



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2273 OF 2018

1. Bipin s/o Chhaburao Patole
Age: 40 years, Occu. Service
R/o. Subedari Guest House
Quarters, Aurangabad
2. Feroz Khan s/o Nawab Khan Pathan
Age: 40 years, Occu: Service,
R/o. Plot No.75, Chaush Colony,
Himayat Bag, Aurangabad
3. Deepak Shivaji Magare
Age: 43 years, Occu. Service,
R/o. N-11, F-15/13, Navjeevan Colony,
HUDCO, Aurangabad
4. Shaikh Shahed Shaikh Ismail,
Age: 37 years, Occu: Service,
R/o. Plot/H.No.2-12-33, Delhi Gate,
Himayat Bag, Aurangabad
5. Nitin s/o Chhaburao Patole,
Age: 46 years, Occu: Service
R/o. Subedari Guest House Quarter,
Aurangabad
6. Latif Shah Shabbir Shah
Age: 51 years, Occu: Service,
R/o. Subedari Guest House Quarter,
Aurangabad
7. Shaikh Abdul Aziz Shaikh Abdul Gani,
Age: 43 years, Occu: Service,
R/o. Subedari Guest House Quarter,
Aurangabad

8. Chandrakant Rambhau Dabhade
Age: 48 years, Occu: Service,
R/o. Subedari Guest House Quarter,
Aurangabad
9. Shaikh Nisar Shaikh Papamiyan
Age: 43 years, Occu: Service,
R/o. Subedari Guest House Quarter,
Aurangabad
10. William s/o Ratan Lalzare
Age: 38 years, Occu: Service,
R/o. Subhedari Guest House Quarters,
Aurangabad
11. Dilip s/o Prabhakar Sutar
Age: 41 years, Occu: Service,
R/o. Subhedari Guest House Quarters,
Aurangabad
12. Khalil Khan s/o Mahmood Khan
Age: 40 years, Occu: Service,
R/o. Subhedari Guest House Quarters,
Aurangabad
13. Sanjay s/o Murlidhar Sathe
Age: 42 years, Occu: Service,
R/o. Subhedari Guest House Quarters,
Aurangabad
14. Dinesh s/o. Shivaji Magare
Age: 41 years, Occu: Service,
R/o Subhedari Guest House Quarters,
Aurangabad
15. Raju Uttam Wagh
Age: 38 years, Occu: Service,
R/o. Subhedari Guest House Quarters,
Aurangabad

16. Kishor Dattu Gawai
Age: 38 years, Occu: Service,
R/o. Subhedari Guest House Quarters,
Aurangabad
17. Sanjay s/o Ukhaji Dudhe
Age: 37 years, Occu: Service,
R/o. Subhedari Guest House Quarters,
Aurangabad
18. Shaikh Zakir Shaikh Yusuf,
Age: 41 years, Occu: Service,
R/o. Subhedari Guest House Quarters,
Aurangabad
19. Shaikh Irfan Shaikh Raheem
Age: 37 years, Occu: Service,
R/o. Subhedari Guest House Quarters,
Aurangabad
20. Smt. Aruna Ramdas Raut
Age: 46 years, Occu: Service,
R/o. Subhedari Guest House Quarters,
Aurangabad

... PETITIONERS

VERSUS

1. The State of Maharashtra
Through the Secretary,
Public Works Department
Mantralaya, Mumbai – 32
2. The Superintending Engineer
Public Works Department,
Bandhkam Bhavan
District Court Premises
Adalat Road, Aurangabad

3. The Executive Engineer
Public Works Department,
Padampura, Opp Divekar Auto Garage,
Aurangabad

... RESPONDENTS

....

Mr. V. P. Latange, Advocate for Petitioners
Mr. S. K. Tambe, AGP for Respondents – State

....

**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

**RESERVED ON : 03.01.2024
PRONOUNCED ON : 25.01.2024**

JUDGMENT (Per Y. G. Khobragade, J.) :-

1. Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.

2. The present Petitioners have put forth prayer clauses, (B), (C), (D) and (E) as under:-

“(B) This Hon’ble Court may be pleased to quash and set aside the impugned order dated 07.08.2014 in Complaint ULP No.107/2008 passed by the Ld. Industrial Court, Aurangabad thereby hold and declare that, the respondents have engaged in and is being engaging in unfair labour practice as contemplated under item-5, 6, 9 & 10 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 (MRTU & PULP) thereby keeping the services of petitioners temporary for years together and also the respondents be directed to seize and desist from the same and for that purpose issue necessary orders.

(C) This Hon'ble Court may be pleased to quash and set aside the impugned order dated 12.01.2018 passed by Resp. No.1 and directed the respondents to make a proposal in accordance with the order passed in Writ Petition No.9175/2016 and directed the respondents to grant a proposal of CRTE/Kalelkar Award of the petitioners in view of Government Resolution dated 24.04.2001 and for that purpose issue necessary orders.

(D) This Hon'ble Court may be be pleased to direct the respondents to brought the services of the petitioners shown in Annexure-A on Converted Regular Temporary Establishment basis by extending the benefits of Kalelkar Settlement after completion of five years service from the date of their initial appointment and pay the arrears of wages if not possible to grant permanency as prayed by the petitioners.

(E) This Hon'ble Court may be pleased to direct the respondents to regularize the services of the petitioners shown in Annexure-A by granting them permanency since after completion of 240 days of each of petitioners from the date of their initial appointment as shown in Annexure-A with retrospective effect and pay the arrears of wages."

3. On 01.03.2018, the Single Judge Bench of this Court was pleased to pass the following order:-

"1. The petitioners have challenged the judgment of the Industrial Court dated 7.8.2014 delivered in Complaint (ULP) No.107 of 2008 and have also challenged the order of the Government dated 12.1.2018, rejecting the proposal for regularization.

2. Since the judgment of the Industrial Court dated 7.8.2014 in Complaint (ULP) No.107 of 2008, was already a

subject matter of Writ Petition No.9175 of 2016, which was decided by this Court on 21.7.2017, the petitioners cannot invoke the supervisory jurisdiction of this Court by once again challenging the said judgment dated 7.8.2014.

3. In so far as the challenge to challenging the order of the State Government dated 12.1.2018 is concerned, which is said to be an administrative function, the petitioners seek liberty to assail the said order before the learned Division Bench of this Court.

4. As such, remove from the Board.”

4. On 14.06.2018, the coordinate Bench of this Court [Coram: S. V. Gangapurwala (as His Lordship then was) and Sunil K. Kotwal, JJ.] has passed the following order:-

“The prayer made in Clause-B cannot be considered by this Court as the same was assailed before this Court in Writ Petition No.9175 of 2016 and the same is already decided on 21.07.2017.

2. The petition to extent of prayer Clause-B stands dismissed.

3. Learned A.G.P seeks time.

4. Stand over to 19th July 2018.”

5. In view of the above orders dated 01.03.2018 and 14.06.2018, the present Petition is restricted only to the extent of prayer Clauses (C), (D) and (E) as quoted above.

6. The challenge in the present Petition is to the order dated 12.01.2018 passed by Respondent No.1. The order dated 12.01.2018

passed by this Court thereby refusing to regularise the services of the Petitioners, is mainly on the grounds as under:-

- (a) The Petitioners were not on daily wages, but they were on job work basis.
- (b) The Petitioners never worked as nominal muster roll continuously for five years as per the recommendation of Kalelkar award.
- (c) The Petitioners were never worked for 240 days continuous service in any year.
- (d) The Petitioners were paid by vouchers
- (e) The Petitioners were never worked on work charge establishment.
- (f) The Government Resolution dated 24.04.2001 extending the benefits of Kalelkar settlement, are not applicable to the Petitioners, since the Petitioners have not completed five years continuous service or they have not completed 240 days continuous service in a year.

7. The learned Advocate appearing for the Petitioners and the learned AGP, have filed written notes of argument.

8. The learned Advocate appearing for the Petitioners in vehemence canvassed that all the Petitioners were continuously working with the Respondent at Subhedari Guest House and they have completed more than 240 days in every year from their initial appointment. The Respondents have not extended the benefit of permanency. The Respondents have denied benefits of Kalelkar

settlement. Therefore, the Petitioners had filed the Complaint bearing ULP No.107 of 2008 before the Industrial Court, Aurangabad and prayed for permanency benefits and implementation of the Kalelkar award, wherein it has been prayed that the employees who have worked on the establishment of Public Works Department, Irrigation Department, Rural Department and Water Conservation Department, should be considered for bringing them on Converted Regular Temporary Establishment (in short "CRTE"). However, on 07.08.2014, the learned Member, Industrial Court dismissed the complaint of the Petitioners.

9. Being aggrieved by said order, the Petitioners filed Writ Petition No.7844 of 2014 before this Court. On 15.01.2016, the Single Bench Court of this Court passed the following order :-

"1. I have heard the learned Advocate for the petitioners and the learned AGP on behalf of the respondents at length.

2. Learned Advocate for the petitioners has placed on record a document dated 01/10/2012 alongwith the communication dated 03/03/2015 and 24/06/2015 by which the names of the petitioners have been included in a proposal seeking sanction for regularizing their services.

3. Mr. Latange, learned Advocate submits that this proposal also indicates the vacancies available with the respondents.

4. *The said proposal (28 pages) is taken on record and marked as Exhibit “X” for identification.*

5. *Mr. Latange submits that all the petitioners are still in employment. They are willing to await the decision of the respondents on the proposal Exhibit “X”. They are willing to be absorbed as and when the vacancies arise, provided their services are protected.*

6. *The learned AGP submits that Exhibit “X” is pending with the competent authorities. A decision thereon can be arrived at and the said decision would be communicated to the petitioners expeditiously.*

7. *In the light of the above, Mr. Latange submits that this petition could be disposed of by giving necessary directions to the respondents to decide Exhibit “X” and convey the decision to the petitioners at the earliest.*

8. *Considering the above, this petition is disposed of with a direction to the respondents to decide the proposal Exhibit “X” within a period of 6 (six) months from today and communicate the decision thereon to the petitioners within a period of 6 weeks thereafter. In the event, the respondents decide to absorb the petitioners considering the vacancies available as is evident from page No.1 and 2 of Exhibit “X”, the petitioners shall be absorbed on the available vacancies and those vacancies/permanent posts which may be available even in future.*

9. *Needless to state, the petitioners' services shall not be terminated merely on the ground that they are “temporaries” or “daily wagers” till Exhibit “X” is decided and the decision on Exhibit “X” is communicated to them. This protection shall continue and also for a period of 6 (six) weeks after the petitioners receive the decision of the respondents on Exhibit “X”. This protection, however, shall not be applicable to acts of misconduct or indiscipline, if any, committed by any of the petitioners.”*

10. On 03.03.2016, the Administrative Officer of State of Maharashtra issued a communication to the Superintending Engineer, P. W. D. Aurangabad and directed to submit the proposal whether the Petitioners Shri Dipak Shivaji Magar, Bipin Ghhaburao Patole, Mr. Shahid Shaikh Ismile and Firoz Khan Nawab Khan are still working on daily wages and if they are absorbed, whether they are qualified for an appointment on CRTE basis. Thereafter, on 01.07.2016, the Respondent No.2 Superintending Engineer, passed the impugned order holding that the Petitioners were working on job work basis and they were being paid by vouchers.

11. According to the Petitioners, they have completed 240 days from the date of their initial appointment. Therefore, they are entitled for permanency or in the alternative, they are entitled to be brought on CRTE as per the Kalelkar settlement on completion of five years on daily wage service. So also, they are entitled for arrears of wages. However, Respondent No.2 illegally passed the impugned order dated 01.07.2016 and denied permanency benefits/CRTE benefits.

12. Per contra, Mr. Sunderdas Sukhdeorao Bhagat, Executive Engineer, Public Works Department, Padampura, Aurangabad, vide affidavit-in-reply resisted the claim of the Petitioners. The learned AGP Mr. S. K. Tambe, vehemently canvassed that, initially, the Petitioners filed Complaint ULP No.107 of 2008 before the Industrial Court, Aurangabad and had prayed for a declaration that keeping the Petitioners on temporary basis for years together, amounts to unfair labour practice as contemplated under Items 5, 6, 9 and 10 of Schedule-IV of the MRTU and PULP Act, 1971. Hence prayed for issuance of directions against the Respondents to regularise their services on completion of 240 days or alternatively to bring them on CRTE as per the Kalelkar Award. However, on 07.08.2014, the learned Member, Industrial Court passed the judgment and order and dismissed the Complaint ULP No.107 of 2008.

13. Being aggrieved by said judgment and order, the Petitioners had filed Writ Petition No. 7844 of 2014. On 15.01.2016, the Single Bench of this Court had passed the order and directed the State Government to decide the proposal Exh. X within a period of six months. In pursuance of said order, the Respondent No.1 State Government issued a communication dated 01.07.2016 and rejected

the proposal for regularisation of the Petitioners on the ground that the Petitioners were not on daily wages, but they worked on job work basis and they never completed 240 days continuous service in a year. The wages of the Petitioners were being paid by vouchers and the Petitioners never worked on work charge establishment. So also the recommendations of Kalelkar Award as per Government Resolution dated 24.04.2001 are not applicable to the Petitioners as the Petitioners have not completed five years continuous service nor they completed 240 days continuous service in a year. Therefore, the Petitioners have not made grounds for their regularisation.

14. In support of these submissions, the learned AGP relied on following case law:-

(i) Secretary, State of Karnataka & Ors Vs. Umadevi & Ors, reported in 2006 (4) SCC 1.

(ii) Satya Prakash & Ors Vs. The State of Bihar, reported in (2010) 4 SCC 179.

(iii) Yogesh Mahajan Vs. Prof. R. C. Deka Director, All India Institute of Medical Sciences, reported in (2018) 3 SCC 218.

(iv) Union of India & Ors Vs. Ilmo Devi & Anr., in Hon'ble Supreme Court, Civil Appeal Nos. 5689 – 5690 of 2021.

15. We have considered the strenuous submissions of the respective parties.

16. It is submitted that, the Petitioners claimed that, they have been appointed with the Respondents establishment on different dates and have been completed 240 days continuous service as under:-

Sr. No.	Name of the Petitioners	Date of Appointment
1.	Bipin s/o Chhaburao Patole	01.03.1992
2.	Feroz Khan s/o Nawab Khan Pathan	01.03.1996
3.	Deepak Shivaji Magare	01.03.1992
4.	Shaikh Shahed Shaikh Ismail,	01.03.1996
5.	Nitin s/o Chhaburao Patole,	01.03.1992
6.	Latif Shah Shabbir Shah	01.03.1992
7.	Shaikh Abdul Aziz Shaikh Abdul Gani,	01.03.1993
8.	Chandrakant Rambhau Dabhade	01.03.1992
9.	Shaikh Nisar Shaikh Papamiyan	07.09.1994
10.	William s/o Ratan Lalzare	05.10.1997
11.	Dilip s/o Prabhakar Sutar	05.10.1997
12.	Khalil Khan s/o Mahmood Khan	05.10.1997
13.	Sanjay s/o Murlidhar Sathe	05.10.1997
14.	Dinesh s/o. Shivaji Magare	05.10.1997
15.	Raju Uttam Wagh	02.07.1998
16.	Kishor Dattu Gawai	02.07.1998
17.	Sanjay s/o Ukhaji Dudhe	02.07.1998
18.	Shaikh Zakir Shaikh Yusuf,	02.07.1998
19.	Shaikh Irfan Shaikh Raheem	09.10.1999
20.	Smt. Aruna Ramdas Raut	01.01.2001

17. On 07.08.2014, the learned Member, Industrial Court delivered the judgment and order after considering the oral as well as documentary evidence, holding that the Petitioners failed to prove that they were appointed on daily wages on clear, vacant post or that they have worked for more than five years as daily wagers with the Respondents, within the purview of Clause 4-C of the model standing orders. So also, the Petitioners have failed to prove that they have completed five years service on daily wages with the Respondents. Therefore, they are not entitled for benefits of CRTE as per the Government Resolution dated 24.04.2001 and 03.05.2008.

18. It is evident that the Petitioners challenged the judgment and order dated 07.08.2014 passed in Complaint bearing ULP No.107 of 2008 in Writ Petition No.7844 of 2014. During the course of hearing, the learned Advocate for the Petitioners placed certain record along with the communications dated 03.03.2015 and 24.06.2015, whereby the names of the Petitioners were included in a proposal seeking sanction for regularisation of their services. Therefore, considering the said communication, the Single Bench of this Court had directed the Respondents to decide the said proposal Exh-"X" within a period of six months and to communicate the said

decision to the Petitioners within a period of six weeks thereafter. In pursuance of the directions issued by the Single Bench of this Court, on 01.07.2016, Respondent No.2 opined as under:-

“त्यानुसार नियमित अस्थापनेवरील सदरील मंजुर पदे त्या-त्या संवर्गाच्या मंजुर पदांपैकी कार्यरत असलेली नियमित पदे वजा जाता उर्वरीत राहीलेल्या मंजुर पदांपेक्षा रूपांतरीत अस्थापनेवरील पदांची संख्या कमी झाल्यानंतर त्या संवर्गाची नियमित अस्थापनेवरील रिक्त होणारी पदे प्रचलित पध्दतीनुसार भरण्यात येतील, तसेच ज्या वेळेस सरळ सेवा भरती होईल त्यावेळेस त्या भरती प्रक्रियेत श्री बीपीन छबुराव पाटोळे व इतर हे विहित अटी व शर्तीनुसार पात्र ठरत असतील तर ते विहित पध्दतीनुसार अर्ज करू शकतात.”

[Emphasis supplied in Marathi]

However, the Petitioners are working on job work basis and as and when they are being called. So also, their wages are being paid by vouchers, therefore, the services of the Petitioners cannot be regularised.

19. On perusal of record, it further reveals that, vide order dated 15-01-2016 passed in W. P. 7844 of 2014, the single Judge bench of this court had directed the Respondents to decide the proposal “X” which is part of the record in said petition within period of 6 months. However, said proposal “X” was turned down on 3rd March, 2016. Therefore, the petitioners again approached this Court in Writ Petition No. 9175 of 2016, challenging order dated 3rd March,

2016 passed by the Respondent No. 1. On 21.07.2017, the single Judge Bench of this court passed the order in Writ Petition No. 9175 of 2016 thereby directing the Respondents 2 & 3 to prepare a proposal of the petitioners within a period of 8 weeks and to forward the same to Respondent no. 1 for its consideration as per G. R. dated 24th April, 2001. Accordingly, Respondent No.1 considered the proposal of the Petitioners and found that;

- (i) The Petitioners were working on petty contractor job work and their wages being paid on vouchers.
- (ii) The Petitioners were never appointed on nominal muster roll or work charge establishment.
- (iii) The Petitioners were never appointed on daily wages basis.
- (iv) The Petitioners never completed five years service or completed 240 days service in a year.

20. In the case of ***Secretary, State of Karnataka and others Vs. Umadevi***, (supra), the Hon'ble Supreme Court has observed in para Nos. 4, 12, 13, 43, 45 and 49, thus:-

“4. But, sometimes this process is not adhered to and the Constitutional scheme of public employment is by-passed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service

Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts. Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitution is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public

employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

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

13. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the

adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab Vs. Jagdip Singh & Ors. (1964 (4) SCR 964). It was held therein, "In our opinion, where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status."

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. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, 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 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 regularized or made permanent, courts are swayed by the fact that the concerned person 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 eyes open. It may be true that he is not in a position to bargain -- not at arms 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 succor 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 of India.

49. *It is contended that the State action in not regularizing 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.”*

21. In the case of ***Satya Prakash and others*** (supra), it has been held that the Appellants therein are not entitled to get benefit of regularisation of their services, since they were never appointed on any sanctioned post and the Appellants were only engaged on daily wages.

22. In the case of ***Yogesh Mahajan*** (supra), the Hon'ble Apex Court held that the contractual employee has no right to have his/her contract renewed in absence of any statutory or other right in his favour for regularisation of his/her services.

23. In the case of ***Union of India and Ors Vs. Ilmo Devi*** (supra), the Hon'ble Apex Court delivered the judgment in Civil Appeal Nos. 5689 – 5690 of 2021 on 07.10.2021. Considering the ratio laid down in case of ***Uma Devi*** (supra), as well as various case law, it has been held that the part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.

24. In the case of *Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade, 2016(6) Mh.L.J. 867*, it has been held that, mere completion of 240 days of service by itself is not a *carte blanche* to an employee to claim permanency in service of his employer in absence of vacant sanctioned post.

25. In the case in hand, though the Petitioners have claimed that they have completed 240 days continuous service from the date of their initial appointment, but they failed to prove about completion of 240 days continuous service from the date of their respective appointment, before the Industrial Court.

26. Per contra, the Respondents proved that, the Petitioners were working on job work basis and their wages were being paid by vouchers. The Petitioners never worked on nominal muster roll and they never worked on work charge establishment. Therefore, as per the Government Resolution dated 24.04.2001 and 22.02.2011, the Respondent No.2 Superintending Engineer, Public Works Department, issued the impugned communication dated 01.07.2016 and declined to regularise the services of the Petitioners as the appointment of the Petitioners were not against the sanctioned post and they were working on job work basis.

27. In view of above discussions, **the present Petition fails and is dismissed.** Accordingly, Rule is discharged.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

SMS