

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13968 OF 2017

Hareshbhai Mohanbhai Patel & Ors.	...Petitioners
Versus	
Union of India & Ors.	...Respondents

**WITH
WRIT PETITION NO. 14191 OF 2017**

Karansinh C. Thakor & Ors.	...Petitioners
Versus	
Union of India & Ors.	...Respondents

Mr. Shrihari Aney – Senior Advocate i/b. Mr. Rahul Walia for
Petitioners in WP 13968 of 2017.
Mr. Rahul Walia for Petitioners in WP 14191 of 2017.
Mr. R. S. Apte – Senior Advocate i/b. Mr. S. S. Deshmukh for
Respondents in both Petitions.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

Date of Reserving the Judgment : 16 July 2018
Date of Pronouncing the Judgment : 24 July 2018

JUDGMENT :

1] Heard the learned counsel for the parties.

2] Rule in both the petitions. At the request of and with
the consent of the learned counsel for the parties, Rule is
made returnable forthwith.

3] The challenge in these petitions is to the common judgment and order dated 15th September 2017 in Original Application No. 862 of 2010 and several other connected Original Applications instituted by the petitioners and others to question the denial of benefit of regularization to the petitioners and to also question advertisements dated 4th June 2010 and 2nd July 2010 by which posts of Post Graduate Teacher (PGT) and Trained Graduate Teacher (TGT) were sought to be filled in on regular basis.

4] The CAT, in the impugned judgment and order has held that the initial appointments of the petitioners in the years 2006/2007 i.e. about three years prior to the issuance of advertisement for filling up posts on regular basis, were appointments on daily wage basis, entitling them to no guarantee of regularization. The CAT has held that relaxations have been granted to the petitioners or similarly placed candidates and therefore, the relief of regularization cannot be granted to the petitioners. The CAT, in the impugned judgment and order has held that grant of relief of regularization to the petitioners, who were appointed on

the basis of advertisements which had clearly indicated that the appointments would be only on *daily rated basis* or that the appointees will not have any claim for regularization, '*would make nonsense of the specific condition advertised under which the selection had taken place*'.

5] Since, common issues of law and fact arise in both these petitions, the learned counsel for the parties agree that both these petitions can be disposed of by a common judgment and order.

6] Mr. Shrihari Aney, the learned Senior Advocate for the petitioners in writ petition no. 13968 of 2017 submits that the petitioners were appointed as PGT or TGT after adoption of the prescribed selection procedures. He points out that the necessary advertisements were issued inviting applications from eligibles, this was followed by written test, which was the basis for determination of the merit list. Mr. Aney submits that the petitioners were appointed, because there was dire need of PGT or TGT and the interest of education would have suffered immensely, if, the respondents were to await formal sanction of posts. Mr.

Aney submits that there was absolutely nothing illegal in the appointments of the petitioners in the years 2006/2007 and therefore, the CAT, has clearly erred even in suggesting some illegality in the appointments of the petitioners and on such basis denying the petitioners the relief of regularization as PGT and TGT.

7] Mr. Aney submits that the petitioners claim for regularization was in pursuance of a policy formulated by the respondents themselves. He points out that such policy is reflected in OM dated 24th May 2010 and the existence of such policy is in fact clearly accepted by the Director of Education, Administration of Union Territory of Dadra and Nagar Haveli, Silvassa in his written statement / affidavit dated 14th June 2011 filed before the CAT. In particular, Mr. Aney makes specific reference to the averments in paragraphs 10, 14 and 15 of the written statement / affidavit dated 14th June 2011. Mr. Aney submits that upon consideration of such averments / admissions, the CAT was not at all justified in denying the petitioners the relief of regularization in services.

8] Mr. Aney relies upon ***Nihal Singh & Ors. vs. State of Punjab & Ors. (2013) 14 SCC 65***, to submit that the State can never refuse to absorb employees into the services of the State on permanent basis, by urging that the initial appointments of such employees were purely on temporary basis and not against any sanctioned posts created by the State. Mr. Aney points out that in this case the Hon'ble Supreme Court has held that where the State had taken a conscious decision to make initial appointments, may be, on temporary basis, but with the clear understanding that such appointments would be regularized once there was formal sanctioning of posts, then, such appointments can never be categorized as either illegal or even irregular appointments.

9] Mr. Aney points out that the Hon'ble Supreme Court in *Nihal Singh* (supra) has itself held that the ruling of the Constitution Bench in ***State of Karnataka vs. Umadevi (3) (2006) 4 SCC 1***, cannot be so interpreted as to constitute a licence for exploiting by the State and its instrumentalities. Mr. Aney submits that the ruling in *Nihal Singh* (supra) applies to the case of the petitioners with full

force and the rejection of the relief of regularization would amount to granting the respondents licence to exploit the services of the petitioners.

10] Mr. Aney also relies upon the ruling of the Division Bench in ***Sachin Ambadas Dawale & Ors. vs. The State of Maharashtra & Anr. 2014 (2) Mh. L.J. 36*** to submit that in cases similar to that in which the petitioners have been placed, relief of regularization was granted by this Court by distinguishing *Umadevi* (SC). He points out that the special leave petition against the said decision came to be dismissed by the Hon'ble Supreme Court on 6th January 2015.

11] Mr. Aney submits that the CAT clearly erred in refusing to follow *Nihal Singh* (supra) and *Sachin Dawale* (supra), and therefore, the impugned judgment and order made by the CAT warrants interference.

12] Mr. Aney submits that the mere fact that the advertisement in pursuance of which the petitioners came to be appointed had made reference to appointments on

daily wage basis, makes no significant dent in the petitioners claim of regularization. He submits that Dadra and Nagar Haveli, Silvassa are geographically and demographically very small units. He submits that in such circumstances a presumption can be raised that all eligibles and interested candidates had applied in pursuance of such advertisements. Mr. Aney therefore submits that in the peculiar facts and circumstances of the present case, no issue of discrimination would arise if, services of the petitioners are ordered to be regularized.

13] Mr. Aney submits that refusal of regularization would promote exploitation and consequently, arbitrariness which Article 14 is intended to prevent. Mr. Aney points out that there are several vacancies and the petitioners, have continued in service since the year 2006 at least. He therefore submits that the CAT has clearly erred or failed to exercise jurisdiction vested in it in not stalling the recruitment process in pursuance of advertisement dated 4th June 2010 and denying the relief of regularization to the petitioners against the posts advertised or any other available posts. For all these reasons, Mr. Aney submits that

the impugned judgment and order is liable to be set aside.

14] Mr. Rahul Walia, the learned counsel for the petitioners in writ petition no. 14191 of 2017 adopts the submissions made by Mr. Aney and based upon the very same submissions submits that the impugned judgment and order made by the CAT may be set aside.

15] Mr. R. S. Apte, the learned Senior Advocate for the respondents submits that the petitioners had been appointed on daily wage basis in the years 2006/2007, in pursuance of advertisements, which had invited applications for appointments on daily wage basis. Some of the advertisements had made it clear that the appointees shall have no claim for regularization. He points out that even the regular selection procedures were never followed in so far as such appointments were concerned, since, by then, the posts of PGT and TGT were yet to be sanctioned. He points out that hardly within a period of three years after posts were sanctioned, advertisements were issued for filling up the same on regular basis. He points out that special relaxations were granted to the petitioners and

similarly placed employees, in the matter of weightage for experience and even age relaxation. From this, he contends that it is quite clear that the respondents never indulged in any exploitation.

16] Mr. Apte points out that the petitioners cannot claim benefit of the services rendered by them in pursuance of interim orders made by the courts and tribunals. If such services are excluded then it is apparent that the petitioners served as daily wagers for hardly three years before, the process for regular appointments commenced. Mr. Apte submits that any regularization of the petitioners services, would amount to violation of Articles 14 and 16 of the Constitution of India, because, the petitioners, had gained entry as daily wagers. Mr. Apte points out that this would amount to playing fraud over several eligibles and perhaps even more meritorious candidates than the petitioners, who may have not even chosen to apply in response to advertisements inviting applications for appointments as daily raters.

17] Mr. Apte submits that the initial appointments of the

petitioners against non sanctioned post and as daily wagers could not even be styled as appointments as such, but, the same were mere engagements, until the completion of the process of filling up the vacancy on regular basis. Mr. Apte relies on *Umadevi (supra)* Mr. Apte points out that the CAT has considered all the aspects of the matter and since there is no error of jurisdiction or perversity, no interference is warranted.

18] Rival contentions now fall for our determination.

19] The Original Applications instituted by the petitioners had in fact been disposed of by the CAT by judgment and order dated 10th October 2013. However, the CAT, thereafter, by order dated 7th August 2015, allowed the review petition instituted by the petitioners, recalled its earlier order dated 10th October 2013 and ordered for a rehearing of the Original Applications. Upon such rehearing, the CAT, by the impugned judgment and order dated 15th September 2017 has dismissed all the Original Applications.

20] In the operative paragraphs 44, 45, 46 and 47, this is

what the CAT has observed and held :

“44. We are satisfied that if at all the applicants were subjected to any disadvantage an account of having to enter the competition a second time, their concerns had been adequately taken care of in the decision of the respondents to grant age relaxation of 7 years in respect of TGTs and 4 years in respect of PGTs and a weightage of 15% for their work experience. Even without any specific weightage for their experience, the experience gained by the applicants as TGTs and PGTs would presumably put them at an advantage in an open competition both in the written examination as well as in the interview as their competitors would be raw graduates / post graduates without any experience and, therefore, may not be able to match their performance in a competition. If they still do and do better, it is only fair that such meritorious persons are selected and appointed in preference to the incumbents. **Accordingly, we are of the view that the age relaxation and weightage for experience would more than reasonably take care of the concerns of the applicants who should not fight shy of competition from fresh Graduates and Post Graduates.**

45. Since regularization can only be made in accordance with a scheme framed by the competent authority which does not fall four with the principles laid down by the Hon'ble Apex Court in the case of **Uma Devi** supra and the formulation of such a scheme cannot be accorded the status of an enforceable right as per the Hon'ble Apex Court's ruling in **State of Jammu & Kashmir and Ors. v. District Bar Association, Bandipora** cited supra, we leave it to the competent authority to consider the demand of the applicants and refrain from issuing any directions in this regard. **Even otherwise, as on the date of the impugned advertisements, the applicants were not in service long enough to justify regularization.** Their continuation from

2010 till date has been in the nature of litigious employment and does not serve to enhance their claim in any manner.

*46. In the facts and circumstances of the case, therefore, we are of the view that the applicants could avail of the concessions in the form of age relaxations and weightage for experience and compete more than fairly in the competitive process. **We accordingly find no merit in the claim of the applicants for regularization from the date of initial appointment itself as it would make nonsense of the specific condition advertised under which the selection had taken place.***

47. In view of the above, the Original Applications are dismissed as misconceived. All interim orders stand vacated. No costs."

[Emphasis supplied]

21] The advertisements in pursuance of which the petitioners came to be appointed as PGT and TGT in the years 2006/2007 were very specific in that, the advertisements had invited applications for filling up posts on '*daily wage basis*'. For example, the advertisement dated 19th December 2003 had invited applications for the 33 posts of TGT '*on daily wage basis*' for secondary school. This advertisement had made it clear that recruitment to these 33 posts of TGT will not, confer any right for regular appointment and this appointment may be terminated at any time without prior notice. Similarly, the advertisement

dated 8th August 2006 had again, very clearly stated that applications were being invited from eligible candidates to fill up the vacancies of TGT and PGT '*on daily wage basis*'. To the same effect, is the advertisement dated 21st June 2007 which invites eligible of PGTs and TGTs for '*a walk in interview*' for posts to be filled on '*on daily wage basis*'. To the same effect, is the advertisement dated 19th October 2007, which again, invites eligibles PGTs for '*walk in interview*' for posts to be filed on '*daily wage basis*'. There is no dispute whatsoever that the petitioners came to be appointed as TGTs and PGTs, on the basis of these very advertisements on various dates between 2006/2007.

22] There is also no dispute that after securing such appointments as TGTs and PGTs *on daily wage basis*, the petitioners, did not question their appointments on daily wage basis by urging that such appointments should have been on regular basis. There is also no dispute that at the stage at which the petitioners came to be appointed as TGTs and PGTs on daily wage basis, there were no sanctioned posts against which, any appointments, much less, any regular appointments, could have been made.

23] By advertisement dated 4th June 2010 read with advertisement dated 2nd July 2010, the Administration of the Dadra and Nagar Haveli, Silvassa, invited applications for filling up approximately 204 posts of PGT and TGT in Education Department on regular basis. At this stage, the petitioners and several others instituted Original Applications before the CAT questioning the exercise of issuing such advertisements and attempting to fill up 204 posts of TGT and PGT on regular basis. The petitioners contended that they had a right to be regularized in service in pursuance of their engagement on daily wager basis and this right, could not be defeated by the administration issuing the advertisements and attempting to fill up the posts of TGTs and PGTs on regular basis.

24] At the stage when the petitioners instituted their Original Applications in the year 2010, the petitioners had put in hardly three years of service as PGTs and TGTs on daily wage basis. This is quite relevant because the decisions upon which the petitioners place reliance concern cases where employees had continued in service for over

more than a decade and in such peculiar facts, certain observations were made in the said decisions about exploitation of daily wagers. According to us, the CAT, has quite correctly held that there was no question of any exploitation of the petitioners involved in a situation where the petitioners, with clear understanding, had been engaged as daily wagers and even before period of three years could expire, the respondents commenced the process of regular selection or filling up the posts on regular basis in accordance with the recruitment rules in force.

25] The respondents, in so far as the process of filling in 204 posts on regular basis is concerned, have admittedly provided for age relaxation to the petitioners and similarly placed persons who came to be engaged on daily wage basis. The respondents have also provided for weightage for the experience gained by such daily wagers. Taking into consideration that the petitioners had put in hardly three years of service as PGTs and TGTs on daily wages and coupled with the relaxation and concessions extended by the respondents to such daily wagers, we agree with CAT that this is not a case of exploitation of daily wagers, as was

sought to be portrayed by the petitioners.

26] Since the advertisements pursuant to which the petitioners came to be engaged as daily wagers, had made it clear that the appointments were to be made only on daily wage basis, the CAT, has quite correctly held that the petitioners had no right to insist upon regularization of their services. According to us, regularization of the petitioners services, will certainly amount to practice of discrimination against several candidates, who possessed the eligibility requirements as may have been prescribed for appointment to the post of TGTs and PGTs, but, who may not have even chosen to apply in pursuance of the advertisements of 2003, 2006, 2007 since, such advertisements, had made it clear that the appointments would be only as daily wagers. Some of the advertisements had clearly stated that such appointment as daily wagers will not entitle such daily wagers to seek regularization. Therefore, the grant of benefit of regularization to the petitioners, will in fact amount to breach of Articles 14 and 16 of the Constitution of India.

27] Mr. Aney's contention based upon Dadra and Nagar Haveli, Silvassa being geographically or demographically small units, is unacceptable. The constitutional principles enshrined in Articles 14 and 16 of the Constitution of India cannot be deflected on basis of such considerations. Even otherwise, such contentions stand belied by the circumstance that almost 11000 applications have been received by the respondents in pursuance of advertisement dated 4th June 2010 for filling up the posts of PGTs and TGTs on regular basis. The petitioners, on the basis of their engagement as daily wagers for a period of about three years, cannot, therefore, stall the opportunity claimed by almost 11000 candidates for being considered for appointment on regular basis to the post of PGTs and TGTs.

28] The affidavit dated 26th February 2018 filed by the Director (Education) of the Union Territory of Dadra and Nagar Haveli, Silvassa points out that in pursuance of advertisement dated 4th June 2010, the Administration has received more than 11000 applications in contrast to the few applications received in response to advertisement of 2003, 2006 and 2007, which had invited applications for

appointment of daily wagers. The affidavit states that this factor indicates that several eligible candidates did not even apply in response to advertisements of 2003, 2006 and 2007. The affidavit states that this resulted in '*reduced performance*' and for the last 10 years there is a consistent fall in academic standards. The affidavit states that the result has never exceeded 49%. According to us, such statistics, afford a good answer to the contentions based upon the geographic or demographic size of the Union Territory of Dadra and Nagar Haveli, Silvassa.

29] In ***Kendriya Vidyalaya Sangathan & Ors. vs. L. V. Subramanyeswara & Anr. (2007) 5 SCC 326***, the Hon'ble Supreme Court was dealing with a claim for regularization of teachers at Kendriya Vidyalaya Sangathan. The teachers, who had been appointed in pursuance of advertisements, which had made it clear that their appointments would be on *ad hoc* basis or by way of stop gap arrangement had claimed for relief of regularization on the basis that they had served for more than ten years. The Hon'ble Supreme Court, rejected the relief of regularization by holding that opportunity within meaning of Articles 14

and 16 of the Constitution would mean opportunity to all who were eligible for appointment to posts which were transferable throughout the country. Since, advertisements had been issued for limited purpose, namely, for leave vacancies, local employment exchanges were contacted for filling of such posts. Selections were held only at the local level and not on All India level. Therefore, even though, such employees had continued in service for a long time, that is because they were thrust upon the Kendriya Vidyalaya Sangathan by reason of interim orders passed by the High Court. In such circumstances, it would not be correct to contend that the employees satisfied the tests of equality, reservation or rule of law adumbrated in *Umadevi* (3) (supra).

30] In ***K. Shekar vs. V. Indiramma & Ors. (2002) 3 SCC 586***, an advertisement had been issued inviting applications to fill up a temporary post. Several months later, a corrigendum was issued making the post permanent from the very inception. The Hon'ble Supreme Court held, that in such circumstances, the said post should have been re-advertised to give notice to all prospective candidates

regarding the nature of vacancy.

31] There is no clear material on record regards the existence of any policy as such for regularization of the services of the daily wagers. The OM dated 24th May 2010 merely forwards the proposal of parliamentary standing committee and urges acceptance as one time measure. However, there is no further document produced on record to indicate that any such policy was in fact formulated. The communication dated 29th March 2010 addressed by the Administration of Dadra and Nagar Haveli, Silvassa, to the Ministry of Home Affairs, again, seeks for one time relaxation for regular appointment of teachers appointed through due process of recruitment procedure as daily wagers in anticipation of creation of posts.

32] To this communication dated 29th March 2010, are appended certain notings, in which it is proposed that sanction be granted to recruit 33 TGTs on daily wages, so that, the department may recruit these TGTs by observing all necessary procedures which are being followed for regular selection. Below these notings, there are some

signatures of the officials and on basis of this, it was sought to be contended that there is an approval for the policy of regularization. As noted earlier, the communication dated 29th March 2010, merely seeks sanction for one time regularization. There is no document produced on record to establish that such sanction was at all granted by the Ministry of Home Affairs.

33] The notings annexed to the communication dated 29th March 2010, has nothing to do with the policy of regularization. The notings, which appears to be of the year 2003 relate to recruitment of 33 TGTs on daily wage basis. The recommendations or notings seeking for a policy of regularization cannot be equated with some formal policy of regularization. In any case, it is settled position in law that even the existence of mere policies of regularization, in such matters, will never suffice. Such policies, have to be consistent with the mandates of Articles 14 and 16 of the Constitution of India. Therefore, on the basis of some communications, notings or even recommendations of the parliamentary committee, it is not possible to hold that their existed some policy of regularization of petitioners services

in place.

34] The affidavit in reply filed on 26th February 2018 by the Director (Education) of the Union Territory, Dadra and Nagar Haveli, Silvassa, also does not speak about the existence of any policy of regularization. Rather, this affidavit states that the petitioners were engaged on daily wage basis in the year 2006-2007 against posts which were never sanctioned. The affidavit points out that the Administrator who is a delegate of the President of India under Article 239 of the Constitution of India, has no powers to create posts of his own.

35] In ***Veer Kunwar Singh University Ad hoc Teachers Association & Ors. vs. Bihar State University (C.C.) Service Commission & Ors. (2009) 17 SCC 184***, again, the issue involved was of regularization of teachers appointed on ad hoc basis against posts which had never been sanctioned. In this context, the Hon'ble Supreme Court at paragraph 19 held that it is now well settled principle of law that any appointment made in violation of the constitutional scheme of equality as

adumbrated under Article 14 of the Constitution of India as also in violation of provisions of the Act and subordinate legislations framed thereunder would be wholly illegal and without jurisdiction. It has been held so by a Constitution Bench of the Supreme Court in *Umadevi (3) (supra)*. The ratio of the said decision has since been followed in large number of cases which have been referred to in paragraph 19.

36] At paragraph 25 of *Veer Kunwar (supra)*, the Hon'ble Supreme Court has held that creation of sanctioned post is *sine qua non* for recruitment to the post of lecturers. Adherence to the statutory provisions therefore is imperative in character. At paragraph 27, the Hon'ble Supreme Court noted the contention on behalf of the employees that they had been working as *ad hoc teachers* for over 20 years or more. However, the Hon'ble Supreme Court observed that this was in pursuance of orders passed by the courts and but for such orders, the services of *ad hoc teachers* would have been terminated by the University.

37] At paragraph 28 of *Veer Kunwar (supra)*, the Hon'ble

Supreme Court has held that there has been a sea change in the legal position in view of the decision in *Umadevi (3)* (supra) and large number of decisions following it. At paragraph 29, the Hon'ble Supreme Court deprecated the practice to appoint teachers on *ad hoc* basis. At paragraph 30, the Hon'ble Supreme Court has held that directions can be issued to State to act within four corners of the statute and to declare any action taken in contravention thereof to be a nullity, but it would not be permissible for the courts to go beyond the provisions of the statute and issue a direction that cases of all the appellants must be considered irrespective of the fact as to whether their appointment even as *ad hoc* teachers were against the sanctioned post or they have been working against a non sanctioned posts or not. At paragraph 31, the Hon'ble Supreme Court noted the fact that the teachers may have the requisite qualification at the relevant point of time is not a ground for ordering regularization because, the court has to consider that since then a large number of other persons must have acquired the requisite qualification for being appointed to the said posts, who cannot be deprived of their right to be considered for appointments along with other eligible

candidates in terms of Article 14 of the Constitution of India.

38] In ***State of Rajasthan vs. Daya Lal (2011) 2 SCC 429***, the Hon'ble Supreme Court has considered the scope of regularization of irregular or part time appointments and laid down that part time employees are not entitled to seek regularization as they do not work against any sanctioned posts. Even temporary, ad hoc or daily-wage service for a long number of years, will not entitle such employee to claim for such regularization, if such employees are not working against any sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right. Part time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees. In this case as well, the Hon'ble Supreme Court has relied upon its ruling in *Umadevi (supra)*.

39] The affidavit dated 26th February 2018 also provides that the recruitment to the post of TGTs and PGTs is

governed by the Dadra and Nagar Haveli Administration, Education Department, Post Graduate Teachers - Group 'C', Non-Ministerial, Non-Gazetted Posts Recruitment Rules, 1995. The affidavit states that the selection committee, which selected the petitioners as daily wagers was not consisting of the members of the regular departmental selection committee for recruitment under the relevant rules. However, as pointed out by Mr. Aney this statement may not be correct since, the respondents, in their written statement before the CAT filed by the Director of Education had stated that the appointments / recruitments of 2007 or for that matter the appointment / recruitment held in the years 1998, 1999, 2000 and 2003 were done after advertising in the newspaper, conduct of interviews and codal formalities existing at the relevant time.

40] Such averments in the written statement however, cannot deflect the main issue which is involved in these matters. Admittedly, the advertisements of 2003 and 2006, in pursuance of which the petitioners came to be appointed in the year 2006-2007 had very clearly stated that the appointments would be made only on daily wage basis and

further, the appointees would not have a claim for regularization. Therefore, even if we proceed on the basis that codal formalities had been observed by the respondents in the year 2006 – 2007, that by itself will not entitle such daily wagers to insist upon regularization upon completion of hardly three years of service as daily wage TGTs and PGTs.

41] The ruling in the case of *Nihal Singh* (supra) is clearly distinguishable. In the 1980's there was a large scale disturbance in the State of Punjab and because the State was not in a position to manage the the prevailing law and order position to with the available police personnel, the State resorted to recruitment under section 17 of the Police Act 1861 to appoint special police officers. The appellants before the Hon'ble Supreme Court were ex-servicemen registered with the employment exchange who came to be appointed as special police officers. Despite working for several decades, since, such employees were denied regularization, the Hon'ble Supreme Court ordered regularization.

42] The two distinguishing features in *Nihal Singh* (supra) were that their initial appointments had some statutory basis in Sections 17 of the Police Act, 1861 and further, the employees had continued to work for decades. In the present case, no statutory basis is pointed out for the initial engagement of the petitioners as daily wagers. Secondly, this is also not a case where the petitioners had worked for decades together so as to raise some presumption of exploitation. This is a case where the petitioners had hardly worked for three years when the respondent commenced the process of recruitment on regular basis. As noted earlier, the respondents, in fact granted some relaxation and concessions to the daily wagers, in the matter of age relaxation and weightage for the experience gained as daily wagers. The petitioners can therefore, claim no comparison with the appellants in *Nihal Singh* (supra).

43] Similarly, the facts in the case of *Sachin Ambadas Dawale* (supra) are also entirely distinguishable. In that case, the employees comparable to the petitioners had already been regularized by the State Government and the issue involved was of discrimination. This Court also found

that the initial appointments of the petitioners were not back door or illegal appointments. That was also a case where the appointments of the petitioners, though on contractual basis, had been continued for periods upto ten years or even more. This Court, also took note of the circumstance that the State did not hold selections through Maharashtra State Public Service Commission for a period of more than ten years. This court noted that the State extracted work from the petitioners for years together and many of the petitioners, on account of the State not holding selection process for years together, became over-aged and would not be in a position to participate in the selection process through MPSC. It is in light of these peculiar facts and circumstances that relief was granted to the petitioners in *Sachin Ambadas Dawale* (supra).

44] In the present case, the petitioners have discharged duties as daily wagers for hardly three years since, they were engaged as daily wagers in 2006 - 2007 and the process for regular appointments commenced in the year 2010. This is also not a case where the respondents have delayed unreasonably in holding the regular selection

process. This is also a case where the respondents, on their own, have granted not only age relaxation to the petitioners but also, granted them some weightage for the services rendered by them as daily wagers. In such circumstances, the present petitioners, cannot compare their case with the petitioners in the case of *Sachin Ambadas Dawale* (supra).

45] In fact, the Division Bench, which decided *Sachin Ambadas Dawale* (supra) in **Civil Application (W) No. 828 of 2017 in Writ Petition No. 2046 of 2010 (D) Anil Laxman Telang & Ors. vs. Principal Secretary, State of Maharashtra, Department of Higher and Technical Education, Mumbai & Ors., has by its order dated 27th April 2017**, clarified its decision and made it clear that the observations in *Sachin Ambadas Dawale* (supra), were in the peculiar facts and circumstances in the said matter. The relevant extracts of the order dated 27th April 2017 read as follows:

"It could further be seen that, in the said case, we were considering the case of the petitioners in the peculiar facts and circumstances as appearing in the said case. We had considered in the said case that the appointments of the petitioners therein were made in pursuance to the Government Resolution dt. 25.7.2002 which specifically provided for the entire selection process including the advertisement,

conducting of interviews by the duly selected Selection Committee consisting of :

- 1. Joint Director, Technical Education Divisional Office - Chairman.*
- 2. Lady representative - Member.*
- 3. Principal of concerned Institute - Member Secretary.*
- 4. Representative of backward classes (Engineering Graduate) - Member.*
- 5. Subject Experts (2) - Member."*

*In these peculiar facts and circumstances, we had observed that the appointment of petitioners could not be said to be a backdoor entry and as such, we had distinguished the Judgment of the Apex Court in the case of **Secretary, State of Karnataka and Ors. vs. Umadevi and Others** reported in AIR 2006 SC 1806(1). We had also considered that the State Government itself in the category of various other employees had regularised the services of various employees. We had further observed that, for a long period during which the petitioners were in employment, the Maharashtra Public Services Commission had also not conducted the interviews and as such, during the intervening period when the petitioners were continued in the employment, after having undergone due selection process, they had attained upper age limit and as such, when the State itself had not conducted the selection process through MPSC for more than 10 years, the petitioners who were selected through due selection process could not be penalised. We had observed that, on account of inaction on the part of the State, selection process for a period of more than 10 years was not held and hence, the petitioners, who had by efflux of time, become age bar, cannot be penalised and thrown out of their job. We had specifically observed that, insofar as the case of Umadevi is concerned, the appointments therein were made clandestinely and without advertisement and the persons were appointed without following the due process of law.*

It could thus be seen that, in the peculiar facts and circumstances of the case, the petitioners in the present petition were selected in pursuance of the Government Resolution dt. 25.7.2002 after following the due selection process by the Selection Committee duly constituted under the said Government Resolution and on account of inaction on the part of the State Government in not holding the selection process through the MPSC for a period of more than 10 years, many of the petitioners had become age bar and as such, they were deprived of opportunity of undergoing selection process through MPSC, we had found that a special case was made out for regularization of services of the petitioners therein. We may specify that we had restricted the claim of the petitioners who were already in service when they had approached the Court. By no stretch of imagination, the said Judgment could be applicable to the persons who had already left the job and taken chances.

We may also observe that, citing the said Judgment, some of the employees who are appointed on temporary or contractual basis and who are removed after putting in a year's or two years service are also seeking regularization. We may clarify that the said Judgment would not lay the ratio that, the persons who are appointed on purely contractual or temporary basis without following the due selection process as laid down by the Apex Court in the case of Umadevi, would also be entitled to regularization of their services."

46] In light of the aforesaid clarification, as also in the absence of the peculiar facts and circumstances, which were found to be present in case of *Sachin Ambadas Dawale (supra)*, the ruling in *Sachin Ambadas Dawale (supra)* can be of no assistance to the petitioners.

47] In ***Satya Prakash & Ors. vs. State of Bihar & Ors. (2010) 4 SCC 179***, the Hon'ble Supreme Court, explained the distinction between temporary employees, daily wagers on one hand and those appointed irregularly on the other hand in the context of observations in paragraphs 8, 53 and 55 of *Umadevi (3)* (supra). The Hon'ble Supreme Court held that daily wage employees were not entitled to regularization in terms of one time relaxation granted in *Umadevi (3)*'s (supra) case. One time relaxation in paragraph 53 was granted only in favour of irregularly appointed employees. Case of daily wage employees was dealt with in paragraphs 55 and 8 of *Umadevi (3)* (supra). In their case, one time relaxation was not granted. They were however allowed to compete in the recruitment process by giving them age relaxation. The claim of daily wage employees for relaxation in terms of paragraph 53 of *Umadevi (3)* (supra) was therefore rejected. However, liberty was granted to them to compete in regular selection process undertaken by the respondent board, by giving them age relaxation.

48] In the present case, even though, the petitioners, had

not put in ten years of service as daily wagers, the respondents, consistent with what was provided in paragraph 53 of *Umadevi (3)* (supra) have granted the petitioners age relaxation and some weightage for the services rendered by them as daily wagers.

49] Applying the principles laid down in the aforesaid rulings, we are unable to detect any jurisdictional error or perversity in the impugned judgment and order made by the CAT.

50] Therefore, for all the aforesaid reasons, we dismiss these petitions. Rule is discharged. Interim relief, if any, stands vacated. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA