

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2502 of 2013

1. Manoj Kumar Singh, S/o. Shri Shiv Narayan Singh, Aged about 37 years, R/o. Village Gamharia, Tahsil & District Jashpur, Chhattisgarh
2. Manish Kumar Sinha, S/o. Late Dashrath Prasad Sinha, Aged about 45 years, R/o. City Jashpur, Tahsil and District Jashpur, Chhattisgarh
3. Deepak Singh, S/o. Jhari Singh, Aged about 45 years, R/o. Village Kadamtoli, Jashpur, Tahsil and District Jashpur, Chhattisgarh
4. Dinesh Tiwari, S/o. Yamuna Prasad Tiwari, Aged about 42 years, R/o. Village Khjanchi Toli, Tahsil and District Jashpur, Chhattisgarh
5. Arun Sinha, S/o. Rajeshwar Sinha, Aged about 45 years, R/o. Village Bijali Toli, Tahsil and District Jashpur, Chhattisgarh

---- Petitioners

Versus

1. State of Chhattisgarh, Through the Principal Chief Conservator of Forest, Aranya Bhawan, Medical College Road, Raipur, Chhattisgarh
2. The Conservator of Forest, Surguja circle, Ambikapur, Office of Conservator of Forest, Ambikapur, District Surguja Chhattisgarh
3. The Divisional Forest Officer, Jashpur Division, Office of District Forest Officer, Jashpur, District Jashpur, Chhattisgarh
4. Sub-Divisional Officer & President of the Scrutiny Committee Forest Division, Jashpur, Chhattisgarh
5. Chandrashekhar Tiwari S/o. Devnath Tiwari, Aged about 57 years, Presently posted as District Forest Officer, Jashpur, Police Station Jashpur, District Jashpur, Chhattisgarh
6. Sant Ram Banjare, S/o. Suraju Das Banjare, Aged about 46 years, Presently posted as Sub-Divisional Officer, Forest Sub Division Office, Jashpur, Police Station Jashpur, District Jashpur, Chhattisgarh

---Respondents

For Petitioner	:	Mr. Neelkanth Malaviya, Advocate
For State	:	Mr. Rahul Mishra, Dy. G.A. and Mr. P. Acharya, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28/02/2019

1. The present writ petition was initially filed seeking for the following reliefs:

10(1) The Hon'ble Court may kindly be pleased to issue the appropriate writ/ writs/ direction/ directions/ order/ orders to respondents and quash the orders mentioned below :

(a) The order passed by the Conservator of Forest on 06.05.2013 bearing No./ Prasha Araj./ 313/ 2013/ 2982 in respect of the order/direction passed by the Hon'ble Court on 03.04.2013 in the writ petition 814/2013 (SB).

(b) The order passed by the Divisional Forest Officer i.e. respondent No.3 on 15.05.2013 bearing No. Stha.Le./ 2013/ 1950 to the Sub-Divisional Officer, Jashpur & President of the Scrutiny Committee, Forest Division Jashpur, Chhattisgarh.

(c) The order passed by the Divisional Forest Officer, Jashpur i.e. respondent No.2 on 14.06.2013 bearing No. Stha.Le. 2013/238 issued to the petitioner.

10(2) The Hon'ble Court may kindly be pleased to issue the commanding writ upon the respondent to extend the benefit of the circular to the petitioners at earliest as per the circular dated 05.03.2008 i.e. Annexure P/4, as the other similarly situated persons of the Forest Division, Jashpur are enjoying the benefit.

10(3) That the petitioners are further praying that benefit to him should be extended from the date when others are enjoying i.e. 19.09.2008 with all and further benefits.

2. Subsequently, by way of amendment, the respondents have also added another relief in 10.1 as 10.1(d), which was for quashment of the order dated 31.12.2013, passed by the Principal Chief Conservator of Forest (in short "**PCCF**") Annexure R/9. Relief No. 10(1)(d) is reproduced as under:

"10(1)(d) The order passed on 31.12.2013 by the Principal Chief Conservator of Forest, Chhattisgarh i.e. Respondent No.1 as Annexure R/9."

3. The brief facts of the case relevant for the adjudication of the present dispute is that the petitioners, it is said were working under the Forest Department of the State of Chhattisgarh as daily wage

employees. The contention of each of the petitioners is that they have been initially appointed and engaged by the Department between the period 1990 to 1995 and they continued to work with the respondents on daily wage basis uninterruptedly till the present writ petition was filed. That since they have been in service for a period of more than two decades continuously as daily wage employees, it stands established that the petitioners were working against sanctioned vacant posts and therefore the petitioners had all the right of being regularized in the department.

4. Some of the petitioners had initially filed a writ petition in the year 2009, it was registered as WPS No. 437/2009, which stood disposed off on 23.01.2009, whereby the writ petition was disposed of making the following observations:

“In view of the above submissions made by learned counsel for the parties, this petition is disposed of with liberty to the petitioners to make representation for regularization of their services along with certified copy of this order, before the competent authority of the respondents. On such representation being made, the same shall be considered and decided by the competent authority of the respondents in accordance with law within a period of six weeks from the date of receipt of representation. However, this order shall be subject to verification by the State of the facts pleading in the petition.”

5. It is necessary at this juncture to mention that the said writ petition (i.e. WPS No. 437/2009) was preferred by the petitioners No.2 & 4 in the present writ petition and another person namely Harnarayan Tiwari, who subsequently has not filed any writ petition, neither has he joined in the present petition.

6. Pursuant to the disposal of the writ petition on 23.01.2009, the respondents is said to have constituted a Committee and considered the case of the petitioners and an order was passed on 26.12.2009, wherein the Committee found that the petitioners were not entitled for regularization, as the petitioners in WPS No. 437/2009 were not fulfilling the requisite eligibility criteria as stipulated in the circular of the State Government dated 05.03.2008. Subsequently, the two petitioners from the earlier writ petition (i.e. WPS No. 437/2009) namely Manish Kumar Sinha and Dinesh Tiwari along with three more persons filed a fresh writ petition i.e. WPS No. 814/2013 seeking again a direction to the respondents for considering their claim for regularization. The said writ petition also stood disposed of vide order dated 03.04.2013 making the following observations:

“In view of the above statement and as the report of Screening Committee has already been forwarded vide memo dated 05.10.2012 to the Divisional Forest Officer, let the matter be decided by the Principal Chief Conservator of Forest, within an outer limit of three months from the date of receipt of copy of this order.”

7. Consequent to this, the petitioners is said to have again approached the PCCF by way of a representation, which was not decided at first by the respondents, which led to the filing of the present writ petition.
8. The contention of the petitioners in the said writ petition is that, the decision of the respondents in not considering the case of the petitioners for regularization or in finding that the petitioners are not entitled for regularization, is totally bad in law and malafide and it is also discriminatory. According to the petitioners, the respondents have been issuing order of regularization time and again, but for

reasons best known, the petitioners have not been considered for regularization and therefore the writ petition should be allowed to that extent.

9. The respondents entering appearance produced before the Court a document, which would reveal that the case of the petitioners was again scrutinized by the Department and a fresh order was passed on 31.12.2013 (Annexure R/9). The said order has been passed by the PCCF on 31.12.2013 and which seems to have been passed in the light of the directions given by this Court in WPS No. 814/2013. Thereafter the petitioners have amended the petition and have also challenged the order dated 31.12.2013.
10. The contention of the counsel for the petitioner is that the respondents have played mischief with the petitioners in as much as initially the officers of the Department had recommended the case of the petitioners for regularization, however subsequently the same officers have further taken a stand that the petitioners are not eligible for regularization, since they do not fulfill the conditions stipulated under the circular of 05.03.2008 issued by the State Government in respect of regularization.
11. It was the further contention of the petitioners that the petitioners have been working all along from the date of their initial appointment, which stretch across between 1990 to 1995 and are working continuously till the filing of the writ petition and yet the respondents have malafidely taken a stand that the petitioners do not have 10 years of continuous service, by which the claim for regularization has been rejected.

12. The counsel for the petitioners referred to the documents enclosed with the writ petition Annexure P/14, which gives certain details of the period, during which each of the petitioners were engaged as daily wagers and were harping strong on the said document. The petitioners have tried to submit that the subsequent stand taken by the Department is incorrect and is without any basis and has been done to circumvent the orders passed by this Court on two earlier occasions and have also been done to victimize the petitioners.
13. The counsel for the petitioners submits that the Department has deliberately suppressed material facts from the Court in as much as not producing the entire records in respect of the petitioners, with which it could be easily ascertained, whether the petitioners have in fact worked continuously during the period from the date of their initial engagement till the writ petition has been filed.
14. According to the counsel for the petitioners, since they have put in more than two decades of service as a daily wage employees under the respondents, they have a legitimate claim and a legitimate expectation that of the respondents considering their claim for regularization. In support of his contention the counsel for the petitioners relied upon the judgment in the case of [Bhagwati Prasad v. Delhi Mineral Development Corporation, \(1990\) 1 SCC 361](#).
15. The counsel for the petitioners further relied upon the judgment of the Hon'ble Supreme Court in the case of "***State of Karnataka and Others Vs. Umadevi (3) & Others, 2006(4) SCC 1***", wherein referring to paragraph No.47, the counsel for the petitioners submits that once when the petitioners have put in more than two decades of

service, the respondents are duty bound to have considered regularization of the petitioners as a one time measure. According to the petitioners, in the light of the judgment of the Hon'ble Supreme Court in the case of "**Uma Devi**" (supra), the respondents had also issued a circular in respect of regularization of daily wage employees and the petitioners fulfill all the eligibility criteria under the said circular/notification and therefore the decision of the respondents in not regularizing the services of the petitioners to be bad in law and also the rejection of the representation by the authorities being illegal and without any basis.

16. The petitioners further tried to harp on the ground that the finding of the two Committees itself is erroneous and illegal, in as much as Annexure P/3, which is a document issued by the respondents dated 14.06.2013 refers to a meeting that was held by the Scrutiny Committee on 24.05.2013 wherein they reached to the conclusion that they are not entitled for the said benefit. According to the petitioners, there has been no such meeting held on 24.05.2013, as on the said date i.e. on 24.05.2013 all the members of the said Scrutiny Committee were discharging their official duties at their respective place of employment and therefore it is only a paper arrangement made by the Department while passing the order dated 14.06.2013.
17. It was the further contention of the petitioners that after the disposal of the WPS No. 814/2013, the concerned Divisional Forest Officer at the first instance had rejected the claim of the petitioners on

14.06.2013 and as such there was no occasion for the PCCF to have decided the matter again on 31.12.2013 on the same line.

18. The counsel for the petitioners further on the preliminary objection of having an alternative remedy of raising a dispute under the Industrial Disputes Act referring to the judgment of the Hon'ble Supreme Court in the case of **“State of Gujarat And Ors. vs Pratamsingh Narsinh Parmar” 2001(9) SCC 713** banked on the ground that, since the Forest Department is not an industry, as has been held by the Hon'ble Supreme Court in the aforesaid judgment, the petitioners does not have any other remedy available, but to approach the writ Court under Article 226 of the Constitution of India.
19. The counsel for the petitioners in support of his contentions also relied upon the judgment of the Hon'ble Supreme Court in the case of **“Sheo Narain Nagar & Ors. Vs. State of Uttar Pradesh & Ors” AIR 2018 SC 233** submitted that the Hon'ble Supreme Court in the said judgment had diluted the judgment of **“Uma Devi”** (supra) rendered by the Hon'ble Supreme Court and has conferred certain rights upon the daily wage employees.
20. The counsel for the petitioners further relied upon the judgment of the Hon'ble Supreme Court again rendered in the case of **“Narendra Kumar Tiwari & others v. State of Jharkhand & others” AIR 2018 SC 3589**, which again has been laying down certain guidelines, under which the claim for regularization is made out.

21. The counsel for the petitioners lastly referred to the judgment of the Hon'ble Division Bench of this High Court in WA No. 14/2017, wherein this High Court vide its judgment dated 07.12.2018 granted the benefit of regularization to the appellants therein relying upon the judgment of the Hon'ble Supreme Court in the case of “**Sheo Narain Nagar**” as well as “**Narendra Tiwari**” (supra).
22. The State counsel on the contrary opposing the petition submits that it is a case where the petitioners have been considered by the authorities on a couple of occasion and each time the petitioners were not found to have fulfilled the criteria fixed under the circular of the State Government dated 05.03.2008. According to the counsel for the State, the respondents have on two occasions scrutinized the case of the petitioner and found that there is no sufficient material to establish that the petitioners had put in continuous 10 years of service prior to 1997. According to the State counsel, the petitioners do not have a right created in them for regularization, and the two orders passed by the respondent authorities rejecting the claim of the petitioners be termed as bad in law, arbitrary or in violation of the judgments of the Hon'ble Supreme Court.
23. The State counsel further raised an objection that the petitioners in fact ought to have raised a dispute under the Industrial Disputes Act before the appropriate forum, as there are many disputed facts involved in the case and which could be thrashed out only by leading evidence by either side. According to the State counsel, since there is an alternative remedy available to the petitioners under the Industrial Disputes Act, it would be proper for the petitioners to have

availed the same and the writ petition on this ground is not sustainable.

24. The State counsel in support of his contention relied upon the judgment of the Hon'ble Supreme Court in the case of ***“Sanjay Kumar Jha v. Prakash Chandra Chaudhary & others” 2018(15) Scale 486***, wherein the Hon'ble Supreme Court has laid down the principle that disputed questions of fact should not be interfered with by the High Court invoking the powers under Article 226 of the Constitution of India.
25. The State counsel further referring to the order passed by the PCCF (Annexure R/9) dated 31.12.2013 submitted that the PCCF has threadbare considered the details of the employment of each of the petitioners and in the case of each of the petitioners, it has been found that they had not put in more than 10 years of service and therefore they had not been held eligible for regularization and thus prayed for the rejection of the present writ petition.
26. Having heard the contentions put forth on either side and on perusal of record, some of the admitted factual position as is clear from the documents, which have been brought before the High Court by either of the parties is that there seems to be no dispute that the petitioners at some point of time were engaged as daily wage employees by the respondents. The engagement of the petitioners is not disputed by the respondents in any of their documents. The whole issue revolves around the period or duration of their engagement as daily wage employees. Initially Annexure P/3 relied upon by the petitioners showed that the petitioners have been

initially engaged between 1990 to 1995 and since then all the petitioners were in continuous employment with the respondents. This Court at the first instance had passed an order on 07.01.2014 directing the respondent/State to file a detailed affidavit of the three officers, who had signed the document (Annexure P/3), giving details of the employment of the petitioners. Pursuant to the directions given by this Court on 07.01.2014, the respondent/State had filed the affidavit of the three officers vide affidavit dated 05.02.2014. In the affidavit, the officers have after tendering unconditional apology in their affidavit, have stated that the said information (Annexure P/3) provided was not based on any verification of the official records, but was only on the basis of the information supplied by the petitioners themselves in each of the cases. The same authority further submits that the competent authority, later on due verification and on thorough inquiry found the petitioners not eligible for regularization as none of the petitioners had completed more than 10 years of continuous service.

27. It would be relevant at this juncture to refer to the document Annexure R/9, which is also under challenge in the present writ petition, passed by the PCCF dated 31.12.2013 dealing with the case of each of the petitioners. Since pending the present writ petition, the petitioner No.2 has expired and there is an application also filed by the petitioners for deleting the name of the petitioner No.2, the present writ petition therefore is being considered only in respect of the petitioners at serial Nos. 1, 3, 4 & 5.

28. So far as the petitioner No.1 Manoj Kumar Singh is concerned, the finding of the PCCF is that the said person had given an affidavit on 28.07.2011 giving details of the muster role entries maintained with the respondents for the period between 10.12.2001 to 31.01.2003 and also between 02.11.2005 to 28.03.2008. The finding of the PCCF is that on verification of the said muster role number, it was revealed that the said muster role pertained to some other worker and not that of the petitioner No.1 Manoj Kumar Singh.
29. Further, the Committee found that so far as the Manoj Kumar Singh is concerned, he was initially engaged in the year 1995 for a period of 8 months, in the year 1996 for a period of 11 months, for the year 1997 for a period of 12 months and again in the year 1998 it was for a period of 11 months, as such, there was some material available with the respondents to show that the petitioner No.1 was periodically engaged between 1995 to 2008. According to the report of the PCCF, there was no document whatsoever available with the respondents to show that the petitioner was engaged by the respondents beyond 2008.
30. At this juncture, the counsel for the petitioners submits that the petitioner No.1 in fact is still working under the respondents and it can be verified from their record itself and that so far as the petitioner No.1 is concerned, he does not have any record to establish that he is still in employment or to establish the fact that right from 1995 till date he is continuously in the service of the respondents.

31. So far as the petitioner No.3 is concerned in the case of Deepak Singh, the finding of the PCCF is that from the record available with the respondents, it appears that the petitioner had worked during the period 1989 to 1995 and thereafter between 1996 to 2000 at regular intervals, however there was no record of the said petitioner namely Deepak Singh having worked with the respondents beyond a period of the year 2003, neither is there any such document enclosed with the present writ petition also except for Annexure P/3 which the officers of the respondents themselves have denied.
32. So far as the petitioner No.4 is concerned i.e. in the case of Dinesh Tiwari, the finding of the PCCF in his order Annexure R/9, he has given a categorical finding that the petitioner has in fact worked during the period between August, 1993 to February, 2000 and beyond February, 2000, the said petitioner No.4 had not worked at all. Same is the case with the petitioner No.5 in the case of Arun Sinha, in whose case also the finding of the PCCF on verification of the records available with the respondents is that he had not worked with the respondents beyond a period of 1992.
33. It would also be relevant at this juncture to refer to certain affidavits, which the petitioners had submitted before the competent authority in the Forest Department. The petitioner No.1 Manoj Kumar Singh has given an affidavit as late as on 28.07.2011 that the said petitioner No.1 has been working with the respondents right from 1991 till date and therefore he has all the requisite eligibility criteria for regularization.

34. So far as the affidavit, which has been filed by Dinesh Tiwari i.e. the petitioner No.4 and also the affidavit of Manish Kumar Sinha i.e. the petitioner No.2, it would reveal that both the petitioners who have also submitted their affidavits in the year 2011 wherein they have in very categorical terms mentioned that they have in the past worked with the respondents between 1987 to 2000 in the case of Dinesh Tiwari and between 1989 to 2000 in the case of Manish Kumar Sinha (since deceased).
35. Relying to these affidavits, the counsel for the petitioners tried to submit that the fact that the petitioners have given an affidavit stating that they have worked between 1989 to 2000 does not mean that they have not worked subsequent to that period. It is the contention of the petitioners that, in fact it has to be read as their initial engagement to be between 1987 to 2000 and thereafter also they are in continuous employment. This contention of the petitioners is hard to accept, as the wordings of the affidavit, which has not been disputed by the petitioners of not being their affidavits clearly reflects the period from when to when the petitioners had been working under the respondents.
36. Except for the petitioner No.1, there does not seem to be any petitioner who has given an affidavit of being in employment with the respondent till date. On a specific query being put to the counsel for the petitioners, he specifically submitted that the petitioners do not have any record whatsoever to establish that they were in continuous employment with the respondents, even when the writ petition was filed.

37. The counsel for the petitioners on the contrary argued that the respondents ought to have fairly produced the entire records to show whether the petitioners are in fact working or not. According to the petitioners, subject to respondent/State producing their records, it could have been easily ascertained by this Court, as to whether each of the petitioners have in fact worked with the Department for a considerable period of time or not, with which the petitioners' claim for regularization could have been considered.
38. Given the said facts and circumstances of the case, what now has to be seen is as to what extent is the documents which have been enclosed along with the writ petition is authentic and reliable. The respondents have not once, but on a couple of occasions have verified the service records available with them to ascertain whether the petitioners have in fact been in employment with the respondents and whether they have put in more than 10 years of continuous service.
39. The respondents on due verification found that the petitioners have not put in continuous 10 years of service. The respondent/State also during the course of the hearing produced certain original records, which were in possession of the State Government to show that the details provided by the petitioner No.1 were in the name of some other persons, which would disprove the contention of the petitioners, so far as the details, which the petitioners have furnished in respect of the continuous employment.
40. Another aspect, which has to be borne in mind is that this Court in this petition is exercising the powers under Article 226 of the

Constitution of India under its writ jurisdiction. The pleadings which have been raised by the petitioners and the reply in response, which has been given by the respondents would show that there are highly disputed questions of facts involved. The petitioners have provided certain details of the muster role and vouchers, from which the engagement of the petitioners could have been ascertained, but so far as the respondents are concerned, they have shown an affidavit that it was verified and found that these vouchers and muster roles are of some other persons and not that of the petitioners.

41. Moreover, the PCCF in his report has categorically given a finding that there is no document to show that so far as the petitioner No.1 is concerned of being engaged with the respondents beyond 2008 and so far as petitioners No. 3 & 4 are concerned, there is no document to show their engagement for a period beyond the year 2000 and so far as petitioner No.5 is concerned, there is no record available to show petitioner No.5 had worked beyond the year 1992.
42. Now to disprove this contention, the requirement of law would be to adduce cogent evidence by the petitioners, which the petitioners candidly accept that they do not have the proof or records with which it could be established that he has put in more than 10 years of service continuously.
43. The Hon'ble Supreme Court so far as regularization is concerned, has in very categorical terms held that the regularization of a person can be considered only if the initial appointment of the petitioner has been made in accordance with the rules or the scheme framed by the State Government. The said position has been laid down by the

Hon'ble Supreme Court in the case of **“Uma Devi”** (supra), wherein in paragraphs No. 47 to 51, the Hon'ble Supreme Court has held as under:

***“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 recognized 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 concerned cases, 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 concerned department 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 regularizing 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 of India, 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.

51. The argument that the right to life protected by [Article 21](#) of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under [Article 39\(a\)](#)

of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on [Article 21](#) of the Constitution.”

44. Reiterating the aforesaid position, the Hon'ble Supreme Court again in the judgment passed in the case of “**Secretary to Government, School Education Department, Chennai and Ors. vs. R. Govindaswamy & Others**” 2014(4) SCC 769 referring to its earlier decision in the case of “**State of Rajasthan & Ors. v. Dayalal & others**” 2011(2) SCC 429 in paragraph No.8 has held as under:

“8. This Court in State of Rajasthan and Ors. v. Daya Lal and 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."

45. So far as the judgments, which have been cited by the petitioners in support of their contentions, this Court, on due consideration of the facts under which those judgments were passed, finds that in all those cases, the initial appointment of the employees therein, were after undergoing some process of selection unlike in the present case and therefore the judgments passed by the Hon'ble Supreme Court as well as the Hon'ble Division Bench of this Court cannot be applied in a straight jacket formula. In the instant case, there was no

recruitment rules or selection process followed or undertaken while initially engaging the petitioners, neither does any of the petitioners have any cogent proof of being in continuous employment, so as to bring them under the purview of the circular dated 05.03.2008 or applying the principles laid down by the Hon'ble Supreme Court in the case of "**Uma Devi**" (supra).

46. On a query being put to the counsel for the petitioners, he had candidly accepted that there was no appointment orders issued in favour of any of the petitioners. At this juncture, the counsel for the petitioners submitted that so far as the claim for regularization is concerned, the requirement of an order of appointment is not necessary. The pleadings of the writ petition also does not disclose the fact that the petitioners have been appointed in accordance with any of the rules of recruitment applicable in the department. Though the counsel for the petitioners tried to submit that all the petitioners were engaged after their names being sponsored from the respective employment exchange, but there is no document to establish this contention of the petitioners.
47. Moreover, the rules applicable in the department do not envisage provision whereby the employment could have been done on the basis of names being sponsored from the employment exchange. The Supreme Court not once, but have repeatedly held that recruitment being done only on the basis of names being sponsored from the employment exchange, is violative of Article 14 of the Constitution of India.

48. The claim for regularization has been threadbare dealt with in the landmark judgment of Supreme Court in case of “*Umadevi*” (supra) wherein the Supreme Court has in very categorical terms discussed the aspect of illegal and irregular appointment and the rights conferred upon the two categories of persons engaged. The Supreme Court has also in the same judgment and which has been reiterated in a catena of decisions subsequently held that once if the initial appointment itself is not in accordance with the rules and regulations stipulated in the department, no appointment could be validated at a later stage only by virtue of the length of service put in.
49. In the instant case, perusal of documents enclosed with the writ petition and in the pleadings made by either side, it clearly reveals that there are no documents with which it can be ascertained that the petitioners had been appointed after due process of selection. Moreover, there are highly disputed questions of fact particularly in respect of the engagement of the petitioners as daily wage employee, their continuity under the respondents on the date of filing of writ petition and also the fact whether even beyond that period the petitioners had worked or not.
50. It is further a settled position of law that where highly disputed questions of law and facts are involved, the High Court in exercise of its power under Article 226 of the Constitution of India should not substitute itself as a fact finding agency by conducting a roving enquiry of the matter. These are matters which require evidence and where the evidence would be of both, oral as well as documentary and which have to be proved in accordance with the provisions of

the Indian Evidence Act. The nature of dispute as such is one which ought to have been raised before the concerned Labour Court having jurisdiction.

51. In the instant case, by way of an amendment the petitioners have themselves brought on record the fact that so far as the petitioner No.3, 4 and 5 are concerned, they stand discontinued from the year 2014 onwards. The said order of discontinuance of service of the petitioners No.3 to 5 has not been questioned before any forum and the substantive status of the petitioners No.3 to 5 as such would be a person who is out of employment or whose services stand discontinued or terminated.
52. As far as the relief of regularization is concerned, the same can only be granted in respect of a person who is in employment or whose employer and employee relationship subsists. The fact that the counsel for the petitioners themselves admit that petitioner Nos. 3 to 5 stand discontinued from service would by itself be a ground which would dis-entitle them seeking benefit of regularization unless the issue of discontinuance is challenged and the same is set aside and the petitioners obtain an order of reinstatement in their favour. The said aspect is in addition to the fact that there is no material either brought on record or proved by the petitioners to show that they were in employment beyond the period or date which has been reflected in the order of PCCF dated 31.12.2013. Under the circumstances, this court finds it difficult to grant any relief to the petitioners No.3 to 5.

53. So far as petitioner No.1 is concerned, in view of the disputed contentions which has been put forth by the either side and the fact that there is no cogent material brought on record by the petitioner No.1 to establish the fact that he is still in employment and at the same time there is a specific denial by the respondent-State in this regard, not once but on more than one occasion wherein they have stated that the petitioner No.1 is not in employment. This again makes it a disputed questions of fact which would not be looked into by this court under Article 226 of the Constitution of India. That for proper adjudication and for reaching to a proper conclusion, it would be required to conduct a thorough enquiry in this regard which either of the parties could do only by leading proper evidence oral and documentary which would be permitted only before the concerned Court having jurisdiction, but definitely not before the High Court. Thus, for the aforesaid reasons, this court finds it difficult to grant any relief to the petitioner No.1 also.
54. Accordingly, the present writ petition in its present form for the reasons mentioned in the preceding paragraphs being devoid of merits deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved