

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12249 of 2015

and

M.P.Nos.2 & 3 of 2015

and

W.M.P.No.3056 of 2016

E.Mari

..Petitioner

vs

- 1.The Government of Tamil Nadu,
Rep.by its Principal Secretary,
Rural Development and Panchayat Raj Department,
Secretariat, Fort St.George,
Chennai - 600 009.
 - 2.The District Collector,
Collectorate, Thiruvallur,
Thiruvallur District.
 - 3.Villivakkam Panchayat Union,
Rep.by it's the Commissioner,
Block Development Officer(B.R),
No.363/68, MTH Road,
Ambattur, Chennai - 600 053.
- .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the notification bearing Ref.No.Na.Ka.En.352/15/Aa1 dated 09.04.2015 issued by the 3rd respondent Panchayat inviting application for the post of Watchman in the Dhina Thanthi Tamil Daily on 16.04.2015 and to quash the same as being illegal, arbitrary and for a consequential mandamus to absorb the petitioner in the post of Watchman by the 3rd respondent Panchayat.

For Petitioner : Mr.N.G.R.Prasad
for M/s.Row and Reddy

For Respondents: Mr.M.Elumalai, GA for R1 & R2
Mr.V.Jayaprakash Narayanan for R3

O R D E R

Challenging the notification for recruitment to the post of Watchman published by the 3rd respondent in the daily newspaper "Dhina Thanthi" on 16.04.2015, is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner studied upto X standard and registered his name in the District Employment office, Thiruvallur in the year 1984. However, the registration became lapsed and he did not renew the employment registration. However, he registered his name once again in the employment office on 23.07.1998 and the registration was continuing. Till 16.07.2011, the writ petitioner was engaged as Sweeper in the Vanagaram Panchayat, which comes under the 3rd respondent Union. On 17.07.2011, the petitioner was transferred to the 3rd respondent Union as a Watchman. However, the petitioner was paid the salary by the Vanagaram Panchayat Union. On 10.06.2012, he was directly put on the rolls of the 3rd respondent Panchayat Union as a Watchman. All along, the petitioner was continuing as a daily wage night watchman and his services are not regularized.

3.The learned Senior Advocate appearing on behalf of the writ petitioner made a submission that the writ petitioner was allowed to continue as daily wage employee for about 480 days and thus, he is entitled for permanent status under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. [hereinafter referred to as "the Act"]

4.Section 2 of "the Act" provides Definitions. Section 2(1) of "the Act" deals with "employer", which reads as under:

(1) "employer" means the owner of an Industrial Establishment to which this Act for the time being applies and includes--

(a) in a factory, any person named under clause(f) of sub-section(1) of section 7 of the Factories Act, 1948 (Central Act LXIII of 1948) as manager of the factories;

(b) in any Industrial Establishment under the control of any department of any State Government in India, the authority appointed by such State

Government in this behalf, or where no authority is so appointed, the head of the department;

(c) in any other Industrial Establishment, any person responsible to the owner for the supervision and control of the Industrial Establishment;

5. Section 2(3) of "the Act" denotes "Industrial Establishment" means--

(a) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (Central Act LXIII of 1948) or any place which is deemed to be a factory under sub-section (2) of section 85 of that Act ; or

(b) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act LXIX of 1951) ; or

(c) a motor transport undertaking as defined in clause (g) of section 2 of the Motor Transport workers Act, 1961 (Central Act 27 of 1961) ; or

(d) a beedi industrial premises as defined in clause (i) of section 2 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (Central Act 32 of 1966) ; or

(e) an establishment as defined in clause (6) of section 2 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947) ; or

(f) a catering establishment as defined in clause (1) of section 2 of the Tamil Nadu Catering Establishments Act, 1958 (Tamil Nadu Act XIII of 1958) ; or

(g) any other establishment which the Government may, by notification, declare to be an Industrial Establishment for the purpose of this Act ;

6. Section 3 of "the Act" denotes "Conferment of permanent status to workmen" and the same which reads as follows:

(1) Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty-four calendar months in an Industrial Establishment shall be made permanent.

(2) A workman shall be said to be in continuous service for a period if he is, for that period, in

uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike, which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.

(i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946) or under any other law applicable to the Industrial Establishment ;

(ii) he has been on leave with full wages, earned in the previous years ;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment ; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks."

7. Undoubtedly, Section 1(3) stipulates that "the Act" applies to every Industrial Establishment in which not less than 50 workmen were employed on any day of preceding 12 months. Thus, in respect of the application of the provisions of the "the Act" is concerned, the petitioner has to establish that the Villivakkam Panchayat Union is an Industrial Establishment. Secondly, the same falls under the definition of Industrial Establishment under Section 2(3) of "the Act" and further, the employer must be come within the Section of 2(1) of "the Act".

8. Panchayat Unions are governed under the Tamil Nadu Panchayats Act, 1994. The service conditions of the employees of the Panchayat Union are in force and those rules are governing the service conditions of the employees working in Panchayat Unions. When the Special Rules governing the service conditions are in force, the general Act for grant of regularization or permanent absorption cannot be applied at all. The settled legal principles in this regard is that, whenever the Special Rules governing the service conditions are in force, governing the subject of grant of regularization or permanent absorption, then the general Act applicable to the Industrial Establishment will not have any application in respect of the services of the writ petitioner. This apart, the Panchayat Union is not coming under the definition of Industrial Establishment under Section 2(3) of the "the Act". Thus, the very application of "the Act" itself is impermissible in respect of the temporary employees engaged by the Panchayat Unions in the State. In this regard, the arguments advanced by the learned counsel for the petitioner is of no avail and the same stands rejected.

9.The learned counsel for the petitioner further contended that the writ petitioner is working in the 3rd respondent Panchayat Union for about 6 years and his appointment was issued pursuant to the permission granted by the District Collector, the order of appointment was issued on 11.06.2012 by the Commissioner, Villivakkam Panchayat Union. The said order is enclosed in Page No.7 of the typed set of papers and the order of appointment unambiguously states that the writ petitioner has been engaged as daily wage employee and the salary fixed per day was Rs.205/-(Rupees Two Hundred and Five only) as on 01.07.2012. Therefore, pursuant to the resolutions passed by the Panchayat Union council, the writ petitioner was engaged as daily wage employee and an order was issued by the Commissioner, Villivakkam Panchayat Union.

10.The learned Government Advocate appearing on behalf of the respondents contended that the District Collector has not approved the appointment of the writ petitioner. However, the writ petitioner was allowed to continue only as a daily wage employee and at no point of time, he was appointed on regular basis. Thus, the writ petitioner was not appointed in accordance with the recruitment rules in force. The Panchayat Union Council unilaterally selected the writ petitioner and passed a resolution and appointed the writ petitioner as daily wage employee. For the purpose of permanent appointment, the procedures as contemplated under the recruitment rules are to be followed scrupulously by the authorities. Thus, the very appointment of the writ petitioner is to be construed as temporary and on daily wages basis and back door entry. No selection procedures were followed at the time of engaging the writ petitioner as daily wage employee. In the absence of following the selection procedures, and the rules in force, the appointment to be held as irregular and through back door entry. The persons, who entered through the back door to a public employment must be sent out from the door, through which they entered. There cannot be any leniency or misplaced sympathy in respect of such irregular or illegal appointments in respect of the public posts.

11.All appointments to the public posts are to be made only under the constitutional schemes and by following the recruitment rules in force. The authorities competent cannot appoint the persons on daily wage basis or on temporary basis for an indefinite period. Such authorities are also to be dealt with in accordance with the Discipline and Appeal Rules. Providing false scope to these poor employees are also to be condemned, if the temporary employment or daily wage employment is provided, then soon after the completion of the emergency work or the project the persons to be ousted from the post.

Contrarily, if the authorities allow these temporary employee to continue for an unspecified period and providing an unnecessary scope for these employees to claim regularization or permanent absorption contrary to the recruitment rules in force. Such a practice is not only unconstitutional, but the same deprives the constitutional right of all other millions of young people, who are aspiring to secure public employment by burning their midnight lamps and by participating in the open competitive process. Thus, the very practice of allowing these daily wage employees or temporary employees to continue for an unspecified period is to be deprecated.

12.The Constitution Bench of the Hon'ble Supreme Court settled the legal principles in the matter of regularization and permanent absorption in the case of The State of Karnataka Vs Umadevi, reported in 2006 4 SCC Page No.1. Even in the Constitution Bench judgment, it is stated that the proposals already pending before the Government for regularization shall be considered as one time measure and thereafter, no regularization or permanent absorption shall be granted contrary to the recruitment rules. The spirit of the judgment is to be adjudicated and this Court is bound by the legal principles settled by the Constitution Bench. Under these circumstances, it is necessary to analyse the scope and interpretation in respect of the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in the cases cited supra.

13.The legal principles laid down in this regard are elaborately discussed by this Court in W.P.Nos.28633 to 28646 of 2014 dated 12.12.2017 and the relevant paragraphs are extracted hereunder:

"27. Considering the arguments advanced both by the learned counsel for the petitioners as well as the learned counsel for the respondents, this Court has to first consider the factual matrix involved in these writ petitions on hand. The writ petitioners, undoubtedly, were appointed as daily wage employees in the year 2003 and they are continued in service for more than ten years, is the claim set out in these writ petitions. However, pursuant to the Judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the case of The State of Karnataka Vs. Umadevi, reported in (2006) 4 SCC 1 [herein after referred to as "Umadevi Case"], one time benefit was granted by the Hon'ble Supreme Court of India in Paragraph (53) of the Judgment.

28. Even before the said judgment, the State of Tamil Nadu issued G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated

28.02.2006. As per the said Government Order, the temporary employees who have completed ten years of service as on the date of the Government Order can be regularised. Even prior to the judgment of the Hon'ble Supreme Court of India, the Government issued G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, granting the benefit of one time regularization in respect of the temporary employees who have completed ten years of service as on 28.02.2006. Thus, the State was extending the benefit of regularization or permanent absorption to the temporary/daily rated employees who have completed ten years of service as on 28.02.2006.

29. Pursuant to the said Government order, large number of temporary employees were conferred with the benefit of regularization and based on that, the writ petitioner also raised his claim for regularization. However, after the Constitution Bench judgment rendered in "Umadevi Case", the State Government issued G.O.Ms.No.74, Personnel and Administrative Department, dated 27.06.2013. In the above said G.O.Ms.No.74, the Government have imposed certain conditions and those conditions are akin to that of the recruitment rules in force. The very idea of issuing G.O.Ms.No.74, is to provide certain restricted concession to the temporary employees who were otherwise appointed by following the recruitment rules in force. Therefore, the prospectus of the large number of employees who have served on daily wage basis are prevented from getting their regularization. In other words, the said G.O.Ms.No.74 prescribes certain conditions and restrictions for regularization and for granting permanent absorption. Thus, the persons who are eligible to be regularized under G.O.Ms.No.22, are prevented from getting the benefit from and out of the said Government order and G.O.Ms.No.74, imposes certain restrictions.

30. Thus, the learned counsel brought to the notice of this Court that in the similar circumstances, the learned Single Judge of this Court dealt with the issues in W.P.No.29346 of 2014 & etc., batch and delivered a judgment on 22.09.2017, setting aside the said G.O.Ms.No.74, in respect of extending the same with retrospective effect. In other words, the implementation of the Government orders was restricted only prospectively and accordingly, the relief of regularization was granted to those writ petitioners.

31. The learned Additional Government Pleader brought to the notice of this Court that the State preferred Writ Appeals in W.A.Sr.No.89134/17 in W.P.29346/14, W.A.Sr.No.89136/17 in W.P.No. 7594/14, W.A.Sr. No.89142/17 in W.P.No.15668/14, W.A.Sr.No.89143/17 in W.P. No.13545/14, W.A.Sr.No. 89138/17 in W.P.No.29212/14 on 13.11.2017, against the said judgment and the same is pending.

32. Thus, this Court has to consider the issues independently and based on the judgments of the Apex Court of India in the matter of regularization and permanent absorption. However, the learned Additional Government Pleader brought to the notice of this Court that the Hon'ble Division Bench of this Court passed an order in the batch of Writ Appeals in W.A.No.2911 of 2012 and etc., batch on 10.07.2014, wherein the Hon'ble Division Bench has considered the terms and conditions imposed in G.O.Ms.No.74 and passed an order stating that the services shall not be disturbed in the light of the Government Order passed in G.O.Ms.No.74, Personnel and Administrative Reforms Department dated 27.06.2013 as well as the order passed by the Hon'ble Supreme Court of India in Civil Appeal Nos.2726-2729 of 2014 with Nos.2730-31 of 2014.

33. The Additional Government Pleader is of the opinion that the terms and conditions imposed in G.O.Ms.No.74 had already been taken note of by the Hon'ble Division Bench and the entire Government Order was upheld and the direction was issued to pass orders in the light of the G.O.Ms.No.74 and therefore, the judgment delivered by the learned Single Judge, need not be relied upon and more so, the State also preferred writ appeals against the said orders.

34. Under these circumstances, this Court has to consider the issues independently based on the judgments of the Apex Court of India.

35. The authoritative judgment in the subject of regularization and permanent absorption is the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in "Umadevi Case". All other subsequent judgments cited by the respective counsels are by the Hon'ble Two Judges Bench of the Supreme Court of India. Thus, the binding nature of the judgments rendered in respect of other cases has to be cogently read and harmoniously interpreted based on

the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India.

36. Before considering the subject of regularization and permanent absorption, this Court has to consider the interpretation of the judgments on "binding nature" or "binding precedent". In view of the fact that the learned counsel for the petitioner has cited number of judgments, which were passed subsequent to the Constitution Bench judgment, stating that Paragraph (53) of the "Umadevi Case" has been interpreted in different ways and under different circumstances and the present case is also to be considered and a direction to be issued for regularization. In view of the fact that large number of judgments are cited before this Court in the matter of regularization and permanent absorption, now, this Court has to first decide what all are the judgments which all are having a "binding precedent" and on this reason, this Court has to consider very interpretation of the concept regarding "binding precedent". In respect of judgments in relation to the interpretation of "binding precedent", this Court is inclined to consider the very recent judgment of the Hon'ble Supreme Court of India in the case of National Insurance Co. Ltd vs Pranay Sethi and Others, reported in JT 2017 (10) SC 450. It is pertinent to note that it is a judgment by the Constitution Bench of the Hon'ble Supreme Court of India headed by His Lordship, Hon'ble Chief Justice of India, Dipak Misra.CJI,. The Hon'ble Chief Justice of India delivered this judgment and it is relevant to quote paragraphs (15 to 26):

37. The Constitution Bench of the Hon'ble Supreme Court of India, while dealing with the cases of accident claims, has elaborately discussed about the "binding precedent". The case in relation to the Motor Accident Claims, the case of "Sarla Verma" was being followed by all the Courts across the Country for the purpose of awarding compensation. When the question arose that the "binding nature" of the said case of "Sarla Verma" delivered by the Hon'ble Supreme Court of India, the Constitution Bench headed by the Hon'ble Chief Justice of India held that the principles laid down in the case of "Virayya v. Venkata Subbayya", it has been held by the Andhra Pradesh High Court that under the circumstances aforesaid the Bench is free to adopt that view which

is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, it is further held that in the case of State of Bihar v. Kalika Kuer alias Kalika Singh and others, reported in [JT (2003) 4 SC 489], held that the earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. Their Lordships rendered the case of Chandra Prakash and others v. State of U.P. and another, reported in [JT 2002 (3) SC 493], held that the doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court.

38. By enumerating the legal principle in this regard, the Apex Court of India held that the judgment by the Larger Bench of the Courts are to be treated as "binding precedent", while deciding the legal principles involved in the particular case.

39. Another Constitution Bench of the Hon'ble Supreme Court of India in the case of Padma Sundara Rao and Others Vs. State of Tamil Nadu and others, reported in (2002) 3 SCC 533, and the relevant paragraph (9) of the Judgment is extracted hereunder:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

40. In view of the legal principle settled in the matter of "binding precedent", now, this Court is bound by the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in the "Umadevi Case". Admittedly, there is no

other subsequent Constitution Bench judgment in respect of the subject of regularization and permanent absorption. The last judgment rendered by the Constitution Bench in the subject matter is "Umadevi Case". Thus, the legal principles settled by the Constitution Bench in "Umadevi Case" are of "binding precedent" or to be followed as "binding precedent". Thus, the facts and circumstances of the present writ petition has to be considered only in the light of the principles laid down by the Constitution Bench. All other judgments subsequently passed by the Hon'ble Supreme Court of India may have certain distinctions far and against. However, these judgments are to be interpreted only based on the facts and circumstances prevailing in that particular case and therefore, this Court cannot consider those judgments delivered on a particular facts in relation to that particular case. However, the legal principles are to be considered in relation to the facts and circumstances of the present case on hand.

41. Let us look into the basic principles enunciated by the Constitution Bench in the matter of regularization and permanent absorption. Paragraph (5) of the "Umadevi Case" is extracted hereunder: "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"

42. This Court wants to look into the very findings made by the Hon'ble Supreme Court of India in the above said paragraph (5), the Apex Court has conceded that the Hon'ble Supreme Court of India had also on occasions, issued directions, which could not

be said to be consistent with the Constitutional schemes of public employment. Such directions are issued presumably on the basis of equitable considerations or individualisation of justice. The Hon'ble Supreme Court of India raised a question that equity to whom? Equity for the handful of people who have approached the Court with the 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 reflected in these cases referred to the Constitution Bench.

43. This Court is able to visualize the strong concern recorded by the Hon'ble Supreme Court of India. The concern raised by the Constitution Bench is that by granting relief to a handful of people, the large sector of meritorious youth of this great nation cannot be deprived of their constitutional rights. Under this pretext, the Constitution Bench commenced its consideration in "Umadevi Case". Thus, the very enumeration in the above paragraph is crystal clear that the Constitution Bench has laid down the principle in the matter of regularization and permanent absorption and the idea of the Hon'ble Supreme Court of India has to stop the practice of appointing employees, through back door on extraneous consideration by showing favoritism and nepotism.

44. Further, Paragraph (10) of the "Umadevi Case" is extracted hereunder:

"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 : 2004 SCC (L&S) 935 : (2003) 9 Scale 187] . 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 : (2003) 10 Scale 388] . 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 : 1997 SCC (L&S) 465 : 1996 Supp (10) SCR 120] , State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] and Dharwad Distt. PWD Literate Daily Wage Employees Assn. v. State of Karnataka [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] on the one hand and State of H.P. v. Suresh Kumar Verma [(1996) 7 SCC 562 : 1996 SCC (L&S) 645 : (1996) 33 ATC 336 : AIR 1996 SC 1565 : (1996) 1 SCR 972] , State of Punjab v. Surinder Kumar [(1992) 1 SCC 489 : 1992 SCC (L&S) 345 : (1992) 19 ATC 500 : AIR 1992 SC 1593 : 1991 Supp (3) SCR 553] and B.N. Nagarajan v. State of Karnataka [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (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."

45. The above said Paragraph (10), stipulates that there were conflicting decisions by three-Judge Benches of this Court and by two-Judge Benches of the Hon'ble Supreme Court of India and therefore, the Hon'ble Supreme Court of India has considered that the question required to be considered by a larger Bench. It is further observed that 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. In the reference made by the Hon'ble three-Judge Bench itself decided 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).

46. In paragraph (11) of the "Umadevi Case", it is stated that in addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State.

47. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and the Public Service Commissions for the States. Article 320 deals with the functions of the Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognised by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the Scheduled Castes and Scheduled Tribes for employment.

48. Further, Paragraph (12) of the "Umadevi Case" reads as follows:

"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."

49. The spirit of Paragraph (12) of the "Umadevi Case" judgment is that the temporary engagements like daily wage appointments, consolidated pay appointments and temporary appointments and 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. Thus, it is made clear by the Constitutional Bench that regular recruitment rules in force, followed scrupulously by the competent authorities and engagements on temporary basis cannot be resorted or the same cannot lead to permanent absorption or regularization. Further, it is stated that the Government is entitled to appoint the persons on daily wages/consolidated pay/temporary basis, if a Government is of the opinion that a project has to be implemented or a special works to be carried out, then they are at liberty to do so, by engaging the temporary employees. Such being the concept accepted by the Hon'ble Supreme Court of India, no doubt, a mere appointment on temporary/daily wage basis cannot constitute a right for the employees to claim regularization or permanent absorption.

50. Further, Paragraph (13) of the "Umadevi Case" judgment is extracted hereunder:

"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 : AIR 1964 SC 521] . 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."

51. This Court cannot omit the powerful statement made by the Constitution Bench in respect of providing equal opportunity and in respect of implementing the equality clause enshrined under Article 14 & 16 of the Constitution. In the above said paragraph (13), the Hon'ble Supreme Court of India has emphasized that 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. We, the people of India, while adopting the Constitution.

52. The approving of such acts also results in depriving many of their opportunity to compete for public employment. The Constitution Bench of "Umadevi Case", considered the proposition of law laid down by the previous Constitution Bench in the case of State of Punjab Vs. Jagdip Singh, reported in [AIR (1964) SC 521]. The earlier Constitution Bench in the case of State of Punjab Vs. Jagdip Singh, held that 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.

53. In paragraph (14) of the "Umadevi Case" judgment, the Hon'ble Supreme Court of India has elaborately discussed about various orders of the Courts either interim orders or final orders which were brought to the notice of the Constitution Bench. The Hon'ble Supreme Court of India came to the conclusion that those orders more or less was the issue of directions for continuation or absorption without referring to the legal position obtaining. It was brought to the notice of this Court 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.

54. The very arguments advanced by the learned counsel for the State of Karnataka is that a chaos was created on account of various contradicting orders passed by the High Courts in the matter of regularization or permanent absorption in order to settle the legal principles. The learned counsel urged the Hon'ble Supreme Court of India to take note of the fact that there is a chaos prevailing in respect of the regularization and permanent absorption of the temporary/daily wages employees and brought to the notice of the Hon'ble Supreme Court of India that the High Courts would be precluded from issuing any such directions or passing such orders in contrary to the legal principles in the matters of regularization or permanent absorption or appointment. The observation made in this regard is that 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.

55. Let us come to paragraph (20) of the "Umadevi Case" judgment which is extracted hereunder:

"20. The decision in Dharwad Distt. PWD Literate Daily Wage Employees Assn. v. State of Karnataka [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] 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."

56. The decision in the case of Dharwad Distt. PWD Literate Daily Wage Employees Assn. Vs. State of Karnataka, reported in (1990) 2 SCC 396, was considered in the above paragraph. It is observed that the role of the Court 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 self same 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.

57. As one Jurist put it, the Hon'ble Supreme Court of India has accepted the decision, the question 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 result in judicial chaos. The observation made in this regard are certainly to be followed by all the Courts across the Country.

58. In paragraph (40) of the Judgment, the Apex Court referred the spirit of Kesavananda Bharati Vs. State of Kerala, reported in (1973) 4 SCC 225, the Court held that Article 14 & 16 which was described as a facet of Article 14 is part of the basic structure of the Constitution. In the case of Indra Sawhney Vs. Union of India, reported in (2000) 1 SCC 168, the said decision was reiterated how neither the Parliament nor the legislature could transgress the basic feature of

the Constitution, namely, the principle of equality enshrined in Article 14 of which Article 16(1) is a facet.

59. In paragraph (41), the earlier decision in the above said case of Indra Sawhney Vs. Union of India, reported in (2000) 1 SCC 168, it is held that equality and equal opportunity is a basic feature of our Constitution, has explained the exultant position of Articles 14 and 16 of the Constitution in the scheme of things.

60. The judgment of the another Constitution Bench in the case of D.C.Wadhwa(Dr.) Vs. State of Bihar, reported in (1987) 1 SCC 378 and the relevant paragraph (3) is extracted hereunder:

"3.The rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State whether it be the legislature or the executive or any other authority should be within the constitutional limitations and if any practice is adopted by the executive which is in flagrant and systematic violation of its constitutional limitations, Petitioner 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice"

61. Let us now look into the way in which the Constitution Bench has arrived the conclusion in the matter of regularization and permanent absorption in "Umadevi Case" and the relevant paragraphs (43) to (50), which all are extracted hereunder:

"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 [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] 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 [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] , Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] , Jacob [Jacob M. Puthuparambil v. Kerala Water Authority, (1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] and Gujarat Agricultural University

[Gujarat Agricultural University v. Rathod Labhu Bechar, (2001) 3 SCC 574 : 2001 SCC (L&S) 613] 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 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] , National Buildings Construction Corpn. v. S. Raghunathan [(1998) 7 SCC 66 : 1998 SCC (L&S) 1770] and Chanchal Goyal (Dr.) v. State of Rajasthan [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] .] 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 [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] . 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."

62. In paragraph (43), it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution when it is clarified that adherence to the rule of equality in public employment is a basic feature of the Constitution, certainly, no person can deviate the principles in this regard and therefore, appointment in accordance with the recruitment rules in force by the competent authorities is the constitutional mandate and any deviation to be construed as violation of the constitutional principles. It is observed that 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 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 appointment, 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.

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

64. The spirit of Paragraph (43) is applicable to the facts and circumstances of the present writ petition on hand. In the present writ petition, the writ petitioners were appointed on daily wage basis as Nominal Muster Rolls employees. The mere continuance or the length of service rendered alone cannot be a ground for granting the relief of regularization. Thus, the very legal principles settled by the Constitution Bench has to be fit in with the facts and circumstances of the present writ petition. Further, the Hon'ble Supreme Court of India deals with the "litigious employment". Of course, the situation does not arise in the present case. The interim order of Status Quo granted by this Court has not been properly implemented by reinstating the petitioners in service and the Contempt petition filed by the writ petitioners were also posted along with the writ petition for final disposal. Thus, the concept of "litigious employment" would not arise in respect of the present writ petition. Therefore, the petitioners have not continued in service by virtue of the interim order of Status Quo granted by this Court. However, their services were ousted, after filing of the writ petition.

65. Paragraph (44) of the "Umadevi Case" judgment deals with the concept of "equal pay for equal work". Thus, it may not be required to elaborate the paragraph as far as the present case on hand is concerned.

66. Paragraph (45) of the above said judgment states that the Apex Court of India held that, while directing that appointments, temporary or casual, be regularized 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. A total embargo of 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.

67. 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 this 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, so as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State.

68. In Paragraph (46) of the "Umadevi Case" judgment, their Lordships held that 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 regularization 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.

69. Paragraph (47) of the "Umadevi Case" judgment enumerates that 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.

70. In paragraph (48) of the "Umadevi Case" Judgment, the Constitution Bench considered the right of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. Even in "Umadevi Case", those employees before the Supreme Court of India were engaged on daily wages in the department concerned on a daily 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 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 for 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.

71. In paragraph (49), it is ruled that the rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated by the Hon'ble Supreme Court of India in the judgment of "Umadevi Case". When the Court is approached by way of a writ, the Court has necessarily to ask itself whether the person before it had any

legal right to be enforced. Even, the Constitution Bench dealt with the Article 21 of the Constitution of India, 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, 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.

72. Now, let us look into the important paragraph urged by the learned counsel for the petitioner, i.e., paragraph (53) of the Judgment of "Umadevi Case".

Paragraph (53) of the Judgment is extracted hereunder:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are

being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

73. The above said paragraph (53) of the "Umadevi Case" is a one time relief, of Course, granted by the Hon'ble Supreme Court of India to mitigate the hardship, if any, caused to the temporary employees. Now, the question arises how long the benefit granted under paragraph (53) can be extended to the employees and what is the interpretation of the subsequent judgment by the Hon'ble Supreme Court of India in respect of paragraph (53) of the judgment of the Constitution Bench.

74. No doubt, the Constitution Bench of the Hon'ble Supreme Court of India, while stopping the entire irregular appointments and back door appointments had taken note of the fact that certain reliefs are required in respect of the employees who are already regularized or in respect of those persons, a proposal is already kept pending. Certainly, the Hon'ble Supreme Court of India have never intended to grant the relief of regularization or permanent absorption in public employment contrary to the legal principles settled in earlier paragraphs. Thus, paragraph (53) of the judgment has to be understood harmoniously and together with the legal principles settled by the Constitution Bench in earlier paragraphs.

75. Thus, this Court is of an undoubted opinion that paragraph (53) of the "Umadevi Case" judgment cannot be treated as an isolation and it should be considered along with the other legal principles settled by the Constitution Bench. Keeping in mind, the legal principles settled by the Hon'ble Supreme Court of India in earlier paragraphs, this Court is of the opinion that one time relief granted by the Hon'ble Supreme Court of India has to be extended in its real sense and the High Courts cannot travel beyond the scope of the intention expressed by the Constitution Bench in paragraph (53) of the Judgment.

76. The learned counsel for the petitioner cited

the judgment of the Hon'ble Supreme Court of India in the case of U.P.State Electricity Board Vs. Pooran Chandra Pandey and Others, reported in (2007) 11 SCC 92, and the paragraph (11) of the judgment is relevant and is extracted hereunder:

"11. Learned counsel for the appellant has relied upon the decision of this Court in Secy., State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] and has urged that no direction for regularisation can be given by the Court. In our opinion, the decision in Umadevi (3) case [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] is clearly distinguishable. The said decision cannot be applied to a case where regularisation has been sought for in pursuance of Article 14 of the Constitution."

77. In the above said case, the Hon'ble Two Judges Bench distinguished that case with the "Umadevi Case". The very language used in Paragraph (11) states that "in our opinion, the decision in "Umadevi Case" is clearly distinguishable. The said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution. However, this Court is of the opinion that their Lordships have distinguished the "Umadevi Case" in respect of the facts and circumstances that the case. When their Lordships have distinguished that case, this Court is of the opinion that the legal principles settled in "Umadevi Case" has not been deviated by the Hon'ble Two Judges Bench of the Hon'ble Supreme Court of India, as it is a "binding precedent" as stated by this Court in earlier paragraphs.

78. "Umadevi Case" being a "binding precedent" and when the case was distinguished from "Umadevi Case" on factual circumstances, the same cannot be applied in the present case before this Court.

79. The judgment in the case of State of Uttaranchal and another Vs. Prantiya Sinchai Avam Bandh Yogana Shramik Mahaparishad, reported in (2007) 12 SCC 483 and the relevant paragraph (5) is cited by the learned counsel for the petitioner which is extracted hereunder:

"5. A writ petition was filed before the Uttaranchal High Court which was dismissed by the impugned order. The High Court was of the view that all the 14 workmen, in question, were working on daily wages for more than six years and had completed 240

days in each calendar year and they ought to be regularised. Accordingly, the writ petition was dismissed."

80. On a perusal of the above said judgment, this Court is of the opinion that the case relates to an award passed by the Labour Court and an Award passed by the Labour Court under the provisions of the Industrial Disputes Act, cannot have any relevance in respect of the Government employments made by virtue of the rules framed by the State in this regard. However, the Hon'ble Supreme Court of India in that case, remanded the matter back for reconsideration by the High Court in the light of the legal principles settled in the "Umadevi Case". Thus, in all respects, the case cannot have any application in respect of the facts and circumstances of the present writ petition.

81. It has further cited the case of State of Karnataka and Others Vs. M.L.Kesari and Others, reported in (2010) 9 SCC 247 and the relevant paragraph (7) is extracted hereunder:

"7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi (3) [(2006) 4 SCC 1], if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

82. In the above case, an exception has been carved out in relation to the one time relief granted in paragraph (15) of the "Umadevi Case".

83. In the case of State of Rajasthan and Others

Vs. Daya Lal and Others, reported in (2011) 2 SCC 429 and the relevant paragraph (12), enumerates the settled principles in respect of regularization and parity in pay, relevant in the context of the case and those principles carved out in paragraph (12) of the above judgment are akin to that of the legal principles settled by the Constitution Bench in "Umadevi Case".

84. The learned counsel for the petitioner solicited the attention of this Court relying the case decided by the Hon'ble Two Judges Bench of the Hon'ble Supreme Court of India in the case of Nihal Singh and Others Vs. State of Punjab and Others, reported in (2013) 14 SCC 65 and the paragraph (31) and (33) of the judgments are extracted hereunder:

"31. Therefore, we are of the opinion that the process of selection adopted in identifying the appellants herein cannot be said to be unreasonable or arbitrary in the sense that it was devised to eliminate other eligible candidates. It may be worthwhile to note that in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753], this Court was dealing with appointments made without following any rational procedure in the lower rungs of various services of the Union and the States.

33. It is no doubt that the assessment of the need to employ a certain number of people for discharging a particular responsibility of the State under the Constitution is always with the executive government of the day subject to the overall control of the legislature. That does not mean that an examination by a constitutional court regarding the accuracy of the assessment of the need is barred."

85. On a plain reading of the judgment, this Court is of an undoubted opinion that there is a slight deviation in respect of the legal principles carved out by the Hon'ble Constitution Bench in "Umadevi Case". This Court wishes to remind the language used by the Constitution Bench in paragraph (5) of "Umadevi Case". To reiterate the language used by the Hon'ble Supreme Court of India emphatically in paragraph (5) that this Court has also occasions to issue directions which could not be said to be consisted by the public employment. Such directions are issued presumably on the basis of equitable consideration or individualization 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?

86. In paragraph (54) of the said "Umadevi Case" judgment, again the Constitution Bench reiterated 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."

87. This Court has no hesitation in holding that the judgment cited by the learned counsel for the petitioner in the case of Nihal Singh and Others Vs. State of Punjab and Others, reported in (2013) 14 SCC 65, is to be considered as denuded of their status as precedents. Thus, this Court is not inclined to consider and follow the same.

88. In the case of Amarendra Kumar Mohapatra and others Vs. State of Orissa and others, reported in (2014) 4 SCC 583, the Hon'ble Two Judges Bench of the Supreme Court of India held that and the paragraphs (42) & (43) of the above said judgment is extracted hereunder:

"42. The decision in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753], as noticed earlier, permitted regularisation of regular appointments and not illegal appointments. Question, however, is whether the appointments in the instant case could be described as illegal and if they were not, whether the State could be directed to regularise the services of the degree-holder Junior Engineers who have worked as ad hoc Assistant Engineers for such a long period, not only on the analogy of the legislative enactment for regularisation but also on the principle underlying para 53 of the decision in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753].

43. As to what would constitute an irregular appointment is no longer res integra. The decision of this Court in State of Karnataka v. M.L. Kesari [(2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826], has examined that question and explained the principle regarding regularisation as enunciated in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. The decision in that case

summed up the following three essentials for regularisation: (1) the employees have worked for ten years or more, (2) that they have so worked in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal, and (3) they should have possessed the minimum qualification stipulated for the appointment. Subject to these three requirements being satisfied, even if the appointment process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby qualify for regularisation. Para 7 in this regard is apposite and may be extracted at this stage: (M.L. Kesari case [(2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] , SCC p. 250)

"7. It is evident from the above that there is an exception to the general principles against 'regularisation' enunciated in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

89. It is important to cite the case of SECRETARY TO GOVERNMENT, SCHOOL EDUCATION DEPARTMENT, CHENNAI v. R.GOVINDASWAMY AND ORS. [(2014) 4 SCC 769]. In paragraph No.(8), the Hon'ble Supreme Court has observed as follows:

"8.this Court in State of Rajasthan & Ors. v. Daya Lal & Ors., 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:

"(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." (Emphasis added) "

90. Reiterating the principles laid down in the Case of Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and others, reported in (2014) 4 SCC 769, the Hon'ble Supreme Court of India emphatically ruled that the High Courts, in exercising power under Article 226 of the Constitution of India will not issue directions for regularization, absorption or permanent continuance. Unless the employees claiming regularization 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 regularization of services of an employee which would be violative of the Constitutional scheme.

91. In the case of Nand Kumar Vs. State of Bihar and Others, reported in (2014) 5 SCC 300, paragraph (25) & (26) are extracted hereunder:

"25. We have consciously noted the aforesaid decisions of this Court. The principle as has been laid down in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has also been applied in relation to the persons who were working on daily wages. According to us, the daily wagers are not appointees in the strict sense of the term "appointment". They do not hold a post. The scheme of alternative appointment framed for regular employees of abolished organisation cannot, therefore, confer a similar entitlement on the daily wagers of abolished organisation to such alternative employment. (See Avas Vikas Sansthan v. Engineers Assn. [(2006) 4 SCC 132 : 2006 SCC (L&S) 613]) Their relevance in the context of appointment arose by reason of the concept of regularisation as a source of appointment. After Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , their position continued to be that of daily wagers. Appointment on daily-wage basis is not an appointment to a post according to the rules. Usually, the projects in which the daily wagers were engaged, having come to an end, their appointment is necessarily terminated for want

of work. Therefore, the status and rights of daily wagers of a government concern are not equivalent to that of a government servant and his claim to permanency has to be adjudged differently.

26. In these circumstances, in our considered opinion, the regularisation/absorption is not a matter of course. It would depend upon the facts of the case following the rules and regulations and cannot be dehors the rules for such regularisation/absorption."

92. Once again, this Court is of the opinion that the above two paragraphs are running contrary to the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India. Thus, the rules laid down in paragraph (54) of the Constitution Bench to be applied in respect of the above case cited.

93. In the case of Malathi Das and Others, Vs. Suresh and Others, reported in (2014) 13 SCC 249 and the relevant paragraph (13) is extracted hereunder:

"13. In the aforesaid undisputed facts it is wholly unnecessary for us to consider as to whether the cases of persons who were awaiting regularisation on the date of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is required to be dealt with in accordance with the conditions stipulated in para 53 of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] inasmuch as the claims of the respondent employees can well be decided on principles of parity. Similarly placed employees having been regularised by the State and in case of some of them such regularisation being after the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] we are of the view that the stand taken by the appellants in refusing regularisation to the respondents cannot be countenanced. However, as the said stand of the appellants stems from their perception and understanding of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] we do not hold them liable for contempt but make it clear that the appellants and all the other competent authorities of the State will now be obliged and duty-bound to regularise the services of the respondents (74 in number) which will now be done forthwith and in any case within a period of two months from the date of receipt of this order."

94. The Hon'ble Supreme Court of India once again

taken a deviation in respect of the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India. Therefore, such deviation to be held as denuded of their status as precedent, as laid down in paragraph (54) of the Constitution Bench.

95. In the case of Amarkant Rai Vs. State of Bihar and Others, reported in (2015) 8 SCC 265, the Hon'ble Supreme Court of India in paragraph (11) and (14) are held as follows:

"11. Elaborating upon the principles laid down in Umadevi (3) case [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] and explaining the difference between irregular and illegal appointments in State of Karnataka v. M.L. Kesari [(2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] , this Court held as under: (M.L. Kesari case [(2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] , SCC p. 250, para 7)

"7. It is evident from the above that there is an exception to the general principles against 'regularisation' enunciated in Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] , if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

14. Considering the facts and circumstances of the case that the appellant has served the University for more than 29 years on the post of night guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularise the services of the appellant retrospectively w.e.f. 3-1-2002 (the date on which he rejoined the post as per the direction of the Registrar)."

96. In paragraph (14) of the above cited judgment, the Hon'ble Supreme Court of India held that the appellant has served in the University for more than 29 years in the post of night guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularise the services of the appellant retrospectively w.e.f. 3-1-2002.

97. Again, in this case also, the Hon'ble Supreme Court of India has deviated the principles laid down in "Umadevi Case". Thus, this Court has to derive an opinion that the decision would be denuded of its status as precedents. For all these reasons, this Court has to independently apply the legal principles settled by the Constitution Bench in the "Umadevi Case".

98. In the case of Prem Ram Vs. Managing Director, Uttarakhand Pwya Jal & Nirman Nigam, Dehradun and Others, reported in (2015) 11 SCC 255, undoubtedly, the Hon'ble Supreme Court of India has decided the case based on the facts and circumstances of the case. However, on a plain reading of the judgment, this Court is of the opinion that the legal principles settled by the Constitution Bench has not been considered by the Hon'ble Two Judges Bench of the Hon'ble Supreme Court of India. Thus, this Court is not inclined to follow the judgment for the purpose of deciding the case on hand.

99. In the case of Surendra Kumar and Others Vs. Greater Noida Industrial Development Authority and Others, reported in (2015) 14 SCC 382, while, the Supreme Court of India in paragraph (13) held as follows:

"13.Considering the facts of the present case on the touchstone laid down in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1: 2006 SCC (L&S) 753], it will be seen that the Division Bench was not right in setting aside the appointment of the appellants. More so, it was nobody's case challenging the appointment of the appellants. Admittedly, the appellants were engaged as contractual employees from 1994 and have completed more than ten years of continuous service with Respondent 1. They continued in service not by the orders of the Court/Tribunal, but by the decision of the respondents. The appellants

were regularised as per the policy decision dated 16-4-2003 taken by Respondent 1 and approved by the State Government vide Letter dated 5-3-2008. Since the appointment of the appellants were made pursuant to the policy of regularisation, the High Court was not right in quashing the appointment of the appellants as the same were never in question before the High Court. The plea that was raised by the appellants was only to seek regularisation with retrospective effect from 20-11-2002 and the consequential seniority."

100. In this case also, the Hon'ble Two Judges Bench of the Hon'ble Supreme Court of India has taken note of the one time benefit granted by the Constitution Bench in paragraph (53) of the Judgment in "Umadevi Case". However, the legal principles settled in paragraphs 5,10,12,14,20 and 43 to 50 and 54 of the judgment has not been considered by their Lordships. Since the legal principles enunciated in the above paragraphs of the Constitution Bench has not been considered and the case was decided based on the particular facts and circumstances of the case, this Court is not bound to consider it as a "binding precedent" as enumerated in the first portion of this Judgment. This Court has earlier considered the nature of the "binding precedents" and the interpretation of binding precedents as enumerated by the Constitution Bench of the Hon'ble Supreme Court of India in the recent case of National Insurance Co. Ltd vs Pranay Sethi and Others, reported in [JT 2017 10 SC 450] cited supra.

101. In all the cases cited supra, this Court is able to find out that those cases by the Hon'ble Two Judges of the Hon'ble Supreme Court of India were decided based on certain facts and circumstances of the case. However, all those circumstances and the legal principles were well settled by the Constitution Bench in "Umadevi Case". Various paragraphs of the Constitution Bench judgment as discussed above made it very clear that all the circumstances arisen out of the temporary/casual/daily wages employees were dealt with elaborately and a findings are provided. This being the factum of the case, this Court is not inclined to follow the above judgment of the Hon'ble Two Judges Bench of the Hon'ble Supreme Court of India as a "binding precedent" and this Court is bound by the legal principles settled by the Constitution Bench in "Umadevi Case" which remains as the law of the land under Article 141 of the Constitution of India.

102. This Court is willing to cite another judgment of the Hon'ble Two Judges Bench of the Hon'ble Supreme Court of India in the case of Punjab Water Supply & Sewerage Board Vs. Ranjodh Singh and Others, reported in (2007) 2 SCC Page 491. In the above judgment paragraph (17) & (18) are extracted hereunder:

"17.A combined reading of the aforementioned paragraphs would clearly indicate that what the Constitution Bench had in mind in directing regularisation was in relation to such appointments, which were irregular in nature and not illegal ones.

18.Distinction between irregularity and illegality is explicit. It has been so pointed out in National Fertilizers Ltd. v. Somvir Singh [(2006) 5 SCC 493 : 2006 SCC (L&S) 1152] in the following terms: (SCC pp. 500-01, paras 23-25)

"23. The contention of the learned counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minorities had not been given due consideration.

24. The Constitution Bench thought of directing regularisation of the services only of those employees whose appointments were irregular as explained in State of Mysore v. S.V. Narayanappa [AIR 1967 SC 1071 : (1967) 1 SCR 128], R.N. Nanjundappa v. T. Thimmiah [(1972) 1 SCC 409] and B.N. Nagarajan v. State of Karnataka [(1979) 4 SCC 507 : 1980 SCC (L&S) 4] wherein this Court observed: [Umadevi (3) case [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] , SCC p. 24, para 16]

'16. In B.N. Nagarajan v. State of Karnataka [(1979) 4 SCC 507 : 1980 SCC (L&S) 4] this Court clearly held that the words "regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments.'

25. Judged by the standards laid down by this Court in the aforementioned decisions, the appointments of the

respondents are illegal. They do not, thus, have any legal right to continue in service."

(See also State of M.P. v. Yogesh Chandra Dubey [(2006) 8 SCC 67 : 2006 SCC (L&S) 1797] and State of M.P. v. Lalit Kumar Verma [(2007) 1 SCC 575 : (2006) 12 Scale 642] .)"

103. The Hon'ble Two Judges Bench of the Hon'ble Supreme Court of India has dealt with the interpretation of paragraphs 16, 17, 19 and 22 of "Umadevi Case" and the paragraphs (16), (17), (19) and (22) are extracted hereunder:

"16. In B.N. Nagarajan v. State of Karnataka [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] this Court clearly held that the words "regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This Court emphasised that when rules framed under Article 309 of the Constitution are in force, no regularisation is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognised therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only 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 and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularisation.

17. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the court, in appropriate cases, would have only the right to regularise an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as

permanent or can be directed to be treated as permanent.

19. One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counterproductive.

22. With respect, it appears to us that the question whether the jettisoning of the constitutional scheme of appointment can be approved, was not considered or decided. The distinction emphasised in R.N. Nanjundappa v. T. Thimmiah [(1972) 1 SCC 409 : (1972) 2 SCR 799] was also not kept in mind. The Court appears to have been dealing with a scheme for "equal pay for equal work" and in the process, without an actual discussion of the question, had approved a scheme put forward by the State, prepared obviously at the direction of the Court, to order permanent absorption of such daily-rated workers. With respect to the learned judges, the decision cannot be said to lay down any law, that all those engaged on daily wages, casually, temporarily, or when no sanctioned post or vacancy existed and without following the rules of selection, should be absorbed or made permanent though not at a stretch, but gradually. If that were the ratio, with respect, we have to disagree with it."

104. In the case of Post Master General, Kolkata and Others Vs. Tutu Das (Dutta), reported in (2007) 5 SCC 317, paragraphs (5) & (18) are relevant and the same are extracted hereunder:

"5. Whereas pursuant to the said direction, although the case of Niva Ghosh was allegedly considered, her case was not, whereupon a contempt

petition was filed. In the said contempt proceedings, a stand was taken by the appellant that she had not completed a period of 240 days in a year before the said cut-off date. The said contempt petition was dismissed with liberty to the respondent to file a fresh original application. Pursuant to the said observations, the respondent filed an application before the Central Administrative Tribunal, Calcutta Bench, Calcutta which was marked as OA No. 484 of 2002.

18. There are two distinctive features in the present case, which are:

(i) Equality is a positive concept. Therefore, it cannot be invoked where any illegality has been committed or where no legal right is established.

(ii) According to the appellant the respondent having completed 240 days, does not fulfil the requisite criteria. A disputed question of fact has been raised. The High Court did not come to a positive finding that she had worked for more than 240 days in a year."

105. In the case of C. Balachandran and Others Vs. State of Kerala and Others, reported in (2009) 1 SCC (L&S) 610, wherein the Hon'ble Supreme Court of India interpreted the scope of paragraph 153 of "Umadevi Case" and the paragraphs (17) & (18) of the said judgment and the same is extracted hereunder:

"17. Dr. Pillay, however, strongly relied upon the observations made in Para 53 in Umadevi [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] which reads as under: (SCC p. 42, para 53)

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore v. S.V. Narayanappa [AIR 1967 SC 1071 : (1967) 1 SCR 128] , R.N. Nanjundappa v. T. Thimmiah [(1972) 1 SCC 409] and B.N. Nagarajan v. State of Karnataka [(1979) 4 SCC 507 : 1980 SCC (L&S) 4] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly

appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme." (emphasis in original)

A case of regularisation which thus attained finality and was not sub judice would not come within the purview of exception to the rule contained in Para 53 of the said judgment. The appellants' case, thus, does not come within the purview thereof. Only those cases where regularisations had already been made were not to be reopened. It is not in dispute that services of the appellants were terminated as far back as in 1987 and they did not question the legality or validity of the said order. It is only after the decision of this Court in Jacob case [(1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] that representations were filed. Such representations were rejected both by the Kerala Water Authority as also the State of Kerala.

18. The appellants, in our opinion, thus, neither in law nor in equity were entitled to be reinstated in service. The decision of this Court in Jacob case [(1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] being not applicable to the case of the appellants, we are bound by the ratio laid down in Umadevi [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] . So far as Para 53 of the judgment of the Constitution Bench in the said case is concerned, the same has been considered by this Court in a large number of decisions. In Punjab Water Supply & Sewerage Board v. Ranjodh Singh [(2007) 2 SCC 491 : (2007) 1 SCC (L&S) 713] it was held: (SCC p. 498, para 15)

"15. The question came up for consideration before a Constitution Bench of this Court in State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] wherein it was held that no person who was temporarily or casually been employed could be directed to be continued permanently. It was opined that by doing so it would be creating another mode of public employment which is not permissible."

[See Employees' Union v. Mineral Exploration Corpn.

Ltd. [(2006) 6 SCC 310 : 2006 SCC (L&S) 1318] , State of M.P. v. Lalit Kumar Verma [(2007) 1 SCC 575 : (2007) 1 SCC (L&S) 405] and Post Master General v. Tutu Das (Dutta) [(2007) 5 SCC 317 : (2007) 2 SCC (L&S) 179] .]"

106. When the scope of the paragraph (53) of the judgment, is well enumerated by the Hon'ble Two Judges Bench of the Hon'ble Supreme Court of India as cited above, this Court is not inclined to consider the other judgments referred by the learned counsel for the petitioner. However, on a perusal of all these judgments cited supra, this Court is of the opinion that ultimately the legal principle settled in by the Constitution Bench in the "Umadevi Case" is binding over the subject and the same is to be followed scrupulously by all the Courts across the country and the same becomes the law of the land in the matter of regularization, permanent absorption and appointment.

107. Now, considering the facts and circumstances of the case on hand, it remains that the writ petitioners were appointed as daily rated employees for a particular period and, this Court has to draw an inference that all the Government orders, passed subsequent to the Constitution Bench Judgment, if runs contrary to the legal principles settled by the Constitution Bench, would become invalid and the same cannot be implemented or followed. In other words, it is to be noted that the Government has no authority to issue any orders granting regularization, permanent absorption or appointment in violation of the Constitutional schemes and in violation of the recruitment rules in force. The power of the Government in this regard is certainly abrogated by the principles settled by the Constitution Bench in the "Umadevi Case". Such being the factum of the case, the State Government is to be precluded as well as its authority are to be regularized in respect of appointing employees in contravention with the recruitment rules in force and effecting appointments through back doors.

108. This Court has to place on record that the State is bound to over see the appointments made in this regard illegally or irregularly by the competent authorities and the same is to be construed as the fraud on the Constitution and such authorities are liable for prosecution under the Discipline and Appeal Rules and other relevant rules. The State shall be

vigilant in this regard and the authorities indulging in such activities of exercising powers by issuing illegal or irregular appointments are to be booked under the Discipline and Appeal Rules. No leniency can be shown by the State in this regard, since these all are the Constitutional principles required for the State to be followed and the State being a modal employer, has to implement the Constitutional perspectives and the principles scrupulously and without any deviation.

109. The learned counsel for the petitioner contended that in paragraph (15) of the judgment in "Umadevi Case", the Constitution Bench of the Hon'ble Supreme Court of India held that a distinction between regularisation and conferment of permanent status in service jurisprudence has to be drawn. This Court is of the opinion that the conferment of permanent status Act, is a general law applicable to the employees, in the absence of any special law governing the particular subject. However, if any such law prevails and covering the field of appointment of regularisation and permanent absorption, then the general law would not apply. In nutshell, the special law and rules will prevail over the general law and the special rules in force are to be applied in the relevant case.

110. In view of the discussions made above, this Court is of the opinion that the writ petitioners are not entitled for any relief of permanent absorption as such sought for in this writ petition."

14. Thus, the writ petitioner is not entitled for the relief as such sought for in this writ petition and accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary, Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Secretariat, Fort St.George,
Chennai - 600 009.

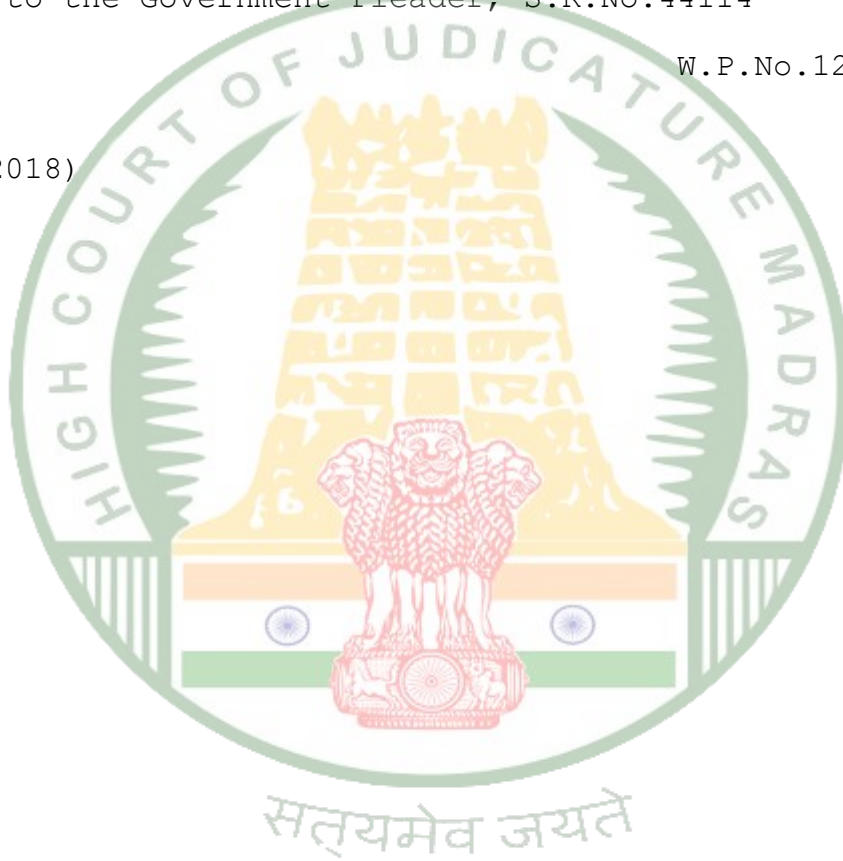
2.The District Collector,
Collectorate, Thiruvallur,
Thiruvallur District.

+1cc to Mr.ROW AND REDDY, Advocate, S.R.No.43723

+1cc to the Government Pleader, S.R.No.44114

W.P.No.12249 of 2015

MP (CO)
TR(17/07/2018)



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