



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD).No.17661 of 2014

R.Marimuthu

... Petitioner

-Vs-

1.The Tamil Nadu Water Supply and Drainage Board,
Rep., by its Executive Engineer,
RMS Division, Sivagangai District.

2.The Inspector of Labour,
Sivagangai District,
Sivagangai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the first respondent herein to accord permanent status to the petitioner as per the order of the Inspector of Labour, Sivagangai in his proceedings No.AA/526/2011 dated 12.06.2014 and consequently, direct the first respondent to give all the monetary benefits to the petitioner with effect from 11.01.2010.

For Petitioner : Mr.S.M.Mohan Gandhi

For Respondents: Mr.G.Arjunan

Government Advocate (for R2)

ORDER

The relief sought for in the present writ petition is to direct the first respondent to accord permanent status to the petitioner as per the order of the Inspector of Labour, Sivagangai in proceedings, dated 12.06.2014 and consequently, direct the first respondent to give all monetary benefits.

2.The petitioner was appointed as Pump Operator on temporary basis. He was receiving daily wage salary. The claim of the writ petitioner is that, he served more than 480 days within a period of 2 years and therefore, he is entitled for permanent status with reference to Section 3(2) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1989. In this regard, the petitioner approached the second respondent/ Inspector of Labour, who in turn passed an order granting permanent status to the writ petitioner. However, the said order has not been implemented. Thus, the present writ petition is filed.

3.This Court is of the considered opinion that, the issues regarding the conferment of permanent status for daily wage employees of the Tamil Nadu Water Supply and Drainage (TWAD) Board, this Court has already considered the issues in WP(MD)No.9265 etc.,



of 2013 and judgment was delivered on 23.11.2020. The present writ petition is also similar to that of the nature. The relevant paragraph of the judgment are extracted hereunder:

"26. Considering the elaborate arguments of the respective learned counsels appearing on behalf of the petitioners and the respondents, this Court has to consider, whether the respondents - workmen is entitled for permanent absorption in TWAD Board Services or not?

27. Admittedly, TWAD Board is the Government of Tamil Nadu Organization. The Board was constituted by virtue of the Tamil Nadu Water Supply and Drainage Board Act, 1970, which received the assent of the President on 24.03.1971 and published in the Tamil Nadu Government Gazette on 25.03.1971.

28. Section 2(i) of the Act defines Board. 'Board' means the Tamil Nadu Water Supply and Drainage Board, constituted under Section 4. The constitution of the Board is provided under Section 4 of the Act.

29. Section 34 of the Act denotes the Board's fund. Sub- clause(4) states that "All moneys and receipts specified in the foregoing provisions and forming part of the fund of the Board shall be deposited into the public accounts of the Government under such detailed head of accounts as may be prescribed (or) in the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (Central Act II of 1934), or the State Bank of India constituted under the State Bank of India Act, 1955 (Central Act 23 of 1955). It is relevant to consider Section 58 of the Act, which deals with the powers of the Government to issue orders and directions to the Board of local authorities. Under the said provision, the Government may issue to the Board or to the local authority concerned, such orders and directions as in their opinion are necessary or expedient for carrying out the purposes of this Act and the Board or such local authority, as the case may be, shall give effect to all such orders and directions.

30. A perusal of the entire service regulations of



Department Service Rules are mostly adopted with necessary modifications and more specifically, regulation (9) prescribes the mode of recruitment, which reads as under:

"9. Mode of Recruitment:- The Board shall notify all vacancies for posts to be filled up by direct recruitment to the local employment Exchange as provided for in the Employment Exchanges (Compulsory Notification of Vacancies) Act 1959 (Central Act No. 31 of 1959) and the rules made thereunder. If the local Employment exchange is unable to sponsor the required number of qualified and eligible candidates and gives a certificate to that effect, the Board shall advertise the remaining vacancies in at least one English daily newspaper and one Tamil Daily newspaper having wide circulation in the area. The selection of candidates shall be made from among the candidates sponsored by the Employment Exchange and or who responded to the advertisement as the case may be. The selection shall be made by a Selection Committee to be constituted by the Board consisting of the Chairman, the Managing Director and one more member to be nominated by the Board. (B.P.Ms.No. 401, dated 28.9.76). The Chairman shall be the Chairman of the Selection Committee so constituted shall function for one year from the date of its constitution. The Board may direct the Selection Committee to make the selection on the results of a written examination or interview or of both as it considers suitable. The lists of candidates selected and arranged in the order of preference for a Class I Service shall be submitted to the Board for approval. All appointments by direct recruitment shall be made only from the list thus approved by the Board. In case the Board disagrees with the recommendations of the Selection Committee, the Board shall cause the matter to be referred back to the Selection Committee for reconsideration in the light of the views expressed by the Board. The Selection Committee's recommendations shall be final for posts in Class II and Class III and appointments by direct recruitment to the classes made with reference to the recommendations of the Selection Committee be



reported to the Board for information.

(2) Selection for appointment by direct recruitment to Class IV shall be made by the appointing authority by inviting applications through the Employment Exchange.

(3) The selection of candidates for appointment for work- charged and nominal muster roll establishment shall be made by the appointing authorities by inviting applications through the Employment Exchange.

(4) For promotion to posts of executive engineers and Superintending Engineers of the Tamil Nadu water Supply and Drainage Board, the Chief Engineer of the Board shall prepare a list of all eligible candidates arranged in the order of seniority for consideration having regard to their efficiency-cum-seniority showing in the list their names, present designation, present pay, age, qualifications and experience and forward the same to the Managing Director with their confidential reports. The Managing Director after scrutinising the lists and the confidential reports will select and appoint the candidates in respect of the post of Executive Engineers. In respect of Superintending Engineers, the Managing Director will make his recommendations to the Board for selection, and based on the selection by the Board he will issue appointment orders. (B.P.Ms.No. 320, dated 1.9.98). The appointment of Chief Engineer of the Board will be made subject to the approval of the Government.

(5) No appeal shall lie against the decision of the Selection Committee in regard to direct recruitment. All appeal shall however, lie to the Board for appointments made by promotion on the basis of the recommendations of the Selection Committee and the Board shall dispose of such appeals on merits and its decision shall be final. With regard to appointment by promotion approved by the Board, a revision shall lie to Government.

(6) In respect of promotions to technical posts below the rank of Assistant Executive Engineers and promotions to non-technical posts in Board's Secretariat and Chief Engineer's office



and other subordinate offices of Chief Engineer, the appointing authority is competent to make the promotions.

(7) Notwithstanding anything contained in the above Regulation, the Board may in any particular case or class of cases adopt a special procedure as more appropriate than the one prescribed in any of the said Regulations."

31. Thus, it is made clear that the service regulations are in force and such regulations are approved by the Government by virtue of the powers conferred under the Tamil Nadu Water Supply and Drainage Board, 1970. When the Act is in force, and by virtue of the said statute, service regulations are framed, then, all the selections, recruitments and regularizations as well as the permanent absorptions are to be strictly made in accordance with law with the statute and the provisions of the service regulations of the TWAD Board. This apart, the Act as well as the Service Regulations, 1972 will prevail over the general law. For the purpose of TWAD Board, the Tamil Nadu Water Supply and Drainage Board, 1970 as well as the service regulations of the year 1972 would be the special law and therefore, the Conferment of Permanent Status Act is to be construed as a general law. Under these circumstances, the Special Act and Special Regulations would prevail over the Conferment of Permanent Status for the purpose of considering the case for grant of regularization and permanent absorption in Board's services.

32. In view of the fact that the special law will prevail over the general law and further, the TWAD Board Act and the service regulations constituted by virtue of the powers conferred under Section 73 of the Tamil Nadu Water Supply and Drainage Board Act, the provisions of the Conferment of Permanent Status Act would not be applicable for grant of regularization and permanent absorption, with reference to the employees of the TWAD Board. Accordingly, the provisions of the Tamil Nadu Industrial Establishment [Conferment of Permanent Status] Act, 1981 is not applicable to the employees of the TWAD Board for granting the benefit of regularization and permanent absorption.



WEB COPY

33. The learned Senior Advocate for the respondents - workmen is of the opinion that the conferment of permanent status Act is a Special Act, as far as the petitioner establishment is concerned. The TWAD Board Act is the General Law and therefore, the Special Act viz., the Permanent Status Act must be applied as far as the present case is concerned. The said proposition is disputed by the learned Senior Counsel appearing on behalf of the petitioners - TWAD Board.

34. This Court is of the considered opinion that when the TWAD Board is an instrumentality of the State within the meaning of Article 12 of the Constitution of India and the Service Regulation of the year 1972 is applicable regarding appointments, regularization or permanent absorption is concerned, then, the said Law governing the service conditions of the employees of the TWAD Board are to be construed as Special Law and the conferment of permanent status, which would be applicable to all the Industrial Establishments across the Country is to be considered as General Law. Thus, it is unambiguous that the Service Regulations 1972 framed by the TWAD Board under the powers conferred under the TWAD Board Act would be the Special Law for the purpose of recruitment, grant of permanent absorption or otherwise.

35. It is contended that the TWAD Board is following the provisions of the Tamil Nadu Water Supply and Drainage Board Service Regulations Act, 1972 constituted with reference to the powers conferred under Section 73 of the TWAD Board Act. At no point of time, the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, is made applicable to the employee of the TWAD Board. The Board in its reply also informed to the first respondent that the Service Regulations are in force and therefore, the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act cannot be applied to these workmen. In this regard, the Board also informed the Joint Commissioner of Labour, Chennai and addressed the Government, seeking exemptions from implementing the Standing Orders in TWAD Board. Therefore, application of Standing Orders would not arise at all, as it never made applicable to the employees of the TWAD Board.



Thus, the binding Law regarding the entitlement of the workmen for regularization and permanent absorption is to be considered with reference to the Special Law in force and as applicable to the TWAD Board employees.

WEB COPY

36. Once this Court arrived a conclusion that pursuant to the powers conferred under the TWAD Board Act, the petitioners - TWAD Board framed Service Regulations and such Service Regulations are to be construed as Special Law, then, the principles laid down by the Constitution Bench of the Hon'ble Supreme Court of India in the case of *Umadevi Vs. State of Karnataka* reported in (2006 (4) SCC 1) would be directly applicable. Several Judgments cited with reference to the industries within the definition of Permanent Status Act would have no application as far as the employees, who are all governed by the Service Regulations framed by the TWAD Board, which is a State within the meaning of Article 12 of the Constitution of India.

37. The legal principles as well as the ratio decidendi laid down by the Constitution Bench of the Hon'ble Supreme Court of India in *Umadevi's* case had not been considered either by the Inspector of Labour or in the judgment cited by the learned Senior Advocate for the Workmen. In view of the fact that the applicability of the Conferment of Permanent Status Act to the TWAD Board employees as well as the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India are not considered, this Court is bound to follow the binding precedent of the Constitution Bench of the Hon'ble Supreme Court of India, as the same became the law of the Land under Article 141 of the Constitution of India.

38. The learned Senior Advocate for the Workmen brought to the notice of this Court regarding various orders passed by this Court, granting the benefit of orders passed by the Inspector of Labour, for grant of conferment of permanent status and regularization of the services of the temporary employees, and made a request to follow the same and accordingly, allow the writ petition by issuing a direction to grant of permanent



absorption and regularization.

39. This Court is of the view that the Constitution Bench Judgment of the Apex Court is the binding law, and more specifically, in paragraph No.54 of the Umadevi's case, the Constitution Bench in unequivocal terms held 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".

40. 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. In this perspective, this Court is bound to consider the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India regarding the doctrine of binding precedent in the case of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS, (2017) 6 SCC 680, the Constitution Bench reiterated that the principles laid down by the Constitution Bench of the Apex Court would be binding precedent and it became the law of the Land and is to be followed scrupulously, even in cases, where two Judges Bench of the Supreme Court are running counter to the Judgment of the Constitution Bench. Therefore, the Judgment of the Constitution Bench, in the present context, would be relevant for the purpose of considering the case of the writ petitioners herein. In the National Insurance Company case cited supra, the Constitution Bench in unequivocal terms held that a decision or judgment can be per incuriam any provision in a statute, rule or regulation, which is not brought to the notice of this Court.

41. In the present case, the provision of the Tamil Nadu Water Supply and Drainage Board Act, 1970 as well as the TWAD Board Service Regulations Act, 1972 were not brought to the notice of this Court in respect of the earlier orders passed by this Court, which are all cited by the writ petitioners. In none of the said judgments, the provisions of the TWAD Board Act as well as the Service Regulations, 1972 and the binding law laid down by the Constitution Bench of the Hon'ble



Supreme Court of India were considered. Thus, this Court is bound to follow the Judgment of the Constitution Bench of India in the matter of grant of regularization and permanent absorption.

42. As far as the Constitution Bench Judgment is concerned, the legal principles are settled. In paragraph No.5 of the Judgment, the Supreme Court had 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 individualization of justice. The question that arises is, 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, who are seeking employment and 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.

43. The Constitution Bench, referring the earlier orders, arrived at a conclusion that the practice of continuing "such individualization of justice" is to be averted. The Constitutional philosophy and ethos in the matter of equal opportunity in public employment are to be ensured in this context. The Supreme Court while considering the earlier orders passed by the High Court as well as the Supreme Court, referred the matter to the Constitution Bench, in order to regulate the illegal and irregular appointments and to ensure that all appointments are to be made under the Constitutional Scheme and by following the rules in-force. In Paragraph No.6 of the judgment, the following observations are made:

6. The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily (see Basu's Shorter Constitution



WEB COPY

of India). Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedures which specify the necessary qualifications, the mode of appointment, etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules.

The State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognised that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed."

44. In the above paragraph, the Supreme Court reiterated that the rules framed under the Statutes are to be followed for the purpose of selection and appointments or regularization or permanent



absorption. In the present case, the service regulations are framed pursuant to the powers conferred on the authority under the provisions of the Tamil Nadu Water Supply and Drainage Board Act, 1970. Therefore, such service regulations are to be followed for the purpose of recruitment, regularization, permanent absorption or otherwise.

45. It is relevant to extract paragraph Nos.43 to 50 of the Judgment. The Constitution Bench settled the legal principles and the same 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

<http://www.judis.nic.in> W.P.(MD)Nos.9265 of 2013 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



WEB COPY

temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in Dharwad[(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] ,Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] , Jacob [Jacob M. Puthuparambil v.Kerala Water Authority, (1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] and Gujarat Agricultural University [Gujarat Agricultural University v. Rathod Labhu Bechar, (2001) 3 SCC 574 : 2001 SCC (L&S) 613] and the like, have given rise to an expectation in them that their services would also



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



cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

WEB COPY

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

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



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

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

50. It is argued that in a country like India where



there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality."

46. Undoubtedly, in paragraph No.53, the Supreme Court has granted one time permission to clear the pending files regarding grant of regularization. However, in paragraph No.54, the Supreme Court in clear terms held 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." Therefore, in the matter of confirmation of service of the permanent absorption, the Constitution Bench Judgment is the binding law and any other judgment of any Court running counter to the legal principles settled by the Constitution Bench stands denuded of their



status as precedents.

47. This being the authoritative pronouncement of the Constitution Bench, and applying the ratio decidendi laid down by other Constitution Bench in the case of National Insurance Company of India, this Court is bound to follow the Constitution Bench judgment in the matter of permanent absorption or regularization or appointments. Thus, all other judgments produced by the learned counsel for the respondents - workmen are of no avail to consider the case of the respondents - workmen for grant of permanent absorption or to issue a direction to implement the orders of Inspectors of Labour granting the permanent status.

48. The Inspectors of Labour had not considered any of these legal principles settled by the Constitution Bench of the Supreme Court of India. Contrarily, mechanical approach has been adopted by the Inspectors of Labour and the relief of permanent status is granted by merely verifying the length of services rendered by these casual laborers. In other words, he simply verified certain records to find out whether the casual laborers have served 480 days or not. If so, then pass an order for grant of permanent status. This being the routine and mechanical orders passed by these Inspectors of Labour, this Court has to consider the legal principles, implications and adverse consequences as well as the violation of the Constitutional principles.

49. To elaborate the adverse consequences in respect of these routine orders of the Inspectors of Labour, for instance, large number of such casual laborers are engaged by various Government Organizations, undertakings, Boards and Government Company. The casual laborers were engaged on daily wage basis in order to complete projects or to meet out certain emergency or exigency. Thus, the casual laborers were not appointed by following the recruitment rules in force. The engagement of these contract laborers on daily wage basis are made on the basis of mere identification. At the outset, all such engagements are made at the choice of the authorities and they are appointed even through certain corrupt practices, favoritism or nepotism. Thus, all these engagements of casual laborers, on need basis, are either illegal or



irregular appointment.

50. In the event of granting permanent status for these causal labourers, based on the orders of the Inspectors of Labour under the conferment of Permanent Status Act, then the back door route created by these authorities would become an illegal channel of appointment and consequently, it would amount to violation of the Constitutional mandates. No reservations are followed. No merit assessments are made. No selection process was conducted. Such practice would lead to corrupt activities and the Constitutional rights of all eligible candidates, who are all aspiring to secure public employment would remain infringed. Thus, such method of granting conferment of permanent status can never be approved by the Constitutional Courts. Even in respect of causal laborers, the process of selection must be conducted for grant of regularization or permanent absorption, and rules in force are to be followed, so as to ensure that the regular appointments in the sanctioned posts are made by following the rules and by providing equal opportunity to all the eligible candidates, who are all aspiring to secure employment.

51. The adverse consequences of this method of grant of confirmation would be that the principles of equality in employment enunciated in the Constitution is violated. The rule of reservations are violated. The scheme of appointment under the recruitment rules are also violated. Thus, the Constitutional Courts cannot approve such appointments, regularization or permanent absorption, which would have adverse impact on the concept of social justice as resolved by "We, the people of India" in the preamble of the Constitution. "Individualization of justice" can never be appreciated. Sometimes one may contend that the molding of relief is not preferable or such molding may be considered as an excess exercise. However, the scope of Article 226 of the Constitution of India has been elaborated by the Constitution Bench and the Larger Benches of the Constitutional Courts across the Country. Thus, as a custodian of the Constitution, the High Court has to ensure that the principles of social justice, philosophy and ethos of the Constitution are also taken care, while granting the relief or



molding of the relief. The writ petition under Article 226 cannot be compared with the Civil suit, wherein the issues alone are to be settled with reference to the documents and evidences. In a Writ Petition under Article 226 of the Constitution of India, the Courts are empowered to mould the relief in order to ensure that Constitutional mandates and perspectives are implemented and protected. This being the spirit of the Constitution, this Court is of the considered opinion that the principles laid down by the Constitutional Bench in "Umadevi's" case, is not only the guiding principles, but also binding the law under Article 141 of the Constitution of India. Thus, any other judgment of any High Court or the judgment of the two judges Bench of the Hon'ble Supreme Court of India denuded of their status as precedents. All the Courts across the Country are bound by the Constitution Bench judgment in the matter of grant of permanent absorption, with reference to the illegal or irregular appointments.

52. In the present case, the TWAD Board which is a "State" within the meaning of Article 12 of the Constitution of India, is a Board created under a statute and being administered. The Board is implementing the Water Supply and Drainage Schemes across the State of Tamil Nadu. Thus, the TWAD Board being a "State" is governed under the Act namely the Tamil Nadu Water Supply and Drainage Board Act, 1970 as well as the service regulations of the year 1972. The said Act and Rules alone are to be construed as special laws, as far as appointments, regularizations and permanent absorptions of the employees of the Board are concerned. The conferment of permanent status is a general law, as far as the TWAD Board is concerned. Thus, the recruitments, regularizations or permanent absorptions are to be made strictly in consonance with the service regulations of the TWAD Board. Any other order passed by the authority under the general law, running counter to the service regulations of the TWAD Board cannot be implemented at all. But such orders of the competent authorities under the general law are to be construed as in violation of the special Act and Rules, and further to be construed in violation of the scheme of recruitment as well as grant of permanent absorption under the TWAD Board



service regulations.

53. The Inspectors of Labour are routinely and mechanically passing orders conferring permanent status without following the legal principles settled by the Apex Court of India. Number of such orders are passed. However, the fact remains that the casual labourers/daily wage rated employees who were engaged by the Government Departments or Government Undertakings or Organizations are very much aware of their engagements and they have no right of permanent absorption. The terms and conditions of such services are also known to these casual labourers. Accepting all such terms and conditions, they are working as casual labourers/daily wage rated employees. Under these circumstances, the Modus Operandi being adopted by these casual laborers or their Organizations/Unions is that to file an application before the Inspector of Labour, get a routine order of the permanent status and file a writ petition seeking implementation of the order of Inspector of Labour. Thereafter, secure permanent appointment in the Government Organizations, Undertakings and Departments. This Modus Operandi being followed by these causal labourers for securing permanent appointment in Government Organizations/Undertakings is in violation of the Constitution of Scheme of appointments and Recruitment Rules and can never be approved by the High Court. Such a practice is going on for the purpose of securing public appointments across the State, more specifically, in Government Undertakings, Government Organizations and Government Departments. The Standing Orders are not adopted by the Government Departments/Organizations. When a separate statute is in force governing the Organizations and Service Regulations are also framed by virtue of powers conferred under the Act, then there is no reason whatsoever to grant such routine orders of permanent status by the Inspector of Labour under the general law. Under these circumstances, this Court is of the strong opinion that such method of back door appointments/permanent absorptions must be stopped at once in order to enforce the principles of equal opportunity in employment enunciated under the Constitution of India. Such a back door route created for securing permanent absorption is undoubtedly unconstitutional.



54. All appointments, permanent absorptions are to be made strictly in accordance with Rules in force. Equal opportunity being the Constitutional mandate, all Citizen, who are all aspiring to secure public employment must be provided with an opportunity to participate in the open competitive process with reference to the Rules of Reservation in force. The equality clause enunciated cannot be diluted at any costs, in view of the fact that there are many back doors kept open even now for entering into public services. All those back door methods are to be closed forthwith and all public appointments are to be made by providing not only equal opportunity but also create an effective and efficient public administration, which is also a Constitutional mandate. The Constitution provides that even while implementing the reservation, the State must ensure efficient Public Administration. Thus, efficient public administration being a concept contemplated under the Constitution, the equal opportunity must go hand-in-hand and then only, the State can achieve the Constitutional goal in this regard. Back door methods are utilized for entering into the public services only by the persons, who are incapable of participating in the competitive process. Thus, such method of appointments other wise not in accordance with the Rules in force can never be encouraged by the Court nor any orders can be passed for grant of permanent absorption depriving the meritorious candidates to secure public employment by participating in the competitive process under the Constitutional Scheme.

55. The learned Senior Advocate for the respondents - workmen contended that the Conferment of Permanent Status is automatic and this Court is of the opinion that the said principles may be applied in an Industrial Establishment, which is not a State within the meaning of Article 12 of the Constitution of the India. However, the said principles laid down by the Division Bench of this Court cannot be applied with reference to the appointments to be made in public services in a State or in instrumentality of the State. The conferment of permanent status cannot have any universal application. It has got restricted application in order to prevent unfair labour practice in Industrial Establishments. However, those concepts would not be applicable



WEB COPY

with reference to the public services in a State or in instrumentality of the State wherein the Service Regulations are very much in force and those Service Regulations being Special Law must be applied in order to provide appointments and permanent absorption with reference to the procedures contemplated.

56. This being the principles to be followed, this Court is of the considered opinion that the Inspector of Labour has not considered any of these issues. The Labour Officer has simply verified the fact whether the respondents - workmen have completed 480 days of service or not, then, passed an order, granting permanent status. If such order is allowed to be implemented, then the consequences would be disastrous. There is a possibility of appointing any person without even assessing the suitability and eligibility as casual labourers and thereafter, grant permanent absorption through back door methods. If the sanctioned posts of the Government Organizations are filled up in such a manner, then, undoubtedly, the efficient administration to be provided under the Constitution is completely diluted and such back door appointments are to be curbed and all appointments are to be made in accordance with the Rules in force. "

4. In view of the principles settled in the above judgment, this Court is of the considered opinion that the relief as such sought for to direct the first respondent cannot be granted, as the writ petitioner is not entitled for the relief. Thus, the Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

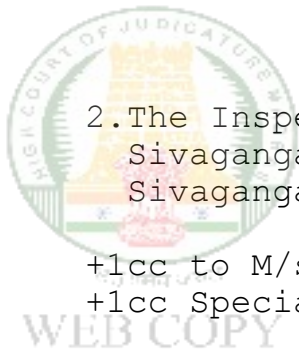
/ /2021

Sub Assistant Registrar(CS)

rmk

To

1. The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
RMS Division, Sivangai District.



2.The Inspector of Labour,
Sivagangai District,
Sivagangai.

+1cc to M/s.S.M.Mohan Gandhi, Advocate Sr.No.26304
+1cc Special Government Pleader Sr.No.26261

W.P.(MD).No.17661 of 2014

CK (CO)
NR (11/01/2020) 25P : 5C