

PMB

URMILA
PRAMOD
INGALE

Digitally signed
by URMILA
PRAMOD
INGALE
Date:
2022.04.21
18:06:03
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1345 OF 2022

Pramod V. Bhatre

..Petitioner

VS.

The Life Insurance Corporation of India
and ors.

..Respondents

Mr. Prathamesh B. Bhargude a/w Mr. Sumit Sonare for
petitioner.

Mr. Ajay Khaire for respondents.

**CORAM : DIPANKAR DATTA, CJ &
M.S. KARNIK, J.**

**HEARD ON : MARCH 11, 2022
JUDGMENT ON: APRIL 21, 2022.**

JUDGMENT : (PER M. S. KARNIK, J.) :

1. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner, *inter alia*, prays for the following substantive relief :-

"(A) *That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ, direction and order under Article 226 of the Constitution of India, 1950, directing the Respondent to confer permanent status of employment on the present Petitioner and make him a permanent employee on and from 18th April, 2013 and grant all consequential benefits from the said date.*

(B) *That in alternative this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction*

and order under Article 226 of the Constitution of India, 1950, thereby directing the Respondent devise a scheme similar to one which was enumerated as per the Affidavit dated 18th January, 2011, before the Honourable Supreme Court and confer upon the Petitioner the benefit of the said scheme.

(C) That this Hon'ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate, writ, direction or order and be pleased to direct the Respondent to grant such benefits to the Petitioner herein from 18th April, 2013, as applicable and eligible for a Permanent Employee of the Respondent."

2. The claim for the aforestated reliefs is based on the following facts :-

The Petitioner in the first place enrolled himself with the Employment Exchange. Respondent no. 1- Life Insurance Corporation of India (hereafter 'LIC', for short) was in search of peons to be employed at Western Zonal office and hence such requirement was placed with the Employment Exchange. The petitioner was called for interview on April 10, 2006. By appointment letter dated April 12, 2006 (Exhibit 'A') the petitioner was appointed as a Peon on temporary basis at Western Zonal office of the LIC in a temporary vacancy that arose on account of seasonal and casual nature of the job. The petitioner was employed on wages of Rs.4,105/- (basic). The petitioner was appointed for 85 days (April 12, 2006 to July 5, 2006). The petitioner was then appointed from time to time on temporary basis upon issuance of fresh letters of

appointment. The petitioner contends that the process of giving technical break to the petitioner continued till the year 2013 and on April 18, 2013 the petitioner was given an appointment letter where he was designated as a Temporary Peon.

3. The Petitioner was given a pay-scale of Rs.6,180/- (basic) which was increased with the passage of time. On the date of filing of the writ petition, i.e. August 5, 2021, the petitioner is drawing a salary of Rs.18,930/- (basic). The petitioner is given Dearness Allowance, H.R.A. in addition to the basic pay. It is the petitioner's grievance that similarly situated employees as the petitioner, who had become permanent in the year 2012-2013 are drawing a basic pay of Rs.32,000/- to Rs.33,000/-. The petitioner is deprived of the benefits such as employee insurance, special insurance, pension, provident fund, gratuity and mediclaim to which the permanent employees are entitled to.

4. Learned advocate for the petitioner submitted that the petitioner is in continuous employment for past 15 years and therefore deserves to be conferred the status of permanent employee of LIC. Learned advocate relied upon the decision of the Supreme Court in the case of **LIC of India and anr. etc. vs. D.V. Anil Kumar etc.**¹ to contend that similarly situated employees as the petitioner who were working on a temporary basis for a number of years had

¹ Civil Appeal No(s).953-968 of 2005.

succeeded in persuading the Supreme Court for grant of permanency status whereupon a scheme was framed by LIC for absorption of such employees. In terms of the procedure laid down in the scheme, eligible employees were to be absorbed. Learned advocate submits that the petitioner's case is similar to such employees who succeeded before the Supreme Court and, therefore, as the petitioner is similarly situate, he is covered by the nature or a scheme similar of such scheme be devised for redressal of the petitioner's grievance.

5. Learned advocate relied upon the order passed by the Aurangabad Bench in the case of **Pandurang Kashinath Shelke and others. vs. Union of India and others.**² pointing out that the said petition was disposed of on July 27, 2018 in view of the statement made by learned advocate for LIC that a decision was taken to consider the appointment of the petitioner therein following the recruitment procedure adopted in the year 2011, in terms of the order passed by the Supreme Court in **D.V. Anil Kumar** (supra). It is pointed out that a statement was made that the written examination, interview and pre-recruitment medical examination of the petitioner therein would be conducted. Learned advocate submits that the petitioner therefore made a representation to LIC to confer him the status of a permanent employee. The petitioner's

² Writ Petition St. No.16247 of 2011

representation dated January 9, 2019 was rejected by LIC by a communication dated April 8, 2019.

6. On the other hand, learned advocate for the respondents, opposing the submissions advanced on behalf of the petitioner, contends that the petitioner is not entitled to regularization in view of the settled position of law laid down by the Supreme Court as regards regularization.

7. Having heard learned advocate for the petitioner as well as the respondents, we are of the opinion that the petitioner's prayer to confer permanent status and the alternative reliefs prayed for in this writ petition cannot be granted for the reasons set out hereafter.

8. Let us first consider why a scheme for regularization was framed by LIC in the first place. We do not propose to set out the history of the litigation between LIC and its employees relating to absorption of temporary employees prior to the order dated January 18, 2011 passed by the Supreme Court in **D.V. Anil Kumar** (supra). Suffice it to observe that the temporary employees working for years together had approached the Supreme Court claiming absorption.

9. In **D.V. Anil Kumar** (supra), an affidavit dated January 18, 2011 came to be filed by LIC indicating that as a one-time measure a scheme is formulated whereunder all the eligible temporary Class IV employees as also the open market candidates who had taken the examination for recruitment as Class IV employees in the year 1996, and

are respondents in these cases shall be absorbed. For better appreciation, we find it convenient to quote the order dated January 18, 2011 passed by the Supreme Court below :

"Mr. Ravindra Sethi, learned Senior Counsel appearing for the Life Insurance Corporation of India has placed before us an affidavit dated 18th January, 2011, filed by Shri C.B. Pallwal, Secretary (Legal), LIC of India. In the said affidavit, it is stated that as a one-time measure, appellant No.1 has formulated a Scheme where under all the eligible temporary Class IV employees as also the open market candidates who had taken the examination for recruitment as Class IV employees in the year 1996, and are respondents in these cases shall be absorbed. The terms and conditions of the said Scheme are enumerated in the affidavit and read as follows :

"One time limited examination for those temporary persons who are working in LIC of India for more than five years and who had possessed minimum eligible qualification and age as prescribed at the relevant time of their entry into LIC of India would be considered. For this purpose, LIC of India will hold a limited written examination which will be in the vernacular language with a limited syllabus which will be announced in advance.

5. The successful short listed candidates shall be called for the interview. Such of those persons who are successful in the interview shall be initially appointed and posted anywhere in the respective Zone.

6. Such of those employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons, who are not governed under these submissions, shall also cease to be in the employment.

7. Those who are recruited shall be governed by the rules as applicable to Class IV employees and they shall not be entitled to claim any other benefit regarding their past service rendered as temporary

employees.

8. *In so far as open market candidates who has appeared in the written test at the relevant time and who were successful in the same shall be called for interview along with temporary employees. Such of those persons who shall be successful in the interview shall be offered appointment and the conditions as applicable to temporary persons in so far as offer of appointment shall be applicable to the open market persons as well."*

The above scheme for absorption is acceptable to learned counsel appearing for respondents.

In that view of the matter, these appeals are disposed of with the direction that the respondents shall be absorbed in terms of the afore-extracted policy as expeditiously as practicable as and in any case not later than six months from today.

The original affidavit is also taken on record.

All the appeals are disposed of in the above terms with no order as to costs."

(emphasis supplied by us)

10. Thus, Their Lordships disposed of the appeals with the direction that the respondents shall be absorbed in terms of the scheme and as the scheme for absorption was acceptable to the respondents therein. The scheme was formulated as a one-time measure by LIC for the benefit of all the eligible temporary Class IV employees as also the open market candidates who had taken the examination for recruitment as Class IV employees in the year 1996 and were respondents before the Supreme Court. The petitioner herein has averred that unfortunately he is not covered by the said scheme. However, learned advocate urged that as the petitioner is similarly situated as the employees before

the Supreme Court, in which case the said scheme should be made applicable to the petitioner as well.

11. The petitioner was appointed on a temporary basis through the employment exchange w.e.f. April 10, 2006 whereafter it is his case that he continued in employment on the basis of fresh orders of temporary appointment issued from time to time with artificial break in service. Learned advocate vehemently urged that the petitioner has worked for more than 15 years and therefore his expectation for absorption as a permanent employee just like those employees in **D.V. Anil Kumar** (supra) is legitimate.

12. The petitioner in the writ petition memo stated the date of scheme framed by the LIC as May 20, 2011 which is at Exhibit 'E' to the writ petition. We however find that Exhibit 'E' is not a scheme but an advertisement inviting applications for conducting a selection process in terms of the scheme.

13. Be that as it may, the question is whether the petitioner can claim parity with those Class IV employees who have been absorbed in terms of the scheme referred to in the order dated January 18, 2011 passed by the Supreme Court in **D.V. Anil Kumar** (supra).

14. In our considered opinion, the petitioner's claim for parity on this ground is unsustainable. Their Lordships have categorically recorded the stand of LIC that as a one-time measure, LIC formulated a scheme for absorption of all

eligible temporary Class IV employees as also the open market candidates who had taken the examination for recruitment as Class IV employees in the year 1996 and were respondents before the Supreme Court. The Supreme Court disposed of the Civil Appeal by recording that the scheme for absorption is acceptable to learned advocate appearing for the respondents. Further Their Lordships have observed that the respondents therein shall be absorbed in terms of the policy extracted in the order dated January 18, 2011 as expeditiously as practicable as and in any case not later than six months from today (January 18, 2011). Thus the scheme was applicable to all eligible employees as a one-time measure and those referred to in the Supreme Court's order.

15. In compliance of the order dated January 18, 2011 passed by the Supreme Court, an advertisement/circular dated May 20, 2011 (Exhibit 'E') was published by LIC inviting applications from all eligible temporary employees in Class IV cadre and who satisfy the eligibility conditions mentioned therein. The last date for receipt of the application forms was June 3, 2011. The petitioner has averred that he is not covered by the scheme. It is not even the case of the petitioner that he made an application in terms of the circular/office order dated May 20, 2011 at Exhibit 'E'. In such a case, the question of claiming parity does not arise. The scheme is applicable only to those who are eligible and no one else. The petitioner is neither

covered by the scheme nor is he covered by any directions passed by the Supreme Court.

16. Learned advocate for the petitioner then placed reliance on the order passed by the Supreme Court in the case of **Hashmuddin & ors. vs. Life Insurance Corporation of India & ors.**³ dated October 20, 2016 in support of his case to contend that the Supreme Court had granted relief to **Hashmuddin and ors.** even as of October 20, 2016. To appreciate the petitioner's submission, it would be profitable to reproduce the order dated October 20, 2016 passed by the Supreme Court reading thus :-

"Heard learned counsel for the parties.

I.A. No.4 of 2016 in Civil Appeal No. 2268 of 2011 has been filed on behalf of the seven applicants. They were writ petitioners before the Allahabad High Court when they were working in the State of U.P. but later their services fell within the newly created State of Uttarakhand and hence their writ petitions are presently still pending before the Uttarakhand High Court at Nanital.

They have prayed for impleadment in Civil Appeal No.2268 of 2011 on the ground that they stand on the same footing as the appellants.

There is no opposition to the aforesaid prayer. Hence I.A. No.4 of 2016 for intervention is allowed.

We make it clear that this order is confined to these four matters which cover the temporary Class III employees of L.I.C. recruited for working in the State of U.P. and Uttarakhand. The other matters already stand de-tagged from some other matters.

It is not necessary to advert to various orders passed in these matters earlier but we may usefully refer to two such orders, passed on 05.02.2014 and

3 Civil Appeal No(s).2268/2011

04.09.2014 which read as under :

"SLP(C) NO.8748/2011, C.A. Nos.2268/2011, 2571/2013 & 4629/2011

Heard counsel on either side.

It is the common case of the parties that the petitioners/appellants have put in more than 10 years of continuing service. On the basis of the decision of this Court in Secretary, State of Karnataka v. Uma Devi (3) & Others reported in (2006) 4 SCC 1, paragraph 53, the Management should have examined the claim of the petitioners/appellants for regularization as one-time measure. This exercise, it is stated, has not been done. We direct the respondent to do that exercise within eight weeks.

"C.A. Nos.6950/2009, 6951/2009, 6956/2009, 6953/2009, 6954/2009, 6952/2009, 6367-6368/2010

After hearing the counsel at length, we are inclined to give directions to the LIC to explore the possibility of framing a scheme so that those already covered by the Industrial award (those who are covered by the award, whether working or not), so as to absorb them in service.

LIC to also examine whether these persons may be exempted from writing this test also.

List all the appeals on 16.04.2014, as part-heard.

SLP(C) No.8748/2011, C.A. No.2268/2011, C.A. No.2571/2013 and C.A. No.4629/2011

This Court vide its order dated 05.02.2014 granted eight weeks time to the respondent-Life Insurance Corporation of India to formulate a scheme as per what was envisaged in paragraph 53 of the judgment of this Court in Secretary, State of Karnataka vs. Uma Devi (3) & Ors. (2006) 4 SCC 1. Learned counsel for the respondents has endeavoured to take us to a scheme that was prevalent in 1992 on the basis of the decision of this Court in State of Haryana Vs. Piara Singh (1992) 4 SCC 118. That exercise is entirely futile after the pronouncement of judgment in Uma

Devi's case (supra). We were, therefore inclined to direct the presence of the Chairman of Life Insurance Corporation of India to appear on the next date of hearing. However, the learned Attorney General has assured us that necessary action shall be taken within six weeks from today. On his assurance, we adjourn these cases.

List for consideration on 05.11.2014.

These appeals/petitions are de-tagged from other appeals which related to the industrial award passed against the respondents in respect of other workmen.

"C.A. Nos.6950/2009, 6951/2009, 6956/2009, 6953/2009, 6954/2009, 6952/2009 & 6367-6368/2010

Let these appeals be listed for hearing on 05.11.2014".

In compliance of those two orders L.I.C. has placed certain materials through I.A. No.3 of 2015 in these matters. In Para 15, the Scheme placed before this Court reads as under

"(i) This scheme is applicable only for the petitioners whose names are given in the Annexure and who had possessed minimum eligible qualification and age as prescribed at the relevant time of their entry into LIC of India. They shall be given age relaxation for the purpose of eligibility only.

(ii) LIC of India will hold a written examination for them.

(iii) They may have to appear in the written examination along with open market candidates, if circumstances, so demand.

(iv) The successful candidates shall be called for interview. Only those persons, who are successful in the interview, shall be appointed and posted as Assistants anywhere in the Zone, after they clear pre-recruitment medical examination.

(v) Those who are recruited shall be governed by the rules as applicable to the employees of the Corporation and they shall not be entitled to claim any other benefit regarding their past service rendered as

temporary employees.

(vi) *By accepting the scheme, any other cases filed by the petitioners in the Supreme Court and/or in other High Court/s or any other court will be treated as closed.*

(vii) *Such of those petitioners who do not apply or are not successful shall cease to be in employment”.*

Considering the long length of service rendered by the appellants in temporary capacity, this Court does not approve the part of the Scheme where under the appellants have to appear in written examination along with open market candidates (Clause 3 of the Scheme).

Fortunately Mr. Kailash Vasudev, learned senior counsel, on instructions, submitted that L.I.C. shall hold a limited written examination only for the appellants and the intervenors.

We make it clear that the limited examination will not include candidates from the open market and will be confined only to the appellants/writ petitioners and the intervenors.

We have noted an order of this Court dated 7th February, 1996 passed in Civil Appeal No.1790 of 1989 (The Management of the Life Insurance vs. Their workmen). In that order this Court permitted the L.I.C. to hold a test if there was no power to exempt the class IV employees from the test and interview but observed as follows :

"We direct the Management to exempt the concerned Class IV Employees from the test and interview if the Management has power to do so under the regulations/instructions governing their conditions of service. In case the Management has not such power, we have no doubt in our mind that the test which shall be prescribed for these workmen shall be of a lessor standard than the one which has been prescribed under the two circulars mentioned in the compromise. We have further no doubt that simply because these workmen have

approached the Court. The Management shall not take any vindictive attitude towards them.

In somewhat circumstances, an order came to be passed by this Court on 18th January, 2011 in C.A. Nos.953-968 of 2005 (LIC of India and Anr. Etc. Vs. D.V. Anil Kumar Etc.) That matter related to a Scheme for absorption of class IV employees and this Court accepted the Scheme as enumerated in the affidavit of the LIC for holding one time limited examination for the temporary employees who were working in the LIC for more than five years and who had possessed minimum eligible qualification and age as prescribed at the relevant time of their entry into LIC of India. For this purpose, LIC of India was directed to hold a limited written examination in the vernacular language with a limited syllabus to be announced in advance.

We agree with the course of action in above noted orders and reiterate the observations to the effect that the standard of examination shall be of such standard that persons who have left academic studies long back but have earned practical experience for a long number of years can take the examination with some amount of confidence of their success.

We direct the L.I.C. to conclude this exercise within a period of four months and submit a report to this Court.

Post after four months. If need arises, the fairness of other conditions/clauses of the Scheme shall be considered during further hearing."

17. Perusal of the order would indicate that Their Lordships directed framing of a scheme as it was the common case of the parties that the employees have put in more than 10 years of continuous service and they are entitled to the relief of regularization on the basis of the decision of the Supreme Court in **Secretary, State of Karnataka v. Uma Devi (3) & Others** reported in (2006)

4 SCC 1, paragraph 53 Their Lordships were, therefore, of the opinion that the Management should have examined the claim of the employees for regularization as a one-time measure. As this exercise was not done, LIC was directed to complete this exercise within eight weeks. Then in C.A. Nos.6950 of 2009 and others, Their Lordships directed LIC to explore the possibility of framing a scheme so that those already covered by the industrial award (those who are covered by the award, whether working or not), so as to absorb them in service. LIC was also called upon to examine whether these employees may be exempted from writing the test. The Supreme Court then in SLP(C) No.8748 of 2011 and others clearly observed that the scheme that was prevalent in 1992 on the basis of its decision in State of Haryana vs. Piara Singh (1992) 4 SCC 118 is not at all relevant in view of the pronouncement of judgment in **Uma Devi** (supra).

18. The Supreme Court records that LIC has placed certain materials through I.A. No.3 of 2015. In paragraph 15, the said scheme is placed before the Supreme Court by LIC indicating that the scheme is applicable only for the petitioners whose names are given in the Annexure and who had possessed minimum eligible qualification and age as prescribed at the relevant time of their entry into service of LIC. It is, therefore, obvious that the employees named in the Annexure were eligible and the scheme is applicable only to such employees. We also find that the order dated

October 20, 2016 was passed by the Supreme Court in the context of insistence on the part of LIC that the employees have to appear in the written examination along with open market candidates, which was not approved by Their Lordships considering the long length of service rendered by the employees in temporary capacity. These orders passed in **Hashmuddin & ors.** (supra), therefore, do not aid the petitioner in any manner.

19. Their Lordships then had an occasion to again pass an order dated January 15, 2020 in **Hashmuddin's** case. The order dated January 15, 2020 reads thus :-

"1. We have heard learned counsels at length and perused the orders passed from time to time.

2. The respondent-Life Insurance Corporation, in pursuance to its own initiation and some prodding from the Court has taken some beneficial steps to help the employees who were given temporary status initially but continued to work for long period of time in that capacity. The Scheme in question was devised so as not to make such temporary employees compete with persons who would be entering afresh. Thus, all such people who may or may not have appeared in the examination in the past were given an opportunity to take the examination in pursuance to the directions of this Court dated 20th October, 2016.

3. A very limited aspect based on the submission of the learned counsel for the appellants has been crystalised by us in our last order dated 5th December, 2019 as under:

"Thus, the question which would have to be examined would be that are the appellants entitled to counting of their period spent in temporary posts towards fixation of their pay on permanent status after they have been given the said permanent status."

4. It is in the conspectus of the aforesaid that we

have heard learned counsel for the parties. In order to frame our opinion on the aforesaid issue, it would be useful to refer to the seminal judgment in the case of Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (2006) 4 SCC 1. The relevant portion is as under:

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa, R.N.Nanjundappa and B.N.Nagarajan 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 aboveresferred 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."

5. It is in the view of the aforesaid observations, we find that a scheme ought to have been devised by the respondent-Corporation within a period of six months

as set out in the aforesaid judgment. It would naturally require some time to carry out the scheme and thus learned senior counsel for the respondent-Corporation contends that such process does take about year and a half. This is being the position, we are of the view, that atleast from the date of initial appointment in the temporary status, a period of twelve years could be set to suffice for purposes of carrying out the necessary process of the absorption of such persons on a permanent basis. However that did not happen and a longer period of time has been taken on account of various proceedings filed and orders passed by different courts from time to time. It is thus the contention of the learned senior counsel for the respondent-Corporation that the respondent should not be burderend with giving the appellants a permanent status from their original date of appointment on a temporary basis.

6. Learned counsels for the appellants have taken a reasonable stand before us. They have confined their contention to the benefits being available on a basis of a requirement that the temporary status should have been converted into a permanent status after twelve years from the initial date of appointment and it is on the expiry of the said period that the time period should be computed for fixation of their pay on permanent status. They have also stated that they are not claiming any backwages, that is an aspect not even noted by us to be examined as per our last order.

7. We are thus of the view that the appellants should be entitled to the counting of their period spent in temporary status post twelve years from their initial date of appointment on the temporary basis towards the fixation of their pay on a permanent basis with all consequential benefits without any backwages (the benefit will accrue from 31st December, 2016). On aspects of gratuity, contributory pension etc., we are not specifically dealing with as that will depend in turn on the provisions of the Scheme, provisions of the Act and Regulation concerned and that can be worked out

on that basis.

8. We hope that this should put a quietus to the lis inter-se the parties and the questions raised before us.

9. The appeals are accordingly disposed of leaving the parties to bear their own costs."

(emphasis supplied by us)

20. According to us, the aforesaid order is in the nature of a clarification of its earlier orders in its application to eligible employees covered by the scheme. Further as is clear from paragraph 3 of the order dated January 15, 2020 passed by the Supreme Court aforesaid, Their Lordships crystallized the issue as to whether the appellants are entitled to counting of their period spent in temporary posts towards fixation of their pay on permanent status after they have been given the said permanent status. It is in this conspectus that the Supreme Court heard the parties. In our considered opinion, the directions in **Hashmuddin** (supra) does not improve the petitioner's case.

21. The next order relied upon by the learned advocate for the petitioner is dated March 6, 2020 of the Supreme Court in the case of **The Chairman, Life Insurance Corporation of India & ors. vs. Jagadevi & ors.**⁴ The order reads thus :-

"Learned senior counsel for the appellant-Corporation submits that he has obtained instructions to an amicable resolution and thus, requests that the course of action followed in Hashmuddin & Ors. v. LIC & Ors.-Civil Appeal No.2268/2011 in terms of order dated 20.10.2016 as confirmed by the order dated 15.01.2020 can be adopted even in the present case.

4 Civil Appeal Nos.4703-4735 of 2016

The effect of this would be that a limited departmental examination would be held for the candidates in question as was proposed in our order dated 31.01.2020 in the present matter. Such a departmental examination would not include the candidates from open market and would be applicable only in cases where the person has completed 10 years of continuous service as temporary Class III employees in accordance with instructions. Naturally, this examination would have to be cleared by such temporary Class III employees for seeking regularization.

The position which will emerge on their qualifying would be as per par 7 of the order dated 15.01.2020 in Hashmuddin (supra) and for convenience of reference, the same is reproduced as under:

"We are thus of the view that the appellants should be entitled to the counting of their period spent in temporary status post twelve years from their initial date of appointment on the temporary basis towards the fixation of their pay on a permanent basis with all consequential benefits without any backwages (the benefit will accrue from 31st December, 2016). On aspects of gratuity, contributory pension etc., we are not specifically dealing with as that will depend in turn on the provisions of the Scheme, provisions of the Act and Regulation concerned and that can be worked out on that basis."

The aforesaid process be commenced with the examination to be held within three months and the process be completed within three months thereafter.

The appeals stand disposed of.

At this stage, learned counsel for the appellant-Corporation points out that there are cases pending in different High Courts by parties similarly situated and it would be appropriate to put a quietus to the matter even in those cases.

We feel that appropriate course of action would

to file an application for those proceedings based on the order passed today so that those claimants can also get the benefit of our order

MISCELLANEOUS APPLICATION NO.520/2020 IN M.A. DIARY NO.40820/2019 IN CIVIL APPEAL NO.7677/2019

Dismissed."

22. From a reading of the said order it appears that the employees therein are similarly situated as those in **Hashmuddin & ors.** and that the order came to be passed by Their Lordships upon learned senior counsel for LIC obtaining instructions to an amicable resolution indicating that the course of action followed in **Hashmuddin & ors.** (supra) in terms of the order dated October 20, 2016 as confirmed by the Supreme Court by order dated January 15, 2020 can be adopted even in the present case. In our opinion, the orders passed by the Supreme Court are in respect of such employees who are covered by the scheme. Moreover, the regularisation is in accordance with the limited window provided by the Supreme Court in **Umadevi** (supra) in paragraph 53 as a one-time measure. The petitioner cannot derive any benefit of the orders passed by the Supreme Court referred to hereinbefore in this writ petition under Article 226 of the Constitution of India.

23. Learned advocate for the petitioner placed much emphasis on the decision of the Supreme Court in the case of **Umadevi** (supra) to submit that the petitioner having worked for so long number of years, his case is squarely covered by the observations of Their Lordships in paragraph

53. While dealing with this submission, it would be useful referring to a judgment delivered by this Bench authored by one of us (Chief Justice) in the case of **Union of India, through the Secretary, Department of Industrial Policy & Promotion and Another vs. Lalita V. Mertia.**

In paragraph 17, we observed thus :-

"17. Any discussion on the contentious issues would be incomplete without reference to the Constitution Bench decision in Umadevi (supra) which marks a watershed moment in the development of law in this country by providing a legal foundation for equality of opportunity in the matter of public employment. We propose to quote below certain paragraphs from such decision to guide our decision-making process."

24. This Court referred to several paragraphs from **Umadevi** (supra) to put the matter in a proper perspective. In the context of the present petition, paragraph 53 in **Umadevi** (supra) has a bearing, which reads thus :-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (AIR 1967 SC 1071), R.N. Nanjundappa [(1972)1 SCC 409] and B.N. Nagarajan [(1979)4SCC 507] 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 above referred 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 supplied by us).

25. A reference also need to be made to paragraph 24 and 25 in the case of **Union of India, through the Secretary, Department of Industrial Policy & Promotion and another vs. Lalita V. Mertia** which read thus :-

"24. Nowadays, the expression 'back-door entrant' has become synonymous with public appointments not made legally. However, the expression 'front-door entrant' for an appointee who is validly appointed in public service is not usually used; understandably so, because appointments made according to law in public service conforming to Constitutional principles of equality in matters of public employment speak for themselves and are not part of 'litigious employment' deserving any castigation.

25. Be that as it may, a claim for regularization could arise for consideration if, despite the appointee fulfilling three conditions: viz. first, he satisfies the eligibility criteria for appointment; secondly, he has faced a process of selection which, though not illegal, can at best be viewed as irregular; and thirdly, despite there

being a sanctioned post on which he could have been appointed on substantive basis is not so appointed, but is engaged either on an ad hoc or casual or temporary basis, or even on a contract, and continues for years together, with the ill-motive to deny him the Constitutional/statutory safeguards. These being the tests, it is necessary to examine how far Smt. Lalita succeeded in setting up a claim for regularization in service."

26. In the present case, we find that LIC has framed scheme in compliance with the directions in terms of paragraph 53 in the case of **Umadevi** (supra) and on the prodding of the Supreme Court. The scheme is applicable only to those employees covered by the scheme and such other employees as directed by the Supreme Court to be eligible as per the scheme. In **Umadevi** (supra) it is clearly mentioned that the question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by the Supreme Court and in that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize 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 Supreme Court directed that the process

must be set in motion within six months from the date of its judgment in **Umadevi** (supra) (April 10, 2006).

27. We thus find that the law of regularization has been definitely laid down by the Constitution Bench in **Umadevi** (supra). As observed by this Court in paragraph 18 of **Lalita V. Mertia** (supra) that all appointments ought to be made on the touchstone of equality of opportunity which is the cornerstone of the Constitution. Having regard to such exposition of law, it is not open for us to grant any relief to the petitioner on the plea that the petitioner is similarly situated as the employees who are absorbed in accordance with the scheme. Once we come to the conclusion that the petitioner is not covered by the scheme, it is not open for us to direct LIC to now frame a scheme for regularization of the petitioner, as any such direction would be in the teeth of **Umadevi** (supra).

28. Even the decision of the co-ordinate Bench of this Court (Aurangabad Bench) in the case of **Pandurang Kashinath Shelke and ors.** (supra) dated July 27, 2018 in Writ Petition St. No. 16247 of 2011 has no application to the petitioner's case, as the same was decided in view of the statement made by learned advocate for LIC that it (LIC) would take the decision to consider the appointment of **Pandurang Kashinath Shelke and ors.** by following recruitment procedure adopted in the year 2011 [in terms of the order of the Apex Court in D.V. Anil Kumar (supra)] i.e. conducting written examination, interview and

pre-recruitment medical examination of the petitioners. The order is made on a concession of learned advocate for LIC. This decision does not help the petitioner's case.

29. As we find that in the application of the settled law to the pleaded facts provides a complete answer to the question under consideration, any reference to the provisions of LIC of India (Employment of Temporary Staff) Instructions, 1993 and LIC of India Recruitment (of Class III and Class IV Staff) Instructions, 1993 would only burden this judgment without furthering the petitioner's cause. Suffice it to observe that the petitioner's appointment is not in consonance with the recruitment Rules, the question of granting him a permanent status does not arise.

30. We therefore do not find any merit in the writ petition. The writ petition is dismissed with no order as to costs.

31. We make it clear that if in future, LIC initiates a process for recruitment of peons and the petitioner is age barred in terms of the terms and conditions set forth by LIC for such recruitment, the petitioner shall be entitled to apply notwithstanding such age bar and he shall be considered for appointment alongwith candidates who apply for such posts.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)