court highlighted the fact that the *power of a State as an employer* is more limited than that of a private employer inasmuch as it is *subjected to constitutional limitations*, that it cannot be exercised arbitrarily and that *the State is meant to be a model employer*. After noting that (a) statutory rules are framed under the authority of law governing employment and (b) the

settled legal position is that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law, the Court emphasized that following any other course could be disastrous as it would deprive the security of tenure and the right of equality conferred on civil servants under the constitutional scheme which may amount to negating the accepted service jurisprudence. It declared that when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.

83. Here I may point out that it is rather surprising that the ONGC, which swears by certain portions of the above judgment in **Uma Devi (3)** does not refer to certain other important portions thereof (which will be referred to by me a little later).

84. In **Umadevi (3)**, the Supreme Court, conceded the right, if any, of the employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, to approach the High Court for the issuance of a Writ of Mandamus directing that they be made permanent in appropriate post, the work of which they were otherwise doing, and the claim which was essentially based on the fact that they have continued in employment or engaged in the work for significant length of time, and that they were therefore entitled to be absorbed in the posts in which they had worked in the department concerned or the authority concerned.

85. The Court then referred to the equality clause represented by Article 14 and Article 16 of the Constitution which provided for equality of opportunity in matters of public employment apart from Article 309 which provides that Legislature may regulate recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State and Article 315 which provides for the constitution of the Public Service Commissions for the Union and for the States and their functions, the Court observed that the Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

86. It is true that the Court then observed that there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wage basis, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and which are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. It observed that this right of the Union or of the State Government has to be recognized and the Constitution does not prohibit it, but the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment.

87. It then went on to hold that *it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following due process of selection as envisaged by the constitutional scheme.* It held that there is only limited role of equity in such matters and otherwise it would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted in the country.

88. The Supreme Court no doubt also held that unless an appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract and if it were an engagement or appointment on daily wage or casual basis, the same would come to an end when it is discontinued. Similarly a temporary employee could not claim to be made permanent on the expiry of his term of appointment. Merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, it held that 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 held that the High Courts acting under Article 226 of the Constitution, *should not ordinarily issue directions for absorption,*

regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.

89. The ONGC places strong reliance on the above portions of the judgement in **Uma Devi (3)** (11 Supra).

90. Now I shall refer to certain portions of **Umadevi (3)**, which the ONGC has conveniently ignored.

91. Firstly, after reviewing other decisions, it declared that *regular recruitment should be insisted upon, and only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization.* Therefore, applying this statement of law, the fact that, even in 2008, two years after the decision in **Umadevi (3)**, the ONGC has given to petitioners, who were rendering service from since prior to 1998, term based appointments and has continued them till date as such, shows that it is conveniently ignoring the above directive of the Supreme Court.

92. Secondly, the Supreme Court clearly held in paragraph-53 of it's judgement that in cases where *irregular* appointments (not illegal appointments) are made of duly qualified persons in duly sanctioned vacant posts and such employees have continued to work for ten years or more without intervention of orders of the Courts or of Tribunals, their regularization may be considered on merits and the Union of

India, the State Governments and their instrumentalities should take steps to regularize *as a one time measure*, the services of such irregularly appointed persons and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts and that required to be filled up within six months from the date of its judgment.

93. The above decision in **Umadevi (3)** was reiterated in **Vartak Labour Union (2)** (12 supra), **Rekha Rani** (13 supra) and it was reiterated that the High Court in exercise of its power under Article 226 of the Constitution of India cannot regularize an employee.

94. From the above decision in **Uma Devi (3)** (11 supra), the following principles have to be noted as regards the present case:

(a) That *ordinarily* High Court under Article 226 cannot direct regularization or absorption in *permanent* employment. Therefore that would mean that there can be exceptions and that there is *no absolute bar on exercise of jurisdiction of the High Court and if circumstances warrant, it can grant such reliefs*;

(b) Equities claimed by the employees who are engaged either temporarily or on casual basis for considerable length of time do not have much of a role and they cannot be allowed to defeat Articles 14 and 16 of the Constitution of India.

(c) Though the State or its instrumentalities may be conceded in certain circumstances to engage persons temporarily or on daily wages, it ought normally to carry on regular recruitment.

(d) **Umadevi (3)** did not have occasion, on facts, to deal with 'unfair labour practice' as defined in Sec.2(ra) r/w item 10 of Schedule V of the Act.

The Maharashtra State Road Transport Corporation and another (3 supra) case (2009) where Umadevi(3) was distinguished

95. Three years after **Umadevi (3)** (11 supra), it was distinguished in **Maharashtra State Road Transport Corporation and another (3 supra)** in 2009 which arose under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'the Maharashtra Act'). In that case, the Industrial Court had given a direction which was confirmed by the High Court that casual labourers engaged for cleaning buses were entitled to status, wages and all other benefits of permanency applicable to the post of cleaners. It held that the power given to the Industrial and Labour Courts under Section 30 of the Maharashtra Act was very wide and the affirmative action mentioned therein is inclusive and not exhaustive.

96. *Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an 'unfair labour practice' on*

the part of the employer under Item 6 of Schedule IV of the said act. Once such 'unfair labour practice' on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive directions to an erring employer. It was held that the provisions of the Maharashtra Act and the powers of Industrial and Labour Courts provided therein were not at all under consideration in **Umadevi (3)** and that *the issue pertaining to unfair labour practice was not at all referred to, considered or decided therein and that it does not denude the Industrial and Labour Courts of their statutory power under the Maharashtra Act to order permanency of the workers who have been victims of unfair labour practice on the part of their employer* and that it is only an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not [normally, as stated in **Umadevi (3)**] issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or *ad hoc* employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

The Nihal Singh (2013) (4 supra) case also distinguishes Umadevi (3)

97. Seven years after **Umadevi (3)**, in **Nihal Singh (4 supra)**, the Supreme Court considered the case of absorption of Special Police Officers appointed by the State, whose wages were paid by Banks at whose disposal their services were made available. It held that the

mere fact that wages were paid by the Bank did not render the appellants 'employees' of those Banks since the appointment was made by the State and disciplinary control vested with the State. It held that the creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State, but if the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship, its action is arbitrary. It also refused to accept the defence that there were no sanctioned posts and so there was justification for the State to utilise services of large number of people like the appellants for decades. It held that *"sanctioned posts do not fall from heaven"* and that the State has to create them by a conscious choice on the basis of some rational assessment of need. Referring to **Umadevi (3)**, it held that the appellants before them were not arbitrarily chosen, their initial appointment was not an 'irregular' appointment as it had been made in accordance with the statutory procedure prescribed under the Police Act, 1861, and the State cannot be heard to say that they are not entitled to be absorbed into the services of the State on permanent basis as, according to it, their appointments were purely temporary and not against any sanctioned posts created by the State. *It held that the judgment in Umadevi (3) cannot become a licence for exploitation by the State and its instrumentalities and neither the Government of Punjab nor those public sector Banks can continue such a practice consistent with their obligation to function in accordance with the*

Constitution. This decision is an apt answer to the contentions raised by the respondents.

The crucial decision in Petroleum Coal Labour Union (5 supra) (2015) which deals with the ONGC's 'unfair labour practice' of non-regularisation and distinguishes Umadevi (3)

98. This decision, which was rendered recently and nine years after **Umadevi (3)** has great precedential value as it deals with the **ONGC**, which is also the contesting respondent herein. I had referred to it under point (b) but now I will deal with it in more detail.

99. This case dealt with the claim for regularization of services on behalf of security guards and security supervisors engaged in the ONGC. They were also initially engaged through contractors and subsequently through co-operative societies like in the present case. They were sought to be discontinued on the basis of a policy decision taken by it to entrust security work to the Central Industrial Security Force (CISF) to protect its installations. This was challenged in the High Court of Madras by the Tamilnadu National Industrial and Commercial Employees' Union and Petroleum Industrial Casual Contract Labour Union. The High Court dismissed the Writ Petition holding that the workers were not entitled for regularization.

100. Since the induction of the CISF Personnel was still awaiting sanction from Central Government, the ONGC appointed the same workmen on term basis in the posts of "watch and ward security" from 13.01.1988 to 29.02.1988 and imposed a condition that the

certified standing orders for contingent employees of ONGC would not apply to them.

101. After completion of the term, they were continued by the Corporation as a stop-gap measure without formal written orders, as a result of which they became employees of the Corporation on temporary basis.

102. They raised industrial dispute claiming regularization of their services in the Corporation and on 10.10.1991, the Central Government made a reference under Section 10 of the Act to the Industrial Tribunal, Chennai, Tamilnadu to decide the following 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 a par with that of the regular workmen and, if not, to what relief the workmen are entitled to ?”

103. The Tribunal answered question no.(i) by directing the ONGC to regularize the services of the workmen on the ground that they had completed 480 days of work as required under the Tamilnadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. This was questioned by the Corporation before the High Court.

104. A single Judge of the High Court dismissed the Writ Petition stating that the dispute between parties regarding non-regularization of the workmen falls within the scope of term 'Industrial Dispute' as defined under Section 2(k) of the Act. He held that the workmen were all victims of 'unfair labour practice' having been employed by the Corporation for several years on temporary basis and even though they were not appointed by following the procedure laid down by the Corporation for recruitment to such posts, they were entitled to regularization and their appointment cannot be stated to be illegal.

105. On an appeal filed by ONGC, this was confirmed by the Division Bench which held that the appointment of the workmen concerned by the Corporation cannot be termed as illegal appointment, but was only an irregular appointment. Therefore they were entitled for regularization in their services having been employed on temporary basis and having completed more than 240 days in a calendar year subsequent to 13.01.1988, the date on which their term-based appointment commenced.

106. Before the Supreme Court, the ONGC contended that the decision of the Tribunal to regularize the workmen with effect from 01.04.1990 is contrary to the decision in **Uma Devi (3)**. It was contended that:

“(a) The appointments of workmen were illegal not irregular, as they were made without proper competition among qualified persons.

(b) The workmen concerned do not possess the qualifications and training required for discharging duties as security guards against attacks by armed gangs or terrorists.

(c) They were not working against sanctioned posts.

(d) The sanction obtained subsequently was only for deployment of members of CISF.

(e) The workmen concerned were, as a stopgap arrangement, though not qualified but found physically fit, were employed for a short period anticipating the posting of the CISF personnel.

(f) They were not allowed to continue voluntarily by the management without intervention of any mandatory provision of law or orders of Tribunal and courts. They could not be discharged and had to be allowed to continue only on account of legal compulsion i.e. Section 33(1) of the ID Act, 1947 and the interim orders of the learned Single Judge and the Division Bench.

(g) The management cannot be compelled by judicial order to regularise the services of unqualified and untrained workmen as security guards for discharging duties which only qualified and trained members of an organised armed force could competently discharge.”

107. The Supreme Court dismissed the appeal filed by ONGC. It firstly held that the Industrial Tribunal has jurisdiction to direct the ONGC to regularize the services of the workmen concerned. It held that Uma Devi (3) did not consider the effect of the Industrial adjudicators' powers and the said decision also did not consider unfair labour practice on the part of employer in engaging employees as badli, casuals or temporaries and to continue to them as such for years with the object of depriving them of the status and privileges of

permanent employees. It held that though Article 14 would apply to the Industrial Tribunal as well and there cannot be any direction to regularize the services of a workman in violation of Article 14, the Industrial Tribunal has undoubtedly jurisdiction to grant relief of regularization having regard to the provisions of the Industrial Disputes Act specifically conferring such powers. It held that the *Industrial and Labour Courts are not denuded of their statutory power to order permanency of the workers who have been victims of "unfair labour practice" on the part of the employer* where the posts on which they have been working exist and this power was not overridden by **Uma Devi (3)**.

108. It held that all the workmen concerned had got qualifications required for their regularization, except one of them and have been employed by ONGC even prior to 1985 in the posts through various irregular means. Therefore, it declared that the Tribunal had the power to adjudicate the Industrial Dispute and impose upon the employer new obligations to strike a balance and secure industrial peace and harmony between the employer and the workmen and ultimately deliver social justice. It followed its judgments in **Maharashtra SRTC case (3 supra)** and **Hari Nandan Prasad v. Food Corporation of India**²⁴.

109. It rejected the contention of the ONGC that the services of the workmen cannot be regularized as their appointment was originally

²⁴ (2014) 7 SCC 190

and initially through contractors and thereafter, without following any procedure of selection and appointment as per the Recruitment Rules and that their appointment is illegal. It followed its decision in **Ajaypal Singh v. Haryana Warehousing Corporation**²⁵ that when a workman was initially appointed in violation of Articles 14 and 16 of the Constitution, then the employer at the time of re-employment of the retrenched workman cannot take the plea that the initial appointment was in violation of the said Articles. It held that the ONGC cannot deny the rights of workmen by taking the plea that their initial appointment was contrary to Articles 14 and 16.

110. It considered clause 2(ii) of the Certified Standing Orders which stated that *“a workman who has been on the rolls of the Commission and has put in not less than 180 days of attendance in any period of 12 consecutive months shall be a temporary workman, provided that a temporary workman who has put in not less than 240 days of attendance in any period of 12 consecutive months and who possesses the minimum qualifications prescribed by Commission may be considered for conversion as regular employee”*. It held that even though due procedure was not followed by the ONGC for the appointment of the workmen, this does not disentitle them of their right to seek regularization of their services by it under the provisions of the Certified Standing Orders, after they have rendered more than 240 days of service in a calendar year from the date of the

²⁵ (2015) 6 SCC 321

memorandum of appointment issued to each one of the workmen concerned in 1988.

111. It also held that the condition in the appointment orders issued to the workmen that the Certified Standing Orders of ONGC will not be applicable is not valid in law and is void since they were workmen for the purpose of the Certified Standing Orders and the said condition therefore has to be ignored ; that the workmen concerned cannot be denied their legitimate, statutory and fundamental right to be regularized in their posts as provided under Clause 2(ii) of the Certified Standing Orders on the basis of the above said contention or because the Corporation did not follow the due procedure as provided under the Appointment and Recruitment Rules for appointment of the workmen concerned in the Corporation. The said contention urged by the Corporation was rejected on the ground that it is an afterthought to justify their irregular act of appointing them as temporary workmen and continuing them as such for a number of years though they are entitled for regularization under Clause 2(ii) of the Standing Orders of the Corporation. It held that this *action of ONGC amounts to an 'unfair labour practice' as defined under Section 2(ra) of the Act, read with the provisions of Sections 25-T and 25-U of the Act, which prohibits such employment in the Corporation and that it would be unjust and unfair to deny the workmen regularization in their posts for the error committed by the Corporation in the procedure to appoint them in the posts.*

112. It held that appointing the workmen through contractors initially, subsequently through co-operative societies, and then vide memorandum of appointment in 1988 and thereafter, continuing them in their services in the posts without following any procedure is untenable in law. It held that their appointment cannot be termed as illegal appointment and has to be treated as irregular appointment since the same was not objected to by any other authority of the ONGC at any point of time.

113. It held that though under Clause 2(ii) of the Certified Standing Orders there is only a right conferred on the workmen to be considered for regularization, the Corporation is bound by law to regularize their services as regular employees after they completed 240 days of services in a calendar year as they have acquired a valid statutory right and it cannot act arbitrarily and unreasonably and deny the same since it is a corporate body owned by the Central Government and an instrumentality of the State in terms of Article 12 of the Constitution governed by Part III of the Constitution.

114. From the above decision in **Petroleum Coal Labour Union** (5 Supra), the following principles can be culled out:

- a) The question as regards the effect of the industrial adjudicators powers was not directly in issue in **Umadevi (3)**;
- b) Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status

and privileges of permanent employees is an unfair labour practices on the part of the employer under item-10 of Schedule V to the Act;

c) The powers of Industrial and Labour Courts to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under item-10 of Schedule V is not over ridden by a decision in **Umadevi (3)**;

d) The ONGC cannot deny the rights of workmen seeking regularization by taking the plea that their initial appointment was contrary to Articles 14 and 16 of the Constitution of India in the light of clause 2 (ii) of its Certified Standing Orders.

e) Even in the absence of plea of an act of Unfair Labour Practice committed by the Corporation against the workmen concerned, the Labour Court/High Court have got the power to record finding of fact from the pleadings to ensure effective adjudication of the industrial dispute and to achieve industrial peace and harmony in the industry in the larger public interest.

ONGC's 'unfair labour practice' were also considered in decisions of various High courts and Umadevi (3) case was distinguished.

115. I may start with the Division Bench of the Delhi High Court in **Krishan Gopal and others Vs. ONGC and another**²⁶ which held against the ONGC and found it to be guilty of 'unfair labour practice'. It followed the judgment in **Petroleum Coal Labour Union case**

²⁶ Order dt.12-10-2015 in LPA No.654 of 2010

(5 supra) and held that 24 contingent employees of the ONGC who had rendered unblemished service in ONGC for more than 15 years were entitled to relief of regularization even though they had approached the High Court directly under Article 226 of the Constitution of India without availing the remedy under the Act and even though Writ Petitions filed earlier by them in the High Court of Himachal Pradesh had been dismissed in 1993. It held that the ONGC had committed unfair labour practice by continuing to engage the appellants for several years after the project for which they were initially engaged came to an end; that the ONGC misled the Himachal Pradesh High Court by stating that no work was available with ONGC and it was in the process of retrenching them but continued to engage them for several years even after the dismissal of the cases by the Himachal High Court; that there was sufficient work available with the ONGC to continue with the services of the workmen is also evidenced from various working papers, office notice and office orders etc. placed before it; that it was tossing the workmen from its one location to another as per its requirement; that it admitted the availability of permanent post against which the workmen could be regularized in an affidavit filed in response to the workmen's complaint that it had recruited permanently certain contingent employees who were juniors to the Writ Petitioners; and that it acted contrary to the Standing Orders prescribing considerations of contingent employees who had put in more than 240 days of service in 12 consecutive months for regularization. Against this judgment, the

ONGC had filed Special Leave Petition No.4/2016, where leave was granted and the High Court's judgment was stayed on 26-02-2016.

116. A Division Bench of the High Court of Gujarat in **the Executive Director/Basin Manager, Oil and Natural Gas Corporation Limited Vs. ONGC Employees Mazdoor Sabha and two others**²⁷, held against the ONGC. It dealt with a challenge to an Award of Industrial Tribunal which directed regularization of services of term based appointees by the ONGC who had been in service since 1999, 2000 and 2001 on completion of 240 days of works in the preceding calendar years and who are still continuing on the posts on which they were appointed and were getting extensions of term/tenure. It directed that they should be treated and covered within priority case of consideration zone for giving them regular appointment by ONGC. One of the directions of the Tribunal was that the ONGC should undertake exercise of giving regular appointment to the remaining term based appointees calling them for interview, if necessary, and not to import recruitment from open market inviting fresh applications for the regular posts *unless term appointees are given regular appointments of Class III and IV posts.*

A Single Judge of the High Court only set aside the above direction but held that workmen who have already undergone procedures of recruitment such as examinations and interviews and have been working with ONGC for years need to be considered and

²⁷ Order dt.29-04-2015 in L.P.A.No.797 of 2013 and batch

the Corporation should treat them as regular employees with effect from 24-01-2005 or the date of first reissuance of appointment order and to grant notional benefits from the said date till 31-03-2013 and to pay them regular pay and allowances with effect from 01-04-2013.

On appeal, by the workmen as well as the ONGC, the Gujarat High Court Division Bench held that when question arises for regularization of workmen under the Act by a Tribunal, a plea that the initial appointment of workmen was contrary to Article 14 and 16 of the Constitution raised by the ONGC or that Public Advertisement was not issued at the time when the recruitment of the workmen had taken place, cannot be accepted. It declined to interfere with the decision of the Single Judge. It is stated that the Special Leave Petitions Nos.22467-22469/2015 filed against the decision of the Division Bench of the Gujarat High Court was dismissed on 17-08-2015 by the Supreme Court.

117. The Counsel for respondent relied upon a Division Bench decision of the Madras High Court in **M.Rajan and others Vs. Oil and Natural Gas Corporation**²⁸, which declined to grant relief to workmen who directly approached the High Court for relief of regularization and took the view that they could not have by-passed the procedure in the Act. It did consider the decision in **Petroleum Coal Labour Union case** (5 supra) but felt that unless the workmen approached the Industrial Tribunal and secured a finding like in that

²⁸ Order dt.20-11-2015 in Writ Appeal Nos.229 of 2010 and batch

case about unfair labour practice by leading oral and documentary evidence, the High Court cannot give a finding that their appointment were irregular and not illegal. It is stated that a Special Leave Petition filed in the Supreme Court of India by the workmen of ONGC against the said decision is admitted by the Supreme Court.

118. Thus the High courts of Delhi and Gujarat in cases dealing with ONGC held that ONGC was guilty of unfair labour practice and distinguished **Umadevi (3)** and granted relief of regularisation.

119. Having noticed all the decisions cited by the respective parties, I will now restate the principles applicable to the facts of this case.

THE APPLICATION OF ABOVE PRINCIPLES TO PRESENT CASE

120. The fact that the petitioners in the Writ Petitions other than WP.No.29116 of 2014 (where the Union of Field Operators is a party) were initially engaged prior to 1997 through private contractors in the K.G. Basin operators at ONGC Rajahmundry Asset and E.O.A., Kakinada, that there was an agreement entered into on 11.12.1997 *in the interest of industrial harmony* between the ONGC Limited Contract Workers Union, Narsapur and the ONGC after conciliation under the Industrial Disputes Act, 1947, that all contractual jobs of ONGC at Narsapur would be executed through co-operative societies formed by the workers themselves and this would continue for five years, is not denied by the ONGC.

121. This agreement was in force for 5 years and was followed up by another agreement on 12.01.2003 in the presence of the Honourable Minister of State for Consumer Affairs, Food and Public Distribution, Government of India and the Minister for Energy, Coal and Boilers, Government of Andhra Pradesh. This subsequent agreement contemplated in clause 9 that the societies would commence contractual services from 13.01.2003; clause 8 stated that ONGC would create and fill up 60 posts to meet operational requirements and would start the process of recruitment immediately; that the second phase of recruitment would be initiated by January, 2004; and the ONGC would make efforts to fill up 300 posts in all at the rate of 60 posts per year during a period of five years; but the assurance in clause 8 was not acted upon by the ONGC.

122. Though this plea was denied in para 12 (a) of the counter filed in WP.No.34664 of 2015, copy of the minutes of meeting held on 12.01.2003 filed by the petitioners have not been denied which mentions in para.8 the promise made by the ONGC. Further, no evidence is placed by it to establish that it fulfilled the promise either. Therefore, the denial by the ONGC cannot be accepted.

123. On 08.1.2008, there was another agreement between the ONGC and the ONGC Limited Contract Workers' Union, Narsapur in the presence of public representatives and the Regional Labour Commissioner (Central), Hyderabad to consider only 280 society workers for term-based employment. It was agreed that the ONGC

would give age relaxation in providing term-based employment to those society workers who are technically qualified subject to verification of certificates of various skills / qualifications. It was also agreed that society workers having non-technical qualifications would be taken for term-based employment within three years for acquiring the technical qualification during this period and till that time they will be given opportunity to continue as society workers. The ONGC also agreed that the remaining society workers will be given opportunity to continue as society workers on contract basis for a period of five years w.e.f. 09.01.2008 or from the date of joining duties whichever is later, with enhanced rates of wages for skilled and semi-skilled as agreed therein.

124. Giving a go-by to this understanding dt.08.01.2008, the ONGC conducted open general recruitment and a written examination for 280 society workers and outsiders which was followed by oral interview and medical examination. Some of the petitioners were subjected to the said tests and, having been successful therein, were engaged by order dt.05.07.2008 as Field Operators for four years on tenure basis subject to conditions mentioned therein.

125. On expiry of the said period of four years in 2012, these very persons as well as some more society workers who were subjected to similar process of written test, oral interview and medical examination were also issued letters dt.25.05.2012 and 05.07.2012 appointing them as Field Operators for four years. The petitioners assert that they had

gone through the process of written test, oral interview and medical examination and are working as Field Operators in the ONGC at the K.G. Basin.

126. Thus, from prior to 1997 till date for about 20 years, the petitioners are working in the ONGC initially under contractors, then through Co-operative societies and later on term based appointments. This Court is entitled to draw these conclusions on basis of the decisions of the Supreme Court in **Babulal** (15 supra), **ABL International** (16 supra), **Gunwant Kaur** (17 supra) and **NTPC Ltd** (1 supra).

127. It is also an admitted fact that the petitioner in W.P. 29116 of 2014 the ONGC Field Operators' Union, a registered Trade Union represented to the Ministry of Labour and Employment, Government of India on 09.06.2014 demanded regularization / conversion of existing Field Operator posts as regular posts in the ONGC with appropriate designation, pay scales in the concerned departments and pending completion of the said process, earmarking of 50% of the posts notified for Direct Recruitment to the Field Operators treating them as in-service candidates; that the Government of India sent the said demand to the Deputy Chief Labour Commissioner (Central), Hyderabad by letter dt.22.07.2014 to take necessary action in the matter; and the General Secretary of the Union was directed to pursue the matter with the said Officer. The Deputy Chief Labour Commissioner (Central), Hyderabad through letter dt.18.08.2014

requested the Asset Manager of ONGC, Rajahmundry to take further action in the matter and the Labour Enforcement Officer (Central), Rajahmundry was requested to enquire into the matter by way of inspection and submit a detailed report. The ONGC submitted its comments to the same on 03.09.2014. Since nothing happened thereafter, the said Union filed on 24.09.2014 WP.No.29116 of 2014.

128. Thus, the mechanism prescribed under the Industrial Disputes Act, 1947 for adjudication of the disputes between the ONGC and the petitioners and the ONGC Field Operators' Union has utterly failed in providing a resolution to the claim for regularization raised by them for two years.

129. So it cannot be said that the existence of a mechanism under the Industrial Disputes Act, 1947 is a bar for entertaining the present batch of Writ Petitions. The ONGC cannot take advantage of the apathy of the Labour Department of the Government of India for more than two years in processing the request of the ONGC Field Operators' Union of India and now insist that this Court has no choice but to direct the said department to wake up from its slumber and do something on the issue.

130. Normally, this Court would be reluctant to exercise jurisdiction under Article 226 of the Constitution of India if there is an effective alternative remedy available to a party. But, if the alternative remedy is ineffective as in the present case, or it involves inordinate delay and

cannot give reasonably quick relief, then it would not be a bar to entertaining of a Writ Petition by this Court.

131. In **Petroleum Coal Labour Union Case** (5 Supra), the Supreme Court held that even if the plea of unfair labour practice was not raised, the Labour Court as well as the High Court have the power to record a finding of fact on the basis of the record and pleadings of parties to ensure that there is effective adjudication of the industrial dispute to achieve industrial peace and harmony in the industry in the larger public interest, which is the prime object and intendment of the Industrial Disputes Act. So this Court can consider the pleadings and give a finding whether the ONGC has committed an '*unfair labour practice*' as defined in Sec.2(ra) of the Act read with Item No.10 of the V Schedule to the Act which is prohibited by Sec.25-T and made punishable under Sec.25-U of the Act.

132. The pleadings of the parties reveal that the ONGC, which is an instrumentality of the State, by giving to the petitioners, who had been employed in it initially through private contractors and later through labour societies from prior to 1997, a term-based appointment *from 2008* till date after a process of selection deprived them of the status and privileges of a regular workmen such as a scale of pay, increments, security of tenure, etc. The ONGC, *only in the interest of industrial peace*, entered into the agreements dt.11-12-1997, 12-01-2003 and 08-01-2008 with the workers Unions, but it has utilised them all these years without giving them the status of regular

workmen and all attendant benefits which accrue on that count to them.

133. This question of ‘unfair labour practice’, on the facts of the present case, did not raise any issue of disputed questions of fact. It falls in the same category as **Petroleum Coal labour Union case** (5 supra), **the Indian Petrochemicals Corporation Limited** (2 supra), and the **Hindalco industries limited** (23 supra) case.

134. In **Sudarshan Rajpoot** (7 supra), the Supreme Court held that extracting work of permanent nature continuously for more than 3 years on the plea that the employment is on contract basis is wholly impermissible and this amounts to an “unfair labour practice” as defined under Section 2(ra) of the Act r/w Section 25-T which is prohibited under Section 25-U and Chapter V-C of the Act.

135. Therefore in the facts and circumstances of the case, I hold that the ONGC has indulged in ‘unfair labour practice’ against the petitioners.

136. In **Umadevi (3)** (11 Supra) it was held that *ordinarily* High Court under Article 226 cannot direct regularization or absorption in permanent employment. But the Supreme Court in that case did not hold that there is an absolute bar to the High Court in all situations to entertain Writ Petitions seeking relief of regularisation.

137. In view of the failure of the Labour Department of the Union of India in acting under the Act and taking steps to resolve the issue for

more than 2 years and clear abdication of responsibility by it, and since the pleadings of parties and material placed on record enable this Court to give the finding on 'unfair labour practice' in the facts and circumstances of the present cases, and since the decision in **Umadevi (3)** did not consider a case of unfair labour practice and the relevant powers of the Industrial adjudicators under the Act and that the decision cannot also apply when facts disclose a clear case of 'unfair labour practice', I hold that this is a fit case not only to entertain these writ Petitions but also to consider the plea of regularisation of the petitioners in these Writ Petitions.

138. A plea was taken by the respondents in para no.9 of the counter-affidavit filed in WP.No.34664 of 2015 that the petitioners, who were engaged for fixed term of four years only in the temporary posts, have no right to claim regularization of their services as their employment comes to an end automatically with the end of the said term and that the petitioners having accepted the said appointment, being fully aware of the nature and the tenure of the post cannot be granted any relief in the Writ Petitions.

139. But I have quoted enough binding precedents in relation to 'unfair labour practice' where directions were given by the Supreme court and High court. I may quote here from Justice Krishna Iyer in **Hussainbhai v. Alath Factory Tezhilali Union**²⁹. The learned Judge declared that the source and strength of the industrial branch of Third-

²⁹ AIR 1978 SC 1410

World Jurisprudence is social justice proclaimed in the preamble to the Constitution, that mere contracts are not decisive and a complex of considerations relevant to the relationship is different. He said:

“ Indian justice, beyond Atlantic liberalism, has a rule of law which runs to the aid of the rule of life. And life, in conditions of poverty aplenty, is livelihood, and livelihood is work with wages. Raw societal realities, not finespun legal niceties, not competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succour for livelihood through labour. The conceptual confusion between the classical law of contracts and the special branch of law sensitive to exploitative situations accounts for the submission that the High Court is in error in its holding against the petitioner.”

140. The above judgment is a further answer to the plea of the respondents that the petitioners are *estopped* by the terms of their appointment orders which fixed their tenure as four years from seeking relief of regularization. The said plea is accordingly rejected.

141. One other plea of the ONGC is that the petitioners cannot claim to be regularized since the posts existing in its organization such as Level A-1, A-II and W-1 which have been notified by it in 2014 are cadre posts enumerated in the Recruitment and Promotion Regulations while there are no posts of Field Operators enumerated in the said Regulations. This plea is untenable since it is not the case of the ONGC that the duties discharged by the petitioners for more than 20 years are not attached to any post in its organization all these years. Obviously, the ONGC wants to raise such an untenable plea only to

avoid regularizing the petitioners' services. As held in **Nihal Singh** (4 supra), *sanctioned posts do not fall from heaven*; the ONGC *has to create them by a conscious choice on the basis of a rational assessment of the need*; it cannot indulge in unfair labour practice against the petitioners inconsistent *with its obligation to function in accordance with the Constitution*; and **Umadevi (3)** judgment of the Supreme Court cannot become a license for exploitation of workmen by it. By deliberately designating the petitioners as Field operators and extracting work from them for more than 20 years, knowing fully well that there is no such post as per its Recruitment and Promotion Regulations, it has acted unjustly and given proof of indulging in unfair labour practice.

142. Admittedly most of the petitioners in these cases had also been put through a process of written test and interview prior to their appointment on term basis in 2008. So it cannot be contended that their appointment is illegal. At best it would only be irregular.

143. Clause 2(ii) of the Certified Standing Orders for contingent employees of the ONGC referred to supra which have been discussed by the Supreme Court in **Petroleum Coal Labour Union and others** case (5 supra) states:

“a workman who has been on the rolls of the Commission and has put in not less than 180 days of attendance in any period of 12 consecutive months shall be a temporary workman, provided that a temporary workman who has put in not less than 240 days of attendance in any period of 12 consecutive months and who

possesses the minimum qualifications prescribed by Commission may be considered for conversion as regular employee”.

144. So **on point (d) I hold** that, on the facts of these cases, the relief of regularization of their services sought by the petitioners in these Writ Petitions (as explained in para below) can be granted by this Court in exercising power under Art.226 of the Constitution of India.

145. I hold **on point (e)** that the decision in **Umadevi (3)** is not a bar for grant of relief of regularisation to the petitioners.

146. **On point (f)**, I declare that such of the petitioners who have been given term based appointments and who have completed 240 days in the period of 12 months after their respective appointments on term basis in 2008 would be entitled to regularisation in the posts to which are attached duties being performed by them presently *except the following few* who are mentioned in the list given by the ONGC for the reasons mentioned against their names.

Sl. No.	W.P.No.	Petitioner's name	Sl. No. in W.P.	Reasons	Remarks
A	B	C	D	E	F
1	16318/2015	B.Rajashekar	8	His term of employment was not renewed on the charge that he has secured appointment as F.O. by submitting fake experience certificate. Hence not in service as F.O.	
2	27237/2015	M.Durgaprasad	10	His term of employment was not renewed on the	

				charge that he has secured appointment as F.O. by submitting fake experience certificate. Hence not in service as F.O.	
3	34036/2015	C.Bheemeshwara Rao	25	His term of appointment not renewed and hence not in service as Field Operator because the charge against him that he has submitted false LIC receipts and drawn the said amount illegally from ONGC was proved.	
4	34222/2015	C.Srinivasa Rao	26	His term of appointment not renewed and hence not in service as Field Operator because the charge against him that he has submitted false LIC receipts and drawn the said amount illegally from ONGC was proved.	
5	34222/2015	Benjimen S	28	His term of appointment not renewed and hence not in service as Field Operator because the charge against him that he has submitted false LIC receipts and drawn the said amount illegally from ONGC was proved.	
6	34052/2015	P.Jagapathi Rao	2	His term of appointment not renewed and hence not in service as Field Operator because the charge against him that he has submitted false LIC receipts and drawn the said	

				amount illegally from ONGC was proved.	
7	30749/2014	K.Satya-narayana	8	His term of appointment not renewed and hence not in service as Field Operator because the charge against him that he has submitted false LIC receipts and drawn the said amount illegally from ONGC was proved.	
8	16092/2015	K.Jagadishwara Rao	20	His term of appointment not renewed and hence not in service as Field Operator because the charge against him that he has submitted false LIC receipts and drawn the said amount illegally from ONGC was proved.	
9	34057/2015	T.Narayana Rao	5	His term of appointment not renewed and hence not in service as Field Operator because the charge against him that he has submitted false LIC receipts and drawn the said amount illegally from ONGC was proved.	Petitioner filed W.P.No. 36150 of 2016 seeking extension of his term as F.O., No interim order passed by this Hon'ble Court
10	34123/2015	Maranaganti Patabhi Ramacharyulu	11	Petitioner's name not tallied with the records (F.Os.) of ONGC	
11	34123/2015	I.Srinivasa Rao	40	Petitioner's name not tallied with the records (F.Os.) of ONGC	
12	16318/2015	Rameswarapu Ramana	12	Petitioner's name not tallied with the	

				records (F.Os.) of ONGC	
13	33033/2015	Ch.V.V.Satya-narayana Raju	2	Petitioner's name not tallied with the records (F.Os.) of ONGC	
14	34060/2015	NSVVS Murthy	10	Petitioner's name not tallied with the records (F.Os.) of ONGC	

147. Accordingly, the Writ Petitions are allowed as follows:

- (a) Those of the Writ petitioners (except those mentioned in the para 142 above) who have been given term based appointments and who have completed 240 days in the period of 12 months after their respective appointments on term basis in 2008 shall be regularised by the ONGC in the posts to which are attached duties being performed by them presently within two months from today;
- (b) They shall be granted notional benefits from the date they complete 240 days of service within the 12 calendar months from their first term based appointment in 2008 and also regular pay and allowances.
- (c) Till the petitioners' services are regularised as directed above, the ONGC shall not take up any regular recruitment for the posts in A1, A2 and W1

levels including as per circular dt.1.9.2014 issued by
it. No costs.

148. As a sequel, miscellaneous petitions pending if any in these
Writ Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date : 30-12-2016

Note:-

Mark the L.R. Copy.

B/o.

Kvr/Vsv/Ndr

