

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO.9923 OF 2014

Rajeev s/o Prabhakar Rao Terkhedkar and others. ... **PETITIONERS**

VERSUS

The Union of India and others. ... **RESPONDENTS**

...

Ms Pradnya Talekar, i/b Mr. S. B. Talekar, Advocate for Petitioners.
Mr. A. V. Deshmukh, A.G.P. for Respondent/State.
Mr. D. G. Nagode, Advocate for Respondent No.1.
Mr. Deelip N. Patil Bankar, Advocate for Respondent No.6.
Mr. N. D. Borade, h/f Mr. K. U. More, Advocate for Respondent No.8.

...

WITH

WRIT PETITION NO.1045 OF 2015

Rameshkumar s/o Devilal Kumawat and others. ... **PETITIONERS**

VERSUS

The Union of India and others. ... **RESPONDENTS**

...

Ms Pradnya Talekar, i/b Mr. S. B. Talekar, Advocate for Petitioners.
Mr. A. V. Deshmukh, A.G.P. for Respondent/State.
Mr. Deelip N. Patil Bankar, Advocate for Respondent No.6.
Mr. A. V. Hon, Advocate for Respondent Nos. 8 & 9.

...

WITH

WRIT PETITION NO.1893 OF 2015

Suryakant s/o Santukram Jadhav and others. ... **PETITIONERS**

VERSUS

The Union of India and others.

... **RESPONDENTS**

...

Ms Pradnya Talekar, i/b Mr. S. B. Talekar, Advocate for Petitioners.

Mr. A. V. Deshmukh, A.G.P. for Respondent/State.

Mr. Deelip N. Patil Bankar, Advocate for Respondent No.6.

Mr. B. A. Shinde, Advocate for Respondent No.9.

Mr. A. B. Dhongade, Advocate for Union of India.

...

WITH

WRIT PETITION NO.5851 OF 2015

Shrikant s/o Shankarrao Dixit and others.

... **PETITIONERS**

VERSUS

The Union of India and others.

... **RESPONDENTS**

...

Ms Pradnya Talekar, i/b Mr. S. B. Talekar, Advocate for Petitioners.

Mr. A. V. Deshmukh, A.G.P. for Respondent/State.

Mr. Deelip N. Patil Bankar, Advocate for Respondent No.6.

Mr. A. B. Dhongade, Advocate for Union of India.

...

WITH

WRIT PETITION NO.11862 OF 2015

Lodhi Md Tariq Irfan s/o Mukhtar Khan and others.

... **PETITIONERS**

VERSUS

The Union of India and others.

... **RESPONDENTS**

...

Ms Pradnya Talekar, i/b Mr. S. B. Talekar, Advocate for Petitioners.
 Mr. A. V. Deshmukh, A.G.P. for Respondent/State.
 Mr. Deelip N. Patil Bankar, Advocate for Respondent No.6.
 Mr. K. B. Jadhavar, Advocate for Respondent Nos.8 & 9.
 Mr. Ajinkya Reddy, Advocate for Respondent Nos.10 & 11.
 Mr. A. B. Dhongade, Advocate for Union of India.

...

WITH**WRIT PETITION NO.3976 OF 2017**

Vijay s/o Radhesham Agarwal and others.

... **PETITIONERS**VERSUS

The Union of India and others.

... **RESPONDENTS**

...

Ms Pradnya Talekar, i/b Mr. S. B. Talekar, Advocate for Petitioners.
 Mr. A. V. Deshmukh, A.G.P. for Respondent/State.
 Mr. Deelip N. Patil Bankar, Advocate for Respondent No.6.

...

WITH**CONTEMPT PETITION NO.507 OF 2018**IN**WRIT PETITION NO.9923 OF 2014**

Rajeev s/o Prabhakarrao Terkhedkar and others.

... **PETITIONERS**VERSUS

Vishal Solunke and others.

... **RESPONDENTS**

...

Ms Pradnya Talekar, i/b Mr. S. B. Talekar, Advocate for Petitioners.
 Mr. A. V. Deshmukh, A.G.P. for Respondent/State.

...

WITH
CONTEMPT PETITION NO.510 OF 2018
IN
WRIT PETITION NO.11862 OF 2015

Lodhi Md Tariq Irfan s/o Mukhtar Khan and others. ... **PETITIONERS**

VERSUS

The Union of India and others. ... **RESPONDENTS**

...

Ms Pradnya Talekar, i/b Mr. S. B. Talekar, Advocate for Petitioners.
Mr. A. V. Deshmukh, A.G.P. for Respondent/State.

...

CORAM : **T. V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

RESERVED ON : 29th January, 2019.

PRONOUNCED ON : 06th March, 2019.

ORDER: (Per T. V. Nalawade, J.)

. All the petitions are filed for regularization of services of
Petitioners, who are working in Central Government Project by
name "*Sarva Shiksha Abhiyan*" (in short "SSA"). The relief of
injunction is also claimed to prevent the Respondents from
terminating their services. It appears that as against some
Petitioners, orders of termination were issued. This Court granted

interim relief in favour of Petitioners and due to the interim relief, the Petitioners are still working in SSA.

2 Both the sides are heard.

3 The Petitioners from Writ Petition No.9923 of 2014 (Petitioner Nos.1 to 9) are working as Junior Engineers. Petitioner No.10 is working as Computer Programmer. Some Petitioners from Writ Petition No.1045 of 2015 are working as Senior Account Clerks, as Assistant Programme Officers and as Stenographers. Some Petitioners from Writ Petition No.5851 of 2015 are working as Data Entry Operator, MIS Coordinator, Computer Programmer and one Petitioner is working as the Executive Engineer. Some Petitioners from Writ Petition No.11862 of 2015 are working as District Coordinator, Assistant Program Officers, Driver etc. Thus, the posts involved in the proceedings are of aforesaid different nature. The Petitioners are working in Beed, Latur, Parbhani, Aurangabad, Osmanabad and Hingoli districts in SSA project. Their initial dates of appointments are different but all of them were given appointments on contract basis on consolidated pay. After

completion of first contract period, the Petitioners were again engaged on contract basis on the same posts and in all the cases, the consolidated pay was increased from time to time. Very few of the Petitioners had completed the service of aforesaid nature of more than 10 years on the dates of petitions and most of the other Petitioners had recently received appointment orders prior to coming to this Court and those particulars are being given at proper place.

4 Before considering the rival contentions, it is desirable to mention the schemes, projects of Central Government, which were started and which are still there. The projects were started for universalization of the primary education. The first project was started in the year 1994 and it was called as *District Primary Education Project* (for short "DPEP"). In accordance with the project of Central Government, the State Government issued first Government Resolution dated 7th May, 1994 through the School Education Department. This project was a pilot project and it was to be implemented in few districts of very State where the literacy rate of females was below the national average rate. Following were the

aims of the project:

- a) To admit all boys and girls below 16 years of age in primary schools;
- b) To impart education to such children by formal and informal methods and to see that they complete primary education; and
- c) To take special steps for spreading literacy in the form of primary education in females, the persons of Scheduled Castes and Scheduled Tribes and adults of weaker sections of society.

The Government Resolution of 7th May, 1994 shows that for implementation of aforesaid project, the State Government had created one autonomous body, which was to work at State level, District level and Village level. This autonomous body was given name “*Maharashtra Prathamik Shikshan Parishad*” (in short “MPSP”). This body was registered as society. This project was to get assistance of the World Bank and the body was created and registered even prior to the date of Government Resolution.

5 Under the aforesaid Government Resolution, in the first phase, five districts of this State like Aurangabad, Latur, Nanded, Osmanabad and Parbhani were selected. After 1994, Parbhani district was bifurcated and one more district viz. Hingoli district was created and the scheme was applied to that district also. In one petition, there are Petitioners from two districts like Aurangabad and Beed.

6 Under the Government Resolution of 1994, power was given to aforesaid autonomous body to prepare programme and implement the programme. Clause (3) of the Government Resolution made it clear that this autonomous body was given the power even to create posts required for implementation of the project. The body was to take help of Education Officer (Primary) and Chief Executive Officer (CEO) of the respective Zilla Parishad for implementation of the programme and also for creation of the posts. The CEO of Zilla Parishad was to have control over the project at District level. For giving advice to CEO, a District level committee of autonomous body was to be created. Separate account was to be opened at District level for this project and the

CEO was to have control over this account.

7 The Government Resolution of 1994 further shows that 85% of the amount required for implementation of the project was to be made available by the Central Government directly to these districts. The State Government was to make available remaining amount, 15% of the amount required for the project.

8 Under the aforesaid Government Resolution, separate staff for the office of autonomous body was created for head office. Under this Government Resolution, two more institutions were created, but there is no need to discuss the work of other two institutions in view of the nature of dispute involved in the present matter.

9 For implementation of project at District level, under the Government Resolution of 1994, 16 posts were created, which were of Project Officer, Education Development Officer, Accountant, Junior Accountant, Senior Clerks and Subject Experts. They were to work under the CEO of Zilla Parishad at District office of aforesaid

autonomous body and so they were the employees of the District level committee of the autonomous body. The Deputy Director of Education, Mumbai was authorized to release the funds for each district from the budgetary provision made by the State of its share. The Committee was to submit report to the Director of Education after utilization of the funds.

10 The Government Resolution dated 20th December, 1997 was issued in respect of the same project, for which Government Resolution of 1994 was issued. This Government Resolution shows that in second phase, the districts like Gadchiroli, Dhule and Beed were selected for implementation of the project. The Government Resolution shows that the Central Government had sanctioned the amount of Rs.157.72 crores for the second phase. The Government Resolution shows that on the establishment of autonomous body at District level 1528 permanent posts were to be created and 1487 posts out of these posts were to be of teachers. The Government Resolution shows that as per Annexure 'B' of the Government Resolution, 172 posts on contract basis were to be filled for the project period. Similarly, 4667 schools were to be

started on contract basis for project period. The Government Resolution shows that phase two project was to be continued for five years and it was to come to an end in the year 2002. Thus, temporary posts, which were to be created on contract basis were to remain in existence only upto the year 2002. Due to such nature of posts, it was expected that the posts were filled on deputation basis or from the retired employees on contract basis. This mention of Government Resolution needs to be kept in mind as the advertisements on the basis of which the applications were made in the present matter, were apparently for the employees, who were already in the service of Government Department or Semi Government Department. Thus, it was not open to appoint the Petitioners who got appointments prior to the year 2003.

11 The Government Resolution of 1997 shows that the aforesaid permanent posts, which were to be created were to be absorbed on the establishment of the State Government or Zilla Parishad after the project period. It was, however, made clear that if it was not possible to absorb all these employees appointed on permanent posts, the junior most employees were to be terminated

first. It was mentioned in the Government Resolution that such condition was to be mentioned in the letters of appointment, which were to be given to the employees as letter of appointment. In the letters to be given to the persons, who were to be appointed on contract basis the contract period was to be mentioned and there was no question of absorption of such employees on establishment of Government or Zilla Parishad. Here again it is necessary to mention that the persons, who were already working in Government and Semi Government Department and the persons who had retired from such offices, were to be given appointments on contract basis.

12 The Government Resolution of 1997 shows that at District level, for each of the subsequently covered four districts, staff of 37 posts was created. Those posts included the posts shown to be held by many of the Petitioners. For Tahsil level, for each District, posts of Junior Engineer, Group Coordinator, Subject Expert, Senior Clerk-cum-Accountant were created. In Government Resolution of 1994, most of the posts mentioned in Government Resolution of 1997 were not mentioned and no record is produced by both the sides to show that after the first Government Resolution

of 1994, another Government Resolution was issued in this regard in respect of first five districts. On the basis of requirement of project and the posts created for the new four districts, in Government Resolution of 1997, it can be inferred or presumed that for District level and Tahsil level for the first five districts covered by Government Resolution of 1994, similar posts were created.

13 In Government Resolution of 1994, there was a mention of *Maharashtra Prathamik Shikshan Parishad* (MPSP), autonomous body created for implementation of DPEP. This autonomous body made Service Regulations of 1994 and copy of the Service Regulations as amended till the year 2003 is produced on record by the learned counsel for Petitioners. These Service Regulations came in force from 7th March, 1994. These Regulations show that they were applicable to the following categories of employees:

- a) All employees appointed on the posts created in MPSP head office;
- b) All the Government servants borrowed from the State or Central Government on deputation basis. However, for leave, conduct and discipline purpose, the deputed employees

were to be governed by the Rules of parent departments; and

- c) All the appointments made on contract basis. The Regulations, however, made it clear that they were to apply only in respect of those matters, which were not specifically provided for in their contracts.

These Regulations were not to apply to daily wagers or part time employees and it can be said that they were placed in different category.

14 In Regulation 3(1) of aforesaid Regulations, term “appointment” is defined as under:

“3 (1) “Appointment” means an appointment made under these regulations after due selection.”

Thus, the Regulation shows that the appointment cannot be recognized unless it is made after due selection under the Regulations. There are definitions of “appointing authority”, “competent authority, “post” and also “service/experience” in the Regulations.

Definition of “Post” given in Regulation 3(10) is important and it runs as under:

“3 (10) 'Post' means a Temporary Post carrying a definite rate of Pay sanctioned for limited period.”

Definition of “service/experience” is also important for present purpose and it is in Regulation 3(12), which is as under:

“3 (12) 'Service' or 'experience' wherever prescribed in these rules as a condition for selection, means service on a post or category of posts under the State of Central Government or Educational Institution of autonomous or voluntary agencies.”

In Chapter III of the Regulations of 1994, different posts which can be created, are mentioned and the mode of recruitment is also given.

The Regulation 6 shows that posts shall be as specified in Schedule of Appendix 'A'. It also shows that the Chairman and Executive Committee had the power to create new posts and also abolish the posts mentioned in Appendix 'A'.

Regulation 8 (ii) is for recruitment of post and Regulation 8 (iii) is for recruitment of consultants and these portions of Regulation are as follows:

“8. **RECRUITMENT:**

- (i) ...
- (ii) Appointment to all other posts specified in Schedules shall be made by Selection either by transfer on deputation from the State/Central Government, or autonomous body or by selection of short term contract in accordance with the procedure hereinafter prescribed.
- (iii) The Appointing authorities may appoint Consultants either,
 - (a) for part time assignments for special services, or
 - (b) on whole time specified work contract, or
 - (c) on whole time general duty purposes against a post specified in the Schedules.”

Thus, the procedure given in this Regulation was required to be followed before making appointment on any post.

Regulation 10 shows that all the appointments made after due selection and approved by the Selection Committee were to be treated as appointments under these Regulations. Thus, every

appointment was to be made after due selection and this needs to be kept in mind in the present matter in view of the Constitutional obligation.

Regulation 11 is for creation of Selection Committee and it is as under:

- “11. (i) **There shall be sub-committee of the Executive Committee, comprising of the following:**
- (a) Chairman
 - (b) State Project Director
 - (c) Representative of Secretary, Social Welfare Department
- (ii) Which shall :-
- (a) Constitute selection committee for all posts in State Office.
 - (b) Prescribe the procedure of selection as envisaged under these regulations.
 - (c) Carryout such other work as may be assigned to it from time to time by the Chairman.”

Regulation 12 is about reservation and it is as follows:

- “12. **Reservation:**
- Reservation of vacancies for Scheduled

Castes and Scheduled Tribes or any other specified categories shall be in accordance with the order of the State Government in force at the time posts are filled.”

So, the reservation policy of the State Government was to be strictly followed.

Regulation 13 provides for age of appointment and it was 18 to 30 years as on 1st July of the year, in which the applications were to be invited for the appointment. There was age relaxation to reserved category upto 35 years of age.

Regulation 15 provides for qualification and it is as under:

“15. **Academic & Technical Qualification :**

A candidate for recruitment to the post specified in Schedules shall possess:

- (a) the qualifications given in Column 4 of the schedules.
- (b) working knowledge of Marathi written in Devnagari script.
- (c) operating knowledge of Computer.

Note: ***The Chairman may relax the prescribed qualifications in the case of candidates***

who are otherwise well qualified.”

Regulation 16 prescribes procedure for recruitment and that runs as under:

“16. Procedure for recruitment :

- (1) Appointments to posts, specified in Schedules shall be made:
 - (i) By Deputation or
 - (ii) by calling the list of candidates from the concerned Employment Exchange or in such other manner as may deemed fit.
 - (iii) if the suitable candidates are not available through (i) & (ii) above, by advertising the vacancies in Local/National papers.

The Appointing authority or any authority subordinate thereto, may be authorised by him shall,

- (a) scrutinise the list/applications received and prepare a list of qualified and eligible candidates as well as short list were necessary as seem appropriate to it to appear for interview.
- (b) interview the candidates, and
- (c) prepare a list of candidates whom they consider suitable for appointment to the post concerned, arrange in order of merit and shall forward it to the Appointing Authority, and

- (d) where necessary, recommend the pay in the next higher time scale of Parent Service or the pay in the indicative pay scale, or Consolidated Pay or fixed emoluments on which the recommended candidate should be appointed.
- (2) The Selection Committee for selection to the posts specified in the Schedules shall be constituted by the appointing authority in which a representative from the Social Welfare Department should be one of the member.
- (3) Appointment to all the posts as specified in Schedules shall be made by transfer on deputation or on short term contract except *ex-officio* post.
- (4) Parishad may hold competitive examinations or tests for recruitment to such posts as the Parishad may deem fit, in accordance with the syllabi prescribed from time to time and procedure laid down therefore by the Parishad.”

This Regulation shows that competitive test was also suggested.

Regulation 17 and particularly portion 17(ii) is relevant for the present purpose and it is as under:

“17. Appointment:

- (ii) Appointment of all other selected candidates shall be made on short term contract either in a time scale of pay or on fixed emoluments or on consolidated pay.”

Regulation 25 is about resignation and it can be said that in view of nature of appointment, it is also relevant and it is as under:

“25. Resignation :

- (1) Resignation tendered by an employee from the service of the Parishad will be considered and accepted by the Appointing Authority, if it is not violative of his contractual obligation of conditions of his appointment and no dues of the Parishad are outstanding against him.
- (2) The competent authority will decide the date from which the resignation should become effective.”

Regulation 26 is about termination of service / contract and it runs as under:

“26. Termination of Service/Contract:

- (a) The services of an employee may be

terminated by the Appointing Authority by serving a notice of one month in writing to the employee or on payment of one month's pay & allowances or consolidated pay or fixed emoluments as the case may be, in lieu of such notice.

(b) Without prejudice to the provisions of Sub-rule (a) the service of an employee shall stand terminated.

(i) if his appointment is made for a prescribed period, on the expiry of such period, unless the appointment is extended for a further period, or

(ii) if his appointment is made against a post, on the abolition of that post or on expiry of the period for which the post was created.”

15 The Regulations from Chapters IV to IX are with regard to service conditions. They are with regard to pay, allowance, leave, conduct, discipline and maintaining the record of service.

16 In Appendix 'A' there are different Schedules. Schedule-I is about staffing pattern for State office of autonomous body and the office was to be kept at Mumbai. As the amendment

was made, after the introduction of *Sarva Shiksha Abhiyan*, this is to be treated as the office of SSA. In Schedule-III, District level staffing pattern for SSA is given and in Schedule-IV Block level staffing pattern for SSA is given. Schedules III and IV of Appendix 'A' show that ordinarily, if no other officer is sent on deputation, the CEO of Zilla Parishad is to act as Chairman of Zilla Karyakarini, District level executive committee. He was to be treated as appointing authority for the posts like Executive Engineer, Junior Engineer, Computer Programmer (MIS Incharge), Accounts Officer, Assistant Programme Officer and Data Entry Operator. The Regulations show that there was option given to create posts of Junior Engineers, if there was necessity of such posts for working in District. However, for such expenditure ceiling was given and the expenditure was not to exceed 3% of the estimated costs of work in the District. If keeping the expenditure below 3% was not possible, the work expected from Junior Engineer could have been got done through the agency of Architects and in that case also such ceiling was to operate.

17 Appendix 'G' of the Regulations prescribe pay scales and qualification for the posts and they are as under:

“Statement showing the Qualifications prescribed for
various posts sanctioned for SSA
to the different implementing Offices

Sr. No.	Designation of the post	Pay Scale	Qualification Prescribed
1	State Project Director	16400-20000	As prescribed by State Govt. in Education Department.
2	Joint Director	12000-16500	As prescribed by State Govt. in Education Department for the cadre of Joint Director.
3	Deputy Director (F & A)	10650-15850	As prescribed by State Govt. in Finance Department for the cadre of Deputy Director of Accounts & Treasury.
4	Deputy Director (Project & Administration)	10650-15850	As prescribed by State Govt. for the cadre of Deputy Director of Education.
5	Executive Engineer	10650-15850	As prescribed by State Govt. in Public Works Department for the cadre of Executive Engineer or B.E. (Civil) from recognised University with 10 years experience.
6	Deputy Director (System Analyst)	10650-15850	B.Tech., B.E., MCS, MCA or equivalent qualifications with 3 years experience in computer programming with sufficient exposure in discipline of Statistics or M.Sc. in Statistics with 3 years experience.
7	Assistant Director (WD, Training, R&E, Co-ordination, Media etc.)	8000-13500	As prescribed by Govt. in Education Department for the cadre of Education Officer. OR Graduate in any faculty with minimum IInd Class, + 5 years experience in relevant field.

8	Dy. Engineer	8000-13500	As prescribed by the Govt. in Public Works Department or B.E. (Civil) from recognised University + 5 years experience or Diploma in Civil Engineering from the Board of Technical Examination, GOM + 10 years experience.
9	Purchase Officer	6500-10500	Graduate from any faculty from any recognised University + Diploma in Material Management or 2 years experience in purchase and handling of stores.
10	Computer Programmer	6500-10500	B.Tech., B.E., MCS, MCA or equivalent qualifications in Computer Science with 2 years experience in computer programming with exposure in statistics or M.Sc. in statistics with 2 years experience
11	Accounts Officer & Audit Officer	6500-10500	As prescribed by State Govt. in Finance Department for the cadre of Maharashtra Finance & Accounts Service Class-II
12	Programme Officer	6500-10500	As prescribed by the State Govt. in Education Department for M.E.S. Class-II cadre or Graduate in any faculty with IInd Class + B.Ed. + 5 years experience in Teaching, Inspecting and Administration.

13	Assistant Programme Officer	5500-9000	As prescribed by the State Govt. in Education Department for the cadre of Extension Officer (Education) or Graduate in any faculty from recognised University + B.Ed. + 3 years experience in Teaching/Administration/any field relevant to implementation of programme under SSA.
14	Assistant – Accounts / Audit Officer	5500-9000	As prescribed by State Govt. in Finance Department for the cadre of Maharashtra Finance and Accounts Service Class-III cadre.
15	Jr. Engineer	5500-9000	B.E. (Civil) from recognised University + 1 year experience or Diploma in Civil Engineering from the Board of Technical Examination, GOM + 3 years experience.
16	Jr. Accounts Officer	5000-8000	As prescribed by State Govt. in Finance Department for the cadre of Deputy Accountant.
17	Stenographer	5500-9000	H.S.C. With a speed of 100 w.p.m. in Shorthand (English/Marathi) + 50 w.p.m. in English and 40 w.p.m. in Marathi Typing. Preference will be given to experienced candidates.
18	Steno-Typist	4000-6000	H.S.C. with a speed of 80 w.p.m. in Shorthand (English/Marathi) + 40 w.p.m. in English and 30 w.p.m. in Marathi Typing. Preference will be given to experienced candidates.

19	Data Entry Operator-cum-Assistant	4000-6000	Graduate in any faculty from recognised University + 40 w.p.m. in English Typing and 30 w.p.m. in Marathi Typing + Advanced Diploma in Computer Science for at least six months duration or minimum 2 years experience in handling data entry machines and computer terminals.
20	Sr. Clerk-cum-Cashier	4000-6000	Graduate in any faculty from recognised University + 2 years experience in accounts and handling of cash.
21	Clerk-cum-Typist including Receptionist and Jr. Clerk	3050-4590	H.S.C. Passed + 40 w.p.m. English and 30 w.p.m. Marathi Typing.
22	Driver	3050-4590	Passed VI th Std. + Heavy License issued by R.T.O. + 3 years experience in driving.
23	Naik	2750-4400	Minimum 4 th Std. Examination passed + 5 years experience
24	Peon	2550-3200	4 th Std. Passed. Experienced candidates will be given preference.
25	Watchman	2550-3200	Minimum 8 th Std. Passed. Ex-serviceman will be given preference.

- (1) The appointing authorities can appoint the retired persons from similar post if found suitable for any posts mentioned at Sr. No. 5,7,8,9,12,13,15,16,17,18.
- (2) Production of MS-CIT Certificate of Board of Technical Examination of Govt. of Maharashtra in Computer will be compulsory for all the posts mentioned at Sr. No. 2 to 21 or any other equivalent certificate issued the recognised Institute.
- (3) All persons upto Sr. No. 21 should know computer operations.”

Though as many as 25 different posts are given in Schedule-III and Schedule-IV for District level and Block level, only few posts are shown in the staffing patter. For better clarification, it is desirable to keep on record Schedule-III and Schedule-IV and they are as under:

“Schedule – III

(District Level Staffing Pattern for SSA)

Sr. No.	Designation	Pay Scale	Qualification	No. of posts sandd.
(1)	(2)	(3)	(4)	(5)
1	Chairman Zilla Karyakarini MPSP cum CEO, Z.P.	Ex-Officio	Ex-Officio	Ex-Officio
2	Secretary Zilla Karyakarini MPSP cum Education Officer (Primary), Z.P.	Ex-Officio	Ex-Officio	Ex-Officio
3	Ex Engineer	8000-13500	As shown in Appendix “G”	1
4	Jr. Engineer	5500-9000	As shown in Appendix 'G'	**
5	Computer Programmer (MIS Incharge)	6500-10500	B. Tech, B.E., MCS or MCA in computer science with 2 years experience in computer programming with exposure in statistics or M.Sc. with Statistics with 2 years experience	1

6	Accounts Officer	6500-10500	As shown in Appendix 'G'	1
7	Assistant Programme Officers	5500-9000	As shown in Appendix 'G'	2
8	Data Entry Operator cum Assistant	4000-6000	As shown in Appendix 'G'	2
Total:				7

** The posts of Jr. Engineers if required for works in the districts may either be created within the ceiling of 3% of the Estimated cost of works in the District and the expenditure be debited to Management or the work of Jr. Engineers may be got done through the agency of Architects within the above ceiling.”

“Schedule – IV
(District Level Staffing Pattern for SSA)

M.P.S.P.

Sr. No.	Designation	Pay Scale	Qualification	No. of posts sandd.
(1)	(2)	(3)	(4)	(5)
1	Block Education officer	6500-10500	Ex-Officio	Ex-Officio
2	BRC Co-ordinator	5500-9000	As shown in Appendix 'G'	1
3	Sr. Accounts Clerk cum Cashier	4000-6000	As shown in Appendix “G”	1
4	Assistant cum Data Entry Operator	4000-6000	As shown in Appendix 'G'	1
Total:				3

Note :

1. The appointing authority for the posts mentioned at Sr. No.3 to 8 of Schedule III (District) & Sr. 2 to 4 of Schedule IV (Block) otherwise than on deputation from Govt. will be Chairman Zilla Karyakarini MPSP sum CEO, Z.P.
2. All appointments shall be made either on deputation basis form Govt., Zilla Parishad or any other organization or on contract basis

only.

3. Consultants upto 36 man months per year can also be appointed by the above authority as and when required.
4. The appointments to the above posts in DPEP districts will not be over and above the existing posts sanctioned under DPEP. The appointments to the above posts can however be made after the closer of the project or after exhausting the management EFC under DPEP whichever is earlier.
5. The appointments shall be made after following the procedure of recruitment laid down in Chapter II of the MPSP Service Regulations, 1994.”

18 At the cost of repetition, it is again mentioned that Regulation 7 of Chapter-II shows that Chairman of the District level committee with the approval of Executive committee had power to create new posts.

19 A copy of agreement, which was to be made with the persons to be appointed on contract basis is also made available in the Regulations. Copy of agreement specifically provides as under:

- i) Appointment was on contract basis and it was of temporary nature;
- ii) It was for particular work (job chart was to be given in the agreement);
- iii) It was for particular period;

- iv) As work was of temporary nature, the work was given on contract basis and that the appointee was expected to admit and mention that he had understood the nature of appointment;
- v) The work was on monthly fixed amount, consolidated pay and during the contract period, the amount was not to be changed;
- vi) Both the sides of the contract were at liberty to put to an end to the contract by giving one month notice;
- vii) Regulations of 1994, which are not part of contract, were also to apply to the contract;
- viii) The appointee was not to accept other work during the period of contract; and
- ix) If there was any dispute about any cause of contract, the decision of the employer was to be treated as final on that dispute.

20 The Government Resolution dated 18th January, 2002 of School Education Department of the Government is in respect of *Sarva Shiksha Abhiyan (SSA)*. This Government Resolution shows

that the State Government issued it to implement the policy decision taken by the Central Government to give education to children of age group 6 to 14 and it was to be primary education. This project was to be implemented by the State Government in partnership with the Central Government. It has objective like to admit all boys and girls for primary education in schools and also in alternate education centers. The object was to complete primary education upto 5th standard between the years 2003 and 2007. The objective was to complete the education of all boys and girls upto 8th standard by the end of the year 2010.

21 The Government Resolution dated 18th January, 2002 for project SSA shows the manner in which the aforesaid objective was to be achieved. It provides as under:

By –

- a) appointing teachers;
- b) creating schools / alternate education facilities;
- c) making construction of class rooms;
- d) providing free books of curriculum;
- e) executing civil construction of class rooms;
- f) maintaining and repairing school buildings;
- g) raising standards;

- h) supplying education materials to schools; and
- i) giving grants etc.

The Government Resolution shows that the Central Government was to provide 85% funds for expenditure in 9th five years plan and the starting year was to be 1999-2000. The State Government was to spend remaining 15% of the total expenditure and the State Government had undertaken to make such funds available in addition to the routine expenditure of the State, which was declared for the financial year 1999-2000. In the 10th five years plan, expenditure of the State was to be raised to make it 25% of the total expenditure and after 10th five years plan, the State and Central Governments were to share expenditure equally.

22 The Government Resolution of 2002 of the State Government shows that the work of implementation of SSA was given to MPSP (which was already created and which was implementing the previous project viz DPEP).

23 In Government Resolution of 2002, for implementing the project, two District level committees were created viz (i) District

Committee headed by CEO of Zilla Parishad and he was to act as *ex-officio* Chairman. The Chairman of all the committees of Zilla Parishads were to be members of the District committee. The Education Officer (Primary) of Zilla Parishad was to act as Secretary of this committee. The work of this committee was to assess the work done by SSA and see that participation of other institution is increased in the implementation. (ii) the District Executive Committee (Zilla Karyakarini). This committee was to take all decisions for implementation of the scheme. The CEO of Zilla Parishad was to act as *ex-officio* Chairman of this committee also and Education Officer (Primary) was to work as a Secretary of this committee. This committee was to consist of 15 members, who were to be picked up from the District Committee, officers and representatives of the institutions. The Government Resolution shows that other committees were also to be constituted like committee for construction and sub-committee for purchases and education sub-committee. All these committees were expected to function as per the Regulations of 1994 made by MPSP, autonomous body created by the State Government.

24 The aforesaid Government Resolution shows that particular period was fixed to see that education is imparted to all boys and girls of primary level and also of the level of 8th standard upto the year 2010. However, even after the end of 10th five years plan, if required, the project was to be continued. In Writ Petition No.9923 of 2014, Under Secretary to the Government of India, Ministry of Human Resource Development, Department of School Education and Literacy, Smt. Jyoti Pahwa has filed affidavit. The affidavit dated 5th April, 2016 shows that till March 2016, her Department had not taken decision to put to an end to SSA. The subsequent record shows that till today, the project is being implemented. The aforesaid Government Resolutions show that under first project of DPEP, only few districts were covered, but in the second project of the year 2002, all the districts came to be covered. The subsequent Government Resolution covered some more objects of the State. The registered body, MPSP created in the year 1994 implemented the first project and it is implementing the second project also. Many posts were created under the previous project, but the record produced like Government Resolution of 2002 does not show that new posts were created for

this project. Thus, it can be inferred that the previous staff is being used by MPSP.

25 It is the case of the Petitioners that all of them were selected on posts after following due procedure created for their selection. According to them, the posts were advertised to inform that appointments would be on contract basis, temporary posts and they were required to give undertaking that they would not stake claim of regularization. It is the case of the Petitioners that they have been continuously working on the present posts and some of them have completed 10 years of service and due to that circumstance, they are entitled to get regularization of service. It is their contentions that their services are still required, but the Central Government and State Government are not regularizing their services and they are being exploited.

26 The Petitioners have given some instances to show that the State Government has absorbed similarly placed employees in various departments. They have given instances like the policy decision taken of absorption of employees by the Government of

Haryana, Government of Jammu and Kashmir and Government of West Bengal.

27 The submissions made and record show that the consolidated pay came to be increased from time to time and every time after completion of contract period, new appointment orders were given to the Petitioners and undertaking, which was given at the time of initial appointment, was given by the Petitioners on every subsequent occasion of appointment. Both the sides have placed reliance on some reported cases of the Supreme Court.

28 It is the case of the Respondents that in view of the nature of posts given to the Petitioners and the manner of their appointment, the Petitioners are not entitled to get regularization of service. It was also submitted that the Petitioners were not appointed as against permanent posts and temporary posts were created by the MPSP and as against those posts the appointments were given on contract basis. It is the contention of the Respondent / State that in such cases, regularization is not possible in law and it will not be practicable also.

29 To ascertain as to whether the Petitioners can be treated as employees of the State Government appointed after following due procedure created for selection, Regulations are already quoted. This Court is now considering the other material, which starts with advertisement published for giving the appointment.

30 In Writ Petition No.9923 of 2014, there is a copy of advertisement dated 13th June, 1998 published by District Branch of MPSP. This advertisement shows that the applications were invited from the employees of the Government and Semi Government offices. These employees were to be appointed on the posts advertised on deputation basis and the posts were of temporary nature. Thus, basically the advertisement was not for the Petitioners as they were not employed in Government or Semi Government offices. The advertisement specifically mentioned that temporary posts were created for DPEP project, first project and it was made clear that the candidates were to be taken on deputation basis. In view of this nature of advertisement, the Petitioners who

were given appointments in respect of the posts, which were mentioned in the advertisement and which were for DPEP project, are not entitled to get any relief and their petitions can be dismissed straightaway. Due to circumstance that these Petitioners were not invited, but they applied and they got appointments though on contract basis, itself shows that others, who could have applied if advertisement was open for them, were prevented from making application by the nature of advertisement. Many things can be read between the lines due to such circumstances against these Petitioners and the committee, which gave appointments to them for DPEP project. Further, in this advertisement, there was no mention of reservation of any posts even when many posts were advertised of each category. On this ground also, no relief can be given to the Petitioners, who got appointment due to this advertisement.

31 In Writ Petition Nos.1045 and 1893 of 2015, filed by the employees of Latur and Parbhani Districts, no copy of advertisement is produced. This Court had specifically asked the learned counsel for Petitioners to see that copies of advertisements are produced as this Court had carefully gone through the nature of

advertisement, which is shown to be published in Writ Petition No.9923 of 2014. In any case, for other reasons also, even if the advertisements were proper, as per the Regulations, things would not have changed. For that, reasons are given at proper place.

32 In Writ Petition No.11862 of 2015, filed by the employees of Osmanabad and Beed Districts, a copy of advertisement dated 19th April, 2012 is produced and that was for one posts of Executive Engineer, many posts of Data Entry Operator-cum-Assistant, MIS Coordinator, resource persons (MI, HI and VI). This was for Beed District and it is only first page of the advertisement. This page also does not show that any reservation for any post was shown. No consolidated pay was mentioned against each post. There is a photocopy of advertisement of July 2004 in Writ Petition No.11862 of 2015. This advertisement shows that 3 posts of Junior Engineers were advertised, but no reservation was shown. Thus, these advertisements were not complete as per the Regulations and policy of the State Government. Further, most of the Petitioners had not appointed as per these advertisements and relevant advertisements are not produced.

33 In Writ Petition No.3976 of 2017, a photocopy of advertisement dated 2nd July, 2005 for 6 posts of Junior Engineer is produced. This advertisement shows that reservations were shown. There is copy of advertisement of December 2011 showing that 4 posts were advertised and reservation was shown. These advertisements were issued by the committee of Hingoli District, but as already observed, the Petitioners of this petition were appointed on different dates and the appointment orders are not showing that the applications were made in response to these advertisements. Those particulars are being discussed at proper place.

34 There is a copy of advertisement dated 29th November, 2004, published by Aurangabad committee and copy of advertisement is produced in Writ Petition No.5851 of 2015. One post of Executive Engineer was advertised and the advertisement was for persons in service and also for other Engineers. There is a copy of advertisement dated 4th November, 2001 for the post of Construction Adviser. There is a copy of advertisement for the post of Senior Accountant (3) dated 18th November, 2008 and reservation

was also shown. One post of Junior Engineer was advertised in advertisement dated 11th November, 2008 and it was for open category. However, no experience for B.E. candidate was required as per this advertisement and experience of two years was required from Diploma candidate.

35 If the record of appointments in respect of Petitioners of Writ Petition No.5851 of 2015 is considered, it can be said that first appointment was given to Petitioner, Rankhamb in the year 2004, even prior to the advertisement of the year 2004 produced in the petition, appointment of Mateen, Junior Engineer was given in the year 2010, appointment to Farkade, Junior Clerk was given in the year 2010, some Senior Clerks and Senior Accountants were shown to be appointed in the year 1999, when there was no such advertisement for those posts, one Smt. Badve, Junior Engineer had received appointment letter in the year 2008 and in the same year other Junior Engineers like Atre, Siddiqui and Dahite had received appointments. As per the advertisement produced, only one post was advertised of Junior Engineer in the year 2008. One Mr.Hade, Junior Engineer was appointed in the year 2009 and 4

Data Entry Operators were appointed in the year 2004. Thus, in respect of most of the Petitioners of Writ Petition No.5851 of 2015, no advertisements were shown to this Court. Inference is easy that like in the first proceeding, the applications of all eligible persons were not invited.

36 In Writ Petition No.11862 of 2015, filed by the employees of Osmanabad and Beed committees, there are other advertisement like one published in April 2012 by District Committee Beed and one published on 29th July, 2004 by District Committee Beed. In advertisement of April 2012, some posts were advertised as already observed, but no reservation was shown. In the advertisement of July 2004 also, no reservation was shown. In this proceeding, copy of appointment letter of Smt. Sunita Katekar, Data Entry Operator of the year 1994 is produced, but the advertisement of the year 1994 is not produced. Copy of appointment letter of Smt. Sunita Goswami appointed on the post of Assistant Programme Officer in the year 1999 is produced, but no advertisement of that post is produced. Copy of appointment of one Surwase appointed as Driver of the year 1997 is produced, but no

advertisement of this post is produced.

37 In Writ Petition No.3976 of 2017, the Petitioners are mainly from Hingoli district. There is a copy of advertisement dated 2nd July, 2005, which was for 6 posts of Junior Engineers. Reservation was shown and it was for the Engineers holding Diploma or degree certificate and having experience. There is a copy of advertisement published in December 2012 for 4 posts of Junior Engineers. In this advertisement also reservation was shown, but consolidated pay was not shown. Appointment orders of the Petitioners from this petition were issued in the years 2011 and 2012, much prior to the date of advertisement of the year 2012. Thus, the advertisement in response to which these Petitioners had applied is not produced in this matter and so, the aforesaid two advertisements of 2005 and 2012 are of no use to these Petitioners.

38 The nature of material produced before this Court, which is quoted above, shows that some irrelevant documents are produced, but necessary record like advertisements, if they were published of the posts on which the Petitioners were given

appointments, are not produced. The burden of proof that they were duly appointed after following procedure given in the Regulations, was on the Petitioners. That burden is also not discharged by the Petitioners. In view of this record, it is not possible to hold that all the Petitioners were duly appointed by following the procedure given in the Regulations.

39 As already observed, the Petitioners have contended that in many cases, the State Government has regularized the services of employees of other departments and on similar line, regularization could have been given by the State to them. On this point, there is a reply of the Deputy Commissioner (Establishment), Office of Divisional Commissioner, Aurangabad. He has contended that as per *Kalelkar Award*, a report of inquiry, policy decision was taken by the Government, which was expressed in Government Resolutions dated 26th December, 1989 and 29th April, 2001 and on that basis, there was regularization of many daily wagers and many work charge employees. It is the specific contention of the Respondents that in view of the decision given by the Supreme Court in the case reported as **(2004) 7 Supreme Court Cases 112**,

(A. Umarani Vs. Registrar Cooperative Societies and others), regularization of the Petitioners is not possible.

40 It is the contentions of the Respondents in reply to specific contentions of regularization of other employees that the Gramsevaks were appointed and separate staffing pattern was created for Zilla Parishad and after three years of work on contract basis, there was a scheme already in existence to absorb them. Explanation for other specific instances is also given in the reply. In any case, only because in some cases, the State Government has regularized the services, the Court is not expected to make orders against the State Government as it is upto the State Government to take policy decision in such regard and many things are required to be considered for that including the necessity of such employees and consequential obligations. From the nature of work particularly of Junior Engineers and the certificates produced by them, it is difficult to believe that all the Junior Engineers were required to be continued for so many years.

41 It is the contention of the Respondents that the project

is of Central Government and the Central Government had made it clear that it will not take permanent liability of any employee under the scheme. It is the contention of the Respondents that in view of the scheme of the Central Government, only temporary posts came to be created for the project and right from the beginning the Petitioners knew the nature of these posts. It is the contention that even the SSA will come to an end when the purpose is served and the State cannot be compelled to continue the project if the purpose is served, only for the sake of persons like Petitioners.

42 The main points which need to be addressed in the present matter are as follows:

- i) Right from the beginning each Petitioner knew that the post was created for particular project, the post was to be filled by registered autonomous body for the project, which it was implementing and the Petitioners was to work on contract basis on consolidated pay during the contract period.
- ii) When post is published as a temporary post and person is expected to work on contract basis, only few persons apply for such posts as they are in dire need of job. Thus, other

eligible candidates are kept away from this process due to nature of post. If such employees are subsequently given permanent post by giving regularization, it sends wrong signal to the society and that is in addition to the breach of mandate of the Constitution.

- iii) The appointment of Government Department for Class-II and Class-III posts are ordinarily made through the Maharashtra Public Service Commission (MPSC). Scrutiny by MPSC is of different nature and it involves both written test and interview. The Petitioners of the present matters were not required to face those tests and they want the employment in the Government.
- iv) The Selection Committee was headed by CEO of Zilla Parishad, but the Regulations show that the CEO was to act on the advise of District level committee and the District level committee contained Chair persons of all the committees of Zilla Parishad. The Executive Committee also contains those members, political figures. In the background of these circumstances, one needs to consider the other circumstances like advertisement was not given to invite the applications of the

Petitioners from the first petition, but they came to be considered and they received the appointment. This circumstance tells that the proper procedure was not followed and there was favoritism and everything was done to give appointment to particular persons.

- v) MPSP, registered body had prepared Regulations in the year 1994 and it was made clear that the employees to be appointed on contract basis were not be treated as employees of the State Government or Zilla Parishad and these posts were created only for particular project of Central Government, which was to be implemented in partnership by the State Government. The project involves limitation on funds as already mentioned and that policy decision was taken already by the Central Government and in some advertisements, limit of expenditure was also mentioned. It cannot be said that the Petitioners were not aware of those limitations.
- vi) Prior to the year 2003, the Petitioners could not have been appointed on the posts they are holding (in DPEP) in view of the contents of Government Resolutions of the years 1994 and 1997.

43 The learned counsel for Petitioners placed reliance on some reported cases. In the case reported as **(1986) 3 Supreme Court Cases 325**, (*Sushil Kumar Yadunath Jha Vs. Union of India and another*), the facts were different. Appointment was given on probation basis as against substantive permanent post. The employee was terminated during the probation period and after some gap, he was reinstated. He had claimed the relief of continuity in service, for ignoring aforesaid gap, break. In view of these circumstances, even when there was a contrary term in the appointment letter, the Apex Court considered the provisions of Section 23 of the Contract Act and held that such term was unconscionable. In the present matter, in view of the nature of posts and other circumstances like absence of advertisements to all eligible candidates, this case can be of no help to the Petitioners.

44 In the case reported as **(1986) 3 Supreme Court Cases 156**, (*Central Inland Water Transport Corporation Limited and another Vs. Brojo Nath Ganguly and another*), facts were different. The case involved a term in contract of employment giving

right of termination to the employer without assigning any reason. Such term was held as unconscionable. That rule and order of termination were set aside after considering Article 14 of the Constitution of India and Section 23 of the Contract Act. This case is also of no help to the Petitioners in view of the peculiar facts of the present case. Reliance was placed on the case of Bombay High Court reported as **(1990) 2 Bom CR 586**, (*Mrs. Geeta Bhaskar Pendse Vs. The Principal, Ayurved College, Sion and others*). At paragraph 22, some observations are there, which was referred by the learned counsel. They are as under:

“**22.** The persons like the petitioner who are selected for appointment are necessitous persons who are not in a position to bargain with their prospective employers. Their need of a job is such a compelling factor that it deprives them of the freedom to bargain. On the other hand, the respondent Nos. 1 and 2 and other colleges have the urge to evade the consequences of the resolution of the Government and the University which grant to the teachers the benefit of confirmation. The economic compulsions of the necessitous candidates leave no alternative but to accept the "interrupted" appointment even though the vacancy is permanent and the continued appointment can be made within the rules. Nevertheless, such

adhoc appointments contrived with a view to evade the consequences of the rules are frequently made by the Educational Institutions.”

Thus, the facts of this reported case were also different. Vacancy was permanent and continued appointment was possible as per the rules. Other points involved in the present matters were not there in the reported case.

45 The facts of the case reported as **2002 SCC OnLine All 1596**, (*Rishi Kumar and etc. Vs. State of U.P. and others*) Allahabad High Court, were different. There was ban on appointment of employees imposed by the State Government and due to that, for attending the work of substantive posts, appointments were given on contract basis. Thus, appointments were against regular vacancies. Subsequently, the ban was removed by the State Government. In view of that circumstance, the High Court gave direction to consider the claim of continuation of the employees appointed on contract basis on same posts and consider the claim of regularization.

46 In the case reported as **(2018) 8 Supreme Court Cases 238**, (*Narendra Kumar Tiwari and others Vs. State of Jharkhand and others*), question of regularization of daily wagers / contractual employees was involved. Rules made in 2015 by the State of Jharkhand provided for regularization of those employees, who had completed ten years of service as on cut-off date. It was held that all those, who had completed ten years of service on the date of promulgation of rules, were entitled to take benefits of these rules in view of peculiar circumstances. The cut-off date was 10th April, 2006 when the State had come into existence on 15th November, 2000. Those, appointments were made as against the permanent posts, which were available.

47 A copy of decision of **Writ Petition No.5867 of 2015**, (*Madhukar s/o Bhavanrao Sadgir and others Vs. State of Maharashtra and others*) decided at this Bench on 31st October, 2018 is produced. It was involving teaching staff of Ashram Schools and non-teaching staff of such schools. The facts were totally different. On permanent posts, those persons were working for more than ten years continuously.

48 The facts of the case reported as **(2018) 13 Supreme Court Cases 432**, (*Sheo Narain Nagar and others Vs. State of Uttar Pradesh and another*) were totally different. The employees of the proceeding had already worked for three years and after that they were offered the service on contract basis. It was not the case of back-door entry. There were no rules for making appointment on contract basis. Then they completed ten years of service and so one time measure in accordance with the ratio of **State of Karnataka Vs. Umadevi (3), (2006) 4 SCC 1**, direction of regularization was given.

49 A copy of judgment delivered by Full Bench of Assam High Court in **Writ Petition (C) No.5002 of 2012** is produced. In that case, the employees were appointed in SSA through regular selection procedure and they were appointed on the post of Shikshan Sarthi. The High Court gave direction to the State Government to give them benefits similar to the benefits given to the persons working on muster roll. For muster roll, some welfare measures were taken by the State Government, which were giving

security of employment. Thus, there was no regularization but some welfare measures were taken and steps were taken for betterment of services.

50 In the present matter, only few of the Petitioners had completed ten years of service with breaks on contract basis on the date of petitions. Services of other Petitioners were protected due to interim relief given by this Court. Further, the appointments were not as per the due process of selection given in the Regulations. The appointments were not as per Government Resolution. Reservation policy was also not followed and record is sufficient to infer that the advertisements or procedure was not ensuring that all the eligible candidates, could have applied for these posts, they could have been considered. Thus, there was violation of Articles 14 and 16 of the Constitution of India. In the case reported as **AIR 2006 Supreme Court 1806**, (*Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors*), the Apex Court has laid down in this regard as follows:

“Unless the appointment is in terms of the relevant rule 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. High Courts acting under Art. 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, 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 Court, which is described as 'litigious employment', 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 felicitate the bypassing of the constitutional and statutory mandates.

...

There are so many waiting for employment and equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Arts. 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 Art. 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.”

down and summed up by the Apex Court in the case reported as **(2004) 7 Supreme Court Cases 112**, (*A. Umarani Vs. Registrar Cooperative Societies and others*). In this case, the Apex Court has laid down that when appointments are made in contravention of the mandatory provisions of the Act and statutory rules framed thereunder, the same would be illegal and cannot be regularized by the State Government. It is laid down that the State cannot invoke the power under Article 162 of the Constitution of India to regularize such appointments. It is further laid down that regularization is not and cannot be a mode of recruitment by any State within the meaning of Articles 12 of the Constitution of India or anybody or authority governed by the statutory Act or rules framed thereunder. Regularization furthermore cannot give permanency to the employees, whose services are adhoc in nature. The Apex Court has laid down that the circumstance that employees were working for long time, cannot be considered as such appointment or service does not give them right of regularization.

52 The learned counsel for Petitioners placed reliance on the decision given by this Court in **Writ Petition No.6344 of 2012**,

(*Vijay Kashinath Honrao Vs. The Zilla Parishad, Aurangabad and others*). The Petitioner was appointed under DPEP as stenographer. That scheme came to an end on 30th June, 2003 and new scheme SSA took place as already observed. It was contended that as per the policy decision of the State Government mentioned in Government Resolution of 20th December, 1997 and as other similar employee was absorbed by the Zilla Parishad, the Petitioner was entitled for absorption. This Court directed the Zilla Parishad to consider the claim of the Petitioner of absorption. In that matter, MPSP was not party Respondent. This is only the instance of absorption by Zilla Parishad of a person appointed on present project and that was done due to order of this Court. All other instances of regularization mentioned by the Petitioners were involving different facts and there was a policy decision of the Government in accordance with Kalelkar Committee report. The learned counsel for Respondents submitted that only because in the past some orders were made by this Court or some regularizations were made, that practice need not be followed in future. He placed reliance on the observations made in paragraph Nos.14 and 15 of the case reported as **(2006) 10 Supreme Court Cases 337**, (*Ekta*

Shakti Foundation Vs. Govt. of NCT of Delhi). The observations are as follows:

“14. “If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order could not be made the basis of issuing a writ compelling the respondent authority to repeat the illegality to cause another unwarranted order. The extraordinary and discretionary power of the High Court under Article 226 cannot be exercised for such a purpose. “(emphasis in original) (See *Secy., Jaipur Development Authority v. Daulat Mal Jain*, SCC p. 51, para 27.)

15. “30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in *Gursharan Singh v. New Delhi Municipal Committee* held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution

which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed: (SCC p. 465, para 9)

'Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination'.

Again in *Jaipur Development Authority* case this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding: (SCC pp. 51-52, para 28)

'Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such

illegal order, not could it be legalised. In others words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High court was clearly in error in directing the appellants to allot the land to the respondents'.

31. In State of *Haryana v. Ram Kumar Mann* this Court observed: (SCC p. 322, para)

'The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them i.e. benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously 'No'. In a converse

case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As state earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right'. "(See State of Bihar v. Kameshwar Prasad Singh, SCC pp. 111-13, paras 30-31.)"

53 The aforesaid ratio can be used in the present matter to reject the claim of the Petitioners that they are entitled to get similar treatment as was given to other employee, who was not properly appointed. This Court is not expected to give such directions to the State as it involves policy matter and breach of mandate of Articles 14, 19 and 309 of the Constitution of India. If the proposition made by the learned counsel for Petitioners is accepted and relief is given by this Court, it will create a bad precedent. This Court holds that no relief can be given to the Petitioners. In the result, the following order is passed:

ORDER

- I. All the petitions stand dismissed.
- II. Interim relief is vacated.
- III. All pending civil applications stand disposed of.
- IV. Contempt petitions also stand disposed of.

[SUNIL K. KOTWAL, J.]**[T. V. NALAWADE, J.]**

. At this stage, the learned counsel for Petitioners requests for continuation of interim relief as she wants to challenge the decision of this Court in Apex Court. Though interim relief is continued for four weeks, the routine practice of the Respondents of shifting the employees from one place to another is not stopped and they are entitled to do it during this period of four weeks.

[SUNIL K. KOTWAL, J.]**[T. V. NALAWADE, J.]***ndm*