



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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W.P. (MD) Nos.10895 to 10897, 14099 to 14101, 11457, 10866, 11084, 10752 to 10758, 11427, 11287 to 11293, 11003, 10981 to 10985, 16089 to 16096 of 2014

and

M.P. (MD) Nos. 2, 2, 2, 3, 3, 3, 4, 4, 4, 2, 2, 2, 2, 3, 4, 5, 2, 3, 4, 1, 2, 3, 5, 6, 1, 1, 1, 1, 1, 1, 1, 1, 2, 2, 2, 2, 2, 2, 2, 2, 3, 3, 3, 3, 3, 3, 3, 4, 4, 4, 4, 4, 4, 4, 2, 2, 2, 2, 2, 2, 2, 2, 3, 3, 3, 3, 3, 3, 3, 4, 4, 4, 4, 4, 4, 2, 3, 4, 1, 2, 3, 1, 1, 1, 1, 1, 1, 1, 1, 2, 2, 2, 2, 2, 2, 2 and 2 of 2014

andW.M.P. (MD) No.247 of 2017

WP (MD) .No. 10895/ 2014 :

D.MuthuKumar .. Petitioner

vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Secretariat, Chennai- 09.

2.The Commissioner of Municipal Administration
Ezhilagam, Anexe VI Floor, Chepauk, Chennai- 05.

3.The Commissioner,
Madurai Corporation,
Madurai. ..Respondents

Prayer in WP (MD) . 10895/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Order passed by the 1st respondent in his Proceedings Letter (D) No.222/MC-4/2013 dated 05.06.2014 and quash the same as illegal and consequentially to direct the respondents to regularize the service of the petitioner taking into account of the 8 1/2 years continuous service as Pharmacist (Allopathy) within the period that may be stipulated by this Honourable Court.



For Petitioner

.. Mr.M.Ajmal Khan
Senior Counsel
for M/s Ajmal Associates

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP(MD) .No. 10896/ 2014 :

S.Vijaya Kumar

.. Petitioner

vs

- 1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Secretariat, Chennai- 09.
- 2.The Commissioner of Municipal Administration
Ezhilagam, Annexe VI Floor, Chepauk, Chennai- 05.
- 3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD) . 10896/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Order passed by the 1st respondent in his Proceedings Letter (D) No.222/MC-4/2013 dated 05.06.2014 and quash the same as illegal and consequentially to direct the respondents to regularize the service of the petitioner taking into account of the 8 1/2 years continuous service as Pharmacist (Allopathy) within the period that may be stipulated by this Honourable Court.

For Petitioner

.. Mr.M.Ajmal Khan
Senior Counsel
for M/s Ajmal Associates

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2



.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP(MD). 10897/ 2014 :

R.Balasundar Raja

.. Petitioner

vs

- 1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Secretariat, Chennai- 09.
 - 2.The Commissioner of Municipal Administration
Ezhilagam Annexe VI Floor, Chepauk, Chennai- 05.
 - 3.The Commissioner, Madurai Corporation,
Madurai.
- ..Respondents

Prayer in WP(MD). 10897/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Order passed by the 1st respondent in his Proceedings Letter (D) No.222/MC-4/2013 dated 05.06.2014 and quash the same as illegal and consequentially to direct the respondents to regularize the service of the petitioner taking into account of the 8 1/2 years continuous service as Pharmacist (Allopathy) within the period that may be stipulated by this Honourable Court.

For Petitioner

.. Mr.M.Ajmal Khan
Senior Counsel
for M/s Ajmal Associates

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP(MD) .No. 14099/ 2014 :

D.MuthuKumar
<https://hcservices.ecourts.gov.in/hcservices/>

.. Petitioner

vs



1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Secretariat, Chennai- 09.

2.The Commissioner of Municipal Administration
Ezhilagam, Annexe VI Floor, Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 14099/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Order passed by the 3rd respondent in his Proceedings in Ma.Ni..10/19295/2014 dated 26.06.2014 and quash the same as illegal and consequentially to direct the respondents to regularize the service of the petitioner taking into account of the 8 1/2 yars continuous service as Pharmacist (Allopathy) within the period that may be stipulated by this Honourable Court.

For Petitioner .. Mr.M.Ajmal Khan
Senior Counsel
for M/s Ajmal Associates

For Respondents .. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP(MD).No. 14100/ 2014 :

R.Balasundar Raja .. Petitioner

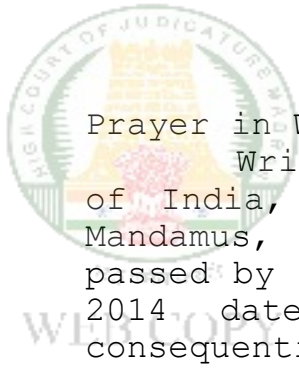
vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Secretariat, Chennai- 09.

2.The Commissioner of Municipal Administration
Ezhilagam, Annexe VI Floor, Chepauk, Chennai- 05.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents



Prayer in WP(MD). 14100/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd respondent in his proceedigs in Ma.Ni. 10/19295 / 2014 dated 26.06.2014 and quash the same as illegal and consequentially to direct the respondents to regularize the service of the petitioenr taking into account of the 8 1/2 years continuous service as Pharmacist (Allopathy) within the period that may be stipulatetd by this Honble court.

For Petitioner .. Mr.M.Ajmal Khan
Senior Counsel
for M/s Ajmal Associates

For Respondents .. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP(MD) .No. 14101/ 2014 :

S. Vijayakumar .. Petitioner

vs

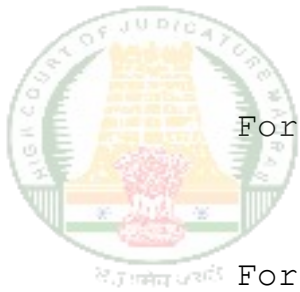
1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Secretariat, Chennai- 09.

2.The Commissioner of Municipal Administration
Ezhilagam, Annexe VI Floor, Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 14101/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd respondent in his proceedigs in Ma.Ni. 10/19295 / 2014 dated 26.06.2014 and quash the same as illegal and consequentially to direct the respondents to regularize the service of the petitioenr taking into account of the 8 1/2 years continuous service as Pharmacist (Allopathy) within the period that may be stipulatetd by this Honble court.



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For Petitioner ..

Mr.M.Ajmal Khan
Senior Counsel
for M/s Ajmal Associates

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

..

Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP(MD) .No. 11457/ 2014 :

S.Sudha Mary Philominal

.. Petitioner

vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 11457/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned orders in Letter (D) No. 222/MC-4/2013 dated 05.06.2014 on the file fo the Respondent No.1 and the quash the same as illegal and consequently direct teh Respondents to regularize the service of the petitionoenr in the post of Staff Nurse with effect from 18.10.2013 within the time stipulated by this Honourable Court.

For Petitioner ..

Mr.S.J.Chakkaravarthy
for M/s Eddy * Embboss

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3



WP (MD) .No. 10866/ 2014 :

K.Jenneth Bibi

.. Petitioner

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vs

- 1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.
- 2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.
- 3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 10866/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter (D) No. 222/MC-4/2013 dated 05.06.2014 on the file of the Respondent NO.1 and quash the same as illegal and consequently to direct the Respondents to regularize the petitioner in her service as Pharmacist (Allopathy) in time scale of pay in the 3rd Respondent Corporation from the date of appointment with all consequential monetary and service benefits within time framed by this Honourable Court and pass such furhter or other orders.

For Petitioner

.. Mr.M.M.Iqbal

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP (MD) .No. 11084/ 2014 :

A.Aval Beer

.. Petitioner

vs

- 1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Secretariat, Chennai- 09.



2.The Commissioner of Municipal Administration
Ezhilagam, Annexe VI Floor, Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 11084/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, by calling for the entire records pertaining to the order passed by the 1st Respondent vide his proceedings in Letter (D) NO. 222/MC-4/2013 dated 05.06.2014 as well as the consequential order passed by the 3rd respondent vide his proceedings in Ma.Ne.10/19295/2014 dated 26.06.2014 and quash the same and consequently direct the Respondents to regularize the petitioners service in the post of Pharmacist and to award all monetary and incidental benefits to the petitioner service by calculating the same from the date of his appointment i.e 08.02.2006.

For Petitioner .. Mr.R.Anand

For Respondents .. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP(MD) .No. 10752/ 2014 :

P.Soundari .. Petitioner

vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 10752/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter (D) No. 222/MC-4/2013 dated 05.06.2014 on the file of the Respondent No.1 and quash the same as illegal and consequently to direct the Respondents to regularize the service of the petitioner in the post of Staff Nurse with effect from 18.10.2013 within the time stipulated by this Honourable Court and pass such further or other orders.

For Petitioner	..	Mr.T.Lajapathi Roy
For Respondents	..	Mr.K.Mu.Muthu Additional Government Pleader for RR1 & 2
	..	Mr.K.Chella Pandian Additional Advocate General Assisted by Mr.R.Murali for R3

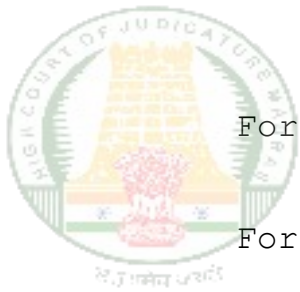
WP(MD).No. 10753/ 2014 :

D.Kalarani	..	Petitioner
		vs

- 1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.
 - 2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.
 - 3.The Commissioner, Madurai Corporation,
Madurai.
- ..Respondents

Prayer in WP(MD). 10753/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter (D) No. 222/MC-4/2013 dated 05.06.2014 on the file of the Respondent No.1 and quash the same as illegal and consequently to direct the Respondents to regularize the service of the petitioner in the post of Staff Nurse with effect from 18.10.2013 within the time stipulated by this Honourable Court and pass such further or other orders.



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For Petitioner

.. Mr.T.Lajapathi Roy

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP(MD) .No. 10754/ 2014 :

P.Mahalakshmi

.. Petitioner

vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 10754/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter (D) No. 222/MC-4/2013 dated 05.06.2014 on the file of the Respondent No.1 and quash the same as illegal and consequently to direct the Respondents to regularize the service of the petitioner in the post of Staff Nurse with effect from 18.10.2013 within the time stipulated by this Honourable Court and pass such further or other orders.

For Petitioner

.. Mr.T.Lajapathi Roy

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3



WP (MD) .No. 10755/ 2014 :

R.Anjugathai

.. Petitioner

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vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 10755/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter (D) No. 222/MC-4/2013 dated 05.06.2014 on the file of the Respondent No.1 and quash the same as illegal and consequently to direct the Respondents to regularize the service of the petitioner in the post of Staff Nurse with effect from 18.10.2013 within the time stipulated by this Honourable Court and pass such further or other orders.

For Petitioner

.. Mr.T.Lajapathi Roy

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP (MD) .No. 10756/ 2014 :

V.Vinodhini

.. Petitioner

vs

1.The Principal Secretary To Government,
<https://hcservices.ecourts.gov.in/hcservices/>
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,



Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 10756/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter (D) No. 222/MC-4/2013 dated 05.06.2014 on the file of the Respondent No.1 and quash the same as illegal and consequently to direct the Respondents to regularize the service of the petitioner in the post of Staff Nurse with effect from 18.10.2013 within the time stipulated by this Honourable Court and pass such further or other orders.

For Petitioner	..	Mr.T.Lajapathi Roy
For Respondents	..	Mr.K.Mu.Muthu Additional Government Pleader for RR1 & 2
	..	Mr.K.Chella Pandian Additional Advocate General Assisted by Mr.R.Murali for R3

WP(MD) .No. 10757/ 2014 :

R.Rani .. Petitioner

vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 10757/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter (D) No. 222/MC-4/2013 dated 05.06.2014 on the file of the



Respondent No.1 and quash the same as illegal and consequently to direct the Respondents to regularize the service of the petitioner in the post of Staff Nurse with effect from 18.10.2013 within the time stipulated by this Honourable Court and pass such further or other orders.

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For Petitioner	..	Mr.T.Lajapathi Roy
For Respondents	..	Mr.K.Mu.Muthu Additional Government Pleader for RR1 & 2
	..	Mr.K.Chella Pandian Additional Advocate General Assisted by Mr.R.Murali for R3

WP(MD) .No. 10758/ 2014 :

P.Krishnaveni .. Petitioner

vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 10758/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter (D) No. 222/MC-4/2013 dated 05.06.2014 on the file of the Respondent No.1 and quash the same as illegal and consequently to direct the Respondents to regularize the service of the petitioner in the post of Staff Nurse with effect from 18.10.2013 within the time stipulated by this Honourable Court.

For Petitioner	..	Mr.T.Lajapathi Roy
For Respondents	..	Mr.K.Mu.Muthu Additional Government Pleader for RR1 & 2



.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP (MD).No. 11427/ 2014 :

S.Thiruppathi

.. Petitioner

Vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Secretariat, Chennai- 09.

2.The Commissioner of Municipal Administration
Ezhilagam, Annexe VI Floor, Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 11427/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Order passed by the 1st respondent in his Proceedings Letter (D) No. 222/MC-4/2013 dated 05.06.2014 and consequential order passed by the 3rd Respondent in his Proceedings in Ma. Ni10/19295/2014 dated 26.06.2014 and quash the same as illegal and consequentially to direct the respondents to regularize the service of the eptitioner taking into account of the 8 1/2 years continuous service as Pharmacist (Allopathy) within the period that may be stipulated by this Honourable Court.

For Petitioner

.. Mr.C.Prithviraj

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP (MD) .No. 11287/ 2014 :

P.Soundari

.. Petitioner



1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai.

4.The Deputy Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 11287/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Ma.Ni, 10/19295/2014 dated 26.06.2014 served on 02.07.2014 on the file of the Respondent No.3 and quash the same as illegal.

For Petitioner .. Mr.T.Lajapathi Roy

For Respondents .. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for RR3 & 4

WP(MD) .No. 11288/ 2014 :

D.Kalarani .. Petitioner
Vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai.



4.The Deputy Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 11288/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Ma.Ni, 10/19295/2014 dated 26.06.2014 served on 02.07.2014 on the file of the Respondent No.3 and quash the same as illegal.

For Petitioner .. Mr.T.Lajapathi Roy

For Respondents .. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for RR3 & 4

WP(MD).No. 11289/ 2014 :

P.Mahalakshmi .. Petitioner

VS

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai.

4.The Deputy Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 11289/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Ma.Ni, 10/19295/2014 dated 26.06.2014 served on 02.07.2014 on the file of the Respondent No.3 and quash the same as illegal.



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For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for RR3 & 4

WP (MD) .No. 11290/ 2014 :

R.Anjugathai

.. Petitioner

vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai.

4.The Deputy Commissioner, Madurai Corporation,
Madurai.

..Respondents

Prayer in WP(MD). 11290/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Ma.Ni, 10/19295/2014 dated 26.06.2014 served on 02.07.2014 on the file of the Respondent No.3 and quash the same as illegal and pass such further or other orders.

For Petitioner

.. Mr.T.Lajapathi Roy

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2



.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for RR3 & 4

WP(MD).No. 11291/ 2014 :

V.Vinodhini

..Petitioner

vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai.

4.The Deputy Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 11291/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Ma.Ni, 10/19295/2014 dated 26.06.2014 served on 02.07.2014 on the file of the Respondent No.3 and quash the same as illegal.

For Petitioner

.. Mr.T.Lajapathi Roy

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for RR3 & 4

WP(MD).No. 11292/ 2014 :

R.Rani

.. Petitioner

Vs



Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai.

4.The Deputy Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 11292/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Ma.Ni, 10/19295/2014 dated 26.06.2014 served on 02.07.2014 on the file of the Respondent No.3 and quash the same as illegal and pass such further or other orders.

For Petitioner .. Mr.T.Lajapathi Roy

For Respondents .. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for RR3 & 4

WP(MD).No. 11293/ 2014 :

P. Krishnaveni .. Petitioner

vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.



3.The Commissioner, Madurai Corporation,
Madurai.

4.The Deputy Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 11293/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Ma.Ni, 10/19295/2014 dated 26.06.2014 served on 02.07.2014 on the file of the Respondent No.3 and quash the same as illegal and pass such further or other orders.

For Petitioner .. Mr.T.Lajapathi Roy

For Respondents .. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for RR3 & 4

WP(MD) .No. 11003/ 2014 :

C.S.Renuga Premalatha ..Petitioner

Vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 11003/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari and Mandamus to call for the records pertaining to the impugned order in letter (D)No.222/MC-4/2013 dated 05.06.2014 on the file of the



respondent no.1 and the consequential order in Ma.Ni.. 10/19225/2014 , dated 26.6.2014 on the file of the respondent no.3 and quash the same as illegal and consequently to direct the respondents to regularize the service of the petitioner in the post of staff nurse with effect from 18.10.2013.

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For Petitioner	..	Mr.T.Lajapathi Roy
For Respondents	..	Mr.K.Mu.Muthu Additional Government Pleader for RR1 & 2
	..	Mr.K.Chella Pandian Additional Advocate General Assisted by Mr.R.Murali for R3

WP (MD) .No. 10981/ 2014 :

T.Usha	..	Petitioner
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VS

- 1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.
- 2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.
- 3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 10981/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the communication letter (D) NO. 222/MC-4/2013 dated 05.06.2014 issued by the 1st respondent and quash the same as illegal and consequently direct them to regularize the petitioner with all the service and monetary benefits.

For Petitioner	..	Mr.VSV.Venkateshvaran
For Respondents	..	Mr.K.Mu.Muthu Additional Government Pleader for RR1 & 2



.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP(MD).No. 10982/ 2014 :

A.Subathra .. Petitioner

Vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 10982/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the communication letter (D) NO. 222/MC-4/2013 dated 05.06.2014 issued by the 1st respondent and quash the same as illegal and consequently direct them to regularize the petitioner with all the service and monetary benefits.

For Petitioner .. Mr.VSV.Venkateshvaran

For Respondents .. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP(MD).No. 10983/ 2014 :

S.Sasikala . Petitioner

VS



1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 10983/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the communication letter (D) NO. 222/MC-4/2013 dated 05.06.2014 issued by the 1st respondent and quash the same as illegal and consequently direct them to regularize the petitioner with all the service and monetary benefits and pass such further or other orders.

For Petitioner .. Mr.VSV.Venkateshvaran

For Respondents .. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP(MD).No. 10984/ 2014 :

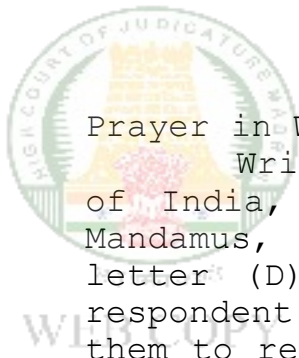
V.Maheshwari .. Petitioner

vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents



Prayer in WP(MD). 10984/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the communication letter (D) NO. 222/MC-4/2013 dated 05.06.2014 issued by the 1st respondent and quash the same as illegal and consequently direct them to regularize the petitioner with all the service and monetary benefits.

For Petitioner

.. Mr.VSV.Venkateshvaran

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali for R3

WP(MD).No. 10985/ 2014 :

C.Senthilkumaran

.. Petitioner

vs

1. The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 10985/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the communication letter (D) NO. 222/MC-4/2013 dated 05.06.2014 issued by the 1st respondent and quash the same as illegal and consequently direct them to regularize the petitioner with all the service and monetary benefits.

For Petitioner

.. Mr.VSV.Venkateshvaran

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2



.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for R3

WP (MD).No. 16089/ 2014 :

P.Mahalakshmi .. Petitioner

vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai.

4.The Deputy Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 16089/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned resolution No. 683 dated 31.07.2014 contained in the proceedings in Ma.Ni. 10/H6/24759/2013 dated 30.07.2014 on the file of the Resondent No. 3 and quash the same as illegal.

For Petitioner .. Mr.T.Lajapathi Roy

For Respondents .. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for RR3 & 4

WP (MD).No. 16090/ 2014 :

<https://hcservices.ecourts.gov.in/hcservices/>

R.Anjugathai .. Petitioner



vs

- 1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.
- 2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.
- 3.The Commissioner, Madurai Corporation,
Madurai.
- 4.The Deputy Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 16090/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned resolution No. 683 dated 31.07.2014 contained in the proceedings in Ma.Ni. 10/H6/24759/2013 dated 30.07.2014 on the file of the Resondent No. 3 and quash the same as illegal.

For Petitioner .. Mr.T.Lajapathi Roy

For Respondents .. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for RR3 & 4

WP(MD) .No. 16091/ 2014 :

D.Kalarani .. Petitioner

vs

- 1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.



2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai.

4.The Deputy Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 16091/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned resolution No. 683 dated 31.07.2014 contained in the proceedings in Ma.Ni. 10/H6/24759/2013 dated 30.07.2014 on the file of the Resondent No. 3 and quash the same as illegal.

For Petitioner .. Mr.T.Lajapathi Roy

For Respondents .. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for RR3 & 4

WP (MD) .No. 16092/ 2014 :

P.Krishnaveni .. Petitioner

vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai.

4.The Deputy Commissioner, Madurai Corporation,
Madurai. ..Respondents



Prayer in WP(MD). 16092/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned resolution No. 683 dated 31.07.2014 contained in the proceedings in Ma.Ni. 10/H6/24759/2013 dated 30.07.2014 on the file of the Resondent No. 3 and quash the same as illegal.

For Petitioner

.. Mr.T.Lajapathi Roy

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali for RR3 & 4

WP(MD) .No. 16093/ 2014 :

C.S.Renuga Premalatha

.. Petitioner

Vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai.

4.The Deputy Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 16093/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned resolution No. 683 dated 31.07.2014 contained in the proceedings in Ma.Ni. 10/H6/24759/2013 dated 30.07.2014 on the file of the Resondent No. 3 and quash the same as illegal.

For Petitioner

.. Mr.T.Lajapathi Roy



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For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for RR3 & 4

WP (MD) .No. 16094/ 2014 :

R.Rani

.. Petitioner

Vs

1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai.

4.The Deputy Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD) . 16094/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned resolution No. 683 dated 31.07.2014 contained in the proceedings in Ma.Ni. 10/H6/24759/2013 dated 30.07.2014 on the file of the Resondent No. 3 and quash the same as illegal.

For Petitioner

.. Mr.T.Lajapathi Roy

For Respondents

.. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for RR3 & 4



WP (MD) .No. 16095/ 2014 :

V.Vinothini

.. Petitioner

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Vs

- 1.The Principal Secretary To Government,
The State of Tamilnadu,
Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.
- 2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.
- 3.The Commissioner, Madurai Corporation,
Madurai.
- 4.The Deputy Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 16095/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned resolution No. 683 dated 31.07.2014 contained in the proceedings in Ma.Ni. 10/H6/24759/2013 dated 30.07.2014 on the file of the Resondent No. 3 and quash the same as illegal.

For Petitioner .. Mr.T.Lajapathi Roy

For Respondents .. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for RR3 & 4

WP (MD) .No. 16096/ 2014 :

P.Soundari

.. Petitioner

vs

- 1.The Principal Secretary To Government,
The State of Tamilnadu,



Municipal Administration & Water Supplies Department,
Fort St. George, Chennai- 09.

2.The Commissioner of Municipal Administration
Chepauk, Chennai- 05.

3.The Commissioner, Madurai Corporation,
Madurai.

4.The Deputy Commissioner, Madurai Corporation,
Madurai. ..Respondents

Prayer in WP(MD). 16096/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records pertaining to the impugned resolution No. 683 dated 31.07.2014 contained in the proceedings in Ma.Ni. 10/H6/24759/2013 dated 30.07.2014 on the file of the Respondent No. 3 and quash the same as illegal.

For Petitioner .. Mr.T.Lajapathi Roy

For Respondents .. Mr.K.Mu.Muthu
Additional Government Pleader
for RR1 & 2

.. Mr.K.Chella Pandian
Additional Advocate General
Assisted by Mr.R.Murali
for RR3 & 4

COMMON ORDER

The rejection of benefit of regularization and permanent absorption made by the Government in proceeding dated 05.06.2014 is under challenge in some of the Writ Petitions.

2.The common facts required for adjudication in all these Writ Petitions are that all the writ petitioners are qualified for appointment to the post of Pharmacists and Staff Nurses. It is not in dispute that all the writ petitioners are fully qualified for appointment either to the post of Pharmacists or to the post of Staff Nurses respectively.

3.The learned Senior Counsel appearing on behalf of the writ petitioners made a submission that there was an administrative exigencies in the matter of providing medical facility in respect of



the hospitals administered by Madurai Corporation. There was a ban during the relevant point of time to fill up the post of Pharmacists and Staff Nurses. Thus, the authorities competent of Madurai Corporation had taken a decision to engage temporary employees on contract basis, more specifically, to the posts of Pharmacists and Staff Nurses. Thus, initiation of process of appointment to these writ petitioners cannot be considered as illegal and the circumstances arose also made the authorities to invite applications for appointment to the posts of Pharmacists and Staff Nurses.

4.The learned counsel appearing for the writ petitioners in all these Writ Petitions are of the opinion that the appointment of the writ petitioners can never be held as illegal appointment and in fact, the process of appointment was undertaken by issuing recruitment notification through the Newspaper. The procedures were followed, selection was conducted, the writ petitioners participated in the selection of process, written examination was conducted, successful candidates were allowed to participate in the process of interview and thus, the writ petitioners were appointed through the established principles of selection and there is no illegality. The process of interview were conducted by the competent authorities and the orders of appointment were issued in proceeding dated 01.02.2006.

5.It is contended that though initial appointment of the writ petitioners were made on contract basis for one year, the writ petitioners were allowed to continue in service and now, they are in service for a considerable length of time. Some of the writ petitioners were already over aged, some of them already left the job. Under these circumstances, the benefit of regularization is to be extended in favour of the writ petitioners, who are all continuing in service for a long period.

6.The learned Senior Counsel for the writ petitioners relied on the judgment of the Hon'ble Supreme Court of India in the case of **State of Orissa and another Vs. Mamata Mohanty** reported in **(2011) 4 MLJ 692 (SC)**, wherein it has been observed as follows:-

"19. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc., that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment, mandatory compliance of the said Constitutional requirement is to be fulfilled. The



equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

7. In the judgment of the Hon'ble Division Bench of this Court, dated 29.04.2014 passed in W.A(MD)Nos.351, 911 and 908 of 2012, the Hon'ble Division Bench has also granted a benefit of regularization by disagreeing with the applicability of the principles laid down in the case of **Secretary, State of Karnataka and others Vs. Umadevi and others** reported in (2006) 4 SCC (1).

8. The learned Senior Counsel is of an opinion that in the present case also the principles laid down in Umadevi case need not be relied upon. The facts and circumstances are different and therefore, the Umadevi case cannot be applied in the present case on hand and by relying the Division Bench's judgment, the benefit of regularization and permanent absorption is to be granted to all these writ petitioners.

9. The learned counsel appearing for some of the writ petitioners also supported the view expressed by the learned Senior Counsel and they have further added that the initial appointments were made with reference to the Madurai City Municipal Corporation Act and further, initial appointment of these writ petitioners were not illegal, recruitment was made by following the procedures and the writ petitioners were allowed to continue in service for a considerable length of time. Thus, they are entitled for regularization and permanent absorption.

10. It is further contended that the benefit of regularization and permanent absorption were granted in respect of other similarly placed employees, who were initially appointed on contract basis for a specific tenure. When the benefit of regularization was granted in respect of other similarly placed employees, the same benefit is to be extended to the writ petitioners also.

11. The learned Additional Government Pleader appearing on behalf of the official respondents disputed the contentions raised by the writ petitioners by stating that by virtue of G.O.Ms.212, Personnel and Administrative Reforms Department, dated 29.11.2001, there was a ban of employment by the Government during the relevant point of time. However, paper advertisement to the selection of post for Pharmacists and Staff Nurses, with a specific condition of specific time period was issued on 15.06.2005, in order to meet out the emergency circumstances in Madurai Corporation Hospitals. Accordingly, the process of selection was conducted, specifically to appoint and fill up the post of Pharmacists and Staff Nurses on contract basis for a period of one year. Thus, the very process of selection was undertaken on temporary basis for the purpose of meeting out the emergency circumstances and therefore, the writ petitioners cannot now claim regularization or permanent absorption



contrary to the conditions of appointment made, which was accepted by all the writ petitioners.

12. The writ petitioners on expiry of one year period submitted representations seeking regularization on 29.05.2006. The Corporation also recommended the case of these writ petitioners to the Government on 24.07.2006. However, the Government rejected the proposal on 30.10.2006 itself. The claim of the writ petitioners for regularization and permanent absorption was rejected by the Government without any lapse of time, by order dated 30.10.2006. The order states that "request of the medical personnels appointed on contract basis in Madurai and Tiruchirapalli Corporations for regularisation of their services and appointment in regular time scale of pay in permanent vacancies is rejected by the Government". In another letter dated 03.04.2007, the Government made an observation as follows:-

"the Commissioner, Madurai Corporation has requested to accord permission to extend the contract period of the Medical personnel appointed on contract basis for a further period of one year. In your letter third cited, it has been stated that there is no justification in the proposal and the proposal may be rejected and the Commissioner, Madurai Corporation may be directed to fill up the posts as per rules as already instructed."

13. Thus, even during the year 2007, the claim of the writ petitioners for regularization was rejected. The Government has directed the Commissioner, Madurai Corporation to fill up the posts by following the recruitment rules in force. Such instructions were already granted to Madurai Corporation also.

14. The repeated proposals sent by Madurai Corporation for grant of regularization were consistently rejected by the Government and the final rejection order was issued in proceeding dated 05.06.2014, which is now under challenge in some of the Writ Petitions.

15. Based on the rejection order of the Government, the Madurai Corporation also passed resolution Nos. 682 and 683 of 2014, dated 31.07.2014, rejecting the appointment Committee Resolution dated 17.10.2013. Thus, the benefit of regularization and permanent absorption cannot be granted to the writ petitioners and they have to secure appointment only by participating in the open competitive process, whenever the recruitment notification is issued for regular appointment in accordance with the recruitment rules in force.

16. The learned Additional Government Pleader made a submission that at no point of time, the Government extended any scope for grant of regularization to these contract employees and right from the date of expiry of the period of one year contract, the Government rejected the claim for regularization. A constant



view was taken by the Government by stating that the recruitment rules ought to be followed. However, it was stated that the appointment on contract basis for a period of one year had not been done in accordance with the recruitment rules in force. The rule of reservation was not followed and therefore, such appointments cannot be considered as made under the constitutional schemes.

17. Considering the arguments of the respective learned counsel appearing both for the writ petitioners and the respondents, this Court is of the considered opinion that the relief in such nature of cases ought to be granted, considering the social implications as well as the constitutional principles. It is not as if the constitutional Courts can issue directions to regularize the service to these contract employees appointed for one year. In the event of granting such reliefs in number of litigations, undoubtedly it will infringe the rights of the lakhs and lakhs of citizens, whose constitutional rights are also to be equally protected. The principles of "social justice" enunciated in the Constitution require, while granting constitutional remedies the Courts to follow the principles consistently, so as to avoid all illegality or irregularity in public appointments.

18. The illegality or irregularity, corrupt activities in public appointments are minimized, then, we are marching towards the achievement of the constitutional goals. If we can able to reduce the illegality or irregularity in public appointments, undoubtedly, we are proceeding towards efficient administration. Efficient administration is essential for the development of our great Nation. Thus, transparency as well as consistency in public appointments in accordance with the recruitment rules are paramount importance. Only through following these basic aspects, the State Government achieves the constitution goals and fulfils directive principles.

19. If many number of illegal or irregular appointments are allowed, that efficiency level in public administration would be descending. Once efficiency is lost, then developmental activities will also slow down. Under these circumstances, constitutional Court plays major role in preventing the authorities from making such illegal appointments. It is duty mandatory on the part of the constitutional Courts to ensure that the public authorities make appointment only under constitutional schemes and by following the recruitment rules in force and by providing equal opportunity to all eligible candidates, who are all aspiring to secure public employment through open competitive process. Thus, in the cases of such nature, the Courts cannot carry away with the sympathy of certain facts like continuance of service for few years or otherwise. Such facts made a ground for showing of misplaced sympathy and leniency. Such nature of cases will infringe the constitutional rights of larger sector and thereby, would cause damage to the efficiency level in public administration. However, the elements in this regard are important and appointments are to be made strictly in accordance with the rules in force.



20. This apart, the appointments of the writ petitioners were made as per the notification issued on 15.06.2005. On a perusal of the notification, it is stated in clear terms that "the tenure shall be for one year initially and if both parties agree, it is extendable for another two years. It is further stated that initial appointment is for one year on contract basis. The order of appointment dated 01.02.2006 also enumerates as follows:-

"1) The Contract period shall be for one year from the date of joining (if both parties agree, it is extendable for another two years)

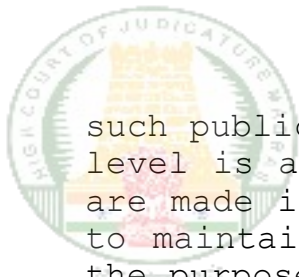
2) You cannot claim any seniority or regular time scale

3) You have to work in the hospital from 8.00 AM to 5.00 PM with one hour lunch break, between 1.00 PM to 2.00 PM."

21. The appointment order enumerates that contract period shall be for one year from the date of joining and they cannot claim any seniority or regular time scale of pay. Therefore, the writ petitioners were very much aware of the conditions imposed in the appointment order. They joined the post by accepting the conditions of service. Once the petitioners had accepted the conditions of service and joined in the post, thereafter, they cannot turn around and say that they are entitled for regularisation and permanent absorption.

22. The growing trends across the Country in various States are that the people try to get appointment from various sources, which all are not in accordance with the recruitment rules in force. Once they enter into public services through some other sources on temporary contract basis, daily wage basis etc., thereafter, they are making attempt to continue in service for a considerable length of time. After working for some years, they are attempting to get regularisation and permanent absorption. However, they do not remember that their initial appointments were not in accordance with the recruitment rules in force. Such practice of securing public appointments on contract basis ought to be deprecated and the Constitutional Courts cannot encourage such back door entries to the public service. All eligible candidates must keep in mind that they should enter into the public services under the Constitutional schemes and by participating in the open competitive process in accordance with the recruitment rules in force.

23. Another question raises in the mind of the Court is that if a public servant enters into the Government service through such methods, which is not in accordance with the rules in force, then, how such a public servant will be honest and maintain honesty and integrity. Therefore, all these aspects are very much important in the social prospective. Persons who enter into the public service through back door entry and this Court is of the undoubted opinion that public cannot accept the level of honesty or integrity from



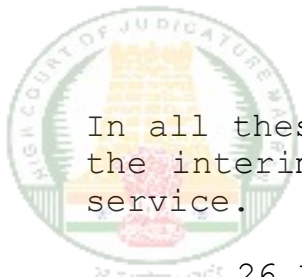
such public servant. If this being the factum, then, the efficiency level is also damaged. Under these circumstances, the appointments are made in accordance with the recruitment rules in force not only to maintain the efficiency level in public administration, but for the purpose of providing better services to the people of this great nation. All these aspects are interlinked. We cannot accept this method of appointment with less efficiency level as well as corrupt activities. All these aspects once interlinked, we have to be cautious in allowing such regularisation or permanent absorption in violation of the recruitment rules in force.

24.As far as the present Writ Petitions are concerned, the Government consistently, disallowed the claim of the writ petitioners even in the final rejection order dated 05.06.2014. The Government in the impugned order stated as follows:-

*"4.The requests of the time individual and the proposal of the Commissioner of Municipal Administration have already been received and examined by the Government. With reference to the recommendation of the Commissioner, Madurai Corporation dated 24.07.2006 the Government examined the issue and rejected the same vide Government letter No.31783/MC.IV/2006-1 dated 30.10.2006. Again the request of the Commissioner of Madurai Corporation for extending their contract period for one more year was also rejected vide Government letter No.35807/MC IV/2006 dated 3.4.2007 and the petitions filed by them in 2007, were also dismissed the High Court on 3.4.2009. **Further the request of the individuals submitted through the Mayor of Madurai addressed to the Hon'ble Minister has been rejected in Letter (D) No.276, Municipal Administration and Water Supply Department, dated 24.06.2009.***

5.In this connection, it is informed that the above recruitment were done during the ban period without observing the orders issued in G.O.(Ms)No.212, Personnel and Administrative Reforms Department dated 29.11.2001. They were appointed on contract periods for a period of one year only which was indicated in their appointment order itself it is also pointed out that the above recruitments were made without consulting the Employment Exchange and without following the Rule of Reservation while directly, recruitment them."

25.The contentions of the writ petitioners that the appointment of the writ petitioners were continued even through order dated 18.10.2013, deserve no further consideration, in view of the fact that all these writ petitioners were allowed to continue in service based on the interim order granted by this Court and by filing these writ petitions. The earlier Writ Petition was dismissed with liberty and the rejection subsequently, passed was challenged by the writ petitioner by way of another writ petition.



In all these writ petitions, interim order were granted and based on the interim order, the writ petitioners were allowed to continue in service.

26. Even paragraph No.53 of the judgment of the Constitutional Bench of the Hon'ble Supreme Court of India in the case of Umadevi clarifies that mere continuance of such litigious employments cannot be a ground for grant of regularisation and permanent absorption in violation of the recruitment rules in force. Thus, mere continuance of the writ petitioners beyond the period of contract cannot be a ground for the purpose of grant of regularisation, in view of the fact that they are continuing the service based on the litigation pending before the High Court and based on the interim order granted.

27. This Court also elaborately discussed the legal principles settled by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of Umadevi in W.P.Nos.28633 to 28646 of 2014, dated 12.12.2017, beyond the Umadevi case binding nature of principles are also to be considered by this Court, in view of the fact that the writ petitioners raised a ground that the principles laid down by the Constitution Bench is not applicable to the present cases on hand.

28. As far as the present Writ Petitions are concerned, it is an admitted fact that the writ petitioners were appointed on contract basis for one year and no extension was granted. They continued in service, by virtue of the interim order granted by this Court. This apart, the rule of reservation was not followed during the selection for appointment to the post of Pharmacists and Staff Nurses. When the rule of reservation is not followed, such appointments are declared unconstitutional and in violation of the recruitment rules in force. Undoubtedly, even in respect of these irregular appointments, this Court is of the considered opinion that regularisation cannot be granted in violation of the legal principles settled by the Hon'ble Supreme Court. In this case, an amount of illegality is also interfered, in view of the fact that the rule of reservation was not followed at the time of appointing the writ petitioners. Once the rule of reservation is not followed, undoubtedly, all such appointments are to be declared unconstitutional, in view of the fact that the rule of reservation is fundamental right of the citizen.

29. The relevant paragraphs of the judgment passed in W.P.Nos.28633 to 28646 of 2014, dated 12.12.2017 are extracted hereunder:-

"36. Before considering the subject of regularization and permanent absorption, this Court has to consider the interpretation of the judgments on "binding nature" or "binding precedent". In view of the fact that the learned counsel for the petitioner has cited number of judgments, which were passed subsequent to the



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

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

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

17. In **State of Bihar v. Kalika Kuer alias Kalika Singh and others [JT (2003) (4) SC 489]**, it has been held:-

"10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam



and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. ..."

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

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

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

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



"The court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a Court of a co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords." In **Virayya v. Venkata Subbayya** it has been held by the Andhra High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in *Bilimoria v. Central Bank of India*. The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court."

20. Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforesaid pronouncements including that of the Constitution Bench and, therefore, we entirely agree with the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline.

21. In the context, we may fruitfully note what has been stated in **Pradip Chandra Parija and others v. Pramod Chandra Patnaik and others [JT (2002) 5 SCC 23]**. In the said case, the Constitution Bench was dealing with a situation where the two-Judge Bench disagreeing with the three-Judge Bench decision directed the matter to be placed before a larger Bench of five Judges of this Court. In that scenario, the Constitution Bench stated:- "6. ... In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. ...



22. In **Chandra Prakash and others v. State of U.P. and another** [JT (2002) (3) SC 493], another Constitution Bench dealing with the concept of precedents stated thus:-

"22. ... The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of **Raghubir Singh** (1989) 2 SCC 754) held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. ...

23. Be it noted, **Chandra Prakash** concurred with the view expressed in **Raghubir Singh** and **Pradip Chandra Parija**.

24. In **Sandhya Educational Society and another v. Union of India and others** (2014) 7 SCC 701), it has been observed that judicial decorum and discipline is paramount and, therefore, a coordinate Bench has to respect the judgments and orders passed by another coordinate Bench. In **Rattiram and others v. State of Madhya Pradesh** (2012) 4 SCC 516), the Court dwelt upon the issue what would be the consequent effect of the latter decision which had been rendered without noticing the earlier decisions. The Court noted the observations in **Raghubir Singh** (supra) and reproduced a passage from **Indian Oil Corporation Ltd. v. Municipal Corporation** (1995) 4 SCC 96) which is to the following effect:- "8. ... The Division Bench of the High Court in **Municipal Corpn., Indore v. Ratnaprabha Dhandra** was clearly in error in taking the view that the decision of this Court in **Ratnaprabha** was not binding on it. In doing so, the Division Bench of the High Court did something which even a later coequal Bench of this Court did not and could not do. ...

25. It also stated what has been expressed in **Raghubir Singh** (supra) by R.S. Pathak, C.J. It is as follows:- "28. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. ..."

26. In **Rajesh** (supra) the three-Judge Bench had delivered the judgment on 12.04.2013. The purpose of



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

"8. Since, the Court in **Santosh Devi** case actually intended to follow the principle in the case of salaried persons as laid down in **Sarla Verma** case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years. 9. In **Sarla Verma** case, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

37. The Constitution Bench of the Hon'ble Supreme Court of India, while dealing with the cases of accident claims, has elaborately discussed about the "binding precedent". The case in relation to the Motor Accident Claims, the case of "**Sarla Verma**" was being followed by all the Courts across the Country for the purpose of awarding compensation. When the question arose that the "binding nature" of the said case of "**Sarla Verma**" delivered by the Hon'ble Supreme Court of India, the Constitution Bench headed by the Hon'ble Chief Justice of India held that the principles laid down in the case of "**Virayya v. Venkata Subbayya**", it has been held by the Andhra Pradesh High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, it is further held that in the case of **State of Bihar v. Kalika Kuer alias Kalika Singh and others**, reported in [JT (2003) 4 SC 489], held that the earlier judgment may seem to be not correct yet it will



have the binding effect on the later Bench of coordinate jurisdiction. Their Lordships rendered the case of **Chandra Prakash and others v. State of U.P. and another, reported in [JT 2002 (3) SC 493]**, held that the doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court.

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

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

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

40. In view of the legal principle settled in the matter of "binding precedent", now, this Court is bound by the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in the "**Umadevi Case**". Admittedly, there is no other subsequent Constitution Bench judgment in respect of the subject of regularization and permanent absorption. The last judgment rendered by the Constitution Bench in the subject matter is "**Umadevi Case**". Thus, the legal principles settled by the Constitution Bench in "**Umadevi Case**" are of "binding precedent" or to be followed as "binding precedent". Thus, the facts and circumstances of the present writ petition has to be considered only in the light of the principles laid down by the Constitution Bench. All other judgments subsequently passed by the Hon'ble Supreme Court of India may have certain distinctions far and against. However, these judgments are to be interpreted only based



on the facts and circumstances prevailing in that particular case and therefore, this Court cannot consider those judgments delivered on a particular facts in relation to that particular case. However, the legal principles are to be considered in relation to the facts and circumstances of the present case on hand.

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

"5. This Court has also on occasions issued directions which could not be said to be consistent with the constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualisation of justice. The question arises, equity to whom? Equity for the handful of people who have approached the court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the constitutional scheme, certainly tend to water down the constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench"

42. This Court wants to look into the very findings made by the Hon'ble Supreme Court of India in the above said paragraph (5), the Apex Court has conceded that the Hon'ble Supreme Court of India had also on occasions, issued directions, which could not be said to be consistent with the Constitutional schemes of public employment. Such directions are issued presumably on the basis of equitable considerations or individualisation of justice. The Hon'ble Supreme Court of India raised a question that equity to whom? Equity for the handful of people who have approached the Court with the claim, or equity for the teeming millions of this Country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin has also to be considered and the way open to any Court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the constitutional scheme, certainly tend to water down the constitutional requirements. It is this conflict that reflected in these cases referred to the Constitution Bench.



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

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

"**10.** When these matters came up before a Bench of two Judges, the learned Judges referred the cases to a Bench of three Judges. The order of reference is reported in Secy., State of Karnataka v. Umadevi (1) [(2004) 7 SCC 132 : 2004 SCC (L&S) 935 : (2003) 9 Scale 187] . This Court noticed that in the matter of regularisation of ad hoc employees, there were conflicting decisions by three-Judge Benches of this Court and by two-Judge Benches and hence the question required to be considered by a larger Bench. When the matters came up before a three-Judge Bench, the Bench in turn felt that the matter required consideration by a Constitution Bench in view of the conflict and in the light of the arguments raised by the Additional Solicitor General. The order of reference is reported in Secy., State of Karnataka v. Umadevi (2) [(2006) 4 SCC 44 : (2003) 10 Scale 388] . It appears to be proper to quote that order of reference at this stage. It reads: (SCC p. 45, paras 1-5)

"**1.** Apart from the conflicting opinions between the three-Judge Bench decisions in Ashwani Kumar v. State of Bihar [(1997) 2 SCC 1 : 1997 SCC (L&S) 465 : 1996 Supp (10) SCR 120] , State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] and Dharwad Distt. PWD Literate Daily Wage Employees Assn. v. State of Karnataka [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] on the one hand and State of H.P. v. Suresh Kumar Verma [(1996) 7 SCC 562 : 1996 SCC (L&S) 645 : (1996) 33 ATC 336 : AIR 1996 SC 1565 : (1996) 1 SCR 972] , State of Punjab v. Surinder Kumar [(1992) 1 SCC 489 : 1992 SCC (L&S) 345 : (1992) 19 ATC 500 : AIR 1992 SC 1593 : 1991 Supp (3) SCR 553] and B.N. Nagarajan v. State of Karnataka [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] on the other, which



have been brought out in one of the judgments under appeal of the Karnataka High Court in *State of Karnataka v. H. Ganesh Rao* [(2001) 4 Kant LJ 466 (DB)] , decided on 1-6-2001 the learned Additional Solicitor General urged that the scheme for regularisation is repugnant to Articles 16 (4), 309, 320 and 335 of the Constitution and, therefore, these cases are required to be heard by a Bench of five learned Judges (Constitution Bench).

2. On the other hand, Mr M.C. Bhandare, learned Senior Counsel, appearing for the employees urged that such a scheme for regularisation is consistent with the provisions of Articles 14 and 21 of the Constitution.

3. Mr V. Lakshmi Narayan, learned counsel appearing in CCs Nos. 109-498 of 2003, has filed the GO dated 19-7-2002 and submitted that the orders have already been implemented.

4. After having found that there is conflict of opinion between the three-Judge Bench decisions of this Court, we are of the view that these cases are required to be heard by a Bench of five learned Judges.

5. Let these matters be placed before the Hon'ble the Chief Justice for appropriate orders."

We are, therefore, called upon to resolve this issue here. We have to lay down the law. We have to approach the question as a constitutional court should."

45. The above said Paragraph (10), stipulates that there were conflicting decisions by three-Judge Benches of this Court and by two-Judge Benches of the Hon'ble Supreme Court of India and therefore, the Hon'ble Supreme Court of India has considered that the question required to be considered by a larger Bench. It is further observed that when the matters came up before a three-Judge Bench, the Bench in turn felt that the matter required consideration by a Constitution Bench in view of the conflict and in the light of the arguments raised by the Additional Solicitor General. In the reference made by the Hon'ble three-Judge Bench itself decided that the scheme for regularisation is repugnant to Articles 16(4), 309, 320 and 335 of the Constitution and, therefore, these cases are required to be heard by a Bench of five learned Judges (Constitution Bench).

46. In paragraph (11) of the "**Umadevi Case**", it is stated that in addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of



service of persons appointed to public services and posts in connection with the affairs of the Union or of a State.

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

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

"12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognised and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognised and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme."

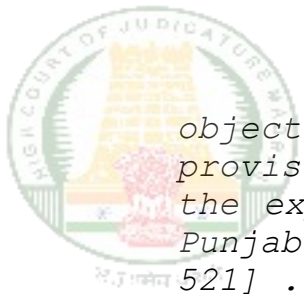
49. The spirit of Paragraph (12) of the "**Umadevi Case**" judgment is that the temporary engagements like



daily wage appointments, consolidated pay appointments and temporary appointments and engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a Court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognised and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts, whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme. Thus, it is made clear by the Constitutional Bench that regular recruitment rules in force, followed scrupulously by the competent authorities and engagements on temporary basis cannot be resorted to or the same cannot lead to permanent absorption or regularization. Further, it is stated that the Government is entitled to appoint the persons on daily wages/consolidated pay/temporary basis, if a Government is of the opinion that a project has to be implemented or a special works to be carried out, then they are at liberty to do so, by engaging the temporary employees. Such being the concept accepted by the Hon'ble Supreme Court of India, no doubt, a mere appointment on temporary/daily wage basis cannot constitute a right for the employees to claim regularization or permanent absorption.

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

"13. What is sought to be pitted against this approach, is the so-called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question



objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in *State of Punjab v. Jagdip Singh* [(1964) 4 SCR 964 : AIR 1964 SC 521]. It was held therein: (SCR pp. 971-72)

"In our opinion where a government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status."

51. This Court cannot omit the powerful statement made by the Constitution Bench in respect of providing equal opportunity and in respect of implementing the equality clause enshrined under Article 14 & 16 of the Constitution. In the above said paragraph (13), the Hon'ble Supreme Court of India has emphasized that it cannot also be forgotten that it is not the role of the Courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us, while adopting the Constitution. We, the people of India, while adopting the Constitution.

52. The approving of such acts also results in depriving many of their opportunity to compete for public employment. The Constitution Bench of "**Umadevi Case**", considered the proposition of law laid down by the previous Constitution Bench in the case of **State of Punjab Vs. Jagdip Singh, reported in [AIR (1964) SC 521]**. The earlier Constitution Bench in the case of **State of Punjab Vs. Jagdip Singh**, held that where a Government Servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status.

53. In paragraph (14) of the "**Umadevi Case**" judgment, the Hon'ble Supreme Court of India has elaborately discussed about various orders of the Courts either interim orders or final orders which were brought to the notice of the Constitution Bench. The Hon'ble Supreme Court of India came to the conclusion that those orders more or less was the issue of directions for continuation or absorption without referring to the legal principles governing the matter. It was brought to the notice of this Court that chaos has been created by such orders without reference to the legal principles and it is time that this



Court settled the law once and for all so that in case the Court finds that such orders should not be made, the Courts, especially, the High Courts would be precluded from issuing such directions or passing such orders.

54. The very arguments advanced by the learned counsel for the State of Karnataka is that a chaos was created on account of various contradicting orders passed by the High Courts in the matter of regularization or permanent absorption in order to settle the legal principles. The learned counsel urged the Hon'ble Supreme Court of India to take note of the fact that there is a chaos prevailing in respect of the regularization and permanent absorption of the temporary/daily wages employees and brought to the notice of the Hon'ble Supreme Court of India that the High Courts would be precluded from issuing any such directions or passing such orders in contrary to the legal principles in the matters of regularization or permanent absorption or appointment. The observation made in this regard is that bypassing of the Constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the validity of such orders on the touchstone of Constitutionality.

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

"20. The decision in Dharwad Distt. PWD Literate Daily Wage Employees Assn. v. State of Karnataka [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] dealt with a scheme framed by the State of Karnataka, though at the instance of the Court. The scheme was essentially relating to the application of the concept of equal pay for equal work but it also provided for making permanent, or what it called regularisation, without keeping the distinction in mind, of employees who had been appointed ad hoc, casually, temporarily or on daily-wage basis. In other words, employees who had been appointed without following the procedure established by law for such appointments. This Court, at the threshold, stated that it should individualise justice to suit a given situation. With respect, it is not possible to accept the statement, unqualified as it appears to be. This Court is not only the constitutional court, it is also the highest court in the country, the final court of appeal. By virtue of Article 141 of the Constitution, what this Court lays down is the law of the land. Its decisions are binding on all the courts. Its main role is to interpret the constitutional and other statutory provisions bearing in mind the fundamental philosophy of the Constitution. We have given unto ourselves a system of governance by rule of law. The role of the Supreme Court is to render justice according to law. As one jurist put



it, the Supreme Court is expected to decide questions of law for the country and not to decide individual cases without reference to such principles of law. Consistency is a virtue. Passing orders not consistent with its own decisions on law, is bound to send out confusing signals and usher in judicial chaos. Its role, therefore, is really to interpret the law and decide cases coming before it, according to law. Orders which are inconsistent with the legal conclusions arrived at by the court in the selfsame judgment not only create confusion but also tend to usher in arbitrariness highlighting the statement, that equity tends to vary with the Chancellor's foot."

56. The decision in the case of **Dharwad Distt. PWD Literate Daily Wage Employees Assn. Vs. State of Karnataka, reported in (1990) 2 SCC 396**, was considered in the above paragraph. It is observed that the role of the Court to interpret the law and decide cases coming before it, according to law. Orders which are inconsistent with the legal conclusions arrived at by the Court in the self same judgment not only create confusion but also tend to usher in arbitrariness highlighting the statement, that equity tends to vary with the Chancellor's foot.

57. As one Jurist put it, the Hon'ble Supreme Court of India has accepted the decision, the question of law for the country and not to decide individual cases without reference to such principles of law. Consistency is a virtue. Passing orders not consistent with its own decisions on law, is bound to send out confusing signals and result in judicial chaos. The observation made in this regard are certainly to be followed by all the Courts across the Country.

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

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

<https://hcservices.ecourts.gov.in/hcservices/> 60. The judgment of the another Constitution Bench in the case of **D.C.Wadhwa (Dr.) Vs. State of Bihar,**



reported in (1987) 1 SCC 378 and the relevant paragraph (3) is extracted hereunder:

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

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

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption,



regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be



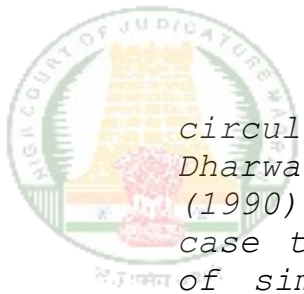
just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the



services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in *Dharwad* [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] , *Piara Singh* [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] , *Jacob* [*Jacob M. Puthuparambil v. Kerala Water Authority*, (1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] and *Gujarat Agricultural University* [*Gujarat Agricultural University v. Rathod Labhu Bechar*, (2001) 3 SCC 574 : 2001 SCC (L&S) 613] and the like, have given rise to an expectation in them that their services would also be regularised. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. [See *Lord Diplock in Council for Civil Services Union v. Minister of Civil Service* [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] , *National Buildings Construction Corp'n. 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.

<https://hcservices.ecourts.gov.in/hcservices/> It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in



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

62. In paragraph (43), it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution when it is clarified that adherence to the rule of equality in public employment is a basic feature of the Constitution, certainly, no person can deviate the principles in this regard and therefore, appointment in accordance with the recruitment rules in force by the competent authorities is the constitutional mandate and any deviation to be construed as violation of the constitutional principles. It is observed that if it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made appointment, merely on the strength of such continuance, if the original



appointment was not made by following a due process of selection as envisaged by the relevant rules.

63. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of constitutional scheme.

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

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

66. Paragraph (45) of the above said judgment states that the Apex Court of India held that, while directing that appointments, temporary or casual, be regularized or made permanent, the Courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain- not at arm's length - Since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the



constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. A total embargo of such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them.

67. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in this context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude, so as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State.

68. In Paragraph (46) of the "**Umadevi Case**" judgment, their Lordships held that the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularised in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of, to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

69. Paragraph (47) of the "**Umadevi Case**" judgment enumerates that when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service



Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees.

70. In paragraph (48) of the "**Umadevi Case**" Judgment, the Constitution Bench considered the right of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. Even in "**Umadevi Case**", those employees before the Supreme Court of India were engaged on daily wages in the department concerned on a daily wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right for those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution.

71. In paragraph (49), it is ruled that the rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated by the Hon'ble Supreme Court of India in the judgment of "**Umadevi Case**". When the Court is approached by way of a writ, the Court has necessarily to ask itself whether the person before it had any legal right to be enforced. Even, the Constitution Bench dealt with the Article 21 of the Constitution of India, in a Country like India, where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context, the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment.



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

Paragraph (53) of the Judgment is extracted hereunder:

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

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

74. No doubt, the Constitution Bench of the Hon'ble Supreme Court of India, while stopping the entire irregular appointments and back door appointments had taken note of the fact that certain reliefs are required in respect of the employees who are already regularized or in respect of those persons, a proposal is already kept pending. Certainly, the Hon'ble Supreme Court of India

settling

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

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

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factual circumstances, the same cannot be applied in the present case before this Court.

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

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

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

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

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

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

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



the process of open competitive selection, such appointments are considered to be irregular."

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

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

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

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

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

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



question arises, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the teeming millions of this Country seeking employment and seeking a fair opportunity for competing for employment?

86. In paragraph (54) of the said "**Umadevi Case**" judgment, again the Constitution Bench reiterated that "It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

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

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

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

43. As to what would constitute an irregular appointment is no longer res integra. The decision of this Court in **State of Karnataka v. M.L. Kesari** [(2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] , has examined that question and explained the principle regarding regularisation as enunciated in **Umadevi (3)** case [State of Karnataka v. **Umadevi (3)**, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . The decision in that case summed up the following three essentials for regularisation: (1) the employees have worked for ten years or more, (2) that they have so worked in a duly sanctioned post without the benefit or

of the interim order of any court or tribunal, and (3) they should have possessed the minimum qualification stipulated for the appointment. Subject to



these three requirements being satisfied, even if the appointment process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby qualify for regularisation. Para 7 in this regard is apposite and may be extracted at this stage: (M.L. Kesari case [(2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] , SCC p. 250)

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

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

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

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

"8. this Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be



scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment 5 Page 6 cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute." (Emphasis added) "

90. Reiterating the principles laid down in the Case of **Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and others, reported in (2014) 4 SCC 769**, the Hon'ble Supreme Court of India emphatically ruled that the High Courts, in exercising power under Article 226 of the Constitution of India will not issue directions for regularization,



absorption or permanent continuance. Unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process against sanctioned vacant posts, the equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularization of services of an employee which would be violative of the Constitutional scheme.

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

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

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

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

93. In the case of **Malathi Das and Others, Vs.**



Suresh and Others, reported in (2014) 13 SCC 249 and the relevant paragraph (13) is extracted hereunder:

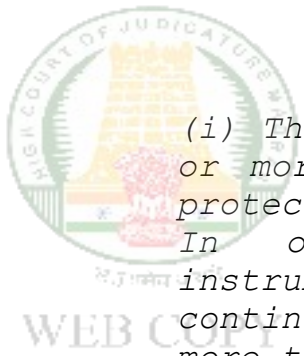
"13. In the aforesaid undisputed facts it is wholly unnecessary for us to consider as to whether the cases of persons who were awaiting regularisation on the date of the decision in *Umadevi (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is required to be dealt with in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

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

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

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

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



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

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

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

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

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

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



deciding the case on hand.

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

"13. Considering the facts of the present case on the touchstone laid down in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , it will be seen that the Division Bench was not right in setting aside the appointment of the appellants. More so, it was nobody's case challenging the appointment of the appellants. Admittedly, the appellants were engaged as contractual employees from 1994 and have completed more than ten years of continuous service with Respondent 1. They continued in service not by the orders of the Court/Tribunal, but by the decision of the respondents. The appellants were regularised as per the policy decision dated 16-4-2003 taken by Respondent 1 and approved by the State Government vide Letter dated 5-3-2008. Since the appointment of the appellants were made pursuant to the policy of regularisation, the High Court was not right in quashing the appointment of the appellants as the same were never in question before the High Court. The plea that was raised by the appellants was only to seek regularisation with retrospective effect from 20-11-2002 and the consequential seniority."

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

101. In all the cases cited supra, this Court is able to find out that those cases by the Hon'ble Two Judges of the Hon'ble Supreme Court of India were decided based on certain facts and circumstances of the case. However, all those circumstances and the legal principles were well settled by the Constitution Bench in **"Umadevi**



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

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

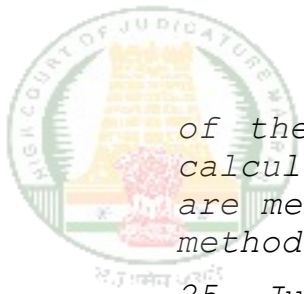
"17.A combined reading of the aforementioned paragraphs would clearly indicate that what the Constitution Bench had in mind in directing regularisation was in relation to such appointments, which were irregular in nature and not illegal ones.

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

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

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

'16. In *B.N. Nagarajan v. State of Karnataka* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4] this Court clearly held that the words "regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea



of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments.'

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

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

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

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

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



rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

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

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

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

"5. Whereas pursuant to the said direction, although the case of Niva Ghosh was allegedly considered, her case was not, whereupon a contempt petition was filed. In the said contempt proceedings, a stand was taken by the appellant that she had not completed a period of 240 days



in a year before the said cut-off date. The said contempt petition was dismissed with liberty to the respondent to file a fresh original application. Pursuant to the said observations, the respondent filed an application before the Central Administrative Tribunal, Calcutta Bench, Calcutta which was marked as OA No. 484 of 2002.

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

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

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

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

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

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

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

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

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

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

106. When the scope of the paragraph (53) of the judgment, is well enumerated by the Hon'ble Two Judges



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

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

108. This Court has to place on record that the State is bound to over see the appointments made in this regard illegally or irregularly by the competent authorities and the same is to be construed as the fraud on the Constitution and such authorities are liable for prosecution under the Discipline and Appeal Rules and other relevant rules. The State shall be vigilant in this regard and the authorities indulging in such activities of exercising powers by issuing illegal or irregular appointments are to be booked under the Discipline and Appeal Rules. No leniency can be shown by the State in this regard, since these all are the Constitutional principles required for the State to be followed and the State being a modal employer, has to implement the Constitutional perspectives and the principles scrupulously and without any deviation.

109. The learned counsel for the petitioner contended that in paragraph (15) of the judgment in "**Umadevi Case**", the Constitution Bench of the Hon'ble Supreme Court of India held that a distinction between



regularisation and conferment of permanent status in service jurisprudence has to be drawn. This Court is of the opinion that the conferment of permanent status Act, is a general law applicable to the employees, in the absence of any special law governing the particular subject. However, if any such law prevails and covering the field of appointment of regularisation and permanent absorption, then the general law would not apply. In nutshell, the special law and rules will prevail over the general law and the special rules in force are to be applied in the relevant case.

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

30. Even recently, in the case of **Secretary to Government, School Education Department, Chennai Vs. R. Govindaswamy and others** reported in **(2014) 4 SCC 769**, the Hon'ble Supreme Court of India held that the High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and / or appointment of ineligible candidates cannot be regularised.

31. Thus, the Apex Court in an equal terms directed the High Courts not to issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process. In the present case, admittedly, advertisement was issued in local newspaper. However, the terms of appointments were notified in the notification itself. The writ petitioners were appointed on contract basis for one year, rule of reservation was not followed. Admittedly, such contract appointments are made to meet out the emergency circumstances arose on account of the ban for public appointments and the same can never be considered as a valid appointments made in accordance with the recruitment rules in force.

32. Even recently, in the case of **State of Tamil Nadu and others Vs. A. Singamuthu** reported in **(2017) 4 SCC 113**, the Hon'ble Supreme Court of India made an observation as follows:-

"16. In *State of Rajasthan vs. Daya Lal* [State of



Rajasthan v. Daya Lal, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340] , this Court has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and this Court clearly laid down that part-time employees are not entitled to seek regularisation as they do not work against any sanctioned posts. It was also held that part-time employees in government-run institutions can in no case claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Relevant excerpt from the said judgment is as under: (SCC pp. 435-36, para 12) 12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularisation of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be litigious employment. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off



dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full-time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute. [See *State of Karnataka v. Uma Devi* (3) [30 SCC 1 : 2006 SCC (L&S) 753], *M. Raja v. CEERI Educational Society* [30 SCC 636 : (2007) 2 SCC (L&S) 334], *S.C. Chandra v. State of Jharkhand* [30 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943], *Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand* [30 SCC 680 : (2010) 1 SCC (L&S) 742] and *Official Liquidator v. Dayanand* [Official <http://www.judis.nic.in> Liquidator v. Dayanand, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943].] (emphasis supplied)

17. The learned Single Judge of the High Court, while allowing the writ filed by the respondent extended the benefit of the said GOMs No. 22 dated 28-2-2006 and directed the appellants to grant regularisation of respondent's service from the date of completion of ten years of service with salary and other benefits. The learned Judge failed to take note of the fact that as per GOMs No. 22 dated 28-2-2006, the services of employees working in various government departments on full-time daily-wage basis, who have completed more than ten years of continuous service as on 1-1-2006 will be regularised and not part-time masalchis like the respondent herein. In GOMs No. 84 dated 18-6-2012, the Government made it clear that GOMs No. 22 dated 28-2-2006 is applicable only to full-time daily wagers and not to part-time daily wagers. The respondent was temporarily appointed part-time worker as per Tamil Nadu Finance Code, Vol. 2, Appendix 5 and his appointment was completely temporary. The respondent being appointed as part-time masalchi, cannot compare himself to full-time daily wagers and seek benefit of GOMs No. 22 dated 28-2-2006. The Single Judge also failed to consider that the Government did not grant regularisation of services of any part-time employee on completion of ten years of his service as envisaged under GOMs No. 22 dated 28-2-2006.



18. The learned Single Judge erred in extending the benefit of GOMs No. 22 dated 28-2-2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 1-4-1989 and completed ten years of service on 31-3-1999. As rightly contended by the learned Senior Counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is, from 1-4-1999 till the date of his regularisation, that is, 18-6-2012, the financial commitment to the State would be around Rs 10,85,113 (approximately) towards back wages apart from pension which will have a huge impact on the State exchequer. That apart, the learned Senior Counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularised under various G.Os. and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularisation of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

19. It is pertinent to note that even the regularisation of services of part-time employees vide G.O. (Rt.) No. 505 Finance (AA-2) Department dated 14-10-2009 and G.O. (2D) No. 32 Finance (T.A. 2) Department dated 26-3-2010 was effected by extending the benefit of G.O. dated 28-2-2006 only from the date of government orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that GOMs No. 22 P & AR Dept. dated 28-2-2006 is applicable only to full-time daily-wage employees and who had completed ten years of continuous service as on 1-1-2006 and not to part-time employees. As per G.O. (Rt.) No. 84 dated 18-6-2012, the respondent is entitled to the monetary benefits only from the date of issuance of government order regularising his service, that is, 18-6-2012. The impugned order [Commercial Taxes and Registration Deptt., State of T.N. v. A. Singamuthu, Writ Appeal No. 1209 of 2012, decided on 4-7-2012 (Mad)] of the Division Bench affirming the order [A. Singamuthu v. Commercial Taxes and Registration Deptt., State of T.N., WP No. 26702 of 2010, order dated 26-11-2010 (Mad)] of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside."



33. In view of the legal principles settled and in view of the fact that initial appointment of the writ petitioners were on contract basis for one year period and the Government also consistently, rejected the claim of the writ petitioners for regularisation and permanent absorption, this Court is of the opinion that the writ petitioners have not established any acceptable legal ground to grant such relief as such sought for in the present Writ Petitions. Accordingly, this Court is inclined to pass the following order:-

"1. The relief sought for in the present Writ Petitions stands rejected.

2. The writ petitioners shall be permitted to continue in service, if their services are required to meet out the emergency circumstances and till the regular appointments are made in accordance with recruitment rules in force for the post of Pharmacists and Staff Nurses. If the writ petitioners are qualified, they are also permitted to participate in the process of selection for recruitment to the post of Pharmacists and Staff Nurses.

3. In view of the fact that the writ petitioners are working as Pharmacists and Staff Nurses, medical facilities to be provided to the citizens cannot be affected. Providing of medical facilities is of paramount importance and the right to medical facility is now an integral part of Article 21 of the Constitution of India. Thus, the State and authorities are bound to provide medical facility to all the citizens. In the event of ousting the service of these Pharmacists and Staff Nurses immediately, the same will disturb the treatments to be provided to the patients, who are attending the Corporation hospitals. Thus, the actions in this regard must be slowly taken by the Corporation without affecting the medical treatments to be provided to the citizens at large."

34. With these observations, these Writ Petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (C.O.)

// True Copy //

Sub Assistant Registrar (CS)



1.The Secretary to Government,
State of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Municipality Administration,
Ezhilagam, Annex VI Floor,
Chepauk, Chennai-600 005.

3.The Commissioner
Madurai Corporation, Madurai.

4.The Deputy Commissioner,
Madurai Corporation, Madurai.

1CC TO THE SPL GOVERNMENT PLEADER SR 69738

4CC'S TO MR. T. LAJAPATHI ROY, ADVOCATE SR 69338 TO 69341

5CC TO MR. V.S.V.VENKASTESWARALU, ADVOCATE SR 69319 TO 39323

1CC TO M/S.AJMAL ASSOCIATES, ADVOCATES SR 69549

1CC TO MR. R. MURALI, ADVOCATE SR 69348

85P 17C

**W.P. (MD) Nos.10895 to 10897, 14099 to 14101, 11457, 10866,
11084, 10752 to 10758, 11427, 11287 to 11293,
11003, 10981 to 10985, 16089 to 16096 of 2014**

17.06.2019