



W.A.No.160 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.160 of 2021
and
C.M.P.No.747 of 2021

1. The State Of Tamil Nadu,
Rep. by its Secretary,
Public Works Department,
Fort St. George, Chennai-9.

2. The Principal Chief Engineer (Buildings),
& Chief Engineer (General),
Public Works Department,
Chepauk, Chennai-5.

... Appellants

Vs.

1. G.Sivagiganesan

2. V.Thambidurai

3. S.Senthil

4. M.Raja

5. M.Jayakumar

6. M.Marudamuthu



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7. The Chief Secretary to Government,
Personnel and Administrative Reforms (F) Department,
Fort St. George, Chennai-9.

... Respondents

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the Order dated 22.09.2017 made in WP no.29346 of 2014 and allow this Writ Appeal.

For Appellant : Mr.S.John J.Raja Singh,
Additional Government Pleader.

For Respondents : Mr.L.Chandra Kumar (for R1 to R6)

J U D G E M E N T

(Judgement of the Court was delivered by S.M.Subramaniam J.)

The intra court appeals have been instituted by the State challenging the common order dated 22.09.2017 made in WP no.29346 of 2014.

2. It is not in dispute between the parties that the respondents were engaged as casual labourers (NMR employees) Public Works Department. Excepting the terms and conditions to serve as casual labourers, the respondents continued their service and on account of length of services rendered as casual employee, they sought the benefit of regularisation and permanent absorption in the sanctioned post in the time scale of pay.



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3. The writ petitions have been instituted to quash the conditions imposed by the Government for regularisation in G.O.Ms.No.74, Personal and Administrative Reforms Department, dated 27.06.2013. The learned Single Judge quashed paragraph no.6 of the order issued in G.O.Ms.No.74 dated 27.06.2013.

4. It is brought to the notice of this Court that the order issued in G.O.Ms.No.22, P&AR Department dated 28.02.2006 had been withdrawn and in superstition of the said Government order, G.O.Ms.No.74 came to be issued by the Government to regulate the regularisation and permanent absorption. Certain conditions are imposed in paragraph no.6 in G.O.Ms.No.74 and such conditions are imposed with reference to the principles laid down by the Constitution Bench of the Hon'ble Supreme Court of India in the case of *State of Karnataka Vs. Uma Devi*¹.

5. By quashing paragraph no.6 of G.O.Ms.No.74, we are of the opinion that the very legal principles settled by the Constitution Bench have not been considered. The legal principles settled by the Constitution Bench, as reiterated in the Government Order, need not be set aside for the

¹ 2006 (4) SCC 1



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purpose of grant of regularisation and permanent absorption in violation of the Service Rules.

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

7. The leading case in the subject of grant of regularization and permanent absorption is the Constitution Bench Judgment in ***Uma Devi's*** case. The Constitution Bench has considered previous Judgments and settled the legal principles, which is the binding precedent.

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

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

“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



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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.”

10. 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 opportunity for competing for employment?

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



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“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.”

12. 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 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



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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



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such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision¹



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the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be



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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 (sic) one that would



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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.***

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



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*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 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



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

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only



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*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.”*

13. High Courts are granting the relief of regularization and permanent absorption in certain cases, specifically, relying on the observations made by the Constitution Bench in para.53 of ***Uma Devi's***



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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.

14. 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 filled up, in cases where temporary employees or daily wagers are being now employed. **The process must be set in motion within six months***



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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.”

15. 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) are made as explained in *S.V.Narayanappa's case*¹, *R.N.Nanjundappa's case*² and *B.N.Nagarajan's case*³.

16. 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 vacant posts. That apart, he must be served for a minimum period of 10 years or more but without the intervention of the

1 AIR 1967 SC 1071

2 (1972) 2 SCR 799

3 (1979) 4 SCC 507



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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.

17. 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 temporary employees or daily wagers are being now employed.

18. Therefore, one time measure approved by the Constitution Bench must have been completed soon after the Judgment in *Uma Devi's*



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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.

19. 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.

20. 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 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.



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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.

21. 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 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.



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WEB COPY 22. 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.¹***, 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 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.”

23. In ***Govindasamy's*** case, in para.8, the Hon'ble Apex Court

¹ (2014) 4 SCC 769



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considered the principles laid down in the case of ***State of Rajasthan Vs.***

Daya Lal², 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 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

² 2011 (2) SCC 429



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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.”

24. 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.

25. 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.

26. 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



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

27. In the matter of irregular, illegal and back-door appointments in Judiciary, the three Judges Bench of the Hon'ble Supreme Court of India in the case of *Renu vs. District and Sessions Judge, Tis Hazari Courts,*



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Delhi' reiterated the constitutional principles asserted by the Constitution Bench in **Umadevi's** case. In **Renu's** case, the three judges Bench considered the equality clause in Article 14 in paragraph 7 onwards as extracted hereunder:

“6. Article 14 of the Constitution provides for equality of opportunity. It forms the cornerstone of our Constitution.

7. In I.R. Coelho v. State of T.N. [(2007) 2 SCC 1 : AIR 2007 SC 861] , the doctrine of basic features has been explained by this Court as under : (SCC p. 108, para 141)

“141. The doctrine of basic structure contemplates that there are certain parts or aspects of the Constitution including Article 15, Article 21 read with Articles 14 and 19 which constitute the core values which if allowed to be abrogated would change completely the nature of the Constitution. Exclusion of fundamental rights would result in nullification of the basic structure doctrine, the object of which is to protect basic features of the Constitution as indicated by the synoptic view of the rights in Part III.”

8. As Article 14 is an integral part of our system, each and every State action is to be tested on the touchstone of equality. Any appointment made in violation of mandate of Articles 14 and 16 of the Constitution is not

1 MANU/SC/0096/2014



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*only irregular but also illegal and cannot be sustained in view of the judgments rendered by this Court in **Delhi Development Horticulture Employees' Union v. Delhi Admn.** [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386] , **State of Haryana v. Piara Singh** [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] , **Prabhat Kumar Sharma v. State of U.P.** [(1996) 10 SCC 62 : 1996 SCC (L&S) 1331] , **J.A.S. Inter College v. State of U.P.** [(1996) 10 SCC 71 : 1996 SCC (L&S) 1339] , **M.P. Housing Board v. Manoj Shrivastava** [(2006) 2 SCC 702 : 2006 SCC (L&S) 422] , **M.P. State Agro Industries Development Corpn. Ltd. v. S.C. Pandey** [(2006) 2 SCC 716 : 2006 SCC (L&S) 434] and **State of M.P. v. Sandhya Tomar** [(2013) 11 SCC 357] .*

*9. In **Excise Supt. v. K.B.N. Visweshwara Rao** [(1996) 6 SCC 216 : 1996 SCC (L&S) 1420] , a larger Bench of this Court reconsidered its earlier judgment in **Union of India v. N. Hargopal** [(1987) 3 SCC 308 : 1987 SCC (L&S) 227 : (1987) 4 ATC 51 : AIR 1987 SC 1227] , wherein it had been held that insistence on recruitment through employment exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution. However, due to the possibility of non-sponsoring of names by the employment exchange, this Court held that any appointment even on temporary or ad*



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*hoc basis without inviting application is in violation of the said provisions of the Constitution and even if the names of candidates are requisitioned from employment exchange, in addition thereto, it is mandatory on the part of the employer to invite applications from all eligible candidates from open market as merely calling the names from the employment exchange does not meet the requirement of the said articles of the Constitution. The Court further observed : (**K.B.N. Visweshwara Rao case** [(1996) 6 SCC 216 : 1996 SCC (L&S) 1420] , SCC p. 218 para 6)*

“6. ... In addition, the appropriate department ... should call for the names by publication in the newspapers having wider circulation and also display on their office notice ... and employment news bulletins; and then consider the cases of all candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.”

*10. In **Suresh Kumar v. State of Haryana** [(2003) 10 SCC 276] this Court upheld the judgment of the Punjab and Haryana High Court wherein 1600 appointments made in the Police Department without advertisement stood quashed though the Punjab Police Rules, 1934 did not provide for such a course. The High Court reached the conclusion that process of selection stood vitiated because*



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there was no advertisement and due publicity for inviting applications from the eligible candidates at large.

*11. In **UPSC v. Girish Jayanti Lal Vaghela** [(2006) 2 SCC 482 : 2006 SCC (L&S) 339 : AIR 2006 SC 1165] this Court held : (SCC p. 490, para 12)*

“12. ... The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made ...”

Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution.

*12. The principles to be adopted in the matter of public appointments have been formulated by this Court in **M.P. State Coop. Bank Ltd. v. Nanuram Yadav** [(2007) 8 SCC 264 : (2007) 2 SCC (L&S) 883] as under : (SCC pp. 274-75, para 24)*



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(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

(4) Those who come by back door should go through that door.

(5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) The court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited



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or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.”

*13. A similar view has been reiterated by the Constitution Bench of this Court in **State of Karnataka v. Umadevi** (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753 : AIR 2006 SC 1806] , observing that any appointment made in violation of the statutory rules as also in violation of Articles 14 and 16 of the Constitution would be a nullity. “Adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment.” The Court further rejected the prayer that ad hoc appointees working for long be considered for regularisation as such a course only encourages the State to flout its own rules and would confer undue benefits on some at the cost of many waiting to compete.*

*14. In **State of Orissa v. Mamata Mohanty** [(2011) 3 SCC 436 : (2011) 2 SCC (L&S) 83] this Court dealt with the constitutional principle of providing equality of opportunity to all which mandatorily requires that*



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vacancy must be notified in advance meaning thereby that information of the recruitment must be disseminated in a reasonable manner in public domain ensuring maximum participation of all eligible candidates, thereby the right of equal opportunity is effectuated. The Court held as under : (SCC p. 452, para 36)

“36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.”

15. Where any such appointments are made, they can be challenged in the court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his



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title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it.

16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly



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provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.

17. Thus, the aforesaid decisions are an authority on prescribing the limitations while making appointment against public posts in terms of Articles 14 and 16 of the Constitution. What has been deprecated by this Court time and again is “back-door appointments or appointment dehors the rules”.

*18. In **State of U.P. v. U.P. State Law Officers' Assn.** [(1994) 2 SCC 204 : 1994 SCC (L&S) 650 : (1994) 26 ATC 906] this Court while dealing with the back-door entries in public appointment observed as under : (SCC pp. 217-18, para 19)*

“19. ... The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be



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made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the back door have to go by the same door. ... From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.”

19. In *Som Raj v. State of Haryana* [AIR 1990 SC 1176] this Court held as under : (SCC pp. 658-59, para 6)

“6. ... The absence of arbitrary power is the first postulate of rule of law upon which our whole constitutional edifice is based. In a system governed by rule of law, discretion when conferred upon an executive authority must be confined within clearly defined limits. The Rules provide the guidance for exercise of the discretion in making appointment from out of selection lists which was prepared on the basis of the performance and position obtained at the selection. The appointing authority is to make appointment in the order of gradation, subject to any other relevant rules like, rotation or reservation, if any, or any other valid and binding rules or instructions having force of law. If the discretion is exercised without any principle or without any rule, it is a situation amounting to the antithesis of rule of law. Discretion means sound discretion guided by law or governed by known principles of rules, not by whim or fancy or caprice of the authority.”



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28. In view of the fact that the respondents were engaged as casual labourers and they have not completed their 10 years of service as on 01.01.2006, even as per G.O.Ms.No.22, which subsequently been withdrawn by the Government, the relief of regularisation and permanent absorption ought not to have been granted by the Writ Court. By encouraging such regularisation and permanent absorption, the rights of a citizen to secure public employment through open competitive process are infringed.

29. In respect of similar cases another Division Bench of this Court, by way of common order dated 16.08.2023 in Writ Appeal No.606 of 2019 considered the relief of regularization. Since we have elaborately considered the legal principles settled by the Constitution Bench and the decision taken which all are running counter to the principles settled, no further deliberations are required in respect of the findings in the Division Bench order. Since in the said Division Bench order, there is no discussion about the legal principles settled by the Constitution Bench of the Supreme Court of India in *Umadevi's* case, the same need not be followed as precedent. Those judgements are individualisation of justice.



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30. With the above observations, the common order in the Writ Petition Nos.29346 of 2014, etc., dated 22.09.2017 is set aside and the writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.J.,)

(C.K.J.,)

15.07.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)

To

1. The State Of Tamil Nadu,
Rep. by its Secretary,
Public Works Department,
Fort St. George, Chennai-9.

2. The Principal Chief Engineer (Buildings),
& Chief Engineer (General),
Public Works Department,
Chepauk, Chennai-5.

3. The Chief Secretary to Government,
Personnel and Administrative Reforms (F) Department,
Fort St. George, Chennai-9.



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S.M.SUBRAMANIAM, J.

and

C.KUMARAPPAN, J.

(sha)

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15.07.2024