



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

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CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.558 of 2021
and
C.M.P.No.2274 of 2021

1. The Secretary to Government of Tamil Nadu,
Highways Department,
Secretariat,
Chennai – 600 009.
2. The Chief Engineer (General),
Highways Department,
Chepauk, Chennai – 600 005.
3. The Divisional Engineer,
Highways Division,
Cuddalore.

... Appellants

Vs.

1. S.Amudha Devi
2. H.Gandhi
3. A.Kandhan
4. M.Shankar
5. C.Sathanantham



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6. M.Sivakural
7. R.Ravi
8. K.Kothandapani
9. J.Sadagopan
10. R.Pannerselvam - died
11. A.Gunasekaran
12. P.Meenachi
13. R.Chinnapillai
14. P.Velmurugan
15. P.Manikandan
16. P.Kanthimathi
17. P.Gayathri
18. P.Elavarsan

... Respondents

(R12 to R18 substituted as the legal heirs of the deceased Mr.R.Pannerselvam *vide* order of the Court dated 21.06.2024 made in CMP.No.29386 of 2023 by SMSJ & CKJ)

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the



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order dated 31.01.2020 made in W.P.No. 31759 of 2012 and allow this writ appeal.

For Appellants	: Mr.P.Kumaresan Additional Advocate General assisted by Mr.J.Daniel Government Advocate
For R1 to R9 & R11	: Mr.V.S.Jagadeesan
For R10	: Died Steps Taken

J U D G M E N T

(Judgment of the Court was made by **S.M.SUBRAMANIAM, J.**)

The intra-court appeal on hand has been instituted challenging the writ order dated 31.01.2020 passed in W.P.No.31759 of 2012.

2. The State is the appellant before us. The respondents preferred writ petition seeking direction to appoint them in the existing or future vacancies as Gang Mazdoors in regular time scale of pay in the light of the orders passed by this court in W.P.No.36623 of 2004, which was upheld by the Division Bench of this Court in W.A.No.1260 of 2008 and confirmed by



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the Hon'ble Supreme Court in CC.No.14093 dated 2010 and in terms of G.O.Ms.No.22 P & AR Department dated 28.02.2006.

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3. The respondents were engaged as Daily wage employees (NMR's) from the year 1980 onwards. They have not continuously engaged as daily wage employees. Whenever the road projects are undertaken by the appellant/Highways Department, these NMR's are engaged on daily rated basis. Their services are utilized for maintenance of road works by the Highways Department.

4. The respondents have stated that they have completed 10 years of service as daily wage employees. Therefore, they are entitled to be regularized in the sanctioned post in the time scale of pay. Since their claim was not considered by the Highways Department, the writ petition came to be instituted.

5. The writ court allowed the writ petition mainly on the ground that the Government issued G.O.Ms.No.74 P & AR (F) Department dated



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27.06.2013, superseding the previous Government Orders and directed appointment only in consultation with the employment exchange against the regular vacancies in the sanctioned cadre strength. Though the writ court has considered the scope of G.O.Ms.No.74, directed the Highways Department to appoint all the respondents on regular basis with effect from their date of initial appointment as daily wage employees. The writ court has further directed that the period of services rendered by them as daily wage employees shall be counted for calculating the pension benefits.

6. Mr.P.Kumaresan, learned Additional Advocate General appearing on behalf of the appellants would submit that admittedly, the respondents were not appointed in the sanctioned posts on regular basis and they were not granted time scale of pay. Contrarily, they are engaged as daily wage employees for maintenance of road works by the Highways Department. Whenever their services are needed, these NMR's engaged. Therefore, the direction issued by the writ court is in violation of the Service Rules and the principles settled by the Hon'ble Supreme Court of India.

7. Mr.V.S.Jagadeesan, learned Counsel appearing on behalf of the respondents would oppose by stating that all the respondents have served for



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a considerable length of time as Daily Wage employees. They have served for more than 10 years.

8. Para.53 of the Constitution Bench Judgment in *Uma devi's* case stipulates that temporary employees served for more than 10 years are entitled to be regularized in the sanctioned post in the time scale of pay. The said principle was considered by the Full Bench of Madras High Court in the case of *M.Sivappa vs. State of Tamil Nadu, Rural Development Department* dated 26.02.2024 in Writ Petition No.23823 of 2023. Relying on the Full Bench judgment, Mr.V.S.Jagadeesan, learned Counsel would contend that the respondents are entitled to be regularized in the sanctioned post in the regular time scale of pay.

9. We have considered the rival submissions made on behalf of the parties to the *lis* on hand.

10. Facts are not in dispute between the parties. No appointment orders have been issued to the respondents nor the respondents were appointed in the sanctioned post on regular basis. Admittedly, the respondents



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were engaged as daily wage employees for maintenance of road works by the Highways Department. In the absence of any order of appointment, the claims set out by the respondents that they are regularly appointed deserves no merit consideration. Their names are entered in the Nominal Muster Roll and their services are utilized, whenever the need arises for maintenance of road works by the Highways Department.

11. With reference to the above facts, let us consider the legal position settled by the Hon'ble Supreme Court of India.

12. The leading case in the subject of grant of regularization and permanent absorption is the Constitution Bench Judgment in the case of ***State of Karnataka Vs. Uma Devi*** reported in ***2006 (4) SCC 1***. The Constitution Bench has considered previous Judgments and settled the legal principles, which is the binding precedent.

13. Let us consider the principles laid down by the Hon'ble Supreme Court in ***Uma Devi's*** case.

14. Para.5 of the Constitution Bench Judgment reads as under:



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

15. The Constitution Bench observed that the Hon'ble Supreme Court of India on occasions issued directions which could not be said to be consistent with the constitutional scheme of appointment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom? Equity for the handful of people who have approached the court with a claim, or equity for the teeming millions of this country seeking employment and seeking fair



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opportunity for competing for employment?

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16. In para.13 of the Judgment of the Constitution Bench reiterated that:

“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 certainty in dealing relating to public employment. The court observed that it is necessary to put an end to uncertainty and clarify the legal position emerged from the Constitutional scheme leading the High Court to follow necessarily, the law laid down.”

17. The legal principles settled by the Constitution Bench from paragraph Nos.43 to 50 are extracted hereunder:

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would



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*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*



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

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation



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of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision¹ the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a



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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



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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 (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

46.

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



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48. *It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were daily wages in the department concerned on a wage that was made known to engaged on them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in*



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service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

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

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the



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

18. High Courts are granting the relief of regularization and



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permanent absorption in certain cases, specifically, relying on the observations made by the Constitution Bench in para.53 of ***Uma Devi's*** case.

Let us consider the scope of para.53 of ***Uma Devi*** judgment, since the said para has been relied on by the writ courts to grant the relief of regularization to the daily wage and temporary employees.

19. Para.53 of the Judgment reads as under:

*“53. 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 regularization 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*



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*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 regularization, 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.***

20. Para 53 commences by stating that it is a clarificatory paragraph incorporated by the Constitution Bench. It proceeds by stating that there may be cases where irregular appointments (not illegal appointments) as explained in *S.V.Narayanappa* reported in *AIR 1967 SC 1071*, *R.N.Nanjundappa* reported in *(1972) 2 SCR 799* and *B.N.Nagarajan* reported in *(1979) 4 SCC 507*.

21. The Hon'ble Supreme Court of India in unequivocal terms reiterated that illegality in appointments cannot be cured. Para.53 deals only with the irregular appointments. Even in respect of irregular appointments, the person seeking regularization must be duly qualified in accordance with the Service Rules and his initial appointment must be made in duly sanctioned



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vacant posts. That apart, he must be served for a minimum period of 10 years or more but without the intervention of the Courts or of Tribunal. Therefore, three conditions are stipulated for regularizing the irregular appointments as one time measure in *Uma Devi's* case.

- (i) A person must be appointment in duly sanctioned post.
- (ii) He must be fully qualified in accordance with Service Rules.
- (iii) He must have completed 10 years of service or more, but without the intervention of the orders of the Court or of Tribunal.

22. With reference to the above principles, the Constitution Bench in Para 53 further proceeds by stating that Union of India, the State Governments and their instrumentalities should take cases to regularize such irregular appointees as a one-time measure, 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



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temporary employees or daily wagers are being now employed.

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23. Therefore, one time measure approved by the Constitution Bench must have been completed soon after the Judgment in *Uma Devi's* case and within period of 6 months as specifically stipulated in para.53 of the Judgment. All such one time measure by the Union Government and State Governments must be completed.

24. Therefore, G.O.Ms.No.22 P & AR Department dated 28.02.2006 will have the sanctity for a limited period and as one time measure. The Government of Tamil Nadu has withdrawn the said Government Order and issued further orders in consonance to the legal principles settled by the Constitution Bench of Hon'ble Supreme Court of India.

25. Para 53 of *Uma Devi's* case clarifies that regularization, if any already made, but not sub judiced, need not be reopened based on the Judgment. The Hon'ble Supreme Court reiterates that regularization of



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irregular appointments already made prior to *Uma Devi's* case are protected.

A clear distinction has been drawn by the Hon'ble Supreme Court that there should be no further bypassing of constitutional requirements for regularizing or making permanent, those not duly appointed under the constitutional scheme. Thus, there cannot be any further regularization of illegal or irregular appointments bypassing of the constitutional scheme of appointments or making permanent. Clarifications cannot be relied upon in perpetuity to grant the relief of regularization in violation of the legal principles settled in the judgment. The clarification is para.53 of *Uma Devi's* case lost its significance on account of efflux of time, since it is an one time arrangement. Thus, relying on para.53, daily wage / casual / temporary / contract employees cannot be regularised or permanently absorbed in violation of the legal principles settled by the Constitution Bench in unequivocal terms.

26. Importantly, para.54 of the Judgment in *Uma Devi's* case, indicates those decisions, which run counter to the principles settled in *Uma Devi's* case or in which directions running counter to what the Hon'ble Supreme Court held in *Uma Devi's* case will stand denuded of its status as precedent. Therefore, all judgments of the High Courts running counter to the



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legal principles settled by the Constitutional Bench denuded to loose its status as precedent and cannot be followed for the purpose of granting the relief of regularization and permanent absorption of irregular and illegal appointments. Full Bench judgment of High Court referred is to be confined to the facts of that case and it resulted in individualization of Justice.

27. Judgment in ***Uma Devi's*** case was delivered on 10.04.2006. Two Judges Bench of the Hon'ble Supreme Court of India while considering the claim of regularization in the case of ***Secretary to Government, School Education Department, Chennai Vs. R.Govindasamy & Ors.***, reported in ***(2014) 4 SCC 769*** relied on para.48 of ***Uma Devi's*** case. Para.48 of ***Uma Devi's*** case is as under:

“48. ...There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other



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employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.”

28. In **Govindasamy's** case, in para.8, the Hon'ble Apex Court considered the principles laid down in the case of **State of Rajasthan Vs. Daya Lal**, reported in **2011 (2) SCC 429** wherein, clear directives are issued by the Hon'ble Apex Court as under:

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



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contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

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

29. The legal position settled in ***Uma Devi's*** case has been reiterated by the Hon'ble Supreme Court of India in the subsequent judgment in ***Govindasamy's case*** and would squarely apply to the factual matrix of the case on hand.

30. The Judgments of the High Courts running counter to the legal principles settled by ***Uma Devi's*** case and in ***Govindasamy's case*** for granting the relief of regularization and permanent absorption cannot be followed as precedents nor any relief of regularization can be granted in violation of the Service Rules in force.



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31. The crux of the issue and the constitutionality involved in the matter of appointment, regularization and permanent absorption are that, all appointments are to be made under the Constitutional scheme and by following the due process. Equal opportunity in public employment is the constitutional mandate. Back door appointments cannot be regularized infringing the fundamental rights of the candidates aspiring to secure public employment through open competitive process. Daily wage, temporary and contractual appointments are made without following the due process and the Recruitment Rules applicable to the posts. Such appointments are mostly not made against the sanctioned posts. Selections are done either at the choice of the Authorities or based on the recommendations of VIP's and VVIP's. Such appointments, if end with an order of regularization and permanent absorption, this Court has no hesitation in arriving at a conclusion that the fundamental rights of lakhs and lakhs of youth of our great nation is infringed and we are dishonoring the constitutional scheme of appointments. Therefore, any appointments made in violation of the service rules cannot end with an order of regularization and permanent absorption. However, such candidates may be granted liberty to participate in the recruitment process for securing



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employment on merits and through rule of reservations as per the Service Rules in force.

32. In the present case, the writ court has not considered the legal position as settled by the Constitution Bench of the Hon'ble Supreme Court of India and in the case of *Govindasamy*.

33. In view of the facts and circumstances, the writ order dated 31.01.2020 passed in W.P.No. 31759 of 2012 is set aside and the Writ Appeal stands **allowed**. No costs. Connected miscellaneous petition is closed.

[S.M.S., J.] [C.K., J.]
21.06.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

1. The Secretary to Government of Tamil Nadu,
Highways Department,
Secretariat,
Chennai – 600 009.
2. The Chief Engineer (General),
Highways Department,
Chepauk, Chennai – 600 005.
3. The Divisional Engineer,
Highways Division,
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