



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2018

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.2411 of 2014

Malaisamy

... Petitioner

Vs.

1. The Secretary to the Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai.

2. The Commissioner,
The Commissionerate of Municipal Administration,
Ezhilagam Extension, 6th Floor,
Chepauk, Chennai-600 005.

3. The Commissioner,
Sivakasi Municipality,
Sivakasi,
Virudhunagar District.

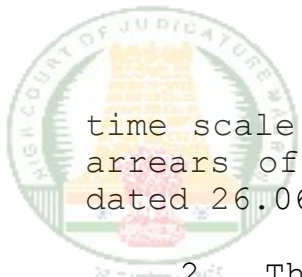
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records of the third respondent in Na.Ka.No.2634/06/H2 dated 31.03.2006 and quash the same and direct the respondents to regularize the petitioner's service retrospectively as per the G.O.Ms.No.198 dated 26.10.1998 in the consolidated pay from the year 1999 consequently to grant all the service and monetary benefits of time scale of pay from the year 2002, eligible pension benefits and arrears of the same by considering the petitioner's representation dated 26.06.2013 within the period stipulated by this Court.

For Petitioner	: Mr.A.Haja Mohideen
For R1 and R2	: Mr.M.Muthu
	Additional Government Pleader
For R3	: K.Dinesh Babu

ORDER

The relief sought for in this writ petition is to call for the records of the third respondent in Na.Ka.No.2634/06/H2 dated 31.03.2006 and quash the same and direct the respondents to regularize the petitioner's service retrospectively as per the G.O.Ms.No.198 dated 26.10.1998 in the consolidated pay from the year 1999 consequently to grant all the service and monetary benefits of



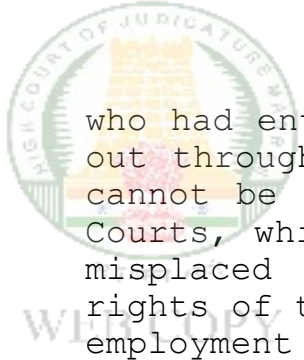
time scale of pay from the year 2002, eligible pension benefits and arrears of the same by considering the petitioner's representation dated 26.06.2013.

2. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was initially appointed as Sweeper in the second respondent municipality on daily wage basis. The petitioner is allowed to continue in service for a considerable length of time and therefore the service of the petitioner ought to have been regularized by the respondent on completion of 10 years of service.

3. At the out set, the learned counsel is of an opinion that the Government issued various orders granting the benefit of regularization to the similarly placed persons on completion of 10 years of service and therefore the same benefit has to be extended to the petitioner also. This apart, the petitioner states that large number of similarly placed last grade servants, who served on daily wage basis for years together were already regularized and on this ground, the writ petitioner alone cannot be discriminated and the same benefit has to be granted to the petitioner also. However, the learned counsel for the writ petitioner is unable to substantiate that the initial appointment of the writ petitioner was in accordance with the regular recruitment rules in force.

4. The learned Additional Government Pleader appearing on behalf of the respondents states that the initial appointment of the writ petitioner was irregular and not in accordance with the recruitment rules in force. The writ petitioner was appointed on daily wage basis and therefore, the writ petitioner cannot claim any of the benefit of regularization or permanent absorption merely on the ground of length of service rendered. The daily wage employees are liable to be terminated at any point of time without any notice. Thus, the permanent absorption earlier granted, cannot be granted by the Government in view of the subsequent development and the subsequent judgment of the Hon'ble Supreme Court of India in this regard.

5. This Court is of an opinion that all appointments to the public post are to be done only through open competitive process and by adhering to the recruitment rules in force. Equal opportunity for public employment is a Constitutional mandate. The equality clause enshrined in the Constitution cannot be violated by the competent authorities while undertaking the process of selection. It is not as if engaging a person on daily wage basis and holding such a person in continuous service for a considerable time and therefore grant regularization or permanent absorption. Such a practice was absolutely condemned by the Hon'ble Apex Court of India. Such a practice will lead to deprivation of the meritorious candidates to secure public employment through open competitive process. Such appointments made in violation of Rules are to be treated as back door entries into the public service. The persons



who had entered into Government service through back door should go out through the door by which he/she got into such service. There cannot be any leniency or misplaced sympathy by the Constitutional Courts, which shows that the Courts are bound to consider that such misplaced sympathy will result in violation of the constitutional rights of the teeming millions of people, who are waiting for public employment through open competitive process.

6. After all, teeming millions of youth of this great nation are burning their midnight lamp and working hard to secure public employment. The plight of such young minds will be in trouble and thus young people will get frustration from and out of the system of back door entries. Thus the Courts can never encourage such entries into public service. The back door entries would cause serious social implication in respect of providing equal opportunity to all the citizens. First of all, the Rule of reservation is violated. The public administration will lose the meritorious candidates for the purpose of serving the public efficiently.

7. These adverse consequences of granting regularization or permanent absorption in respect of the employees, who are not appointed under the recruitment Rules in force is certainly a drastic step and therefore this Court has to come to the conclusion that such appointments made by the competent authorities are fraud and the constitutional Courts can never encourage such practices.

8. This Court also had elaborately discussed the matter, considering all the legal principles settled by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of **The Secretary, State of Karnataka and others .vs. Umadevi(3) and others reported in (2006) 4 Supreme Court Cases 1**, in W.P.No.28633 to 28646 of 2014 on 12.12.2017 and those discussions are extracted hereunder for better appreciation of the present writ petition also:

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.

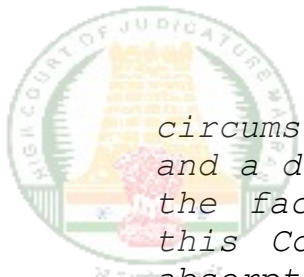
32. Thus, this Court has to consider the issues independently and based on the judgments of the Apex Court of India in the matter of regularization and permanent absorption. However, the learned Additional Government Pleader brought to the notice of this Court that the Hon'ble Division Bench of this 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):

"15. The aforesaid analysis in **Santosh Devi** (supra) may prima facie show that the two-Judge Bench has distinguished the observation made in Sarla Verma's case but on a studied scrutiny, it becomes clear that it has really expressed a different view than what has been laid down in **Sarla Verma** (supra). If we permit ourselves to say so, the different view has been expressed in a distinctive tone, for the two-Judge Bench had stated that it was extremely difficult to fathom any rationale for the observations made in para 24 of the judgment in Sarla Verma's case in respect of self-employed or a person on fixed salary without provision for annual increment, etc. This is a clear disagreement with the earlier view, and we have no hesitation in saying that it is absolutely impermissible keeping in view the concept of binding precedents.

16. Presently, we may refer to certain decisions which deal with the concept of binding precedent.

17. In **State of Bihar v. Kalika Kuer alias Kalika Singh and others [JT (2003) (4) SC 489]**, it has been held:- "10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. ..."



17.1. The Court has further ruled:-

"10. ... Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways – either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits."

18. In *G.L. Batra v. State of Haryana and others* (2014) 13 SCC 759, the Court has accepted the said principle on the basis of judgments of this Court rendered in *Union of India v. Godfrey Philips India Ltd.* (1985) 4 SCC 369, *Sundarjas Kanyalal Bhatija v. Collector, Thane, Maharashtra* (1989) 3 SCC 396 and *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel* (AIR 1968 SC 372). It may be noted here that the Constitution Bench in *Madras Bar Association v. Union of India* and another [JT 2015(5)SC 33] has clearly stated that the prior Constitution Bench judgment in *Union of India v. Madras Bar Association* [JT 2010 (5) SC 553] is a binding precedent. Be it clarified, the issues that were put to rest in the earlier Constitution Bench judgment were treated as precedents by latter Constitution Bench.

19. In this regard, we may refer to a passage from *Jaisri Sahu v. Rajdewan Dubey* (AIR 1962 SC 83):-

"11. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision given by a Bench is not brought to the notice of a Bench hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in *Seshamma v. Venkata Narasimharao* that the decision of a court of appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in *Halsbury's Laws of England*, 3rd Edn., Vol. 22, para 1687, pp. 799-800:

"The court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of



its own or of a Court of a co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords." In *Virayya v. Venkata Subbayya* it has been held by the Andhra 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, vide also the decision of the Nagpur High Court in *Bilimoria v. Central Bank of India*. The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court."

20. Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforesaid pronouncements including that of the Constitution Bench and, therefore, we entirely agree with the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline. 21. In the context, we may fruitfully note what has been stated in *Pradip Chandra Parija and others v. Pramod Chandra Patnaik and others* [JT (2002) 5 SCC 23]. In the said case, the Constitution Bench was dealing with a situation where the two-Judge Bench disagreeing with the three-Judge Bench decision directed the matter to be placed before a larger Bench of five Judges of this Court. In that scenario, the Constitution Bench stated:-

"6. ... In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. ...22. In *Chandra Prakash and others v. State of U.P. and another* [JT (2002) (3) SC 493], another Constitution Bench dealing with the concept of precedents stated thus:-

<https://hcservices.courts.gov.in/hcservices/> 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. It is in the above context, this Court in the case of *Raghubir Singh* (1989) 2 SCC 754 held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. ...

23. Be it noted, *Chandra Prakash* concurred with the view expressed in *Raghubir Singh* and *Pradip Chandra Parija*. 24. In *Sandhya Educational Society and another v. Union of India and others* (2014) 7 SCC 701, it has been observed that judicial decorum and discipline is paramount and, therefore, a coordinate Bench has to respect the judgments and orders passed by another coordinate Bench. In *Rattiram and others v. State of Madhya Pradesh* (2012) 4 SCC 516, the Court dwelt upon the issue what would be the consequent effect of the latter decision which had been rendered without noticing the earlier decisions. The Court noted the observations in *Raghubir Singh* (supra) and reproduced a passage from *Indian Oil Corporation Ltd. v. Municipal Corporation* (1995) 4 SCC 96 which is to the following effect:-

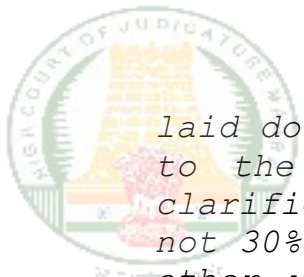
"8. ... The Division Bench of the High Court in *Municipal Corpn., Indore v. Ratnaprabha Dhandra* was clearly in error in taking the view that the decision of this Court in *Ratnaprabha* was not binding on it. In doing so, the Division Bench of the High Court did something which even a later coequal Bench of this Court did not and could not do. ...

25. It also stated what has been expressed in *Raghubir Singh* (supra) by R.S. Pathak, C.J. It is as follows:-

"28. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. ..."

26. In *Rajesh* (supra) the three-Judge Bench had delivered the judgment on 12.04.2013. The purpose of stating the date is that it has been delivered after the pronouncement made in *Reshma Kumari's* case. On a perusal of the decision in *Rajesh* (supra), we find that an attempt has been made to explain what the two-Judge Bench had stated in *Santosh Devi* (supra). The relevant passages read as follows:-

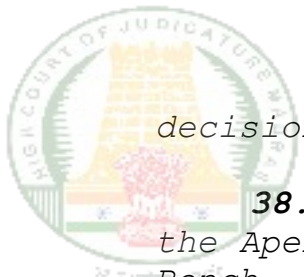
28. Since, the Court in *Santosh Devi* case actually intended to follow the principle in the case of salaried persons as



laid down in **Sarla Verma** case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

9. In Sarla Verma case, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

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.

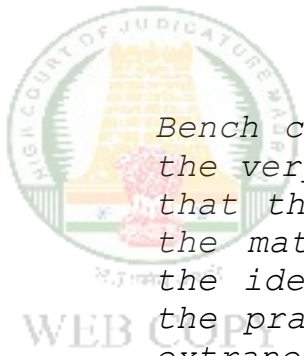


41. Let us look into the basic principles enunciated by the Constitution Bench in the matter of regularization and permanent absorption. Paragraph (5) of the "**Umadevi Case**" is extracted hereunder:

"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 virtualize 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

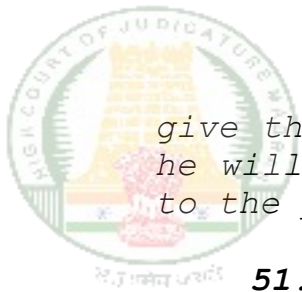


completed. Once this right of the Government is recognised and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts, whether acting under Article 226 of the Constitution 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 to 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 basis 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

"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



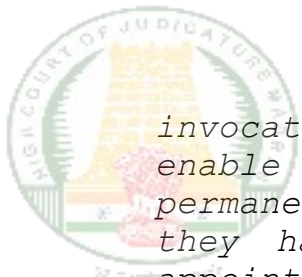
appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

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 court to void 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 orders, 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



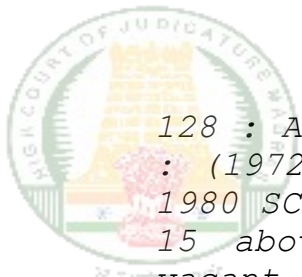
employees before the Supreme Court of India were engaged on daily wages in the department concerned on a daily wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they 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?

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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
for 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 (34) 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:

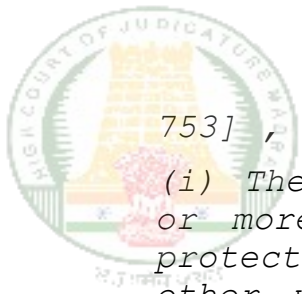
"13.In the aforesaid undisputed facts it is wholly unnecessary for us to consider as to whether the cases of persons who were awaiting regularisation on the date of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is required to be dealt with in accordance 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.

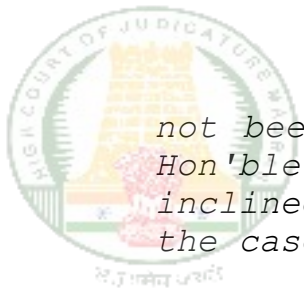
(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the 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 Pwaj & 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

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.'

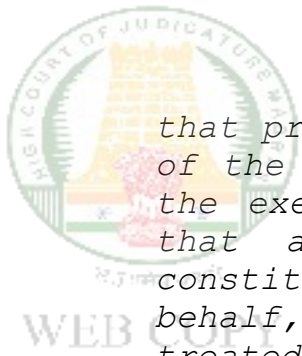
25. Judged by the standards laid down by this Court in the aforementioned decisions, the appointments of the respondents are illegal. They do not, thus, have any legal right to continue in service."

(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:

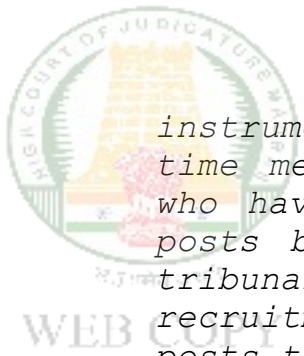
(i) Equality is a positive concept. Therefore, it cannot be invoked where any illegality has been committed or where no legal right is established.

(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 referred 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."

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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.

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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.

9. In view of the legal discussions made, no further adjudication is required in this regard. Accordingly, this writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to the Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai.
2. The Commissioner,
The Commissionerate of Municipal Administration,
Ezhilagam Extension, 6th Floor,
Chepauk, Chennai-600 005.
3. The Commissioner,
Sivakasi Municipality,
Sivakasi, Virudhunagar District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 53605
+ 1 CC TO Mr.A.HAJA MOHIDEEN, ADVOCATE IN SR No. 52881

PNN

TE/GT/SAR-1 : 03/04/2018 : 47P/6C

W.P. (MD) No.2411 of 2014