

CWP- 19238 of 2013 & connected cases -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

252 (157 cases)	CWP- 19238 of 2013 Date of Decision: 26.02.2024
Amrish Sharma and others	...Petitioners
Versus	
State of Punjab and others	...Respondents
With	
Balhari	CWP-22377-2012 (O&M) ...Petitioner
Versus	
State of Punjab and others	...Respondents
With	
Ram Parkash and others	CWP-10335-2005 ...Petitioners
Versus	
State of Punjab and others	...Respondents
With	
Prem Chand and others	CWP-1035-2007 (O&M) ...Petitioners
Versus	
State of Punjab and others	...Respondents

CWP- 19238 of 2013 & connected cases

-2-

With

CWP-10346-2005 (O&M)

Ballu Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-10490-2015

Chhinda Singh

...Petitioner

Versus

The Secretary, Department of Wild Life and Forest and others

...Respondents

With

CWP-10793-2021

Tilak Raj

...Petitioner

Versus

State of Punjab and another

...Respondents

With

CWP-1081-2014

Balwinder Ram and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases

-3-

With

CWP-1088-2014

Budh Ram and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-10912-2006 (O&M)

Resham Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-11126-2017 (O&M)

Jaspal Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-11717-2006 (O&M)

Mukhtiar Khan and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases

-4-

With

CWP-11889-2017

Sant Ram and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-12240-2017

Avtar Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-12499-2019

Satpal

...Petitioner

Versus

State of Punjab and another

...Respondents

With

CWP-12945-1998

Razak Mohmad and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CWP- 19238 of 2013 & connected cases

-5-

With

CWP-13134-2020

Roop Chand

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-13207-2004 (O&M)

Kartar Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-13251-2020

Kuldeep Sharma

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-13323-2005 (O&M)

Avtar Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases

-6-

With

CWP-13566-2022 (O&M)

Kulwant Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-13957-2022 (O&M)

Nishan Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-13958-2022

Joginder Singh (deceased) through his LRs

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-14074-2004 (O&M)

Hakam Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases

-7-

With

CWP-14358-2006 (O&M)

Sher Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-14413-2015

Surjit Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-14524-2005 (O&M)

Pritem Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-14738-2003 (O&M)

Sarwan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases

-8-

With

CWP-14778-2006

Sarwan Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-1528-2004 (O&M)

Darshan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-15332-2001 (O&M)

Amrik Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-15353-2013 (O&M)

Manjit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases

-9-

With

CWP-15565-2003 (O&M)

Rakesh Kumar and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-15861-2020

Lakhwinder Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-16082-2017 (O&M)

Harbans Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-17678-2014 (O&M)

Pritam Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CWP- 19238 of 2013 & connected cases -10-

With

CWP-17827-2018 (O&M)

Jagdish Kumar ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-17917-2023

Salim Kumar ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-18009-2018

Amrik Singh and another ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-18332-2004 (O&M)

Balbir Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP- 19238 of 2013 & connected cases -11-

With

CWP-18376-2004

Nirmal Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-18410-2019

Ravi Kumar Sharma ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-18438-2001 (O&M)

Rana Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-18610-2006 (O&M)

Gamdoor Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP- 19238 of 2013 & connected cases -12-

With

CWP-18734-2002 (O&M)

Balwinder Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-18849-2008 (O&M)

Darshan Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-18920-2023

Major Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-18985-2018 (O&M)

Kuldeep Sharma and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-19071-2003 (O&M)

Malkiat Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-19138-2022

Balbir Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-19202-2012

Shano Devi ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-16260-2014 (O&M)

Balbir Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP- 19238 of 2013 & connected cases -14-

With

CWP-27352-2015 (O&M)

Tarlochan Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-19245-1997 (O&M)

Nasib Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-19251-2003

Kaka Ram and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-19417-2002

Kashmiri Lal and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP- 19238 of 2013 & connected cases -15-

With

CWP-19479-2005

Sman Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-1985-2020

Satnam Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-19888-2020

Gurmail Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-19900-2003 (O&M)

Raj Kumari and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP- 19238 of 2013 & connected cases

-16-

With

CWP-19953-2011

Mohinder Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-20287-2005

Ram Jage and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-2031-2007 (O&M)

Mohinder Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-20415-2003 (O&M)

Ravi Kumar and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases

-17-

With

CWP-20948-2011

Bhajan Lal

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-21543-2020

Gurpartap Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

With

CWP-21792-2018 (O&M)

Swarn Gir

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-2181-2002 (O&M)

Tehal Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases -18-

With

CWP-21833-2021

Prem Kumar and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-22246-2013 (O&M)

Amrik Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-22389-2020

Sukhdev Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-229-2019

Jog Raj ...Petitioner

Versus

State of Punjab and others ...Respondents

CWP- 19238 of 2013 & connected cases -19-

With

CWP-22952-2014

Ashok Kumar and others ...Petitioners

Versus

State of Punjab and another ...Respondents

With

CWP-23034-2018

Dhir Singh and another ...Petitioners

Versus

State of Punjab and another ...Respondents

With

CWP-23232-2018

Sohan Singh and others ...Petitioners

Versus

State of Punjab and another ...Respondents

With

CWP-24443-2014

Mewa Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP- 19238 of 2013 & connected cases

-20-

With

CWP-24476-2012

Mahinder Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-2526-2015

Balwant Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

With

CWP-2541-2009 (O&M)

Darshan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-25699-2016

Chinderpal and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CWP- 19238 of 2013 & connected cases -21-

With

CWP-25756-2016

Om Parkash ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-25832-2021

Harjeet (since deceased) through LR(s) ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-26003-2017 (O&M)

Raj Kumar and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-1192-2018

Pawan Kumar and others ...Petitioners

Versus

State of Punjab and another ...Respondents

CWP- 19238 of 2013 & connected cases -22-

With

CWP-14144-2018

Karnail Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-2541-2018

Bhagirath and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-25644-2017

Nishan Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-27059-2017

Amrik Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP- 19238 of 2013 & connected cases -23-

With

CWP-29318-2017

Bachan and others ...Petitioners

Versus

State of Punjab and another ...Respondents

With

CWP-3785-2019

Amar Nath and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-5217-2018

Sham Lal and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-6424-2018

Gurpreet Singh and others ...Petitioners

Versus

State of Punjab and another ...Respondents

CWP- 19238 of 2013 & connected cases

-24-

With

CWP-854-2018

Tarsem Lal and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-9759-2018

Harbans Kaur and another

...Petitioners

Versus

State of Punjab and another

...Respondents

With

CWP-26022-2017

Bhagirath and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-26747-2018

Jagat Ram and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases -25-

With

CWP-26957-2021

Amarjeet Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-27006-2014 (O&M)

Ranjit Singh and others ...Petitioners

Versus

State of Punjab and another ...Respondents

With

CWP-27260-2017 (O&M)

Amanpreet Singh and another ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-14045-2019

Harbans Lal and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP- 19238 of 2013 & connected cases

-26-

With

CWP-27302-2015

Rattan Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-27646-2022

Mejar Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-28679-2018

Jaswinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

With

CWP-28995-2018 (O&M)

Rattan Chand

...Petitioner

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases

-27-

With

CWP-29196-2017

Najar Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-3058-2001 (O&M)

Hari Ram and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-30881-2018

Neetu Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-3144-2004 (O&M)

Charanjit Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases

-28-

With

CWP-31552-2019

Malkan Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

With

CWP-3209-2021

Balvir Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-3307-2014 (O&M)

Mukhtiar Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-35-2022

Malook Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases

-29-

With

CWP-3660-2005 (O&M)

Sarabjeet Kaur and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP- 3704-2002 (O&M)

Daulat Ram and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-37515-2019 (O&M)

Sher Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-4290-2019

Akhtar Khan

...Petitioner

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases

-30-

With

CWP-4611-2018

Baldev Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-4660-2023

Tarlok Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-4995-2020

Jagat Ram and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-5051-2001 (O&M)

Darshan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases -31-

With

CWP-525-2013

Inder Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-5275-2003 (O&M)

Bhaga ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-5303-2019 (O&M)

Gursewak Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-5385-2004

Dalwara Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP- 19238 of 2013 & connected cases

-32-

With

CWP-5495-2015

Surinder Pal @ Surinder Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

With

CWP-5571-2005

Harminder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-5617-2018

Jaspal Singh and others

...Petitioners

Versus

Punjab State and others

...Respondents

With

CWP-5666-1998 (O&M)

Karnail Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases

-33-

With

CWP-5740-2020

Kuldeep Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-5773-2005 (O&M)

Tarsem Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-5913-2005

Prem Chand and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-5995-2015

Bhajan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases -34-

With

CWP-6002-2013

Lakhbir Singh and another ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-608-2019 (O&M)

Major Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-6105-2018

Bhaga ...Petitioner

Versus

State of Punjab and others ...Respondents

With

CWP-6247-2003 (O&M)

Sardara Singh and another ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP- 19238 of 2013 & connected cases

-35-

With

CWP-6251-2005

Kashmir and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-6298-2005

Amarjeet Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-6305-2004 (O&M)

Surinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-6336-2003

Balbir Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases

-36-

With

CWP-9998-1999 (O&M)

Charna

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-6363-2019

Teja Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

With

CWP-6646-2003 (O&M)

Ravinder Kumar and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-6753-2001 (O&M)

Mit Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CWP- 19238 of 2013 & connected cases -37-

With

CWP-7086-2000

Dharam Paul and others ...Petitioners

Versus

State of Punjab ...Respondent

With

CWP-32930-2019

Kala Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-7290-2006

Gurpartap Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

With

CWP-7517-2005

Jogga Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP- 19238 of 2013 & connected cases

-38-

With

CWP-7916-2006

Mahil Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-8169-2013

Kulwinder Singh

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-8540-2001 (O&M)

Bhag Chand and others

...Petitioners

Versus

State of Punjab and others

...Respondents

With

CWP-9072-2006

Mohni and others

...Petitioners

Versus

State of Punjab and others

...Respondents

And

CWP- 9460-2006 (O&M)

Sohan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Pawan Kumar Mutneja, Senior Advocate with
Mr. Viranjeet Singh Mahal, Advocate,
Mr. Brijesh Kumar, Advocate and
Ms. Suverna Mutneja, Advocate for the petitioner(s)
Mr. R.K. Arora, Advocate and
Mr. Jugam Arora, Advocate
for the petitioner(s) (in CWPs-18849-2008 and 9072-2006)

Mr. Rai Singh Chauhan, Advocate
for the petitioner (in CWP-7916-2006)

Mr. Ramesh Kumar, Advocate and
Mr. Kabul Singh, Advocate for the petitioner (in CWP-35-2022)

Mr. Rohit Kataria, Advocate for
Mr. Manu K. Bhandari, Advocate for the petitioner(s)
(in CWPs-5353-2013, 21792-2018, 3307-2014, 8169-2013)

Mr. Ashish Goklaney, Advocate and
Mr. Pawan Kumar Goklaney Advocate for the petitioner
(in CWP-5995-2015)

Mr. Gursharan Dass, Advocate
for the petitioner (in CWP-5385-2004)

Mr. S.P. Soi, Advocate for the petitioner (in CWP-3209-2021)

Mr. Lalit Rishi, Advocate and
Mr. Rohit Singh, Advocate
for the petitioner(s) (in CWP-17917-2023)

Ms. Promila Nain, Advocate and
Mr. Amit Thakur, Advocate
for the petitioner (in CWP-5666-1998)

Mr. K.S. Dadwal, Advocate and
Ms. Neha Jain, Advocate for the petitioner(s)
(in CWPs-1192-2018, 6753-2001 and 19900-2003)

Mr. Ashok Giri, Advocate for the petitioner(s)
(in CWP-3058-2001)

Ms. Anju Arora, Advocate,
 Ms. Alisha Arora, Advocate and
 Ms. Manpreet, Advocate for the petitioner(s) (in CWPs-22377-2012, 22389-2020, 27059-2017, 25644-2017, 16082-2017, 4611-2018, 25832-2021, 11126-2017, 11889-2017, 854-2018, 9759-2018, 12240-2017, 26003-2017, 26957-2021, 3785-2019, 27260-2017, 14045-2019, 6424-2018, 14144-2018, 32930-2019, 4290-2019, 19138-2022, 14358-2006, 6247-2003, 12945-1998, 6363-2019, 9460-2006, 3660-2005, 6336-2003, 18376-2004, 11717-2006, 19071-2003, 10474-2004, 14358-2006, 18610-2006, 5217-2018, 9998-2019)

Mr. Amandeep Singh, Advocate for the petitioner(s)
 (in CWPs-15332-2001, 18438-2001, 19479-2005 and 5913-2005)

Mr. Ranjivan Singh, Advocate,
 Ms. Kanika Toor, Advocate and
 Mr. Risham Raag Singh, Advocate for the petitioner(s)
 (in CWPs-8540-2001 and 3704-2002)

Mr. Rajender Kumar, Advocate for
 Mr. D.K. Kaushal, Advocate for the petitioner(s)
 (in CWP-10490-2015)

Mr. R.K. Arya, Advocate for the petitioner(s)
 (in CWPs-12499-2019 and 22377-2012)

Mr. Neeraj Sharma, Advocate for the petitioner(s)
 (in CWP-29196-2017)

Mr. Amrinder Pratap Singh, Advocate for
 Mr. Gurnam Singh, Advocate for the petitioner(s)
 (in CWPs-14738-2003, 14778-2006, 1528-2004 and 15565-2003)

Ms. Nisha Rana, Advocate for the petitioner(s)
 (in CWP-31552-2019)

Mr. Vijay Rana, Advocate for the petitioner(s)
 (in CWP-16082-2017)

Mr. Dharam Pal, Advocate,
 Ms. Monika Soni, Advocate and
 Mr. H.K. Brinda, Advocate for the petitioner(s)
 (in CWPs-5617-2018, 229-2019 and 5303-2019)

Mr. Johan Kumar, Advocate for the petitioner(s)
 (in CWP-6105-2018)

Mr. Shalender Mohan, Advocate for the petitioner(s)
 (in CWPs-14738-2005, 19953-2011, 5773-2005, 14524-2005, 20948-2011, 7517-2005, 27006-2014, 10346-2005, 13323-2005, 10335-2005)

Mr. Harbans Lal Sharma, Advocate for the petitioner(s)
 Mr. K.B. Sharma, Advocate for the petitioner(s)
 (in CWP-18009-2018)

Mr. Sukwinder Singh Sudan, Advocate for the petitioner(s)
(in CWP-22952-2014, 2526-2015, 5495-2015, 25699-2016,
25756-2016 and 17827-2018)

Mr. Subhash Ahuja, Advocate for the petitioner(s)
(in CWP-18332-2004)

Mr. Vishal Mittal, Advocate for the petitioner(s)
(in CWPs-26003-2017, 26022-2017, 2541-2018)

Mr. Vipin Mahajan, Advocate
for the petitioner(s) (in CWP-18410-2019)

Mr. Ashok Sharma Nabhwala, Advocate for the petitioner(s)
(in CWPs-18734-2002 and 3144-2004)

Mr. Inderpal Singh, Advocate for
Mr. B.S. Randhawa, Advocate
for the petitioner(s) (in CWP-21833-2021)

Mr. Aman Dhir, Deputy Advocate General, Punjab with
Mr. Pawan Kumar, Deputy Advocate General, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. This bunch of petitions first time was listed before this Bench on 20.02.2024 and thereafter on 22.02.2024 and 26.02.2024. Few petitions are pending for more than two decades. In most of the petitions, there are more than one petitioner. All the petitioners are seeking regularization and minimum of pay scale. It is not possible to notice facts of each case, thus, with the consent of all the stakeholders, facts are borrowed from *CWP- 19238 of 2013*.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking direction to respondents to regularize their services and pay minimum of the regular pay scale.

3. The petitioners are daily wage workers and they are working with Punjab Forest Department (for short '**Department**'). As per the petitioners, they have completed service of 17-18 years on the date of filing writ petition.

They, from time to time, were transferred from one Project to another. They are paid wages on the rates fixed by Deputy Commissioner. They have not been still regularized despite completing service of 30 or more years.

4. A battery of lawyers led by Mr. Pawan Mutneja, Senior Advocate pleaded that respondents in terms of judgment of Constitutional Bench in ***Secretary, State of Karnataka v. Uma Devi, (2006) 4 SCC 1*** read with policies made from time to time, were duty bound to regularize all the petitioners who had completed service of 10 years by 31.12.2006. The respondent has not regularized them on the ground that sanctioned posts are not available. The respondent during the pendency of petition has regularized many petitioners like in a bunch of 13 writ petitions, there were 180 petitioners and 45 of them have been regularized. The respondent, as per its whims, creates posts and regularizes few of the employees. The action of the respondent in the teeth of judgment of Supreme Court in ***Uma Devi (supra)***, ***Official Liquidator v. Dayanand and Others, (2008) 10 SCC 1***; ***State of Karnataka and others v. M.L. Kesari and others, (2010) 9 SCC 247***; ***Narendra Kumar Tiwari vs. State of Jharkhand and others, (2018) 8 SCC 238*** is violative of Article 14 and 21 of the Constitution of India. The respondent is paying wages at the rates prescribed by Deputy Commissioner, whereas petitioners as per judgment of Supreme Court in ***State of Punjab Vs. Jagjit Singh, 2017 (1) SCC 148*** read with ***Bahadur Singh and Others v. Jaspreet Kaur Talwar and Others, 2022 SCC OnLine SC 1077*** are entitled to minimum of pay scale plus DA plus grade pay.

5. Mr. Sukwinder Singh Sudan, Advocate claimed that petitioners were working for more than 10 years as on 31.12.2006 and respondent has

wrongly concluded that they have not completed service of 10 years by 31.12.2006. The petitioners are in possession of Seniority list of different years disclosing that they have worked during 10 years preceding 31.12.2006. The respondent in its reply has wrongly pleaded that petitioners have not completed service of 10 years by 31.12.2006. The record of the respondents is contradictory to their assertion.

6. Mr. Dharampal, Advocate claimed that petitioners were considered for regularization and their claim was accepted. The petitioners in *CWP-5617-2018* were even marked for medical examination still they have not been regularized.

7. Ms. Anju Arora, Advocate submitted that respondent has fudged their record to prove that petitioners have not rendered service of 10 years by 31.12.2006 whereas seniority list and other documents are disclosing that most of the petitioners had completed service of 10 years by 31.12.2006. The juniors of the petitioners have been regularized which amounts to hostile discrimination and violation of Article 14 of the Constitution of India.

8. *Per contra*, Mr. Aman Dhir, learned State counsel submits that no worker can be regularized in the absence of sanctioned post. A Constitution Bench in *Uma Devi (supra)* had directed the States to regularize those workers who were appointed against the sanctioned posts and were having minimum educational qualification. The Court cannot ask the State to create or sanction any post. It is the prerogative of the State to create/sanction post or structure/restructure any cadre. The petitioners were appointed as Daily Wagers and few of them have been regularized against sanctioned

posts. In the absence of sanctioned posts, the petitioners cannot be regularized. The State is paying lump sum wages to all the petitioners which is more than minimum of regular pay scale, thus, petitioners cannot claim that they are underpaid. The petitioners at the time of joining were well aware that they are not appointed against sanctioned posts, thus, they have no vested or fundamental right to claim regularization. The State framed regularization Policy in 2006 and many employees were regularized. The State has recently announced 2023 Policy whereunder a Dying Cadre has been created and all the employees would be considered under the said policy subject to compliance of terms and conditions enumerated therein.

9. On being asked, Mr. Dhir confirmed that petitioners are incessantly working with the State. He further confirmed that work is available and workforce is required, however, appointments have been made on contract/daily wages basis.

10. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

11. The State Government vide notification dated 23.01.2001 (Annexure P-2) issued policy for regularization of temporary workers. As per the said policy, an employee who was in continuous service of 3 years was eligible for absorption as a regular employee. The relevant extracts of the said policy read as:

“i) No new posts are ordinarily to be created to absorb and regularize existing work charge/ daily wage and other categories of workers. Wherever the full circumstances of the particular situation warrant that new posts may be created, the

case should be thoroughly examined, Finance department should be consulted and approval of the CM should be obtained.

ii) Each department may prepare a list of work charge, daily wage and other categories of workers who have completed 3 years service and these lists may be up-dated from time to time. The lists should be prepared strictly as per seniority.

iii) Out of the listed prepared thus, workers should be absorbed/ regularized only against regular posts existing in each department. In the first instance work charged workers should be regularized in the order of seniority. Only when all eligible persons of this category have been accommodated cases of daily wager and other categories of workers who have completed 3 years of service in the departments may be taken up. The Basic idea is that workers belonging to a particular department should be considered for regularization only against available regular vacancies in that department. The claim of work charge/daily wage/other categories of workers for regularization will extend only against available vacancies in the departments to which these workers belong.

iv) For accommodating work charged daily wage/other category workers as per the above policy the existing vacancies the existing instructions requiring permission of the DOP and BD k1 for filling up the vacancies would not apply. Wherever for the absorption/regularization of workers as per the above policy any department's own recruitment Rules come in the way, such provisions of the Recruitment rules will stand relaxed."

12. Few employees filed CWP No.13193 of 2001 before this Court seeking regularization on the ground of policy of 2001. A Division Bench of this Court vide order dated 16.09.2002 (Annexure P-4) disposed of said petition with a direction to respondents to consider claim of the petitioners for

regularization and pay scale. The relevant extracts of the order dated 16.09.2002 read as:

“The petitioners in these two cases are working as Drivers on daily wages in the Punjab Forest Department. The petitioners aver that they have been working for substantially long periods ranging from 3 to 22 years. Despite satisfactory performance of duties, the petitioners are being paid a consolidated wage of Rs.2000/- per month. It has been pointed out that the principal Chief Conservator of Forests had issued an advertisement for appointing 30 drivers. The minimum pay of Rs.4,700/- was proposed to be paid. The appointments had to be made on contract basis. The petitioners allege that the posts of Drivers carry regular pay scale. The petitioners are not being paid even the minimum of the scale. In fact, payment of Rs.2000/- per month is wholly arbitrary. It amounts to exploiting the petitioners.

The respondents contested the petitioners’ claim. It has been inter-alia averred that the posts have been advertised. The petitioners can apply.

Learned counsels for the parties have been heard. Mr. Mahajan, learned counsel for the petitioners submits that the State Government has been periodically issuing instructions for regularisation of services of the adhoc employees. The petitioners have been working for long periods of time. There is no proposal to reduce the number of vehicles. Thus, even the need for drivers is not likely to diminish. In view of this situation, counsel submits that the respondents should be directed to consider the claim of the petitioners for regularisation of their services.

On behalf of the respondents, it has been pointed out that the petitioners are working on the posts sanctioned for projects. They are working on daily wages. They have no right to claim regularisation of their services or the scale of pay.

It is the admitted position that some of the petitioners have been in service for a period of more than 22 years. They have worked as Drivers for long periods of time ranging from 3 to 22 years. It is also not disputed that the State Government has been periodically issuing instructions for the regularisation of the services of adhoc employees. Still further, it is a known fact that the number of vehicles and employees has gradually increased. There has been no down-ward slide in either of the two. More than all this, the admitted facts show that the need for drivers is continuous. In this situation, it is apparent that the petitioners have not been fairly treated. They are being paid a paltry sum of Rs.2000/- which is even less than what is given to a class IV employee.

Taking the totality of the circumstances into consideration, it is directed that the respondents shall consider the petitioners' claim for regularisation of services within six months from the date of the receipt of a certified copy of this order. They will also be placed in the regular scale of pay, sanctioned for the category of post, held be them.

As an interim measure, the petitioners shall be given the same salary as was proposed to be given to the drivers to be appointed on contract basic viz. Rs.4700.00P.M.

The writ petitions are allowed in the above terms. No costs."

13. After laying down of law by Constitution Bench in ***Uma Devi (supra)***, the State Government declared its regularization policy dated 15.12.2006 (Annexure P-7). As per said policy, an employee was entitled to be absorbed as a regular employee, if he has completed service of 10 years by 10.04.2006. The relevant extracts of the policy read as:

"In view of the above law laid down by the Hon'ble Supreme Court of India, the State Government has decided to regularize the services of work-charged/daily wage workers

and employees worked on 89-days/Adhoc/temporary basis, and are still in service without break in various departments of the State Government. The said decision shall also apply to the aforesaid workers/employees working in Public Sector under the Administrative control of the State of Punjab.

2. *While considering the cases for regularization of the services of such irregularly appointed workers/employees as a one time measure, the following guidelines are to be followed in letter and spirit, namely*

- i) the employee should have worked for not less than 10 (Ten) years as on 10.4.2006 without the intervention of the orders of the Courts or Tribunals against duly sanctioned posts;*
- ii) the employee fulfills the minimum basic qualification for the post against which he was appointed;*
- iii) it shall be certified by the competent authority that no supernumerary posts were created to retain the employees in service, when the persons were appointed on regular basis; and*
- iv) it shall be the duty of the Administrative Department that while considering the case of each employee, the order of the Hon'ble Supreme Court of India passed in the aforesaid case are implemented in letter and spirit. It shall be ensured that there should be no further by passing of Constitutional requirements and regularizing or making permanent those, who were not appointed as per the said constitutional scheme.”*

14. The above-noted policy of 2006, came to be affirmed by policy dated 18.03.2011 (Annexure P-8). By this policy, the cut-off date for counting service of 10 years was extended from 10.04.2006 to 31.12.2006, however,

principally policy of 2006 remained intact. The relevant extracts of 2011 policy read as:

“2. The daily wager/work charged employees working in various departments shown in Annexure who have completed the service of 10 years till December, 2006, on the basis of information received the matter was considered by the Cabinet in the meeting dated 9.3.11 and cabinet taken the decision (SIC) the employees are regularized:-

- i) That the daily wager/work charged employees who have completed 10 years service till December, 2006 are to be regularized their service, post to be created in the related department and those employees who as per rules /directions fulfill the educational qualification and capability be regularized against the vacant post.*
- ii) Regularization will be done on strict compliance of conditions mentioned as under:-*
 - a) The regularization will be considered operative from the beginning of the date of passing order and the persons were regularized will not be given any previous service benefits, but in any department if employee of that cadre is directly recruited through proper procedure on that date then in that condition the employees who were regularized under the policy will be placed under them in seniority.*
 - b) At the time of regularization the basic scale of the concerned cadre shall be given.*
 - c) The strict compliance of reservation policy to be made.*
 - d) New contribution pension scheme will be applicable on the regularized employees.*

e) The order passed by the Hon'ble Supreme Court in case of Uma Devi to be followed."

15. The petitioners filed *Civil Writ Petition No. 19488 of 2012* titled as *Amrish Sharma and others v. State of Punjab and others* before this Court seeking regularization in terms of 2011 policy. The said petition came to be disposed of vide order dated 28.09.2012 (Annexure P-13). The relevant extracts of the order dated 28.09.2012 read as:

"(2) The petitioners who are working on work- charged/ daily-wage basis for the last more than 15 to 17 years seek regularization of their services. They also seek pay-scales equal to what is being drawn by the regular employees.

(3) Suffice it to observe that the petitioners' claim for regularization of their service needs to be considered by the respondents as per the Government policy/ Instructions dated 18.3.2011 (Annexure P8) and they shall do so as early as possible but not later than four months.

(4) As regards the grant of minimum pay scale to the petitioner, the respondents are directed to consider the same in the light of the Full Bench decision dated 11.11.2011 rendered in Avtar Singh Vs. State of Punjab & ors (CWP No.14796 of 2003).

(5) The needful shall be done within a period of four months from the date of receipt of a certified copy of this order."

16. The respondent in its reply dated 10.12.2013 conceded that pursuant to policy of 2006 and 2011, posts have been sanctioned but all the workers could not be adjusted due to limited number of sanctioned posts. The relevant extracts of the reply dated 10.12.2013 read as:

"2. That as per instruction of the Government of Punjab Vide letter dated 18.03.2011, bearing no. A.V.P.N.11/8/2009-

4PP 3/397 dated 18.03.2011 (Annexure P-7) and in compliance of the order dated 10.02.2012 passed by the this Hon'ble High Court in CWP NO.2500 of 2012, the answering respondent has passed speaking order (Annexure P 15), whereby it is clearly mentioned, that the seniority list has been prepared by the department, out of those daily wager employees, who have completed 10 years of service till 31.12.2006, in which name of 886 daily wager employees are mentioned, who fulfill the required conditions and as per the seniority list finalized by the Screening Review Committee, the petitioners had been considered for regularization of service, as per the instructions issued by the Government.

3. That the case of the petitioners is not covered under Sub Para 1 of the conditions laid down by this Hon'ble High Court in CWP No.19488 of 2003 titled Avtar Singh Versus State of Punjab. Since the petitioners never worked against the sanctioned post, and the case of the petitioners falls under the sub para 2 of the said judgment which reads as under:

“(2) But if daily wagers, adhoc or contractual appointees are not appointed against regular sanctioned post and their service are availed continuously with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, adhoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legal permissible scheme.”

Thus it is clear that the petitioners are entitled to minimum of the regular pay scale without any allowance, and further, they are entitled to starting basic pay of Rs.6950/-.

4. *That as per letter (Annexure P-13) bearing no.4/8675 dated 03.09.2012, the Principal Chief Conservator of Forest (HOFF) Punjab, Ajitgarh (Mohali) had also requested to the Financial Commissioner, that 409 Baildars are regularized from the new seniority list of daily wagers prepared by the department and for Creation of 461 posts, the request had been made vide letters no.198 dated 11.11.2011, Letter No.2106 dated 14.07.2011 and letter no.1674 dated 01.12.2011, and a request was made to the Ld. Financial Commissioner (Forest) and the Principal Secretary to create 462 posts of Baildars, so that the government work may not suffer.*

5. *That whenever the said posts are sanctioned/created by State Government, the case of the petitioners shall be considered as per rules.”*

17. This Court during the pendency of present writ petition passed order dated 10.08.2023 whereby respondent was directed to file affidavit with respect to latest position of petitioners in 13 writ petitions. The relevant extracts of the order read as:

“Learned State Counsel submits that several petitioners in these writ Petitions have already been regularized. Since, there are 13 cases in this bunch of Writ Petitions before this Court, learned State counsel shall prepare the details of the persons who have been regularized and those who have not been regularized. Reasons shall also be placed before this Court for not regularizing the remaining Daily Wagers and whether the exercise was conducted for regularizing the Daily Wagers in terms of the Government circular dated 18.03.2011 which provided regularization of Daily Wagers, Work Charge employees in various Departments as one time measure.

The affidavit of the Principal Chief Secretary shall be filed which shall also give reasons for not paying the minimum of the pay scale to the Daily Wagers working with the Departments in terms of the judgment passed by the Hon’ble

Supreme Court in the State of Punjab Vs. Jagjit Singh report in 2017 (1) SCC 148 and the same is applicable to all.

The affidavit shall be filed by the next date of hearing with a copy in advance to the learned counsel for the petitioner.

List these cases on 06.09.2023.

It is made clear that if the affidavit is not filed by the next date of hearing, the Principal, Chief Conservator of Forests, Punjab shall appear in the Court.

Photocopy of this order be placed on, the files of the connected cases.”

18. The respondent in compliance of above-noted order of this Court filed affidavit dated 11.12.2023 of Vikas Garg, IAS, Financial Commissioner, Department of Forests and Wildlife Preservation, Punjab wherein respondent confirmed that out of 180 petitioners in different writ petitions, 45 have already been regularized, 11 have passed away and 2 have left the job. The remaining are not regularized due to lack of sanctioned posts or being overage. The relevant extracts of the affidavit read as:

“3. That in compliance of the above order of this Hon'ble High Court, especially regarding preparing list/details of the persons who have been regularized and those who have not been regularized, it is most respectfully submitted that in order to provide the latest status of the petitioners, the record of these petitioners was sought from the concerned divisions, which has been provided by them on the basis of the official record maintained by the concerned division, regarding which affidavits have already been submitted by the Divisional Forest Officers of these divisions before this Hon'ble court after getting the same duly vetted from the office of Advocate General, Punjab on different dates/years. From which it is clear that there are total 180 petitioners of these different 13

writ petitions, who belong to the various 7 divisions (3 writ petitions relate to Ludhiana Division, 2 writ petitions relate to SAS Nagar, Hoshiarpur, Gurdaspur and Patiala each, whereas 1 writ petition relates to Bathinda and to Headquarter each. And out of these total 180 petitioners, 45 have been granted the benefit of regularization, out of which 1 petitioner was expired after regularization of his services, whereas out of the remaining 135 petitioners 11 petitioners have expired, 2 petitioners have left the job and never came back on the daily wage work and 17 were not found eligible due to being overage or due to not fulfilling the conditions of the policies issued in this regard.”

19. Different High Courts as well as Supreme Court prior to 2006 in many cases directed to States/Union of India to regularize part time/work charged/ad-hoc/contractual/daily wage employees. The foundation of all the judgments was length of service. In 2006, a Constitution Bench in ***Uma Devi (supra)***, adverted with the question of regularization of temporary/part time/adhoc/daily wage employees. The Apex Court deprecated practice of employing temporary/part time or contractual employees though it held that in exigency, State can make appointment on contract basis. The Court held that regularization of contractual or part time employees would amount to legalization of back door entrants. The regularization of part time employees is violative of Articles 14, 16 & 309 of Constitution of India. The employees who are working on daily wage cannot claim discrimination on the ground that they have been paid lesser than regularly recruited employees. The High Court should not ordinarily issue directions for absorption, regularization or continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. High Court is not justified in issuing interim orders in such cases. There is no fundamental or vested right in those who have been

employed on daily wages or temporary or contract basis to claim that they have a right to be absorbed in service. The relevant extracts of the judgment read as:

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the

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

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 decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] 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 directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such*

casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

46. *Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in Dharwad [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] , Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] , Jacob [Jacob M. Puthuparambil v. Kerala Water Authority, (1991) 1 SCC 28 :*

1991 SCC (L&S) 25 : (1991) 15 ATC 697] and Gujarat Agricultural University [Gujarat Agricultural University v. Rathod LabhuBechar, (2001) 3 SCC 574 : 2001 SCC (L&S) 613] and the like, have given rise to an expectation in them that their services would also be regularised. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. [See Lord Diplock in Council for Civil Services Union v. Minister of Civil Service [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] , National Buildings Construction Corpn. v. S. Raghunathan [(1998) 7 SCC 66 : 1998 SCC (L&S) 1770] and Chanchal Goyal (Dr.) v. State of Rajasthan [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] .] There is no case that any assurance was given by the Government or the department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after Dharwad decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] . Though, there is a case that the State had made regularisations in the past of similarly situated employees, the fact remains that such regularisations were done only pursuant

to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularised in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularisation of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

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 salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to 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 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.”

20. A two Judge Bench of Supreme Court in ***Union of India and others v. Vartak Labour Union, (2011) 4 SCC 200*** rejected claim of regularization of contractual employees who had worked for more than 30 years with Border Roads Organization.

21. A two Judge Bench of Supreme Court in ***Union of India and others v. All India Trade Union Congress and others, (2019) 5 SCC 773***, following *Vartak Labour Union (supra)* has held that no contractual employee can claim regularization. High Courts cannot direct authorities to frame policy and regularize the contractual employees.

22. A Division Bench of this Court vide judgment dated 31.05.2018 in ***Yogesh Tyagi and another v. State of Haryana and others, CWP No.17206 of 2014***, set aside policy of regularization made by the State. The Court has set aside policy on the ground that regularization of contractual employees who have been appointed without following prescribed procedure

amounts to back door entry and it amounts to violation of Articles 14, 16 & 309 of Constitution of India.

23. A two Judge Bench of Apex Court in ***Union of India v. Ilmo Devi, (2021) 20 SCC 290*** considered question of regularization of part time employees of Union of India. The Court while setting aside judgment of this Court has held that High Court in exercise of its writ jurisdiction cannot ask State to regularize part time employees. The Court has further held that part time employees cannot claim pay parity with regular employees. The Court has noticed judgment of this Court in Para 3.4 and returned findings in Para 16-19 which are reproduced as below:

“3.4. By the impugned common judgment and order [Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144] , the High Court has disposed of the aforesaid writ petitions with the following directions : (Ilmo Devi case [Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144] , SCC OnLine P&H paras 22-23)

“22. We, thus, direct the petitioner authorities to revisit the whole issue in its right perspective and complete the exercise to reformulate their policy and take a decision to sanction the posts in phased manner within a specified time schedule. Let such a decision be taken within a period of six months from the date of receiving a certified copy of this order.

23. Till the exercise as directed above, is undertaken, the respondents shall continue in service with their current status but those of them who have completed 20 years as part-time daily wagers, shall be granted “minimum” basic pay of Group “D” post(s) w.e.f. 1-4-2015 and/or the date of completion of 20 years contractual service, whichever is later.”

XXXX XXXX XXXX XXXX

16. Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularisation 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.

17. Applying the law laid down by this Court in the aforesaid decisions, the directions issued by the High Court in the impugned judgment and order [Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144] , more particularly, directions in paras 22 and 23 are unsustainable and beyond the power of the judicial review of the High Court in exercise of the power under Article 226 of the Constitution. Even otherwise, it is required to be noted that in the present case, the Union of India/Department subsequently came out with a regularisation policy dated 30-6-2014, which is absolutely in consonance with the law laid down by this Court in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , which does not apply to the part-time workers who do not work on the sanctioned post. As per the settled preposition of law, the regularisation can be only as per the regularisation policy declared by the State/Government and nobody can claim the regularisation as a matter of right dehors the regularisation policy. Therefore, in absence of any sanctioned post and considering the fact that the respondents were serving as a contingent paid part-time SafaiKaramcharies, even otherwise, they were not entitled for the benefit of regularisation under the regularisation policy dated 30-6-2014.

18. Though, we are of the opinion that even the direction contained in para 23 for granting minimum basic pay of Group ‘D’ posts from a particular date to those, who have completed 20 years of part-time daily wage service also is unsustainable

as the part-time wagers, who are working for four to five hours a day and cannot claim the parity with other Group 'D' posts. However, in view of the order passed by this Court dated 22-7-2016 [Union of India v. Ilmo Devi, 2016 SCC OnLine SC 1933] while issuing notice in the present appeals, we are not quashing and setting aside the directions contained in para 23 in the impugned judgment and order [Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144] so far as the respondents' employees are concerned.

19. *In view of the above and for the reasons stated above, both the appeals succeed. The impugned judgment and order [Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144] passed by the High Court and, more particularly, the directions contained in paras 22 and 23 in the impugned judgment and order [Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144] are hereby quashed and set aside. However, it is observed that quashing and setting aside the directions issued in terms of para 23 in the impugned judgment and order [Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144] shall not affect the case of the respondents and they shall be entitled to the reliefs as per para 23 of the impugned judgment and order [Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144] passed by the High Court."*

24. From the above narrated factual and legal position, following questions emanate for the consideration of this Court:

- i) Whether this Court can direct the respondent to create/sanction the posts?
- ii) Whether the petitioners are entitled to be regularized/absorbed?
- iii) Whether the petitioners are entitled to minimum of pay scale including dearness allowance and grade pay?

- iv) What relief can be granted to those who after having rendered service of more than 30 years, during the pendency of their petition have superannuated or passed away?

Direction to create sanction posts:

25. It is axiomatic in service jurisprudence that Courts cannot ask State to create/abolish posts or formulate/structure/re-structure a cadre. It is within domain of the executive which as per its financial resources, work load, need of manpower, availability of sources etc. decides, however, decision of executive can be tested in the teeth of fundamental rights. Constitutional Courts having been assigned role of sentinel on the qui vive, thus, cannot turn a blind eye or deflect from its responsibility.

26. A three Judge Bench of Court in ***Official Liquidator v. Dayanand and Others, (2008) 10 SCC 1*** has adverted with this issue. The court has held that courts cannot ask State to create posts to absorb employees. The findings of the court read as:

“59. The creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection, etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and laying down the qualification, etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review

can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides.

60. *In State of Haryana v. Navneet Verma [(2008) 2 SCC 65 : (2008) 1 SCC (L&S) 373] , a Division Bench of two Judges referred to M. Ramanatha Pillai v. State of Kerala [(1973) 2 SCC 650 : 1973 SCC (L&S) 560] , Kedar Nath Bahl v. State of Punjab [(1974) 3 SCC 21] , State of Haryana v. Des Raj Sangar [(1976) 2 SCC 844 : 1976 SCC (L&S) 336] , N.C. Singhal (Dr.) v. Union of India [(1980) 3 SCC 29 : 1980 SCC (L&S) 269] and Avas Vikas Sanghathan v. Engineers Assn. [(2006) 4 SCC 132 : 2006 SCC (L&S) 613] and culled out the following principles: (Navneet Verma case [(2008) 2 SCC 65 : (2008) 1 SCC (L&S) 373] , SCC p. 70, para 14)*

“(a) the power to create or abolish a post rests with the Government;

(b) whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity;

(c) creation and abolition of posts is a matter of government policy and every sovereign Government has this power in the interest and necessity of internal administration;

(d) creation, continuance and abolition of posts are all decided by the Government in the interest of administration and general public;

(e) the court would be the least competent in the face of scanty material to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fides, legal or factual;

(f) as long as the decision to abolish the post is taken in good faith in the absence of material, interference by the court is not warranted.”

61. *In State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] the Constitution Bench adverted its attention to financial implications of creation of extra posts and held that the courts should not pass orders which impose unwarranted burden on the State and its instrumentalities by directing creation of particular number of posts for absorption of employees appointed on ad hoc or temporary basis or as daily wagers.*

62. *In Aravali Golf Club v. Chander Hass [(2008) 1 SCC 683 : (2008) 1 SCC (L&S) 289] also, a two-Judge Bench considered the issue relating to creation of posts and held: (SCC p. 688, para 15)*

“15. The court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organisation. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the courts cannot take upon themselves the power of creation of a post. Therefore, the directions given by the High Court and the first appellate court to create the posts of tractor driver and regularise the services of the respondents against the said posts cannot be sustained and are hereby set aside.”

27. From the reading of above-cited judgment, it is evident beyond the pale of doubt that the creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection, etc. are matters which

fall within the exclusive domain of the employer. The Court has further reiterated findings recorded by the Constitution bench in *Uma Devi (supra)*.

28. From the reading of different paragraphs of judgment of the Constitution Bench in *Uma Devi (supra)*, it can be gleaned that plea of regularization was rejected because they were not recruited in accordance with prescribed procedure as contemplated by Article 14 and 16 of the Constitution. The Court formed an opinion that executive has made appointment of these employees without following procedure prescribed for regular appointment. On account of contractual/daily/ad hoc appointment, meritorious candidates do not participate and mediocre come forward. The executive in violation of procedure ensures backdoor entry of favourite and less meritorious candidates. The regularization of these backdoor entrants would encourage executive and jettison of rule of law as well as mandate of Articles 14 and 16 of the Constitution. At the cost of repetition, relevant extracts from the operative part of the judgment are reproduced as below:

- i) *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.*
- ii) *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.*
- iii) *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.

- iv) *It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.*
- v) *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.*
- vi) *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.

- vii) *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.*
- viii) *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.*
- ix) *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.”*

29. A common thread running through observations and findings of the Apex Court, made in different paragraphs, is that State had made appointment without following procedure prescribed for regular recruitment which amounts to violation of Article 14 and 16 of the Constitution of India. Despite said findings, the Court directed States and its agencies to make one time arrangement to regularize/absorb these employees with certain riders i.e. 10 years minimum service, sanctioned posts, minimum qualification etc.

30. The respondent-State has made hay from the findings of the Constitution Bench. It has started making appointment on contract/ad-hoc/temporary/part time basis in every department including education which is a character and nation building department. Many teachers appointed on contract basis are getting miniscule in comparison of regularly appointed

peons. The exchequer is siphoned off for subsidies instead of appointing regular employees and paying regular pay scale. The Supreme Court, in case of exigencies, had permitted to make appointment on contract basis and did not permit States and its agencies to make it a routine practice. The Court had emphasised to make appointments in public employment after following procedure prescribed for regular recruitment and in accordance with mandate of Articles 14 and 16 of the Constitution of India. Intention and imprimatur of the court was to inhibit and discourage back door entry. The Court did not permit to make contractual recruitment for infinity and pay minimum of pay scale. The State being a model employer neither can exploit its citizen nor take advantage of mass unemployment. It is expected to make recruitment in accordance with prescribed procedure and on permanent basis. It cannot keep hanging sword of termination.

31. In the case in hand, most of the petitioners were appointed much prior to judgment of Supreme Court in *Uma Devi (supra)*. The respondent in 2001 introduced regularisation policy which lost its significance post judgment of Supreme Court in the case of *Uma Devi (supra)*. The State, in compliance of directions of the Supreme Court, on 10.06.2006 introduced Policy whereunder very few employees were regularized. Most of the employees were not regularized due to lack of sanctioned posts or short of 1-2 years out of minimum prescribed service of 10 years. These employees continued to work and few of them, as admitted in different affidavits of the respondents, came to be regularized during 2012-16. The respondent at its pleasure created few posts and adjusted few employees. It was job of the State to create posts. The respondent uninterruptedly is availing services of the

petitioners for decades which shows that work is available and there is need of workforce. The State despite availing services cannot claim that regular posts are not available. Posts are created by State and not by some unknown force. Court cannot ask State to create or abolish a post or structure/re-structure a cadre, nevertheless, State cannot ignore mandate of Supreme Court. In the wake of judgment of Supreme Court in ***Uma Devi (supra)***, State was duty bound to consider all the employees who by the end of 2006 had already completed service of 10 years without court intervention. The State could not regularize few employees and ignore others on the ground of lack of sanctioned posts.

32. A two judge bench of Supreme Court in ***Nihal Singh v. State of Punjab, (2013) 14 SCC 65*** had occasion to consider question of regularization of Special Police Officers (SPOs) appointed under Section 17 of Police Act, 1861. A division bench of this court relying upon of an earlier judgment of this court dismissed petitions of 20 SPOs and matter travelled to Apex Court which turned down claim of the respondent-State of Punjab that there are no sanctioned post to absorb appellants despite their service of decades. The court held that State cannot take undue advantage of judgment of Supreme Court in ***Uma Devi (supra)***. The said judgment cannot become licence for exploitation by the State. After availing services for decades, it is not justified for the State to take a defence that there are no sanctioned posts to absorb the appellants. The relevant extracts of the judgment read as:

“20. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of a large number of people like the appellants for decades to say

that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. The State has to create them by a conscious choice on the basis of some rational assessment of the need.

21. *The question is whether this Court can compel the State of Punjab to create posts and absorb the appellants into the services of the State on a permanent basis consistent with the Constitution Bench decision of this Court in Umadevi (3) case, State of Karnataka v. Umadevi (3), (2006) 4 SCC 1. To answer this question, the ratio decidendi of Umadevi (3) case State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 is required to be examined. In that case, this Court was considering the legality of the action of the State in resorting to irregular appointments without reference to the duty to comply with the proper appointment procedure contemplated by the Constitution: (SCC pp. 17-18, para 4)*

“4. ... 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 Commissions 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 the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The 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. Whether the wide powers under Article 226 of the Constitution are 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 recognised by our Constitution, has to be seriously pondered over."

(emphasis supplied)

It can be seen from the above that the entire issue pivoted around the fact that the State initially made appointments without following any rational procedure envisaged under the scheme of the Constitution in the matters of public appointments. This Court while recognising the authority of the State to make temporary appointments engaging workers on daily wages declared that the regularisation of the employment of such persons which was made without following the procedure conforming to the requirement of the scheme of the Constitution in the matter of public appointments cannot become an alternate mode of recruitment to public appointment.

22. *It was further declared in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] that the jurisdiction of the constitutional courts under Article 226 or Article 32 cannot be exercised to compel the State or to enable the State to perpetuate an illegality. This Court held that compelling the State to absorb persons who were employed by the State as casual workers or daily-wage workers for a long period on the ground that such a practice would be an arbitrary practice and violative of Article 14 and*

would itself offend another aspect of Article 14 i.e. the State chose initially to appoint such persons without any rational procedure recognised by law thereby depriving vast number of other eligible candidates who were similarly situated to compete for such employment.

23. *Even going by the principles laid down in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , we are of the opinion that the State of Punjab cannot be heard to say that the appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.”*

33. In ***Narendra Kumar Tiwari vs. State of Jharkhand and others***, (2018) 8 SCC 238, the Apex Court dealt with denial of regularization and held that the State of Jharkhand has continued with irregular appointments for almost a decade after decision in ***Uma Devi's case (supra)*** and it was nothing but exploitation of the employees by not giving them their benefits. Resultantly, it was held that if they had completed 10 years of service, they were to be regularized unless there is valid objection to their regularization. Resultantly, the order of the High Court was set aside which had itself placed reliance upon ***Uma Devi's case (supra)***. The relevant portion of ***Narendra Kumar Tiwari (supra)*** reads as:-

“7. The purpose and intent of the decision in Umadevi (3) was therefore two-fold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) is a clear indication that it believes that it was all right to continue with irregular

appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid.

8. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3), is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15th November, 2000 and the cut-off date was fixed as 10th April, 2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

9. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

10. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years

of service they should be regularised unless there is some valid objection to their regularisation like misconduct etc.

11. The impugned judgment and order passed by the High Court is set aside in view of our conclusions. The State should take a decision within four months from today on regularisation of the status of the appellants. The appeals are accordingly disposed of.

12. We may add that that it would be worthwhile for the State of Jharkhand to henceforth consider making regular appointments only and dropping the idea of making irregular appointments so as to short circuit the process of regular appointments.”

34. In ***State of Karnataka and others Vs M.L. Kesari and others (2010) 9 SCC 246***, the Supreme Court noticed misuse by the State and its agencies, non-compliance of order of the Apex Court and denying the benefits to employees. The Court noticed that the object as such was two folds. Firstly, that persons who had put in more than 10 years of services were to be considered for regularization in view of the long service. Secondly, it was to ensure that departments do not perpetuate the practice of employing persons on daily wage, ad hoc or casual basis. It was held that persons who had worked for more than 10 years on 10.04.2006 were entitled for regularization and necessary directions were issued in the said case and those not entitled because of lack of educational qualifications were to be regularized on a lower post. The relevant extracts of the judgment in ***M.L. Kesri (supra)*** read as:-

“7. It is evident from the above that there is an exception to the general principles against ‘regularization’ enunciated in Uma Devi, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

8. Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006).

9. The term ‘one-time measure’ has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily- wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification

as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

10. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/ad-hoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all daily-wage/adhoc/those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi, are so considered.

11. The object behind the said direction in para 53 of Umadevi is two-fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to

ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily- wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.

12. These appeals have been pending for more than four years after the decision in Umadevi. The Appellant (Zila Panchayat, Gadag) has not considered the cases of respondents of regularization within six months of the decision in Umadevi or thereafter.

13. The Division Bench of the High Court has directed that the cases of respondents should be considered in accordance with law. The only further direction that needs be given, in view of Umadevi, is that the Zila Panchayat, Gadag should now undertake an exercise within six months, a general one- time regularization exercise, to find out whether there are any daily wage/casual/ad-hoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfill the requirements mentioned in para 53 of Umadevi. If they fulfill them, their services have to be regularized. If such an exercise has already been undertaken by ignoring or omitting the cases of respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in

continuation of the said one time exercise within three months. It is needless to say that if the respondents do not fulfill the requirements of Para 53 of Umadevi, their services need not be regularised. If the employees who have completed ten years service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularization in suitable lower posts. This appeal is disposed of accordingly.

Appeal disposed of.”

35. In the case in hand, the respondent in 2006 framed regularization policy which was followed by 2011 Policy. As per Policy of 2006 read with policy of 2011, an employee who has completed service of 10 years by the end of December' 2006 is eligible for regular appointment. All the petitioners are Class 'D' employees. Few petitioners, as confirmed in different affidavits, during the pendency of litigation have been regularized and remaining have not been regularized due to lack of permanent/sanctioned posts. The respondent in 2023 has framed another policy whereby dying cadre has been created. There was no minimum qualification at the time of their appointment. They without interruption are working for decades. They are assigned duties of Class IV. Courts repeatedly have held that long experience is as good as minimum qualification especially when an employee is effectively discharging his duties. Thus, it would not be justified, on the ground of minimum qualification, to deny benefit of regularization to an employee who is working for decades and is assigned duties of class IV i.e. lowest rung.

Claim of Minimum Pay:

36. The petitioners besides claiming regularization are claiming minimum pay on the principle of ‘equal pay for equal work’. In support of their claim, they are relying upon judgment of Supreme Court in ***State of Punjab v. Jagjit Singh, (2017) 1 SCC 148***. The Court has held that temporary employees are entitled to minimum of pay scale available to regular employees. The relevant extracts of the judgment in ***Jagjit Singh (supra)*** read as:

“56. We shall now deal with the claim of temporary employees before this Court.

57. There is no room for any doubt that the principle of “equal pay for equal work” has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the Constitution of India. The parameters of the principle have been summarized by us in para 42 hereinabove. The principle of “equal pay for equal work” has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarized by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.

XXXX XXXX XXXX XXXX

60. Having traversed the legal parameters with reference to the application of the principle of “equal pay for equal work”, in relation to temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the employees

concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of “equal pay for equal work” summarised by us in para 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being randomly deputed to discharge duties and responsibilities which at some point in time were assigned to regular employees. Likewise, regular employees holding substantive posts were also posted to discharge the same work which was assigned to temporary employees from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarised by us in para 42 hereinabove. There can be no doubt, that the principle of “equal pay for equal work” would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, in the present bunch of cases would be entitled to draw wages at the minimum of the pay

scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post.”

37. In the above referred judgment, the Court has not clarified whether minimum of pay scale would include dearness allowance and grade pay. As per petitioners, the said question has been subsequently clarified by Supreme Court in ***Bahadur Singh and Others v. Jaspreet Kaur Talwar and Others 2022 SCC OnLine SC 1077***. The Court has held that minimum of pay would include dearness allowance as well as grade pay. The relevant extracts of the judgment read as:

“3. Paragraph 55 of the decision in Jagjit Singh (supra) was to the following effect:

“55. In view of all our above conclusions, the decision rendered by the Full Bench of the High Court in Avtar Singh v. State of Punjab [Avtar Singh v. State of Punjab, 2011 SCC OnLine P&H 15326, is liable to be set aside, and the same is hereby set aside. The decision rendered by the Division Bench of the High Court in State of Punjab vs. Rajinder Singh [State of Punjab v. Rajinder Singh, 2009 SCC OnLine P&H 125] is also liable to be set aside, and the same is also hereby set aside. We affirm the decision rendered in State of Punjab v. Rajinder Kumar [State of Punjab v. Rajinder Kumar, 2010 SCC OnLine P&H 13009], with the modification that the employees concerned would be entitled to the minimum of the pay scale, of the category to which they belong, but would not be entitled to allowances attached to the posts held by them.”

4. Notably, the expression “pay” was considered by this Court in Contempt Petition (Civil) Nos. 699-700 of 2015, Tej Singh v. Sarvesh Kaushal, arising out of decision dated 11.05.2015 in Grah Rakshak, Home Guards Wel. Asso. v. State

of H.P. and connected matters, Civil Appeal No. 2759 of 2015 Etc. In its order dated 04.05.2016 passed in said Contempt Petitions, this Court observed:

“After hearing learned counsel for the parties, we are of the opinion that the expression “minimum of the pay” mentioned in paragraph 22 is intended to mean not only the basic pay + grade pay, but also the dearness allowance that comes along with the basic pay and grade pay. This is in the context of the view expressed by this Court denying regular appointments to the petitioners, while taking into consideration the fact that the services of the Home Guards are used during an emergency and for other purposes and at the time of their duty they are empowered with the power of police personnel. Accordingly, we make it clear that the word “minimum of the pay” used in paragraph 22 of the judgment and order dated 11th March, 2015 means the basic pay + grade pay + dearness allowances + washing allowance.”

38. The claim of daily wage workers of minimum pay was also considered by Constitution Bench in ***Uma Devi (supra)***. The Division Bench of High Court had ordered for payment to daily wage workers equal to regular employees. The Supreme Court set aside said direction and held that daily wage workers may be paid equal to the lowest grade of employees of their cadre. The relevant extracts of the judgment read as:

“55. In cases relating to service in the Commercial Taxes Department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find

that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court.

.....”

39. In ***Ilmo Devi (supra)***, Supreme Court held that part time employees are not entitled to pay equal to regular employees. They work for 3-4 hours and cannot claim pay parity. The findings of the court are reproduced as below:

“18. Though, we are of the opinion that even the direction contained in para 23 for granting minimum basic pay of Group ‘D’ posts from a particular date to those, who have completed 20 years of part-time daily wage service also is unsustainable as the part-time wagers, who are working for four to five hours a day and cannot claim the parity with other Group ‘D’ posts. However, in view of the order passed by this Court dated 22-7-2016 [Union of India v. Ilmo Devi, 2016 SCC OnLine SC 1933]

while issuing notice in the present appeals, we are not quashing and setting aside the directions contained in para 23 in the impugned judgment and order [Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144] so far as the respondents' employees are concerned.

19. *In view of the above and for the reasons stated above, both the appeals succeed. The impugned judgment and order [Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144] passed by the High Court and, more particularly, the directions contained in paras 22 and 23 in the impugned judgment and order [Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144] are hereby quashed and set aside. However, it is observed that quashing and setting aside the directions issued in terms of para 23 in the impugned judgment and order [Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144] shall not affect the case of the respondents and they shall be entitled to the reliefs as per para 23 of the impugned judgment and order [Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144] passed by the High Court.”*

40. From the conjoint reading of judgments of Supreme Court in ***Jagjit Singh (supra), Bahadur Singh (supra), Uma Devi (supra) and Ilmo Devi (supra)***, it can be culled out that part time employees who are working for few hours cannot claim pay parity. Daily wage workers who work at par with regular employees though cannot claim pay parity with regular employees yet are entitled to minimum pay. The minimum pay includes dearness allowance and grade pay. The petitioners herein are working for last 30-40 years and they are not part timer whereas they are daily wager and work at par with regular employees which is more evident from the fact that few of their colleagues have already been absorbed against sanctioned posts. The majority of the petitioners are not absorbed due to non-availability of

sanctioned/regular posts or they had not completed service of 10 years at the time of introduction of 2006 Policy. The petitioners who despite having rendered a quite long service, may be more than 30 years, if not regularized, deserve at least minimum pay which includes minimum of pay scale plus dearness allowance and grade pay. Accordingly, it is concluded that Respondent-State is liable to pay minimum of pay scale plus dearness allowance and grade pay to all those petitioners who neither have been/are regularized nor are part timer.

41. The respondent in its reply and during the course of arguments has pleaded that petitioners are paid monthly lump sum amount which is more than rate prescribed by Deputy Commissioner and minimum of pay scale available to regular employees. The dichotomy between figure of State and Petitioners has erupted due to non-inclusion of dearness allowance and grade pay. The State in view of above referred judgments is bound to add DA and GP while calculating minimum of pay scale.

42. Keeping in mind financial burden on State exchequer, binding precedents, rights of petitioners as well as equity, this Court hereby holds and gives its imprimatur to the State to pay minimum of pay scale plus dearness allowance and grade pay to all those employees who are not part timers and have completed service of 10 years.

Status of employees who have superannuated or passed away:

43. On account of multiple reasons, present bunch of petitions is pending before this Court for last more than two decades. As confirmed by both sides, there are few employees who during the pendency of litigation

after having rendered service of 20 or more years have superannuated or passed away. They were paid lump sum monthly remuneration without allowances. As per affidavit dated 11.12.2023 of the respondents, the petitioners have been paid Rs. 7568/- p.m. As per respondent, the said amount is higher than minimum of pay band i.e. Rs. 4900/-. Pension is available to regular employees. The respondent did not regularize these petitioners as per its 2006 and 2011 Policy. A fortiori, they were neither paid pension nor minimum pay i.e. minimum of pay scale plus grade pay and dearness allowance. Had they been regularised before retirement/death, they would have received pensionary benefits as well higher pay.

44. In ***Prem Singh v. State of U.P.***, (2019) 10 SCC 516, a three Judge Bench of Supreme Court had occasion to consider status of work charged employees vis-à-vis regular employees, counting of their service for the purpose of pension and fate of those who despite service of 30-40 years have not been regularized. The Court though denied differential amount accruing on account of payment as work charged and regular employment yet held that employees who have superannuated after having rendered services of 30-40 years are entitled to pension as if they have retired from the regular establishment. The findings of court read as:

“29. The submission has been urged on behalf of the State of Uttar Pradesh to differentiate the case between work-charged employees and regular employees on the ground that due procedure is not followed for appointment of work-charged employees, they do not have that much work pressure, they are unequal and cannot be treated equally, work-charged employees form a totally different class, their work is materially and qualitatively different, there cannot be any

clubbing of the services of the work-charged employees with the regular service and vice versa, if a work-charged employee is treated as in the regular service it will dilute the basic concept of giving incentive and reward to a permanent and responsible regular employee.

30. *We are not impressed by the aforesaid submissions. The appointment of the work-charged employee in question had been made on monthly salary and they were required to cross the efficiency bar also. How their services are qualitatively different from regular employees? No material indicating qualitative difference has been pointed out except making bald statement. The appointment was not made for a particular project which is the basic concept of the work-charged employees. Rather, the very concept of work-charged employment has been misused by offering the employment on exploitative terms for the work which is regular and perennial in nature. The work-charged employees had been subjected to transfer from one place to another like regular employees as apparent from documents placed on record. In NarainDutt Sharma v. State of U.P. [CA No. _____2019 arising out of SLP (C) No. 5775 of 2018] the appellants were allowed to cross efficiency bar, after '8' years of continuous service, even during the period of work-charged services. NarainDutt Sharma, the appellant, was appointed as a work-charged employee as GejMapak with effect from 15-9-1978. Payment used to be made monthly but the appointment was made in the pay scale of Rs 200-320. Initially, he was appointed in the year 1978 on a fixed monthly salary of Rs 205 per month. They were allowed to cross efficiency bar also as the benefit of pay scale was granted to them during the period they served as work-charged employees they served for three to four decades and later on services have been regularised time to time by different orders. However, the services of some of the appellants in few petitions/appeals have not been regularised even though they had served for several decades and ultimately reached the age of superannuation.*

XXXX XXXX XXXX XXXX

36. *There are some of the employees who have not been regularised in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularised under the Government instructions and even as per the decision of this Court in State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one-time measure, the services be regularised of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularised. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.”*

45. The State Government w.e.f. 01.01.2004 has stopped Pension Scheme and there is no contribution of petitioners and State in the contributory fund (New Pension Scheme), thus, in the present case, order to pay pension would not be practical as well as executable. It would be in the interest of justice and fitness of thing if petitioners who have superannuated or passed away after completing service of 20 years are extended benefit of minimum of pay scale plus dearness allowance and grade pay for the period

beyond service of 10 years. Accordingly, State is directed to calculate its liability qua these petitioners and pay within 6 months from today.

46. As per few petitioners, they have completed service of 10 years by 31.12.2006, however, respondent has either destroyed or fudged its record. The petitioners are having documentary evidence to prove that they had completed service of 10 years. The petitioners are at liberty to submit available evidence to the respondent who while deciding question of 10 years service shall consider it.

Conclusion:

47. In the wake of above discussion and findings, this Court comes to conclusion as below:

- i) This Court in the normal course cannot ask State to create or sanction posts.
- ii) The petitioners who had completed service of 10 years by the end of December' 2006, either at present are in service or have already retired, are entitled to regular post and they cannot be denied regularization on the ground of lack of sanctioned post or minimum education qualification. To avoid burden on State exchequer, it is clarified that from the deemed date of their regularization, they shall be entitled to minimum of pay scale plus dearness allowance and grade pay till the date of this order and thereafter regular pay scale.

- iii) The petitioners who are still in service but did not complete service of 10 years by the end of December' 2006 would form part of dying cadre created by 2023 Policy. The State, in view of long service of these employees, would not insist for minimum qualification. They from the date of completing service of 10 years would be entitled to minimum of pay scale plus dearness allowance plus grade pay till the date they are regularized in terms of 2023 Policy.
- iv) The petitioners who did not complete service of 10 years by the end of December' 2006 and during the pendency of present litigation have superannuated or passed away would be entitled to minimum of pay scale plus dearness allowance and grade pay from the date of completing service of 10 years till the date of their retirement or death.
- v) The petitioners who have already been regularized by 31.12.2016 shall not be entitled to any additional financial benefit because they are already getting higher amount of salary for last couple of years.
- vi) The respondent-State shall not be liable to pay interest on arrears arising on account of re-fixation of pay.

48. All the petitions are hereby disposed of in terms of conclusion drawn hereinabove.

49. The litigation is pending before this Court for last more than two decades. Many workers have passed away or superannuated. This Court hopes and trusts that State without waiting demise or superannuation of surviving petitioners would extend their due claim and in any case within 6 months from today.

(JAGMOHAN BANSAL)
JUDGE

26.02.2024
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>