

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.38037 of 2004

- 1.A.Anandhi
- 2.K.G.Soundaravalli
- 3.G.Vasanthavalli
- 4.K.Pushphalatha

... Petitioners

Vs

- 1.The Secretary to Government,  
Municipal Administration and  
Water Supply Department, Chennai - 9.
- 2.The Commissioner of Municipal,  
Administration, Chennai - 5.
- 3.The Regional Director of Municipal,  
Administration, Chengalpattu.
- 4.The Commissioner,  
Pallavaram Municipality,  
Chrompet, Chennai - 44.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to regularise the petitioners services as Section Writer in the regular post as specified in G.O.Ms.No.125, Municipal Administration and Water Supply Department dated 27.05.1999 and consequently to direct the respondents to allow the petitioners to continue in service as Section Writer.

For Petitioners : Mr.S.Ilamvaludhi

For Respondents : Mr.P.H.Aravind Pandian  
Additional Advocate General  
Assisted by Mr.G.B.Rajesh, Govt. Advocate

## O R D E R

The writ petition on hand is filed for a direction to regularise the services of the writ petitioners in the sanctioned post of Section Writers in the regular time scale of pay, based on G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999, and consequently, to direct the respondents to allow the writ petitioners to continue in service as Section Writers.

2.The writ petitioners were initially appointed as Section Writers on 17.10.1994, 20.07.1994, 01.12.1994, and 24.11.1994 respectively. The learned counsel appearing on behalf of the writ petitioners made a submission that all the writ petitioners are fully qualified for appointment to the post of Section Writer, in the respondent Municipality. They are initially appointed on temporary basis and they were serving for a considerable length of time, without any break in service. The writ petitioners initially filed O.A.Nos.548, 549, 550, 551 of 2001 before the Tamil Nadu Administrative Tribunal, Chennai, and the Tribunal passed an order on 25.01.2001, granting an order of interim injunction. Pursuant to the interim order, the petitioners continued in service and subsequently, after the abolition of the Tamil Nadu Administrative Tribunal, the Original Applications, filed by the petitioners, were transferred to the High Court of Madras and this Court passed final orders on 28.01.2010, dismissing the applications, filed by the writ petitioners.

3.The learned counsel for the petitioners contented that the writ petitioners filed Writ Appeal in W.A.No.638 of 2010, and the Hon'ble Division Bench of this Court passed an order dated 11.10.2011, directing the authorities competent, to consider the case of the appellants for regularisation, in the light of the relevant Government Orders and taking into account, the services from the year 1994-1995, as shown in the proceedings of the Commissioner of Pallavaram Municipality, dated 29.01.2008, and the related proceedings dated 20.06.2005, on the file of the Regional Director of Municipal Administration.

4.The grievances of the petitioners are that, even after the orders of the Hon'ble Division Bench, no decision had been taken by the authorities to regularise the service of the writ petitioners in the sanctioned posts.

5.The learned counsel for the petitioners states that the similarly placed employees, who were engaged as Section Writer on temporary basis, were brought under the regular establishment and their services were regularised in the sanctioned posts. Therefore, the writ petitioners are also entitled for the same benefit and accordingly, the writ petition is to be allowed. In

support of the said contention, the learned counsel for the writ petitioners submitted the judgment of the Hon'ble Supreme Court of India in the case of Narendra Kumar Tiwari & Ors. etc. vs. The State of Jharkhand & Ors. etc. dated 01.08.2018. The Hon'ble Supreme Court of India granted the relief of regularisation, with reference to the regularisation rules, issued by the State of Jharkhand in respect of the temporary employees. The Hon'ble Supreme Court of India, in Para No. 11, held as follows.

"11.Under the Circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct etc."

6.The learned counsel referred the Judgment in the case of Chennai Port Trust vs. The Chennai Port Trust Industrial Employees Canteen Workers Welfare Association and Ors., reported in 2018(3) SLR 572 (S.C). The Hon'ble Supreme Court of India has formulated the principles of regularisation in Para No.15 which is extracted hereunder:

"15.If we see the Indian Petrochemical's case, the similarity of the factual issues is quite startling. In that case,

(a)The canteen has been there since the inception of the appellant's factory.

(b)The workmen have been employed 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.

On the basis of the above facts, the Supreme Court arrived at the opinion that the workmen were the workmen of the management and by the same process of reasoning, the learned single Judge also came to the conclusion that the canteen workmen were the workmen of the Port Trust. We see no error in this reasoning."

The learned counsel for the writ petitioners contended that, in view of the judgments of the Hon'ble Supreme Court, the case of the writ petitioners are to be considered favourably.

7.The learned Additional Advocate General, appearing on behalf of the respondents, disputed the contentions of the writ petitioners, by stating that the writ petition itself, is not maintainable. The writ petitioners had earlier filed Original Applications before the Tribunal with a prayer to regularise their services and the case was transferred to this Court. This Court passed an order on 28.01.2010, dismissing the writ petition with following observations:

"4.Even without admission of the writ petition, an interim stay was granted on 29.04.2009, which was subsequently extended on 15.06.2009. The respondents were directed to file counter. Accordingly the respondents have filed a counter affidavit dated 15.07.2009. In the counter affidavit, it was stated that the G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 27.05.1999 will not apply to the Section Writers since they are not NMR workers and their names were not included in the NMR Muster Rolls. The petitioners are working only as Section Writers and the Municipality never treated them as NMR workers. It is also stated that the communication referred to by them has no relevance in the matter of their absorption or regularisation. It is also further stated that the petitioners have been ousted from service as early as 13.03.2002 and hence, they are not entitled for regularisation even in terms of G.O.Ms.No.21 by which the State Government had directed regularisation of all temporary workers who put in more than 10 years of service in Municipality.

5.It must be noted that the employment in Municipal Corporation is covered by Section 75 of the District Municipalities Act, 1920. Therefore, it is for the Municipality to appoint its own employees in the manner known to law.

The petitioners have been continuously filing case after case before the Tribunal and before this Court and by virtue of interim orders, they have got their services continued. The communications referred to by the petitioners are at the maximum can only be recommendatory in nature and not binding on the Corporation.

6. In the absence of any legal or enforceable right, the prayer made by the petitioners cannot be countenanced by this Court. Hence, both the writ petitions will stand dismissed. No costs. Consequently, connected miscellaneous petition is closed."

8. The learned Single Judge of this Court has made an observation that the petitioners were working only as Section Writers and the Municipality never treated them as NMR workers. This apart, the employment in Municipal Corporation is covered by Section 75 of the District Municipalities Act, 1920, and therefore, it is for the Municipality, to appoint its own employees in the manner known to law. An observation has been made by the High Court that the petitioners have been continuously filing case after the case, before the Tribunal and before the High Court and by virtue of interim orders, their services continued and with those observations, the writ petition was dismissed. The appeal preferred by the writ petitioners in W.A.No.638 of 2010 was also dismissed with an order of direction to the authorities competent to consider case of the writ petitioners. The Special Leave Petition filed by the Secretary to Government, Municipal Administration, was also dismissed for non-appearance.

9. The learned Additional Advocate General, brought to the notice of this Court that, the writ petitioners have not taken any action in respect of the orders passed by the Hon'ble Division Bench and admittedly, there is a delay on the part of the respondents in passing final orders, implementing the orders passed by the Hon'ble Division Bench on 11.10.2011. However, the case of the writ petitioners were considered with reference to the Government Order, passed in G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999. The orders of the High Court passed in W.A.638 of 2010 was considered and the Principal Secretary to Government, Municipal Administration and Water Supply Department, passed an order, rejecting the claim of writ petitioners, for grant of regularisation and permanent absorption. The order of rejection states that, such regularisation, if granted to the writ petitioners, would be violative of legal principles, settled by the Constitution Bench of the Hon'ble Supreme Court of India, in

the case of Secretary, State Of Karnataka and Others v. Umadevi and others reported in [2006 4 SCC 1].

10.The learned Additional Advocate General further brought to the notice to this Court that, the writ petitioners were ousted from service, during the year 2003, and they are not in service for the past about 15 years. The claim of regularisation was also rejected by the respondents, considering the judgment of the High Court, as well as the Apex Court of India. Thus, the present writ petition, filed with the same prayer, cannot be considered at all.

11.Considering the arguments, as advanced by the respective learned counsel for the petitioners, as well as the learned Additional Advocate General, this Court is of an opinion that, regularisation or permanent absorption can never be claimed as a matter of legal right. Regularisation or permanent absorption are to be granted strictly in accordance with the recruitment rules in force.

12.Equal opportunity in public employment is a constitutional mandate. All eligible persons are entitled to participate in the process of selection through open competitive process and the authorities competent, while undertaking the process of selection, are bound to follow the rules in force, scrupulously. In the event of any violation of the recruitment rules in force, the constitutional right of all the eligible candidates are infringed, and therefore, there cannot be any deviation or violation in respect of adherence to the recruitment rules in force, especially, for appointment to the public posts in the Government.

13.The legal principles in this regard are well settled by the Constitution Bench of the Hon'ble Supreme Court of India in the case of Secretary, State Of Karnataka and Others v. Umadevi and Others reported in [2006 4 SCC 1], wherein, the Constitution Bench, in unambiguous terms, held that, back door entries can never be permitted and the persons, who entered through such back door, have to be sent through the door, through which, they entered.

14.Thus, this Court is bound to follow the aforesaid legal principles in the matter of appointment. Appointments are to be made under the constitutional schemes and by following the procedures contemplated. In the event of any such irregular appointments, not only, the constitutional rights of all other meritorious and eligible candidates are infringed, but also, the equity clause enshrined in the constitution, is also violated.

15.Uniformity in providing public employment, is the

constitutional mandate. Thus, the authorities, who are all making such irregular appointments, are liable to be prosecuted. A growing trend in several Governmental organisations is that, the competent authorities are engaging such temporary employees and allowing them to continue in service for an unspecified period, by which, the very spirit of contract appointment and the temporary employment, have been violated by the competent authorities. The violations committed by these competent authorities are providing scope for these temporary and contract employees to claim regularisation and permanent absorption. Undoubtedly, the Government is empowered to engage employees on contract basis and on temporary basis. However, such appointments are to be made strictly, in accordance with the terms and conditions, and for the purpose of completing the Government projects, within the time stipulated. Soon after the completion of the project or the scheme, the temporary employees must be ousted from service. Thus, the competent authorities are bound to follow the scheme of temporary appointment and contract appointment, for specific purposes, and for completion of certain urgent works, to be carried out by the Government machinery. However, allowing such employees to serve for an unspecified period of time, and developing a scope in their minds to get permanent appointment based on the length of their service, can never be encouraged. Such omissions and commissions of the competent authorities are to be deprecated.

16. The Constitution Bench has observed as follows, in the following paragraphs.

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

...

10. When these matters came up before a Bench of two

Judges, the learned Judges referred the cases to a Bench of three Judges. The order of reference is reported in Secy., State of Karnataka v. Umadevi (1) 2004 7 SCC 132. This Court noticed that in the matter of regularisation of ad hoc employees, there were conflicting decisions by three-Judge Benches of this Court and by two-Judge Benches and hence the question required to be considered by a larger Bench. When the matters came up before a three-Judge Bench, the Bench in turn felt that the matter required consideration by a Constitution Bench in view of the conflict and in the light of the arguments raised by the Additional Solicitor General. The order of reference is reported in Secy., State of Karnataka v. Umadevi (2) 2006 4 SCC 44. It appears to be proper to quote that order of reference at this stage. It reads: (SCC p. 45, paras 1-5)

"1. Apart from the conflicting opinions between the three-Judge Bench decisions in Ashwani Kumar v. State of Bihar 1997 2 SCC 1, State of Haryana v. Piara Singh [1992 4 SCC 118 = 1992 3 SCR 826] and Dharwad Distt. PWD Literate Daily Wage Employees Assn. v. State of Karnataka on the one hand and State of H.P v. Suresh Kumar Verma [AIR 1996 SC 1565 = 1996 1 SCR 972], State of Punjab v. Surinder Kumar AIR 1992 SC 1593 and B.N Nagarajan v. State of Karnataka [1979 4 SCC 507 = 1979 3 SCR 937] on the other, which have been brought out in one of the judgments under appeal of the Karnataka High Court in State of Karnataka v. H. Ganesh Rao 2001 4 Kant LJ 466 DB, decided on 1-6-2001 the learned Additional Solicitor General urged that the scheme for regularisation is repugnant to Articles 16(4), 309, 320 and 335 of the Constitution and, therefore, these cases are required to be heard by a Bench of five learned Judges (Constitution Bench).

2. On the other hand, Mr M.C Bhandare, learned Senior Counsel, appearing for the employees urged that such a scheme for regularisation is consistent with the provisions of articles 14 and 21 of the Constitution.

3. Mr V. Lakshmi Narayan, learned counsel appearing in CCs Nos. 109-498 of 2003, has filed the GO dated 19-7-2002 and submitted that the orders have already been implemented.

4. After having found that there is conflict of

opinion between the three-Judge Bench decisions of this Court, we are of the view that these cases are required to be heard by a Bench of five learned Judges.

5. Let these matters be placed before the Hon'ble the Chief Justice for appropriate orders."

We are, therefore, called upon to resolve this issue here. We have to lay down the law. We have to approach the question as a constitutional court should.

...

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, 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 that 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. This right of the Union or of the State Government cannot but be recognised and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognised and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion 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 a due process of selection as envisaged by the constitutional scheme.

13. What is sought to be pitted against this approach, is the so-called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has

a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in *State of Punjab v. Jagdip Singh* 1964 4 SCR 964. It was held therein: (SCR pp. 971-72)

"In our opinion where a government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status."

14. During the course of the arguments, various orders of the courts either interim or final were brought to our notice. The purport of those orders more or less was the issue of directions for continuation or absorption without referring to the legal position obtaining. Learned counsel for the State of Karnataka submitted that chaos has been created by such orders without reference to the legal principles and it is time that this Court settled the law once and for all so that in case the Court finds that such orders should not be made, the courts, especially, the High Courts would be precluded from issuing such directions or passing such orders. The submission of learned counsel for the respondents based on the various orders passed by the High Court or by the Government pursuant to the directions of the Court also highlights the need for settling the law by this Court. The bypassing of the constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the validity of such orders on the touchstone of constitutionality. While approaching the questions falling for our decision, it is necessary to bear this in mind and to bring about certainty in the matter of public

employment. The argument on behalf of some of the respondents is that this Court having once directed regularisation in Dharwad case all those appointed temporarily at any point of time would be entitled to be regularised since otherwise it would be discrimination between those similarly situated and in that view, all appointments made on daily wages, temporarily or contractually, must be directed to be regularised. Acceptance of this argument would mean that appointments made otherwise than by a regular process of selection would become the order of the day completely jettisoning the constitutional scheme of appointment. This argument also highlights the need for this Court to formally lay down the law on the question and ensure certainty in dealings relating to public employment. The very divergence in approach in this Court, the so-called equitable approach made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by this Court one way or the other. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down.

15. Even at the threshold, it is necessary to keep in mind the distinction between regularisation and conferment of permanence in service jurisprudence. In *State Of Mysore v. S.V Narayanappa* 1967 1 SCR 128 this Court stated that it was a misconception to consider that regularisation meant permanence. In *R.N Nanjundappa v. T. Thimmiah* 1972 1 SCC 409 this Court dealt with an argument that regularisation would mean conferring the quality of permanence on the appointment. This Court stated: (SCC pp. 416-17, para 26)

"Counsel on behalf of the respondent contended that regularisation would mean conferring the quality of permanence on the appointment whereas counsel on behalf of the State contended that regularisation did not mean permanence but that it was a case of regularisation of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment.

Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."...

20. The decision in Dharwad Distt. PWD Literate Daily Wage Employees Assn. v. State of Karnataka dealt with a scheme framed by the State of Karnataka, though at the instance of the Court. The scheme was essentially relating to the application of the concept of equal pay for equal work but it also provided for making permanent, or what it called regularisation, without keeping the distinction in mind, of employees who had been appointed ad hoc, casually, temporarily or on daily-wage basis. In other words, employees who had been appointed without following the procedure established by law for such appointments. This Court, at the threshold, stated that it should individualise justice to suit a given situation. With respect, it is not possible to accept the statement, unqualified as it appears to be. This Court is not only the constitutional court, it is also the highest court in the country, the final court of appeal. By virtue of Article 141 of the Constitution, what this Court lays down is the law of the land. Its decisions are binding on all the courts. Its main role is to interpret the constitutional and other statutory provisions bearing in mind the fundamental philosophy of the Constitution. We have given unto ourselves a system of governance by rule of law. The role of the Supreme Court is to render justice according to law. As one jurist put it, the Supreme Court is expected to decide questions of law for the country and not to decide individual cases without reference to such principles of law. Consistency is a virtue. Passing orders not consistent with its own decisions on law, is bound to send out confusing signals and usher in judicial chaos. Its role, therefore, is really to interpret the law and decide cases coming before it, according to law. Orders which are inconsistent with the legal conclusions arrived at by the court in the selfsame judgment not only create confusion but also tend to usher in arbitrariness highlighting the statement, that equity tends to vary with the Chancellor's foot. ...

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or

in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the 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, if it were an engagement or appointment on daily wages 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. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to

eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in Dharwad, Piara Singh, Jacob<sup>29</sup> and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularised. The doctrine can be

invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. [See Lord Diplock in *Council for Civil Services Union v. Minister of Civil Service* 1985 AC 374, *National Buildings Construction Corp. v. S. Raghunathan* 1998 7 SCC 66 and *Dr. Chanchal Goyal (Mrs) v. State Of Rajasthan* 2003 3 SCC 485.] There is no case that any assurance was given by the Government or the department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after Dharwad decision. Though, there is a case that the State had made regularisations in the past of similarly situated employees, the fact remains that such regularisations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularised in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularisation of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for

being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees

accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality."

17. The legal principles are re-iterated and emphasized by the Hon'ble Bench of two Judges of the Hon'ble Supreme Court of India in Secretary to Government, School Education Department, Chennai v. R. Govindaswamy and others reported in (2014) 4 SCC 769 and the relevant paragraph, viz. Para No.8 is extracted hereunder :

"8. This Court in State of Rajasthan v. Daya Lal AIR 2011 SC 1193 has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under: (SCC p. 435, para 12)

"(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even

temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

18. Even recently, the Hon'ble Supreme Court of India, in the case of State of Tamil Nadu through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and another v. A. Singamuthu reported in (2017) 4 SCC Pg. 113, held as follows :

"16. In State of Rajasthan v. Daya Lal State of Rajasthan v. Daya Lal, 2011 2 SCC 429, this Court has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and this Court clearly laid down that part-time employees are not entitled to seek regularisation as they do not work against any sanctioned posts. It was also held that part-time employees in government-run institutions can in no case claim parity in salary with regular employees of the

Government on the principle of equal pay for equal work. Relevant excerpt from the said judgment is as under: (SCC pp. 435-36, para 12)

"12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularisation of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were

appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full-time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

[See State of Karnataka v. Uma Devi (3), M. Raja v. Ceeri Educational Society M. Raja v. Ceeri Educational Society, 2006 12 SCC 636, S.C Chandra v. State of Jharkhand S.C Chandra v. State of Jharkhand, 2007 8 SCC 279, Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand, 2007 15 SCC 680 and Official Liquidator v. Dayanand Official Liquidator v. Dayanand, 2008 10 SCC 1.]”

(emphasis supplied)

17. The learned Single Judge of the High Court, while allowing the writ filed by the respondent extended the benefit of the said GOMs No. 22 dated 28-2-2006 and directed the appellants to grant regularisation of respondent's service from the date of completion of ten years of service with salary and other benefits. The learned Judge failed to take note of the fact that as per G.O.Ms.No.22 dated 28-2-2006, the services of employees working in various government departments on full-time daily-wage basis, who have completed more than ten years of continuous service as on 1-1-2006 will be regularised and not part-time masalchis

like the respondent herein. In GOMs No. 84 dated 18-6-2012, the Government made it clear that GOMs No. 22 dated 28-2-2006 is applicable only to full-time daily wagers and not to part-time daily wagers. The respondent was temporarily appointed part-time worker as per Tamil Nadu Finance Code, Vol. 2, Appendix 5 and his appointment was completely temporary. The respondent being appointed as part-time masalchi, cannot compare himself to full-time daily wagers and seek benefit of GOMs No. 22 dated 28-2-2006. The Single Judge also failed to consider that the Government did not grant regularisation of services of any part-time employee on completion of ten years of his service as envisaged under GOMs No. 22 dated 28-2-2006.

18. The learned Single Judge erred in extending the benefit of G.Os No. 22 dated 28-2-2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 1-4-1989 and completed ten years of service on 31-3-1999. As rightly contended by the learned Senior Counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is, from 1-4-1999 till the date of his regularisation, that is, 18-6-2012, the financial commitment to the State would be around Rs 10,85,113 (approximately) towards back wages apart from pension which will have a huge impact on the State exchequer. That apart, the learned Senior Counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularised under various G.Os and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularisation of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

19. It is pertinent to note that even the regularisation of services of part-time employees vide G.O (Rt.) No. 505 Finance (AA-2) Department dated 14-10-2009 and G.O (2D) No. 32 Finance (T.A 2) Department dated 26-3-2010 was effected by extending the benefit of G.O dated 28-2-2006 only from the date of government orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that GOMs No. 22 P & AR Dept. dated 28-2-2006 is applicable only to full-time daily-wage employees and who had

completed ten years of continuous service as on 1-1-2006 and not to part-time employees. As per G.O (Rt.) No. 84 dated 18-6-2012, the respondent is entitled to the monetary benefits only from the date of issuance of government order regularising his service, that is, 18-6-2012. The impugned order of the Division Bench affirming the order of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside.

20. In the result, the impugned order is set aside and this appeal is allowed. No costs."

19. Even in the Govindasamy's case cited supra, his Lordship Dr.B.S.Chauhan, J., speaking for the Bench, issued a direction to the High Courts, that the High Courts, in exercising power under Article 226 of the Constitution of India, will not issue directions for regularisation, absorption or permanent continuance, unless, the employees claiming regularisation, had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee, which would be violative of the constitutional scheme.

20. The Hon'ble Supreme Court, in unequivocal terms, has held that, the High Courts, in exercising power under Article 226 of the Constitution of India, will not issue directions for regularisation, or permanent absorption, otherwise contrary to the regularisation rules in force.

21. This being the authoritative statement and the legal principles to be followed, this Court cannot issue any direction for regularisation or permanent absorption in violation of the recruitment rules or regularisation rules, which are in force.

22. With reference to the judgments submitted by the learned counsel for the petitioners, this Court is of an opinion that the first judgment in the case of Narendra Kumar Tiwari & Ors. Etc. vs. The State of Jharkhand & Ors. Etc. dated 01.08.2018, the facts and circumstances are not akin to the facts and circumstances of the present case on hand, as the state of Jharkhand was constituted during the year 2000 and it has issued a separate regularisation rules for grant of regularisation and with reference to such rules, the Hon'ble Supreme Court has passed the order and based on the same principles, the present

writ petition on hand, cannot be considered.

23. So also, in the case of Chennai Port Trust vs. The Chennai Port Trust Industrial Employees Canteen Workers Welfare Association and Ors., reported in 2018(3) SLR 572 (S.C), it was the canteen employees' rules and regulations, relating to the grant of permanent absorption, which are entirely different with respect to the employees of Government of Tamil Nadu, for whom, the rules for regularisation are different.

24. In these circumstances, the facts and circumstances of the present case on hand, cannot be compared with reference to the judgments of the Hon'ble Supreme Court of India, cited by the learned counsel for the writ petitioners. Thus, the two judgments referred to by the learned counsel for the writ petitioners, are of no avail for the petitioners, for grant of regularisation, as prayed for in the present writ petition.

25. Para No.54 of the Constitution Bench Judgment re-iterates that "It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents." Thus, the judicial statement warrants that, all other judgments subsequently passed, either by the Bench of two Judges of the Hon'ble Supreme Court of India, or by any other High Courts, cannot be relied upon, if the principles are running counter to the legal principles, settled by the Constitution Bench of the Hon'ble Supreme Court of India in the case of Umadevi cited supra.

26. Thus, even some decisions, settled by the High Courts or the Bench of two Judges of the Hon'ble Supreme Court, cannot be relied upon and the principles settled by the Constitution Bench alone, are to be followed by the High Courts, for the purpose of granting of regularisation or permanent absorption. Even if, the Supreme Court has granted certain relief with reference to the peculiar facts and circumstances, the same cannot be relied upon, for the purpose of grant of relief of regularisation or permanent absorption.

27. This being the legal principles to be followed, this Court is of an opinion that the writ petitioners in the present writ petition have not established that they are entitled for the relief of regularisation or permanent absorption. The fact remains that the writ petitioners were initially appointed as Section Writers in the year 1994. They were ousted from service in the year 2003. The first writ petitioner filed Original Applications before the Tribunal and subsequently, it was

transferred to the High Court of Madras and the same was dismissed. In the appeal preferred by the writ petitioners, the Hon'ble Division Bench directed the competent authorities to consider their representation. The respondent Government considered their representation and rejected the claim for regularisation. The ground relied upon by the Government is that, the writ petitioners are not falling within the terms and conditions stipulated in G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999, and further, their services were also ousted in the year 2003. In these circumstances, now, after a lapse of 15 years from the date of ousting of their services, the petitioners are not entitled for the relief of regularisation, which was the very same prayer in the writ petition previously filed by the writ petitioners, which was dismissed by this Court.

28.Hence, this writ petition is devoid of merits and stands dismissed. No costs. However, it is made clear that, it is left open to the writ petitioners to participate in the process of selection, if any notified by the respondents, for recruitment to the post of Section Writers, or to any other posts, for which the petitioners are eligible and qualified. This Court wishes the writ petitioners to get public employment by participating in the open competition process and by way of merit.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jen/mkn

To

- 1.The Secretary to Government,  
Municipal Administration and  
Water Supply Department, Chennai - 9.
- 2.The Commissioner of Municipal,  
Administration, Chennai - 5.
- 3.The Regional Director of Municipal,  
Administration, Chengalpattu.

4.The Commissioner,  
Pallavaram Municipality,  
Chrompet, Chennai - 44.

+1cc to Mr.S.Ilamvaludhi, Advocate, S.R.No.80073

+1cc to the Government Pleader, S.R.No.80922

W.P.No.38037 of 2004

VGII (CO)  
GSP (20/12/2018)