

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Pronounced on: 25 .10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.32652 of 2013

and

WMP.No.1 of 2013

Tamil Nadu Slum Clearance Board,
Rep. by its Chairman,
No.5, Kamaraj Salai,
Chennai - 600 005.

.. Petitioner

Vs.

1. Thalaiver,
Tamil Nadu Kudisai Matru Varia Thupparavu,
Paniyalargal Sangam (AITUC),
No.24, 'O' Block, Ramakamathpauram,
Thiaaraya Nagar,
Chennai - 600 017.

2. The Presiding Officer,
Industrial Tribunal, Tamil Nadu,
High Court campus,
Chennai - 600 104.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorari, calling for the records from the 2nd respondent's impugned order made in ID.No.7 of 2005, dated 31.12.2009 and quash the same.

For Petitioner : S.Prabhu

For Respondents R-1 : Mr.S.Arunachalam
for.S.Arunachalam Associates

For R2 : Tribunal

O R D E R

The instant writ petition is for a Writ of Certiorari, challenges the award dated 31.12.2009, passed by the Presiding Officer, Industrial Tribunal, Chennai, in ID.No.7 of 2005 .

2. The Tamil Nadu Slum Clearance Board employed about more than 500 workmen in the city of Chennai. By an order

dated 01.04.2005, these workmen were transferred to Corporation of Chennai, in accordance with the Government order GO.D.No.154, Labour & Employment (H1) Department, dated 11.02.2005. By G.O.Ms.No.130, another 88 workmen were also included in the list of sanitary worker who were transferred to Corporation. The GO.D.No.154, Labour & Employment (H1) Department, dated 11.02.2005, was challenged by the workers. In so far as it did not refer the issue of regularization and permanency of the workers said to be transferred.

3. Writ petition No.19956 of 2005 was filed for a Writ of Certiorarified Mandamus, calling for the records connected with GO.D.No.154, Labour & Employment (H1) Department, dated 11.02.2005, passed by the first respondent and to quash the same in so far as it does not refer the issue of regularization and permanency of the workers whose names are found in the annexure to the impugned Government order and consequently to direct the Tamil Nadu Government, Labour and Employment Department, to refer the issue of regularization and permanency to the Industrial Tribunal, Chennai, for adjudication. The said writ petition was disposed of by an order dated 09.02.2005.

4. The learned Single Judge noted that the Government had referred on two issues to the the industrial tribunal namely,

"(i) Whether the contract of employment of 84 workers employed by the Slum Clearance Board given in Annexure-II is genuine or sham and nominal one.

(ii) Whether they are the direct employees of the Slum Clearance Board?"

5. This Court in its order dated 09.12.2005, directed that the Government must refer one more dispute "If the answer on reference No.2 is in the affirmative in favour of the members of the petitioner union, are they not entitled to be regularized and made permanent and if so, from what date?"

6. Accordingly, the said issue was also referred to tried along with the two issues mentioned above. In the light of the reference, the respondent Association filed a claim statement before the Industrial Tribunal, Chennai, stating as under:-

a) The members of the petitioner union have been engaged for construction and continued maintenance of the flats constructed by the Tamil Nadu Slum Clearance Board.

b) The workers engaged where being paid at the rate of Rs.12.50 per day. c) About 500 workmen who were transferred to Chennai Corporation have not been regularized.

d) These workers are continuing on same work of maintaining the flats. The work done by these workmen are directed and supervised by the department officials.

e) The nature of work of the workmen indicates a systematized working arrangement and activity of their workers

are/were constantly supervised and managed by the officials of the board.

f) For each and every term of the employment, every worker is issued with a chart containing his allotment of duties and the works to be performed by them.

g) It is the Slum Clearance Board supplies the tools and accessories required for their routine work.

h) The workers signed in the attendance register maintained at the section office of the Slum Clearance Board. Movement of every workman in their 8 hours working time is supervised by the Engineers and officials of the Slum Clearance Board.

i) The department also maintained a spot fine system for the non-cleaning or the unsatisfactory work.

j) Warnings were also issued to maintain the precautionary measures while cleaning the manholes, inspection chambers and sewage line, by the officials of Slum Clearance Board. Junior Engineers / Officials are the disciplinary authorities to issue charge memos, calling for explanation if any misconduct found in the work of the workers.

k) The daily rate is fixed by the board as per the schedule of the rates fixed by the PWD. A pseudo contract is maintained on one year basis with the workmen. There is no registered contractor for whom these workmen are working.

l) It is a peculiar situation that the workers themselves are termed by the board as contractors. This workmen are not working with any contractor. Despite the fact that these workmen worked more than three decades from service are not being regularized.

m) When the workmen raised the claim and demanded the regularization of service, the workers were informed that with effect from 01.02.1994, the Slum Clearance Board threatened that they will start engaging contractors after calling for tenders and these daily rated sanitary workers will have to work under the contractor,

7. It is the case of the workmen that there are no intermediary and so-called contractors are the workers themselves. The workers have put in a continuous service of twenty plus years of service. Th work is perennial in nature and is continuous. The work performed by the workmen is an integral part of the work of the Slum Clearance Board. Even according to the norms of the Slum Clearance Board, there should be one worker for 120 families and therefore, continuance of this work and workers are essential of the Slum Clearance Board. The workmen therefore prayed for a declaration in favour of the workmen and award that the contract between the board and the workmen is sham and nominal and the workers are the direct workmen of the respondent Board and they are entitled to their service regularized from the date of joining service as list.

8. The Slum Clearance Board filed its counter stating as hereunder:-

a) The members of the petitioner union were neither appointed by the respondent Board under the service rule nor recruited through the employment exchange.

b) The nature of work entrusted to the members of the said Union is purely based upon the contract of agreement for the limited period and after expiry of the contract of agreement, they have no right to continue the work for the Board.

c) The workers were never employed continuously as alleged in the petition and the contract of agreement executed by the members of the said Union would reveal beyond doubt that the nature of work entrusted to them is purely contractual nature for particular period.

d) Depending on the requirement during a particular period the No. of contractors engaged for sanitary work will vary.

e) The maximum allowable daily rate for engagement of a contractor is fixed by PWD and hence these contractor are allowed to execute agreement at those rates for a specified period for a particular work. They are subsequently engaged as and when required and they are engaged only for a particular period.

f) The works of all the contractors (registered and unregistered), even the works of Class I contractors are supervised by the Board engineers to maintain the quality. It their bounded duty to supervise the works of the contractors. This does not mean the contractors are regular employees or labourers of the Board. The material required for the work are supplied by the Board for maintaining the quality of work and the agreement with the contractors referred to in this case is only for termination of contract, if the work is not satisfactory, but no disciplinary action can be taken since they were not appointed under the rules of the Board.

g) depending on the work requirement, availability of und and based on the delegation of powers for nomination of a contractor the contract period is prescribed. Considering the experience, the contractors were utilized further in the new works, if any, taken up subsequently. Most of the Class-I, Class-II etc., contractors are tendering for work for several years and it does not mean that they are regular employees of labourers of the TNSCB. On humanitarian consideration as well as due to court stay order, these sanitary contractors i.e. the members of the petitioner union are allowed to have repeated execution of agreement for several periods one after another, without any continuity.

h) The claimants are only contractors engaged for particular type of work for a specified period depending on the fund available for the particular work. The engagement of persons for sanitary works on NMR basis has already the been banned by the Government in G.O.Ms.No.1502, Hg. & U. D. Dept,

dated 27.11.1991, and their request for regularization has also been turned down by the High Court in W.A. No.1034/99 filed by the Board. The slum tenements from 1990 onwards are allotted only on hire purchase system. The tenements constructed and for further maintenance, the allottees have to form service society and undertake the maintenance works as per the conditions stipulated in the allotment order. Hence, the arrangement made by the TNSCB, are only of temporary nature. In view of this fact, the contract of the members of the petitioner Union could have been terminated long back as and when the necessity ceases. The existing contractors engaged for scavenging work are continued on the basis of the court direction for the same continuance even without any sufficient fund and work. But as per the direction of the High Court in Writ Appeal filed by the Board, Board could retain them for six months period only. Where scavenging is to be vested with Corporation of Chennai and the maintenance with service societies being formed by the allottees on hire purchase basis, the question of even continuance of these contractors by the Board did not arise for want for work. Further, the roads and streets inside the scheme have initially been handed over to the Corporation of Chennai for maintenance.

9. It is therefore contended by the petitioner that the members of the respondent union were neither appointed by the petitioner board under the service rule nor were they recruited through the employment exchange. The nature of work entrusted to the members of the respondent union herein, is purely based on the contract agreement mainly on need and after expiry of work, they have no right to continue. It is stated that the direct employees of the Tamil Nadu Slum Clearance Board are selected and recruited only through the employment exchange under the service rules of the Board through appointment order subject to the specified condition therein. As such the members of the petitioner union, they are not direct employees of the board. It is therefore contended that since they are not employees of the board, they are not entitled to be regularized and made permanent.

10. The Labour Court framed the following issues,
- "a) Whether process, operation, or other work is incidental to or necessary for the industry, trade, business, manufacture, or occupation that is carried on in the establishment.
 - b) Whether it is of perennial nature, that is to say, of sufficient duration having regard to the nature of the industry, trade business, manufacture, or occupation carried on in that establishment.

- c) Whether it is done through regular workmen in that establishment or an establishment similar thereto and
- d) Whether it is sufficient to employ considerable whole time workmen."

11. After analyzing the evidence and various judgments of the Hon'ble Supreme Court of India, the learned Tribunal came to a conclusion that the contract entered between the board and employees are sham and nominal. The Tribunal upheld the claim of the union that the workmen are the direct employees of the Tamil Nadu Slum Clearance Board. The Tribunal held that the workmen are entitled to be regularized as they are found to be direct employees of Tamil Nadu Slum Clearance Board and their regularization will relate back to the respective date on which each of the workmen completed 480 days of work in a period of 24 calendar months, to be counted from the date of joining in the Slum Clearance Board.

This order has been challenged by the Tamil Nadu Slum Clearance Board.

12. Heard the counsel for the parties.

13. Mr.S.Prabhu, learned counsel appearing for the Tamil Nadu Slum Clearance Board, would contend that the members of the respondent union were neither appointed under the service rules nor recruited through the employment exchange. The nature of the work entrusted to the members had based on the contract of the agreement for the limited period and expiry of the contract of the agreement. They have no right to continue to work for the board continuously as alleged by the workmen. It is also stated that the petitioner workmen were engaged only for a particular type of work for specific period, depending upon the funds available for the work.

14. It is contended by the Slum Clearance Board that the respondents were engaged for sanitary work and the amount paid to them was as per the PWD schedule of work. It is stated that for every time tender for piecework which was entrusted to the workmen, a contract was entered into between the board and contractor and earnest money was deposited by the contractor and after the tender period was over, their services were stopped.

15. It is the contention of the Board that the members of the respondent union are not entitled to regularization after 480 days, after their initial appointment. The claim of the respondent that they are direct employees of the slum clearance board is not tenable. Further the piecework model agreement clearly shows that there was no employer, employee relationship between the petitioner and the respondent. The exhibits clearly show that the respondents are contractors of

the slum clearance board. Pursuant to the G.O.(Ms.No.130 dated 31/08/2005 the slum clearance board had transferred sanitary workers to the Chennai Corporation since the maintenance of the sweeping and others were handed over to the Chennai Corporation. None of the contractor's were continuously engaged by the slum clearance board for carrying out the piecework. The works of all the contractors was supervised by the board engineers to maintain the quality since it is the responsibility of the Board to ensure that the tenaments constructed by the Board are maintained properly. The learned counsel contends that just because the work was being monitored by the officials of the Board, does not mean that contractors are regular employees of the board. Further considering the experience the contractors were utilised further in new works, if any, taken up subsequently. The fact that most of the Class-1, Class-II etc contractors are engaged in work for several years does not mean that they are regular employees of the Slum Board. It is stated that since the respondents were engaged as contractor as per conditions stipulated in the agreement and they cannot be termed as workmen within the meaning of I.D. Act. The direct employees of the Slum Clearance Board are selected and recruited only through the Employment Exchange under Service Rules of the Board through appointment order subject to the specified condition therein. As such, the members of the union are not the direct employees of the board. The contractors were paid as per the agreement as per nature of the work after the completion of work nor like regular employees paid in 1st day of the English calendar.

16. On the other hand, the counsel for the respondent would argue that the order of Tribunal does not require any interference. It is argued by the respondent that the work discharged by them under the Board was of a perennial nature. It is stated that the Tribunal after considering the facts came to a conclusion that the contention of the petitioner Board that the workers of the union were only contract labour was wrong. According to the respondent, the so called contract was only a sham contract, calculated to defeat the various enactments giving security to the workmen and restraining the employers from terminating the services of the workmen without following the procedure under the various labour enactments. It is stated that the executive engineer of the Slum Clearance Board had entered into agreements with every worker and term them as a contractor. It is argued that for every 120 houses only one sanitary worker was appointed and the expenditure on the employees was factored in by the Board in their budget. The attendance registers were maintained by the Slum Clearance Board, in which all the workers would sign daily. It is also argued that the work was supervised by the engineer's of the Board. All the material was supplied by the Slum Clearance Board at their own cost. The salaries were paid by cheque by

the Board directly to the employees and there was no intermediary between the Board and the workmen of the respondent union. The counsel for the respondent therefore would submit that the petitioner Board cannot ignore the services of the members of the respondent union prior to their transfer to the Corporation.

17. The Tribunal took into account the problems of waste disposal in cities and duty of the Corporation to address this issue. The Tribunal on the basis of the facts presented before it found that the work being done by the workers was perennial in nature. The Tribunal was of the opinion that only because the work was of perennial nature, the Government decided to abolish the contract labour in the organization. The Tribunal held that the workmen were directly under the supervision of the respondent Board. The Tribunal thereafter held that Section 10(1) of the Contract Labour Abolition Act mandates that, if the principal employer decided to engage regular workmen on abolition of the contract labour, then it shall give preference to the existing contract labour by relaxing the eligibility conditions. The Tribunal held that the Board must behave like a model employer and regularize the services of the workmen. The Tribunal relied on the judgment of the Hon'ble Supreme Court in S.K.Verma Vs. Mahesh Chandra & Ors, 1983 (4) SCC 214, wherein the Hon'ble Supreme Court held that, public sector corporation are model employers and they should avoid indulging in luxurious litigations and drag workmen to Court by fighting needless litigation. After quoting the said judgment the Tribunal observed as under:-

"This decision applies to the Slum Clearance Board also. Anticipating that the workmen would successfully litigate the issue of regularization, the Chennai Corporation has insisted under Ex,M3 that the retrial benefits to the workmen for the period during which they have been under the service of the Slum Clearance Board. This proposal of the Slum Clearance Board has been accepted by the Slum Clearance Board. This proposal of the Slum Clearance Board has been accepted by the Government also under Ex.M4. This circumstance is a clinching proof to show that the Slum Clearance Board as well as Chennai Corporation were conscious of the fact that the workmen are entitled to regularization.

The workmen are entitled to get their regularization from the date on which each of them had completed 480 days of service within a period of 24 calendar months. As such they are deemed to be permanent workmen.

However, a peculiar situation has arisen in this case. These workmen are appointed to a regular post by the Corporation of Chennai, after taking over their services from Slum Clearance Board, but

conveniently, leaving the length of the service. At this stage what is the benefit to be conferred upon the workers having "deemed permanent status is the issue. No doubt they have been working for long number of years. That is the positive as well as the negative point. When the number of employees are large in number and the duration of service is also long then the burden on Government exchequer cannot be disregarded. Moreover they have been earning money in the capacity as daily rated workmen. The calculation of back wages is also very difficult at this stage. Therefore it would be appropriate to treat the period under which they have been working under Slum Clearance Board towards continuity of service for the purpose of calculating retirement benefits, alone.

In the result, award is passed holding that the employment of 400 listed workmen on the basis of the contract is sham and nominal.

i) The claim of the union that the workmen are the direct employees of Tamil Nadu Slum Clearance Board is upheld.

ii) The listed 400 workmen are entitled to be regularized (as they are found to be direct employees of Tamil Nadu Slum Clearance Board) and their regularization will relate back to the respective date on which each of the workmen completed 480 days of work in a period of 24 calendar months, to be counted from the date of joining, (in the Tamil Nadu Slum Clearance Board). The continuity in service at Tamil Nadu Slum Clearance Board would ensure for getting the retirement benefits alone from Tamil Nadu Slum Clearance Board."

18. The Tribunal held in favour of the respondent workmen primarily on the ground that the work was perennial in nature and that the workers were under the direct control of the Board and further the members of the respondent union had been sponsored by the employment exchange. Even assuming that the agreement entered into between the workmen and the Board was a sham agreement, this does not give any right to the workmen to claim regularization of service rendered by them with the Board prior to their transfer to the Corporation. Admittedly, the workers of the respondent union were appointed on daily basis, depending upon the work assigned to them. The fact that the workmen were signing the registers maintained by the Board or the fact that their work was being supervised by the engineers of the Board or the fact that there was no contractor between the workmen and the Board does not give a right to the workmen to get regularized with the Board.

19. The Hon'ble Supreme Court in Secretary, State of Karnataka Vs. Umadevi, 2006 (4) SCC 1, has categorically held that workmen who have not been appointed in accordance with the service Rules cannot claim for regularization. The judgment rendered by five judges of the Hon'ble Supreme Court holds the field. The question which arose for consideration has been stated in paragraph 7 of the said judgment, which reads as under:-

7. These two sets of appeals reflect the cleavage of opinion in the High Court of Karnataka based on the difference in approach in two sets of decisions of this Court leading to a reference of these appeals to the Constitution Bench for decision. The conflict relates to the right, if any, of employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, to approach the High Court for the issue of a writ of mandamus directing that they be made permanent in appropriate posts, the work of which they were otherwise doing. The claim is essentially based on the fact that they having continued in employment or engaged in the work for a significant length of time, they are entitled to be absorbed in the posts in which they had worked in the department concerned or the authority concerned. There are also more ambitious claims that even if they were not working against a sanctioned post, even if they do not possess the requisite qualification, even if they were not appointed in terms of the procedure prescribed for appointment, and had only recently been engaged, they are entitled to continue and should be directed to be absorbed."

20. The Hon'ble Supreme Court after analyzing the case laws on the point held as under:-

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual

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

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the

parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

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

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

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in Dharwad [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] , Piara Singh [(1992) 4 SCC 118 : 1992 SCC

(L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] , Jacob [Jacob M. Puthuparambil v. Kerala Water Authority, (1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] and Gujarat Agricultural University [Gujarat Agricultural University v. Rathod Labhu Bechar, (2001) 3 SCC 574 : 2001 SCC (L&S) 613] and the like, have given rise to an expectation in them that their services would also be regularised. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. [See Lord Diplock in Council for Civil Services Union v. Minister of Civil Service [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] , National Buildings Construction Corpn. v. S. Raghunathan [(1998) 7 SCC 66 : 1998 SCC (L&S) 1770] and Chanchal Goyal (Dr.) v. State of Rajasthan [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] .] There is no case that any assurance was given by the Government or the department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after Dharwad decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] . Though, there is a case that the State had made regularisations in the past of similarly situated employees, the fact remains that such regularisations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularised in the

service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularisation of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for

claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

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

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees

permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

51. The argument that the right to life protected by Article 21 of the Constitution 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 backdoor. The obligation cast on the State under Article 39(a) of the Constitution 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 recognise 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 recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising 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.

52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College* [1962 Supp (2) SCR 144 : AIR 1962 SC 1210]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

(emphasis supplied)

21. The question referred to above has been answered against the employees. The judgment of the Tribunal with respect runs completely contrary to the above mentioned judgment rendered by five Hon'ble Judges of the Hon'ble Supreme Court. The Tribunal has not given any concrete reasons to distinguish the present case from the judgment of the Hon'ble Supreme Court in State of Karnataka Vs. Umadevi (supra).

22. The Hon'ble Supreme Court however in paragraph 53 opened a small window to hold that there may be cases where irregular appointments of duly qualified person in duly sanctioned posts have been made and the employees are continued to work for ten years or more, in such cases the Hon'ble Supreme Court held, the Union of India or the State Government or their instrumentalities should take steps to regularize them as a one time measure. Paragraph 53 reads as under:-

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly

appointed as per the constitutional scheme."
The present case is not covered by paragraph 53.

23. The workmen have not been appointed in accordance with the Service Rules. The agreement even if it is sham would not result in automatic regularization of the workmen. They were only being paid daily wages. The judgment of the Hon'ble Supreme Court in Secretary to State of Karnataka Vs. Umadevi (supra) squarely applied to them. The fact that some of the workmen were sponsored by the employment exchange also does not grant any right to get regularized in the respondent Board.

24. The workers of the respondent union are not covered under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status To Workmen) Act, 1981. The said Act applies to industrial establishment. Industrial establishments have been defined under Section 2(3) which reads as under:-

"(3) "industrial establishment" means-

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

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

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

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

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

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

(g) any other establishment which the Government may, by notification, declare to be an industrial establishment for the purpose of this Act."

25. The Slum Clearance Board is not an industrial establishment under the said Act. There is no notification notifying the Tamil Nadu Slum Clearance Board as an establishment covered under Tamil Nadu Industrial

Establishment (Conferment of Permanent Status To Workmen) Act, 1981. Since Tamil Nadu Slum Clearance Board is not an establishment under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status To Workmen) Act, 1981, Section 3, which confers permanent status to workmen working in an industrial establishment would not be applicable to the present case. The Hon'ble Supreme Court in A.Umarani Vs. Registrar, Cooperative Societies, 2004 (7) SCC 112. In that case the workmen of the Cooperative Society claim for regularization by a relying on the Tamil Nadu Industrial Establishment (Conferment of Permanent Status To Workmen) Act, 1981. The Hon'ble supreme court held that the Cooperative Society would not come in to the definition of an Industrial establishment under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status To Workmen) Act, 1981. The Hon'ble Supreme Court observed as under:-

" 39. Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed thereunder. It is also now well settled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. (See State of H.P. v. Suresh Kumar Verma [(1996) 7 SCC 562 : 1996 SCC (L&S) 645 : (1996) 33 ATC 336] .)

40. It is equally well settled that those who come by back door should go through that door. (See State of U.P. v. U.P. State Law Officers Assn. [(1994) 2 SCC 204 : 1994 SCC (L&S) 650 : (1994) 26 ATC 906])

41. Regularisation furthermore cannot give permanence to an employee whose services are ad hoc in nature.

42. The question came up for consideration before this Court as far back in 1967 in State of Mysore v. S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] wherein this Court observed: (SCR p. 132 C-D)

"Before we proceed to consider the construction placed by the High Court on the provisions of the said order we may mention that in the High Court both the parties appear to have proceeded on an assumption that regularisation meant permanence. Consequently it was never contended before the High Court that the effect of the application of the said order would mean only

regularising the appointment and no more and that regularisation would not mean that the appointment would have to be considered to be permanent as an appointment to be permanent would still require confirmation. It seems that on account of this assumption on the part of both the parties the High Court equated regularisation with permanence."

43. This Court yet again in R.N. Nanjundappa v. T. Thimmiah [(1972) 1 SCC 409 : (1972) 2 SCR 799] held: (SCC pp. 416-17, para 26)

"If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

44. The said decisions of this Court have received approval of a three-Judge Bench of this Court in B.N. Nagarajan v. State of Karnataka [(1979) 4 SCC 507 : 1980 SCC (L&S) 4] wherein it was held that the procedures for appointment as contained in the Rules framed under Article 309 of the Constitution of India must be complied with.

45. No regularisation is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules.

53. In Chanchal Goyal (Dr.) v. State of Rajasthan [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] this Court categorically held that there was no scope of regularisation unless the appointment was made on a regular basis.

54. In Delhi Development Horticulture Employees' Union v. Delhi Admn. [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386] the Court emphasised how judicial sympathy to the workmen could boomerang upon the purpose wherefor schemes like Jawahar Rozgar Yojna have been framed, and thereby in the larger context, deny the limited benefit extended by the State to the unemployed which would not be available but for such schemes. [See also Executive Engineer (State of Karnataka) v. K. Somasetty [(1997) 5 SCC

434 : 1997 SCC (L&S) 1229] .]

58. A Division Bench of this Court in Surendra Kumar Sharma v. Vikas Adhikari [(2003) 5 SCC 12 : 2003 SCC (L&S) 600] noticed the decision of this Court in Delhi Development Horticulture Employees' Union [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386] to the effect: (SCC p. 15, para 3)

"A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the employment exchanges for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in government departments, public undertakings or agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days they have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts." (SCC p. 112, para 23)

60. Although we do not intend to express any opinion as to whether the cooperative society is a "State" within the meaning of Article 12 of the Constitution of India but it is beyond any cavil of doubt that the writ petition will be maintainable when the action of the cooperative society is violative of mandatory statutory provisions. In this case except the nodal centre functions and supervision of the cooperative society, the State has no administrative control over its day-to-day affairs. The State has not created any post nor could it do so on its own. The State has not borne any part of the financial burden. It was, therefore, impermissible for the State to direct regularisation of the services of the employees of the cooperative societies. Such an order cannot be upheld also on the ground that the employees allegedly served the cooperative societies for a long time."

26. The Tribunal has itself held that on the abolition of the Contract labour, a workman is not entitled to be employed by the principal employer as laid down by the Constitution Bench of the Hon'ble Supreme Court in 2011 (8) SCC 1, Steel Authority of India Vs. National Union Water Front Workers.

27. The respondent workmen cannot be entitled to be regularized and their regularization cannot relate back to the respective dates on which each of the workmen completed 480 days of work in the period of 24 calendar months to be counted from the date of joining so that they are entitled to retirement benefits from the Slum Clearance Board.

Before parting, this Court is constrained to observe that the contract entered into between the Board and the workmen is sham and nominal. It is very unbecoming of the Board to enter into such contracts. The intention is obviously to circumvent the various labour law legislations. Such actions by the Board is deprecated.

28. The Writ Petition is allowed. The award dated 31.12.2009 is set aside. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pkn.

To

1. The Presiding Officer,
Industrial Tribunal, Tamil Nadu,
High Court campus,
Chennai - 600 104.

W.P.No.32652 of 2013

NMI (CO)
CB(27/11/2019)

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