

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**APPELLATE SIDE**

**BEFORE:-**

**THE HON'BLE JUSTICE RAJASEKHAR MANTHA**

**W.P.A. 10267 of 2021**

**BOARD OF TRUSTEES FOR THE SYAMA PRASAD MOOKERJEE PORT,  
KOLKATA  
-VERSUS-  
UNION OF INDIA & ORS.**

**AND**

**W.P.A. 8919 of 2021**

**NATIONAL UNION OF WATERFRONT WORKERS (INTUC) & ANR.  
-VERSUS-  
UNION OF INDIA & ORS.**

Mr. Kishore Datta, Senior Advocate  
Mr. Ashok Kumar Jena

...for the petitioners in WPA 10267 of 2021  
and respondents in WPA of 8919 of 2021.

Mr. Asoke Kumar Banerjee, Senior Advocate,  
Mr. Sarajit Sen  
Mr. Tapas Singha Roy

...for the respondents in WPA 10267 of 2021  
and petitioners in WPA of 8919 of 2021.

**Hearing Concluded On** : 13<sup>th</sup> March, 2024.

**Judgment On** : 18<sup>th</sup> March, 2024.

**Rajasekhar Mantha, J.**

1. The two writ petitions have been filed challenging an award dated 1<sup>st</sup> August 2019 passed by the Central Government Industrial Tribunal, Kolkata, in reference No. 19 of 2006.

**Facts of the Case**

2. The brief facts of the case leading to the award are that the Shyama Prasad Mookerjee Port Trust (formerly known as Kolkata Port Trust), had a list of 350 persons who were called for recruitment in the year 1995. The recruitment was for Group/Grade IV posts in different departments. The said list comprised of persons who were in the died-in-harness category or were legal heirs of employees who died in service and were found entitled to compassionate employment.
3. 264 of such persons were permanently employed. The remaining 86 persons were initially engaged temporarily against permanent vacant posts. Such vacancies are stated to have arisen due to leave obtained by the permanent employees and those who left employment. Out of the said 86 employees, 42 persons were soon engaged and permanently absorbed in sanctioned Class-IV posts in the Marine Department. The rest of the 44 employees thus remained and continued to be engaged temporarily against permanent vacant posts from 1995 till date. Out of the said 44, 5 employees died and 39 remain.
4. Around the same time, at the request of the Port Trust, for the purpose of recruitment, 52 candidates sponsored by the local employment exchange, applied for group IV posts. 35 out of the 52 workmen were

permanently absorbed and appointed against sanctioned posts. Eventually, 14 candidates survived after the death of 3 persons.

5. The said remaining 61 odd, employees (said workmen), continued to work for well over 38 years and are still working as on date (except those who have died and or superannuated during the pendency of the Reference and these proceedings). They were the applicants before the Industrial Tribunal represented by their trade union. The said trade union is the petitioner in the W.P. 8919 of 2019.
6. Some of the said workmen received quarters, some were provided uniforms. All of them were provided casual, medical, and annual leaves. They were also given bonuses from time to time. They obtained treatment at the medical facilities of the Port Trust.
7. The said workmen are stated to have been engaged contractually, by the Port Trust. Curiously there was an artificial break for one day after 41 days of continuous engagement of the said workmen.
8. The 61 employees who were not permanently absorbed, applied before the Port Trust through their trade union for permanent absorption and demanded equal pay and benefits with their permanent counterparts.
9. On 21<sup>st</sup> December 2008, the Chairman of the Port Trust addressed a letter to the Secretary of the Ministry of Shipping of the Central Government stating that 61 persons were continuously working as temporary hands and were required to be absorbed permanently and adjusted against regular vacancies. A list of 107 vacancies in permanent posts of Lascar, Bhandari, Masalchi, Topaz, and Firemen was admitted. It was further indicated that after absorbing the 61

workmen in permanent posts in the Marine Department against sanctioned vacancies, there would remain 30 more vacant posts in the class IV category of the Marine Department. Reference was made to directions of the Calcutta High Court in three different writ petitions.

10. The Central Government did not accord sanction and in fact, imposed a ban on any permanent recruitment in Kolkata Port Trust. The Chairman of the Port Trust, in the letter dated 4th July 2006 had also requested a temporary lifting of such ban.

### **Proceedings before the Industrial Tribunal**

11. On failure of the Port Trust to permanently absorb the said 61 workmen, conciliation proceedings were initiated under the provisions of the Industrial Dispute Act 1947. Upon failure of said proceedings, the Central Government referred the following questions to the Central Government Industrial Tribunal at Kolkata on 23<sup>rd</sup> May 2006 followed by a corrigendum dated 4<sup>th</sup> July 2006 under Section 10(1)(d) read with Section 2A of the Act of 1947 for adjudication.

“Whether the action of the management of Kolkata Port Trust, Kolkata in non-regularizing the services of 61 workmen (as per list attached as Annexure-1) engaged on temporary basis, on the permanent posts as mentioned against each name in the list, is legal and justified? If not, to what relief they are entitled for?”

12. The reference was numbered 19 of 2006. The workmen were represented by the National Union of Waterfront Workers (INTUC) a writ petitioner herein.
13. Pleadings were exchanged. The Port Trust examined as witnesses Shyama Prasad Bose, Ex-UDC in the Finance Department, and Prabhat

Kumar Chattopadhyay, Establishment Officer in the Marine Department as witnesses. The workmen presented five witnesses.

14. After discussing the evidence that came on record and referring to the arguments of the parties, the Tribunal found that the workmen were engaged contractually for the specific period mentioned therein. The Tribunal found nothing on record to show that the workmen concerned were appointed against the substantive vacancies. The Tribunal found that the decision of the Supreme Court in the case of **Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors.** reported in **(2006) 4 SCC 1** would be a bar against regularization. The tribunal referred to the case of **Durgapur Casual Workers Union and Ors v. Food Corporation of India and Ors.** reported in **(2015) 5 SCC 786**.
15. Reference is also made to the decision of **Union of India and Ors. v. Vartak Labour Union** reported in **(2011) 4 SCC 200** that even prolonged employment of casual labour was not a ground sufficient enough to sustain a claim for regularization. Placing reliance at paragraphs 43, 44, and 45 of the decision of the Supreme Court in the case of **Umadevi (3) (Supra)** that was reiterated in the case of **Hindustan Aeronautics Ltd. v. Dan Bahadur Singh and Ors.** reported in **(2007) 6 SCC 207**, it was held that an employee appointed illegally cannot seek regularization. It was also held that since the engagement of some of the workmen was purely contractual and for a specific period, the right to permanent absorption could not be claimed.
16. The Tribunal answered the first part of the reference i.e. as to “whether the action of the management of Kolkata Port Trust in non-regularizing

the services of 61 workmen engaged on temporary basis on the permanent posts”, in the negative against the workmen.

17. The Tribunal however thereafter went on to decide whether the Port Trust engaged in any “Unfair Labour Practice” to address the part of the reference “to what relief they are entitled for?”
18. As for the second part of the “Reference”, the Tribunal found “Unfair Labour Practice” on the part of the Port Trust. By relying on the dicta of the Supreme Court in the cases of **Durgapur Casual Workers Union and Ors. v. Food Corporation of India and Ors.** reported in (2015) 5 SCC 786, **Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana** reported in (2009) 8 SCC 556 and **Ajaypal Singh v. Haryana Warehousing Corporation** reported in (2015) 6 SCC 321, the Tribunal held that the **Umadevi (3) (Supra)** decision only barred the High Courts and the Hon’ble Supreme Court from ordering regularization but not Tribunals constituted under specialized statutes.
19. It was also found that the Port Trust had engaged in “Unfair Labour Practice” by keeping the said workmen engaged contractually for years, providing artificial breaks after 41 consecutive days of work. The Port Trust was found treating the workmen as badlis, casual labour, and temporary employees, continuously for decades. The Tribunal held that this was an “Unfair Labour Practice” within the meaning of item 10 of the 5<sup>th</sup> Schedule read with section 2(r)(a) of the Industrial Disputes Act, 1947.
20. In the backdrop of the above, the Tribunal, after analyzing the oral and documentary evidence adduced by the parties, went on to direct the

Kolkata Port Trust to permanently absorb the 61 workmen. It was however directed that only those presently working as on the date of the award would be entitled to permanent absorption.

### **Submissions on behalf of the Port Trust**

21. Mr. Kishore Datta, Ld. Senior Counsel, appearing for the Port Trust, would argue that once the Tribunal found that the petitioners were not engaged in permanent posts and that they could not claim absorption in terms of the decision of the Supreme Court in the **Umadevi (3) (Supra)** decision, the Tribunal committed error in proceeding to deal with the issue of “Unfair Labour Practice”. The Tribunal traveled outside the scope of the reference in embarking upon the enquiry on the question of “Unfair Labour Practice” by the Port Trust.
22. Reference in this regard is made to the following decisions:-
  - a. Paragraphs 22, 31, 53, and 56 in the case of **Umadevi (3) (supra)**.
  - b. Paragraphs 27 and 28 of **State of UP and Anr. v. Anand Kumar Yadav and Ors.** reported in **(2018) 13 SCC 560**.
  - c. Paragraph 4 of **Gouri Sankar Chatterjee v. Texmaco Ltd. and Ors.** reported in **(2001) 2 SCC 257**.
23. Placing reliance on the **Umadevi (3) decision (Supra)** it was argued that even if there is non-compliance with a minor condition of recruitment, violation of a condition that goes to the root of the recruitment cannot be regularized. The same would amount to justifying an illegality.

24. It is also argued that a regular appointment to a post in the State or Union Territory cannot be made without following the process of advertisement and inviting sponsorship from the employment exchange. It was also argued that merely because a temporary employee or a casual wage worker is continued beyond the term of his appointment, he should not be made permanent.
25. Mr. Datta placed reliance on paragraph 24 of the decision in the case of **State of Haryana and Ors. v. Sharanjit Singh and Ors.** reported in **(2006) 9 SCC 321** on the proposition that contractual workers cannot claim equal pay as that of regular workers.
26. Reliance was next placed by the Port Trust on the decision of **Indian Drugs and Pharmaceuticals Ltd. v. Workmen, Indian Drugs and Pharmaceuticals Ltd.** reported in **(2007) 1 SCC 408** in which it was held that casual/daily-rated/ad hoc employees and temporary employees have no right to permanent posts and hence cannot claim permanent absorption.
27. The case of **Vijay Singh Deora and Ors. v. State of Rajasthan and Anr.** reported in **(1997) 3 SCC 118** and the case of **State of Uttar Pradesh and Anr. v. Kaushal Kishore Shukla** reported in **(1991) 1 SCC 691**, as also the decision in the case of **Bhagwan Dass and Ors. v. State of Haryana and Ors.** reported in **(1987) 4 SCC 634** have been relied upon by Mr. Dutta against the decision of the Tribunal.

### **Submissions on Behalf of the Workmen**

28. Mr. Ashoke Kumar Banerjee, Ld. Senior Advocate for the workmen placed the provisions of Rule 20D of the West Bengal Industrial Tribunal Rules 1958, and the Employment Exchange Act 1959. He also placed several parts of the evidence adduced by the parties before the Tribunal. He argued that the Tribunal committed an error on the first part of the reference finding that the said workmen were not entitled to permanent absorption.
29. Mr. Banerjee relied upon the decision of the Supreme Court in the case of **The Comptroller and Auditor General of India, Gian Prakash v. K.S. Jagannathan and Anr.** reported in **AIR 1987 SC 537** particularly paragraphs 19 and 20 thereof on the power of the High Court under Article 226. He also relied upon the case of **State of Rajasthan v. Ganeshi Lal** reported in **AIR 2008 SC 690** at paragraphs 13 and 14 on the doctrine of precedent. Mr. Banerjee finally relied upon the case of **Smt. Naseem Bano v. State of U.P. and Ors.** reported in **AIR 1993 SC 2592**. Mr. Banerjee has made detailed submissions by reference to the pleadings that come on record.
30. Mr. Banerjee further relied upon Section 4(2) and 4 of the Employment Exchange Act, 1959 which specifies that the Port Trust is required to regularly furnish the number of permanent vacancies to be filled up. It is essentially in this context that the 52 persons were sponsored by the employment exchange concerned. The engagement of only 35 persons

in permanent posts and that of the rest of the 17 as temporary/contractual is ex facie arbitrary discriminatory and illegal.

### **This Court's Analysis and Findings**

31. Having carefully heard the counsel for the parties, the arguments of the Port Trust based on the decisions need to be addressed first. The dicta of **Umadevi (3) (Supra)**, is primarily against the High Courts and the Supreme Court directing permanent absorption of irregularly and illegally engaged casual daily wage and contractual employees. The said decision does not deprive the High Courts and the Supreme Court and Tribunals of the power to direct absorption of legally and regularly engaged employees and in the case of unfair labour practices adopted by the employer.
32. The **Umadevi (3) decision (Supra)** also did not bar Tribunals from directing absorption based on a finding of "Unfair Labour Practice". It is only an authority for the proposition that irregular appointments cannot be regularized.
33. The above position has been clarified in paragraphs 17 to 21 of the decision of the **Durgapur Casual Workers Union Case (Supra)** which in turn referred to the **Casteribe decision (Supra)**.

"17. In *Umadevi (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] the Constitution Bench of this Court while observing that casual/temporary employees do not have any right to regular or permanent employment held as follows : (SCC pp. 36-38, paras 43 & 45) "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.

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

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

**18.** However, in respect of irregular appointments of duly qualified persons working for more than 10 years, this Court observed : [*Umadevi (3) case* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , SCC p. 42, para 53]

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

considered on merits in the light of the principles settled by this Court in the cases 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.”

34. The **Anand Kumar Yadav decision (Supra)** cited by Mr. Dutta, was dealing with teachers seeking permanent employment without having requisite qualifications. Such teachers were appointed contractually and not against the sanctioned posts. The aforesaid decision cannot come to the aid of the Port Trust in view of the discussion on facts and evidence hereinbelow.
35. The **Gouri Sankar Chatterjee decision (supra)** placed by Mr. Dutta, also cannot aid the Port Trust as it was not argued by the Port Trust before the Tribunal in the instant case, that they were taken by surprise and that the Tribunal could not enter into the question of “Unfair Labour Practice”. On the contrary, it appears to this Court that detailed arguments have been advanced by the Port Trust before the Tribunal on the issue of “Unfair Labour Practice”.
36. The decision of **Sharanjit Singh and Ors. (Supra)** is equally distinguishable as the Port Trust has admitted before the Tribunal as well as before this Court that each of the workmen were part of the

regular process of recruitment either under the died-in-harness (compassionate employment) category or sponsored by the employment exchange. A majority of persons who joined along with them have already been absorbed in permanent posts. It is only the 61 workmen out of the 400 odd employees in a regular recruitment process, who were engaged temporarily against permanent sanctioned posts.

37. In the decision of **Indian Drugs and Pharmaceuticals Ltd. V. Workmen, Indian Drugs and Pharmaceuticals Ltd.** reported in **(2007) 1 SCC 408** cited by Mr. Dutta, it was held that casual/daily-rated/ad hoc employees and temporary employees have no right to permanent posts and hence cannot claim permanent absorption. The said case is distinguishable in the facts of the instant case where the petitioners were admittedly engaged against the permanent posts.
38. The case of **Vijay Singh Deora and Ors. v. State of Rajasthan and Anr.** reported in **(1997) 3 SCC 118**, cited by Mr Dutta, has no manner of application in the facts of the case as does not, the decision in the case of **State of Uttar Pradesh and Anr. v. Kaushal Kishore Shukla** reported in **(1991) 1 SCC 691**.
39. The decision in the case of **Bhagwan Dass and Ors. v. State of Haryana and Ors.** reported in **(1987) 4 SCC 634** is equally inapplicable in the facts of the case as the engagement of the teachers therein was under an ad-hoc scheme of the State.
40. This Court finds that the workmen before the tribunal comprised in two categories. The persons under the first category were part of the recruitment process in the died-in-harness (compassionate

employment) category where 350 candidates participated in a regular selection process. 264 candidates were thereafter employed and appointed against permanently sanctioned posts. The remaining 86 were appointed temporarily against the permanently sanctioned posts. Such vacancies arose due to leave taken by the regular employees or because some had resigned and left. 42 out of such 86 employees were absorbed permanently in sanctioned posts and 39 remained.

41. Admittedly as per the letter of the Chairman of the Port Trust dated 21<sup>st</sup> December 2009 that was exhibited before the Tribunal, there were 107 vacancies in the Marine Department. Despite whereof 39 out of the 44 workers (5 had died) were not absorbed permanently.
42. In the second round of regular recruitment process where 52 candidates were sponsored by the exchange upon being invited by the Port Trust itself. 35 employees were absorbed permanently against sanctioned posts and 17 were engaged temporarily also against sanctioned posts. 4 of such employees had died. It therefore cannot be said that there was no valid process of recruitment or engagement of the petitioners or that they were contractual. No such contract has been produced by the Port Trust before the Tribunal.
43. The persons who were considered for recruitment in the two stages referred to above have been absorbed against permanent vacancies. Both the stages were normal and regular recruitment processes. The remaining persons being the said workmen were admittedly engaged in permanent posts, albeit temporarily. They remained temporary for decades despite vacancies in the permanent posts.

44. Each one of the 61 workmen was deliberately and willfully engaged temporarily against the permanently sanctioned posts. The process of recruitment did not have any illegality at all. If there is anything that is found illegal it is temporary engagement of the petitioners and characterizing them as contractual whereas a majority of those who were engaged along with the petitioners were given permanent employment in sanctioned posts.
45. It further appears from the evidence on record that the workmen were paid bonus till 2007 all the way from the year 1995. They have been given helmets, shoes, and summer and winter uniforms. Some workmen got free provisions. Some also got promotions. Most of the workmen were provided with and stayed in the Port Trust Quarters. All of them were provided casual, medical, and annual leaves. They were also given bonuses from time to time. They obtained treatment at the medical facilities of the Port Trust. The said workmen were therefore treated at par with permanent employees and yet deprived of the monetary and other benefits being paid to permanent employees.
46. Shyama Prasad Bose, the management witness, has admitted in his deposition before the Tribunal that the workmen were all engaged in permanent posts, and despite repeated requests, their services have not been regularized. He has further deposed that the jobs performed by the workmen were perineal in nature. Prabhat Kr. Chattapadhyay, the other Port Trust witness, has deposed before the Tribunal that the 61 workmen are being provided quarters and are getting basic DA, HRA,

and CCA. He has also admitted that the workmen are performing the same work as that of the permanent employees.

47. Both the management witnesses have confirmed that the Chairman of the Port Trust had approached the Ministry for the permanent absorption of the 61 workmen by the letter dated 21<sup>st</sup> December 2009. In the backdrop of the oral evidence of the management in examination-in-chief as also in cross-examination, the documentary evidence, the arguments of the Port Trust that the petitioners are not working in permanent posts must be rejected.
48. On the doctrine of non-traverse, the reliance placed on the decision in the case of **Naseem Banu (Supra)** is appropriate. The Port Trust has not denied either before this Court or before the Tribunal that the workmen performed perineal jobs. Some of them were sponsored by the employment exchange and some were engaged in the died-in-harness category after participating in a regular recruitment process, which has not been denied by the Port Trust. This Court notes that none of the petitioners were ever disengaged during the 30 years of their service with the Port Trust. This Court therefore is in disagreement with the findings of the Tribunal that the said workmen have not been engaged against substantive vacancies. The workmen are therefore entitled to be regularized in services.
49. Non-regularization and engagement on a temporary basis in permanent posts and for over 20 years, would also indicate that the work done by the said workmen is perineal in nature. Their services were and are vitally necessary for the functioning of the Port Trust. The continued

engagement of the said workmen as temporary or contractual is therefore indeed illegal and unjustified.

50. On the subject matter main reference and the claims of 61 workmen out of 350 for regularization, useful reference may be made to the decision of the Supreme Court in the case of **Mahanadi Coalfields Ltd. v. Brajrajnagar Coal Mines Worker's Union** in **Civil Appeal No(s). 4092-4093/2024** decided on 12<sup>th</sup> March, 2024.
51. The facts have striking similarity to the facts of our case. Paragraphs 20, 21 and 23 are set out below:-

“20. It is proved that the remaining workers stand on the same footing as the regularized employees, and they were wrongly not made part of the settlement. This is established by the Tribunal, by examining the nature of work undertaken by the first set of 19 workmen and that of the other 13 workmen. It also examined Shri Arun Ch. Hota (WW3), the Deputy General Manager (MW2), Mr. Udayshankar Gonelal, the Personal Manager (MW3) and Shri S. Agarwal, the Project Officer (MW4). The Tribunal finally came to the conclusion that the nature of the duties performed by the 13 workmen are perennial in nature. The appellant has failed to establish any distinction between the two sets of workers. The Tribunal was, therefore, justified in answering the reference and returning the finding that they hold the same status as the regularized employees.

21. We are also not impressed with the artificial distinction which the appellant sought to bring about between the 19 workers who were regularized and the 13 workers who were left out. The evidence on record discloses that, of the total 32 workmen, 19 workers worked in the bunker, 6 worked in the Coal Handling Plant, and 7 worked on the railway siding. However, of the 19 workers who were regularized, 16 worked in the bunker, and 3 worked in the Coal Handling Plant. However, 3 workers from the same bunker, 3 workers from the same Coal Handling Plant and again 7

workers from the same railway siding were not regularized. A tabulated representation of the above description is as follows:

| <b>Site of work</b> | <b>No. of workers who executed works</b> | <b>No. of workers who were regularized</b> | <b>No. of workers not regularized</b> |
|---------------------|------------------------------------------|--------------------------------------------|---------------------------------------|
| Bunker              | 19                                       | 16                                         | 3                                     |
| Coal Handling Plant | 6                                        | 3                                          | 3                                     |
| Railway Siding      | 7                                        | -                                          | 7                                     |
| <b>Total:</b>       | <b>32</b>                                | <b>19</b>                                  | <b>13</b>                             |

23. This is a case of wrongful denial of employment and regularization, for no fault of the workmen and therefore, there will be no order restricting their wages.”

52. Applying the aforesaid dicta, the 61 odd workmen in the present case were and are entitled to be regularized as permanent employees in the Port Trust. The Tribunal therefore was in error in finding that the petitioners were not engaged against permanent and sanctioned posts. The answer to the main reference by the Tribunal is erroneous and perverse and is liable to be set aside.

53. Insofar as the Tribunal embarking upon the enquiry as to whether the Port Trust is guilty of “Unfair Labour Practice” in treating the petitioners as temporary, casual, and badli for 30 long years amounts to “Unfair Labour Practice” is concerned, this Court is of the clear view that the Tribunal has not travelled outside the scope of reference.

54. Rule 20D of the West Bengal Industrial Disputes Rules of 1958 is as follows:-

“20D. Addition of issues or parties to the proceedings.- (1) After the parties have filed their statements, the Industrial Tribunal Labour Court may fix a date for framing, if necessary, issues relating to

and arising out of the point or points in dispute, as referred and matters incidental thereto, as well as additional or subsidiary issues, not enlarging in any way the scope of the points referred for adjudication on the merits, nor adding to their number but required for dealing with extrinsic contentions raised by the parties about the reference and for its hearing.”

55. It is clear and evident from the aforesaid Rule that the Tribunal can frame additional issues based on the “extrinsic condition” raised by the parties. Such extrinsic and external issues are vitally necessary for addressing the reference in the case of **State of Madras v. C.P. Sarathy** reported in **(1952) 2 SCC 606**, it has been held as follows:-

“15. Moreover, it may not always be possible for the Government, on the material placed before it, to particularise the dispute in its order of reference, for situations might conceivably arise where public interest requires that a strike or a lockout either existing or imminent should be ended or averted without delay, which, under the scheme of the Act, could be done only after the dispute giving rise to it has been referred to a Board or a Tribunal [vide Sections 10(3) and 23]....”

56. Indeed, to expect the appropriate government to identify and specify the exact nature of the dispute at the time of reference in all cases, is neither feasible nor practical. The Tribunal must therefore be understood to have the power to frame additional issues that arise out of the facts on record and vitally related to the subject matter of the reference. The expression “extrinsic contentions” under Rule 20D above. must be understood as those claims and rights and liabilities, which automatically and or consequently arise out of the basic subject matter of the reference and the facts intrinsic thereto.

57. The reference by the Tribunal to paragraphs 35 and 36 of the decision in the case of **Maharashtra SRTC (Supra)** which is set out hereinbelow, is found apt and appropriate:-

“35.Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

36.Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established.”

58. It is therefore held that the Tribunal did not commit any illegality and has acted within the scope of rule 20D and 24 of the West Bengal Industrial Disputes Rule 1958.
59. On the application of clause 10 of schedule 5 of the Industrial Disputes Act, the Tribunal has rightly found that insofar as artificial breaks of one day after 41 days of continuous engagement, the Port Trust was guilty of “Unfair Labour Practice”.
60. Reference in this regard is made to the decision of **Regional Manager, State Bank of India v. Raja Ram** reported in **(2004) 8 SCC 164** at paragraph 9.

“9. It appears that the High Court as well as the Labour Court had proceeded on a fundamental misconception as to the nature of the right available to the respondent. The respondent was employed for a fixed period of 91 days. Assuming that such an employee could be called a temporary employee for the purposes of the Sastry Award, the requirement as to service of notice of 14 days, would, in cases where an employee has been appointed for a fixed tenure, amount to an embargo on the employer terminating the services prior to the expiry of such period without giving a 14 days' notice. The non-giving of the notice would not mean that the employee would thereby continue to serve beyond the period for which he was originally appointed. The exception to this principle is when an employee is appointed temporarily for successive fixed tenures with artificial breaks in between so as to deny the employee the right to claim permanent appointment. This action would be an unfair labour practice within the meaning of the phrase in Section 2(ra) of the Act. Section 2(ra) says that unfair labour practice means any of the practices specified in the Fifth Schedule to the Act. The Fifth Schedule to the Act contains a list of unfair labour practices which have been classified under two heads, namely: (I) on the part of the employer and trade unions of employers, and (II) on the part of the workmen and trade unions of workmen. The principle that we have referred to earlier finds place in Item 10 of Part I under which “to employ workmen as ‘badlis’, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen”

*is an unfair labour practice. In other words, before an action can be termed as an unfair labour practice it would be necessary for the Labour Court to come to a conclusion that the badlis, casuals and temporary workmen had been continued for years as badlis, casuals or temporary workmen, with the object of depriving them of the status and privileges of permanent workmen. To this has been added the judicial gloss that artificial breaks in the service of such workmen would not allow the employer to avoid a charge of unfair labour practice. However, it is the continuity of service of workmen over a period of years which is frowned upon. Besides, it needs to be emphasised that for the practice to amount to unfair labour practice it must be found*

*that the workman had been retained on a casual or temporary basis with the object of depriving the workman of the status and privileges of a permanent workman.* There is no such finding in this case. Therefore, Item 10 in List I of the Fifth Schedule to the Act cannot be said to apply at all to the respondent's case and the Labour Court erred in coming to the conclusion that the respondent was, in the circumstances, likely to acquire the status of a permanent employee. Furthermore, both the High Court and the Labour Court appeared to have proceeded on the basis that the appointment of Ram Kumar after the employment of the respondent ceased, also on casual basis, was an unfair labour practice. If this view is to be upheld the respondent's appointment in place of Sooraj would equally be an unfair labour practice and therefore unsustainable.”

61. Hence in addition to the answer in favour of the workmen, as found by this Court in respect of the first part of the reference, this Court is also in concurrence with the finding of the Tribunal that the Port Trust has also engaged in “Unfair Labour Practice”.

### **Conclusion**

62. For the reasons stated hereinabove, all 61 persons shall be entitled to permanent absorption from the date of the reference i.e. 4<sup>th</sup> July 2006. Those who have retired or have died during the pendency of these proceedings would be entitled to all benefits available to them as permanent employees with effect from 4<sup>th</sup> July 2006.
63. The workmen would be entitled to all arrears of salary as permanent employees including any terminal or retiral benefits like pension or provident fund. In other words, they shall be given all and other benefits available to permanent employees, monetary and non-monetary with effect from 4<sup>th</sup> July 2006.

64. Insofar as the employees who have died, their families shall not only be entitled to arrears of pay and allowances of all benefits but also family pension payable to permanent employees of the Port Trust.
65. With the aforesaid directions, WPA 8919 of 2021 is allowed and disposed of.
66. WPA No. 10267 of 2021 shall stand dismissed.
67. There shall be no order as to costs.
68. All parties are directed to act on a server copy of this Judgment duly downloaded from the official website of this Court.

***(Rajasekhar Mantha, J.)***

**18.03.2024**

**LATER**

After the judgement is delivered in Court, learned counsel for the workmen prays for specification of a timeframe for its implementation.

Let the judgment be implemented by the Port Trust within a period of one month from date.

Learned counsel for the Port Trust prays for stay of operation of the judgement. The aforesaid prayer is considered and declined.

***(Rajasekhar Mantha, J.)***