IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.211 of 2021
In
Civil Writ Jurisdiction Case No.806 of 2012

==========

1. Piush Kumar C/o Dr. L.N. Mehta, Purnea-854301, at present posted as Technical Assistant, D.R.D.A., Katihar.
2. Akshay Lal Yadav son of Sri Shivnath Yadav, Resident of Village-Gaushala, P.O.-Katihar June Mill, District-Katihar-854107, at present posted as Technical Assistant, D.R.D.A., Katihar.
3. Rajiv Kumar Das, Son of Late T.C. Das, Housing Board Colony, M.I.G.-103 Barari, District-Bhagalpur-812003 at present posted as Office Superintendent, D.R.D.A., Katihar.
4. Om Prakash Bharti, son of Sri Dinesh Prasad Yadav, Resident of Village Bhorabiri, P.O.-Tingachhia, District-Katihar, at present posted as Technical Assistant, D.R.D.A., Katihar.
5. Sanjeev Kumar, son of Ashok Kumar Resident of Chitragupta Nagar, Kendua, P.O.-Tihiya, at and District-Jamui, at present posted as Technical Assistant, D.R.D.A., Patna.
6. Kaushal Kumar Chandrabanshi son of Sri Kailash Prasad, Resident of RMS, Near Saraswati Shishu Mandir, Gopalganj, Sasaram, District-Rohtas, at present posted as Accountant, D.R.D.A., Patna.
7. Madan Nath, son of Sri Yogendra Prasad Gupta, Resident of Village and P.O.-Runni Saidpur, District-Sitamarhi, at present posted as Accountant, D.R.D.A., Patna.
8. Md. Amzad, son of Hafiz Kalam, Resident of Village P.O.-Darigaon, Distt.-Rohtas at present posted as Accounts Officer, D.R.D.A., Patna.
9. Rajni Singh, son of Sri Ram Suresh Singh, Resident of Village and P.O.-Indore, Via-Dinara, Distt.-Rohtas, at present posted as Accounts Officer, D.R.D.A., Patna.
10. Sanjeev Kumar, son of Sri Nathun Choudhary, Resident of Mohalla-Banolia, P.O.-Biharsharif, Distt.-Nalanda, at present posted as Senior Accounts Officer, D.R.D.A., Patna.
11. Kumari Yasmin, Daughter of Devendra Prasad, Resident of Flat No. 201, Siddhi Vinayak Apartment, Rajendra Nagar, Patna at present posted as Assistant Project Officer, D.R.D.A., Patna.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Development Department, Govt. of Bihar, Patna.
2. Special Secretary to the Government, Rural Development Department, Government of Bihar, Patna.
3. Union of India through Director D.R.D.A. Administration Department of Rural Development Krishi Bhawan Government of India, New Delhi.
4. Secretary Rural Development Department Ministry of Rural Development, Krishi Bhawan, New Delhi-1.

WEB COPY

5. The Accountant General, Bihar Birchand Patel Path, Patna.
6. Bihar D.R.D.A Karmi Sangh through its Secretary Dharmendra Kumar, aged about 52 years, Male, S/o Sri Krishna Kishore having its head office at Saristabad East, P.S. Gardanibagh and P.O.-Patna.
7. Sunil Kumar Singh, son of Shri Chandra Kishore Singh, Resident of Village Manikpur, P.O.-Awapur, P.S.-Pupri, District-Sitamarhi, at present posted as Senior Accounts Officer, D.R.D.A., District-Purnea.
8. Umesh Kumar, son of Chiranjiwi Lal Agarwal, Resident of at and P.O.-Imamganj, P.S. Imamganj, District Gaya BIhar present posted as Senior Accounts Officer, D.R.D.A., Katihar.
9. Pankaj Kumar Singh, son of Sheoshankar Singh, Resident of Village Sardiha South Tola, P.S. Simri Bakhtiarpur, District-Saharsa, present posted as Technical Assistant, D.R.D.A., Purnea.
10. Ashwini Kumar, son of Shri Mahendra Narayan Yadav, Resident of Village Ramni, P.O.-Gangapur, Via-Murliganj, District Madhepura, at present posted as Technical Assistant, D.R.D.A., Purnea.
11. Uttam Kumar Mishra, son of Late Sakaldeo Mishra, Resident of Village Salempur, P.O. Khaira, District-Kaimur, at present posted as Technical Assistant, D.R.D.A., Purnea.
12. Manoj Kumar, son of Sri Krityanand Rajpal, Resident of Village-Got Khatik, P.O.-Khatik Bazar, P.S.-Khatik, District-Bhagalpur-853202, at present posted as Technical Assistant, D.R.D.A., Purnea.
13. Ajit Kumar Bharti, son of Late Bhuwanwshwar Pd. Jaiswal, Resident of Village P.O. Sah Tola, Bhawanipur, P.S.-Rangra Chowk, Via-Nawgachia, District-Bhagalpur at present posted as Technical Assistant, D.R.D.A., Purnea.
14. Dilip Kumar Singh, son of Ramchandra Mandal, Resident of Village P.O. Maula Tola, P.S.-Pirpainti, District-Bhagalpur, at present posted as Accounts Officer, D.R.D.A., Purnea.
15. Chandan Kumar Singh, son of Sriu Sudama Singh, Resident of Village-Pateji Bahadur, P.O.-Kunjhwan, P.S.-Aasaon, Block-Andar, District Siwan 841502, at present posted as Accounts Officer, D.R.D.A., Purnea.
16. Jyotish Chandra Singh, son of Sri Upendra Narayan Singh, Resident of Village and P.O. Jaynagar, Via-Mirganj, P.S.-Bhargama, District-Araria, at present posted as Technical Assistant, D.R.D.A., Purnea.
17. Sarwesh Kumar son of Sri Prithawi Chand Yadav, Resident of Sunil Sadan, Jayprakash Nagar, Ward No. 6 Via District-Madhepura-852113 at present posted as Assistant Engineer, D.R.D.A., Purnea.
18. Sumant Kumar, son of Mahesh Prasad Sah, Resident of Hotel VinayakPurnea, at present posted as Technical Assistant, D.R.D.A., Katihar.
19. Priya Ranjan Prasad, son of Sri Madan Lal Prasad, Resident of Village P.O. and P.S. Makhdumpur, District Jehanabad, at present posted as Accounts Officer, D.R.D.A., Katihar.
20. Sandeep Kumar, son of Late Rameshwar Prasad Yadav, C/o Anil Kumar Yadav, Anandi Lal Lane, Behind State Bus Dept., Surkhi Kal, District Bhagalpur-812001, at present posted as Technical Assistant, D.R.D.A.,

WEB COPY

Katihar.

21. Devanand Choudhary, son of Sri Chaturanand Choudhary, at-Phulwari, P.O.-Sohgmaro, Via-Kurshkanta, District-Araria, at present posted as Technical Assistant, D.R.D.A., Katihar.
22. Ajit Kumar Paswan, son of Sri Biranchi Paswan, Resident of Village P.O. P.S.-Biuhariganj, District-Madhepura-852101, at present posted as Technical Assistant, D.R.D.A., Katihar.
23. Rajesh Kumar, son of Sri Kedar Narayan Singh Resident of ward No. 2, Naya Bazar, Saharsa at present posted as Technical Assistant, D.R.D.A., Patna.
24. Pramod Kumar Singh son of Jamadar Pd. Singh Resident of Village Bhawani Chowk, P.O. Salapur, District-Jehanabad, at present posted as Technical Assistant, D.R.D.A., Patna.
25. Premanand Jha, son of Sri Shardanand Jha Resident of Village-Khojpur, Distt.-Madhubani, at present posted as Clerk-cum-Typist, D.R.D.A., Patna.

... ... Respondent/s

==========

Appearance :

For the Appellant/s	:	Mr. Y. V. Giri, Sr. Advocate assisted by Mr. Pranav Kumar, Advocate Ms. Shiristi Singh, Advocate
For the UOI	:	Mr. Bindhyachal Rai, Sr. Panel Counsel
For State	:	Mr. Anjani Kumar, AAG 4 Mr. Deepak Sahay Jamuar, AC to AAG 4

==========

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 16-04-2025

On 17.03.2025, following order was passed :

"Core issue involved in the present lis is whether Appellants are entitled to regularization in D.R.D.A. in the light of the fact that they were initially appointed on contract basis and continued to be contract basis from time to time. In the absence of any policy decision of the State Government to the extent that contract employees are entitled to absorption/regularization whether Appellants have made out a case or not? Further, Appellants are hereby directed to furnish copy of the

WEB COPY

contract appointment before the next date of hearing in order to ascertain nature and conditions imposed in the contract appointment.

2. Re-list this matter on 15.04.2025."

2. Appellants have filed interlocutory application along with Annexures P/1 and P/2 series relating to contract appointment of appellants along with agreement entered among the employer and contract appointees (appellants). The appellants were appointed on contract basis on 07.06.2007 followed by agreement on 02.07.2007 respectively. In the agreement, paragraph No. 3 reads as under :

"3. The position offered to you is on contract extending not more than Two year from subject to satisfactory performance. The contract would be reviewed by DRDA based on your performance during the contract period. DRDA might rescind the contract if your performance has been found unsatisfactory. How ever if the performance is satisfactory DRDA may extend the contract period for further period of 2 years on same terms & condition."

Underline Supplied

3. Having regard to the aforementioned document, it is evident that appellants' appointment was purely on contract basis and it is a tenure appointment which is extendable from time to time. The appellants have invoked remedy of filing writ petition under Article 226 of the Constitution in seeking direction to the

WEB COPY

concerned authority for the purpose of regularization pursuant to holding of the contract appointment posts. The learned Single Judge had rejected on the ground that appellants do not fulfill certain conditions relating to cut-off date. Feeling aggrieved and dissatisfied with the order of the learned Single Judge dated 24.02.2020, the present LPA No. 211 of 2021 has been presented.

4. Learned senior counsel appearing on behalf of the appellants *Mr. Y.V. Giri* submitted that from the inception in the year 2007 till date, the appellants are continued to hold various posts on contract basis. Having regard to the length of contract service, they are entitled for regularization. In support of such contention, learned senior counsel for the appellants relied on Annexure – 4 to the writ petition dated 23.10.2006. It is in respect of sanction of post, relying on government decision in respect of similarly contract appointees who have been extended the benefit of pay scale. On 16.07.2008 the State of Bihar and Government of India have evolved various schemes to the extent that such of those contract appointees are entitled for regularization. To buttress the aforementioned contention, learned senior counsel for the appellants is relying on the Hon'ble Supreme Court decision *namely* in the case of ***Jaggo vs. Union of India and Others with Anita and Others vs. Union of India and Others*** reported in **2024**

WEB COPY

SCC OnLine SC 3826, Paragraph Nos. 22 and 25. Similarly, in the case of ***Shripal and Another vs. Nagar Nigam, Ghaziabad*** reported in **2025 SCC OnLine SC 221,** Paragraph No. 15.

5. *Per contra*, learned counsel for the State resisted the aforementioned contentions and supported the order of the learned Single Judge and submitted that contract appointees are not entitled for absorption or regularization. Having regard to the nature of appointment, Clauses mentioned in the agreement, the cited decisions do not assist the appellants. Regularization of appellants would violate Article 14, 16 and 309 of the Constitution.

6. Heard learned counsels for the respective parties.

7. The appellants are holding various posts on contract basis under the District Rural Development Agency which is one of the scheme floated by Rural Development Department, State of Bihar.

8. At this stage, learned senior counsel for the appellants submitted that the appellants were appointed in a Society, the same is deprecated for the reasons that order of appointment as well as agreements dated 07.06.2007 and 02.07.2007 do not reveal an iota of material to the extent that there is agreement between the Society and the appellants.

WEB COPY

9. Further, it is submitted that State in their counter affidavit, in Paragraph No. 8, stated that the appellants are working under the Society, the same is deprecated in the light of the fact that there is no material information, on the other hand, order of appointment of the appellants read with the agreements dated 07.06.2007 and 02.07.2007 are required to be taken into consideration to determine whether appellants are working in a society or District Rural Development Agency. They are working in Agency.

10. Contract appointees are not entitled for absorption or regularization for the reasons that public post are filled up in various kinds of appointments viz. direct recruitment, promotion, contract appointment, *ad hoc* appointment or casual employment. Having regard to the nature of contract appointment, it is a tenure appointment. For the purpose of regularization against permanent post, the employer has to adhere to Articles 14 and 16 of the Constitution read Rules of recruitment under with Article 309 of the Constitution. If there are Rules of recruitment governing the post under Article 309 of the Constitution, in that event, the employer has to take note of relevant rules or executive instructions or executive orders issued under Article 166 of the Constitution. In this regard, the Hon'ble Supreme Court in the case

WEB COPY

of ***Secretary, State of Karnataka and Others vs. Uma Devi (3) and Others*** reported in **(2006) 4 SCC 1** elaborately considered that contract appointees are not entitled for absorption or regularization.

11. The Co-ordinate Bench of this Court in the case of ***The Bihar State Power (Holding) Company Ltd. others vs. The Bihar State Electricity Employees Association and others*** in LPA No. 1554 of 2019, in paragraph Nos. 15 and 21 held as under :

> ***"15****. Paragraph Nos. 32, 34 and 36 of the Supreme Court decision in the case of* ***K. Anbazhagan and another Versus Registrar General, High Court of Madras and another {(2018) 9 Supreme Court Cases 293}*** *read as under :*
>
> > ***"32.*** *By Direction 10(16), this Court had directed the State Governments to ensure compliance, hence, the terms and conditions of service of the appellants were same as those other judicial officers of the State as per order of this Court. The High Court in its judgment although observed that Fast Track Courts cannot be said to have been created in "pensionable establishment" but the said conclusion has been arrived at without considering relevant materials and without giving any cogent reasons. We thus are of the view that appointment of the appellants was in "pensionable establishment".*
> >
> > ***34.*** *In service jurisprudence, the appointments are made by the employer with different nomenclature/characteristics. Appointments are made both on permanent or temporary basis against permanent post or temporary post. The appointment can also be*

WEB COPY

made on ad hoc basis on permanent or temporary post. There is one common feature of appointments of permanent, temporary or ad hoc appointment i.e. those appointments are made against the post whether permanent or temporary. On the contrary, for contractual appointment, there is no requirement of existence of any post. A contractual appointment is not normally made against a post. Further, contractual appointments are also not normally on pay scale. On the mere fact that the advertisement as well as the appointment was made initially for a period of five years, the nature of appointment of the appellants cannot be termed as contractual appointment. When a government servant is contemplated to hold a certain post for a limited period it is a tenure post.

36. *The fact that the advertisement limited the appointment for a period of five years only because the posts were contemplated for five years only, the appointment of the appellants at best can be said as "tenure appointment". Although temporary, ad hoc and contractual appointments are used in contradiction to a regular and permanent appointment but between ad hoc appointment and contract appointment, distinction is there in service jurisprudence and both the expressions cannot be interchangeably used. When the advertisement against which the appellants were appointed and the appointment order mentions the appointment as ad hoc appointment, we cannot approve the view of the High Court that the nature of the appointment of the appellants was only a contractual appointment."*

21. *The Hon'ble Supreme Court in the case of* ***Director General, Doordarshan Prasar Bharti Corporation of***

WEB COPY

India and Anr. vs. Smt. Magi H Desai – 2023 Live Law (SC) 248 *in paragraph Nos. 5 and 9, it is held as under :*

> ***"5.*** *We have heard learned counsel for the respective parties at length.*
>
> *At the outset, it is required to be noted and it is an admitted position that for the period between 1985 till 31.03.1995 the respondent served as a casual/contractual employee and her services came to be regularised as per the Scheme w.e.f. 31.03.1995. As such, under the Scheme of Regularisation, there is no mention that the casual services shall be counted towards service benefits/pensionary benefits. Even as per the clarification issued by the DOPT in the year 2009, it was clarified that such appointee is not entitled to claim any benefit out of the services rendered by him/her on contractual basis before he/she was appointed on regular basis on a government post.*
>
> ***9.*** *Now so far as the submission on behalf of the respondent that in other departments under the scheme the employees of such departments are entitled to their services rendered as casual/contractual counted for qualifying service for pensionary/service benefits is concerned, merely because some other departments might have such schemes, the respondent shall not be entitled to the same benefit in absence of any scheme in the appellants' department/department in which the respondent rendered her services. The appellant – Doordarshan Prasar Bharti Corporation of India is an autonomous independent department/body. As observed hereinabove, neither the rule nor the regularisation scheme provide that services rendered as casual/contractual shall be treated as temporary service*

WEB COPY

and/or the same shall be counted for the purposes of pensionary/service benefits."

12. At this stage, it is necessary to give an illustration, for example, if a contract appointee – A, who was working in a Public Works Department as on the date of advertisement issued by the District Rural Development Agency in the present case in the year 2006 or year 2007, contract appointee – A, in Public Works Department may not be interested in applying for contract appointment in the District Rural Development Agency for the reasons that he is already working on contractual post, therefore, there was no necessity to make application for contract appointment pursuant to the District Rural Development Agency advertisement, thinking that it is only on contract basis. If the District Rural Development Agency proceeded to regularize such of those contract appointees, in that event, there would be violation of Articles 14 and 16 of the Constitution and relevant Rules of recruitment governing either under Article 309 or under Article 166 of the Constitution. Therefore, there would be discrimination and violation of Article 14 in not providing opportunity to such of those persons who are similarly situated persons and who is eligible and who do not apply for the contractual post. Identical situation has been explained by the Hon'ble Supreme Court in the case of ***Uma Devi*** cited *supra.*

WEB COPY

13. It is necessary to peruse the decision of the Apex Court rendered in ***K. Anbazhagan* v. *The Registrar General High Court of Madras*** **[(2018) 9 SCC 293]** - wherein-para.14 reads as under:

> ***"14.*** *The learned Counsel appearing for the High Court supporting the judgment and the order contends that the Appellants were appointed on Fast Track Courts on contract basis. The Fast Track Courts cannot be said to have been created in pensionable establishment hence the writ petition of the Appellants has rightly been dismissed. It is further submitted that Appellant's claim for regularisation on post of Additional District judge had been rejected, which was upheld by the High Court vide its judgment dated 20.07.2012. The Appellants functioned purely on ad hoc basis and were not appointed under the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 1995 nor were absorbed in any regular vacancy hence they are not eligible for any retiral benefits, which are available to those who were appointed by due recruitment process under the above 1995 Rules. Tenure of the Fast Track Courts was initially for only five years under the Eleventh Finance Commission and subsequently extended for another five years. Government of Tamil Nadu had further extended the tenure of courts for a period of one year upto 31.03.2012. Thereafter vide Government Order dated 26.08.2011, Government of Tamil Nadu had sanctioned retention of 49 Fast Track Courts in the cadre of District Judge functioning in the State of Tamil Nadu. <u>The Appellants having accepted the</u>*

WEB COPY

purely temporary nature of the post to which they were appointed, they now cannot contend claiming all the benefits available to those, who have been appointed to a substantive post by a recruitment process."

Underline supplied

14. In the case of ***Yogesh Mahajan* v. *Professor R.C. Deka, Director, All India Institute of Medical Sciences*** **[(2018) 3 SCC 218] ,** at para nos.6 and 8 it is held as under:

"6. *It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the Petitioner was unable to show any statutory or other right to have his contract extended beyond 30th June, 2010. At best, the Petitioner could claim that the concerned authorities should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the concerned authorities and therefore reject this contention of the Petitioner.*

8. *Insofar as the final submission of the Petitioner to the effect that some persons were appointed as Technical Assistant (ENT) in May 2016 is concerned, we are of the view that the events of 2016 cannot relate back to the events of 2010 when a decision was taken by the All India Institute of Medical Sciences not to extend the contract of the Petitioner. The situation appears to*

WEB COPY

have changed over the last six years and the Petitioner cannot take any advantage of the changed situation. There is no material on record to indicate what caused the change in circumstances, and merely because there was a change in circumstances, does not mean that the Petitioner is entitled to any benefit. On the other hand, it might have been more appropriate for the Petitioner to have participated in the walk-in interview so that he could also be considered for appointment as Technical Assistant (ENT), but he chose not to do so."

15. The Hon'ble Supreme Court in the case of ***Rajbalam Prasad* v. *State of Bihar* [(2018) 12 SCC 50]** wherein para Nos. 16 to 23 reads as under:

16. *This is what the Division Bench held for allowing the appeal and dismissing the Appellants' writ petition : (Vinay Kishore Case, SCC Online Pat Para. 12)*

"12. We have heard learned Counsel for the parties and find that the order passed by the learned Single Judge is not sustainable in law. The order passed in Sant Prakash Srivastava v. State of Bihar, dated 28th of July, 2008 was not brought to the notice of the learned Single Judge. It is further contended that even if the order dated 10.10.2006 was not set aside, the fact remains that such order of regularization could not have been passed since the services of the Muharrir have come to an end in 1991 itself. The permanent status could be conferred to those who were in service and not to those whose services had come to an end many years ago. Such an order could

WEB COPY

not be made the basis of permanent status through the writ court. Such order dated 10.10.2006 is not enforceable in law. The representation having been declined in the light of the circular dated 16.04.2008, we do not find that the writ Petitioners were entitled to any direction to treat them as regular employees".

17. *We agree with the reasoning of the Division Bench quoted supra.*

18. *In our opinion also, when the appointment of the Appellants (writ Petitioners) was made for a fixed period in exercise of the powers under Rule 57-A and the said appointment period having come to an end in the year 1991 after granting some extension, we fail to appreciate as to how the Appellants could claim to remain in service after 1991.*

19. *One cannot dispute that the State has the power to appoint persons for a temporary period under the Act and Rules framed thereunder and once such power was exercised by the State, the status of such appointee continued to be that of temporary employee notwithstanding grant of some extensions to them for some more period.*

20. *In other words, the grant of extension to work for some more period to the writ Petitioners could never result in conferring on them the status of a permanent employee or/and nor could enable them to seek regularization in the services unless some Rule had recognized any such right in their favour.*

21. *That apart, when the period fixed in the appointment orders expired in the year 1991 then there was no scope for the Appellants to have claimed*

WEB COPY

continuity in service for want of any extension order in that behalf.

22. *We have perused the Circular dated 16.04.2008 (Annexure P-7) issued by the State. This Circular only says that if any temporary persons are appointed for a particular project and if they are found to be of some utility, their services can be regularized as per Rules.*

23. *As mentioned above, so far as the cases of these Appellants are concerned, their representations were examined by the State but were rejected finding no merit therein. One of the reasons for rejection of the representation was that the services of the Appellants had already come to an end in 1991 and, therefore, no orders to regularize their services could now be passed after such a long lapse of time"*

16. Contractual appointment is for a specified period and not entitled to regularization. Grant of extension of tenure based does not confer on status of employee nor can he/she seek regularization of his/her services in absence of any statutory Rule recognizing such right in his/her favour. On this issue Hon'ble Supreme Court in the case of ***Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, Through Its Manager*** **v.** ***Sree Kumar Tiwary*** **[(1997) 4 SCC 388]**

"6. In view of the respective contentions, the question that arises for consideration is; whether the respondent is entitled to the benefit of the Third Removal

WEB COPY

of Difficulties Order as indicated hereinbefore? Section 33- B(1) (i) of U.P. Secondary Education Service Commission Act, 1982 postulates among others, regulation of a candidate who was appointed by promotion or by direct recruitment in the certificate of teaching grade before May 13, 1989 against a short term vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Eduction Services Commission (Removal of Difficulties) (Second) Order, 1981 and such vacancy was subsequently converted into a substantive vacancy. It is seen that the regular incumbent retired from service on June 30, 1988. Consequently, the temporary vacancy was deemed to have been converted into a substantive vacancy w.e.f. June 30, 1988. But the crucial question is : whether the respondent was continuously serving the institution under clause (c) of Section 33-B(1)? Admittedly, the service of the respondent came to be terminated w.e.f June 30, 1988. Though he had obtained the stay order and continued to be in service, it was not by virtue of his own right under an order of appointment, he continued in the office with permission of the management. In fact, in the recommendation made before the Selection Committee, they have stated as under:

> *"Ad hoc appointment of Shri Sri Kumar Tiwari was made on 1.8.1986 L.T. Grade and vide notice dated 30.5.88 his services were terminated. ON the basis of the above order Shri Sri Kumar Tiwari obtained stay order No. 13565 dated 29.7.1988 from Hon'ble High Court. Therefore appointment is disputed."*

WEB COPY

7. In fact, the regularisation order passed by the District Inspector of Schools also says that it was subject to the result in the writ petition. The appeal being the continuation of the writ petition, the question arises : whether the respondent is entitled to claim the benefit of Section 33-B(1)(a) (i) of the U.P. Secondary Education Services Commission Act, 1982. We have seen that his services came to be terminated on 30-5-1988 and the Amendment Act has no application. Hence, the Division Bench was right in giving direction that his regularisation will be subject to the further orders since the regularisation order itself means that it was subject to the result of the writ petition.

8. The appeal is accordingly allowed, the writ petition stands dismissed, but in the circumstances, without costs. If there is provision for further appointment according to rules, the bar of age may be relaxed appropriately."

17. Constitution Bench decision in the case of *Umadevi (3)* supra has been taken into consideration in a recent decision in the case of ***Upendra Singh* v. *State of Bihar* [(2018) 3 SCC 680 : AIR 2018 SC 1315] .**

"8. Law pertaining to regularisation has now been authoritatively determined by a Constitution Bench judgment of this Court in Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1. On the application of law laid down in that case, it is clear that the question of regularisation of daily wager appointed contrary to law does not arise. This ratio of the judgment could not be

WEB COPY

disputed by the learned Counsel for the Appellant as well. That is why she continued to plead that the appointment of the Appellant was made after following due procedure and in accordance with law. However, that is not borne from the records. Pertinently, order dated August 13, 2003, vide which the Appellant was refused regularisation on the aforesaid ground was not even assailed by the Appellant at that time. It may be mentioned that in Uma Devi, the Court left a small window opened for those who were working on ad hoc/daily wage basis for more than ten years, to regularise them as a one-time measure. However, that was also subject to the condition that they should have been appointed in duly sanctioned post. Further, while counting their ten years period, those cases were to be excluded where such persons continued to work under the cover of orders of the courts or the tribunal. The High Court has, in the impugned judgment, discussed these nuances and has also referred to the judgment in Uma Devi and held that the benefit of one-time measure suggested in that case could not be extended to the Appellant because of the following reasons:

The Appellants dearly fall in the exception noticed in paragraph-53 of Umadevi (supra) as their claims were sub judice on the date the pronouncement of the Constitution Bench was made in view of pendency of C.W.J.C. No. 12235 of 2005 disposed subsequently on 29.08.2006. Such litigious continuation in employment stands excluded from the directions of Umadevi.

The Appellants claim to have been regularized within the staffing pattern. In our opinion, it is not the crux of the matter. The crucial question is if their initial

WEB COPY

appointment by the Managing Committee was in consonance with Article 14 of the Constitution of India by open advertisement and competitive merit selection. On account of various interpretations by more than one Bench of M.L. Kesari, (supra) reference was made to the Full Bench. We have already noticed from the order refusing regularization dated 13.08.2003 that the appointment of the Appellants on daily wage was not in consonance with the law.

The conclusion in Ram Sewak Yadav, (supra) at paragraph 43 is as follows:

43 (A) Uma Devi (supra) prohibits regularization of daily wage, casual, ad-hoc, and temporary appointments, the period of service being irrelevant;

(B) An illegal appointment void ab initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any circumstances.

(C) Irregular appointments can be regularized if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(D) The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any court orders.

WEB COPY

18. A person appointed on purely contractual basis by the State on the specific express condition that his services is for limited period and would not have any right to be absorbed in the regular cadres, has no right to be absorbed permanently. Hon'ble Supreme Court has opined that the High Court/Tribunals cannot give directions to be absorbed in regular service inasmuch as their initial entry is not in accordance with statutory rules governing the post

19. Constitution Bench decision of the Hon ' ble Apex Court in the case of *Umadevi (3)* supra, Court has elaborately dealt that daily wagers, casual employees and contract employees are not entitled to seek for regularization, only protection given is such of those persons who are working for the last 10 years with a rider that such of those employees are not working by virtue of Court order. Further, 4 conditions have been stipulated for the purpose of one time regularization.

20. In the case of ***Brij Mohan Lal* v. *Union of India*** **[(2012) 6 SCC 502]** Para. 172, 173, 174 and 175 reads asunder:

> **"*172.*** *The prayer for regularization of service and absorption of the petitioner appointees against the vacancies appearing in the regular cadre has been made not only in cases involving the case of State of Orissa, but even in other States. Absorption in service is not a right. Regularization also is not a statutory or a legal*

WEB COPY

right enforceable by the persons appointed under different rules to different posts. Regularization shall depend upon the facts and circumstances of a given case as well as the relevant Rules applicable to such class of persons.

173. *As already noticed, on earlier occasions also, this Court has declined the relief of regularization of the persons and workmen who had been appointed against a particular scheme or project. A Constitution Bench of this Court has clearly stated the principle that in matters of public employment, absorption, regularization or permanent continuance of temporary, contractual or casual daily wage or ad hoc employees appointed and continued for long in such public employment would be de hors the constitutional scheme of public employment and would be improper. It would also not be proper to stay the regular recruitment process for the posts concerned. [Refer to Uma Devi (3).]*

174. *It is not necessary for us to deliberate on this issue all over again in view of the above discussion. Suffice it to notice that the petitioner appointees have no right to the posts in question as the posts themselves were temporary and were bound to come to an end by efflux of time. With reference to the letters of their appointment and the Rules under which the same were issued, it is clear that these petitioners cannot claim any indefeasible right either to regularization or absorption. It may also be noticed that under the Orissa Superior Judicial Service and Judicial Service Rules, 2007, there is no provision for absorption or regularization of ad hoc Judges.*

WEB COPY

> ***175.*** *The petitioners from the State of Andhra Pradesh have also prayed for identical relief claiming that the advertisement dated 28-5-2004 issued for filling up the vacancies in the regular cadre should be quashed and not processed any further and the petitioners instead should be absorbed against those vacancies. In view of the above discussion, we find no merit even in these submissions."*

21. In a recent decision of the Supreme Court *Union of India* v. *Central Administrative Tribunal* [Civil Appeal Nos.175-176/2019 @ SLP (C) Nos. 37798-37799/2013] held under what circumstances and at what point of time Regularization is permissible. In other words those employee who have not completed 10 years of service as on the date of deciding *Umadevi's (3) case* viz., on 10.04.2016 are not entitled to regularization. Whereas, in the present petitions petitioners were appointed to the post of Accountant Consultancy on 25.06.2007. Hence, claim for regularization of the petitioners would be contrary to *Umadevi's (3) case* supra.

22. Division Bench decision of the Punjab and Haryana High Court at Chandigarh in the case of ***Shllpa Jlndal* v. *Central Administrative Tribunal, Chandlgarh Bench*** **[2016 (3) SCT 486 (P&H)]** has held as under:

> ***"14.*** *For the purpose of seeking writ of mandamus, one has to establish the legal right. The*

WEB COPY

petitioner does not have any legal right emanating from any statutory Rules/Regulation. In the absence of any provision for regularisation of contract employees, this Court has no power to give a direction to the respondents to consider the petitioner for regularisation either in the post of Lecturer or in the post of Assistant Professor (Associate Professor).

15. *The Supreme Court has authoritatively ruled that the Tribunal and Courts cannot give directions to the department/Government Institution or Organizations to regularise services of an employee. Such a direction and implementation of the same would be violative of Articles 14 and 16 of the Constitution. When the petitioner was appointed on contract basis to the post of a Lecturer in the year 2003, the advertisement, as well as, appointment order made clear that selection and appointment was on contract basis. The contract appointment cannot be converted into regular appointment on the sole ground that the petitioner has continued for more than a decade. Had the respondents notified the selection and appointment to the post of Lecturer for 'regular recruitment', large scale candidates who were eligible and/or already working elsewhere on contract basis would be denied to compete for selection and appointment to the post of Lecturer/Assistant Professor. In other words, each and every eligible candidate must know the nature of public appointment. This Court cannot give direction to regularise petitioner's services by way of writ of mandamus, since the petitioner has not pointed out under which statutory rules she has got right to seek regularisation. Unless right is vested in a person, Court*

WEB COPY

cannot issue writ of mandamus to the respondents. Mandamus can be issued against a public authority only on its failure to perform mandatory legal duty. If there is no such failure, manda??? would not be issued. The Supreme Court in the case of Mani Subrat Jain v. State of Haryana, (1977) 1 SCC 486 held as follows:—

> *"9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something (See Halsbury's Laws of England 4th Ed. Vol. 1, paragraph 122; State of Haiyana v. Subash Chander Marwaha, (1) Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed, (2) and Ferris Extraordinary Legal Remedies paragraph 198."*
>
> *In the case of Tirumala Tirupathi Devasthanams v. K. Jotheeswara Pillai (dead) by LRs, (2007) 9 SCC 461, it has been held that:—*
>
> *"9. ……. The principles, on which a writ of mandamus can be issued, are well settled and we will refer to only one decision rendered in The Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh, (1977) 4 SCC 145 : AIR 1977 SC 2149, where this Court observed as under:—*

WEB COPY

> *"A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limits of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance."*

16. *None of the decisions cited on behalf of the petitioner would assist the petitioner's case for seeking regularisation of her services in the absence of statutory provision. Moreover, factual aspects of the cited decisions are entirely different and are not related to regularisation of contract appointees. The petitioner relied upon decision in Dr. Gagan Inder Kaur's case, (Supra) which is of the year 1995. In the said case the ad hoc appointment of the petitioners was held as regular. In Guneeta Chadha's case, (Supra), which is of the year 2001, this Court held that ad hoc appointees are to be treated as having been regularly appointed. In Lalit Kumar Verma's case, (Supra), while referring to Umadevi's case, relief was refused to the employees. In Smt. Shashi Tejpal's case, (Supra), this Court in the year 2008, in the matter of grants-in-aid regular appointment against un-aided post, held that regular appointment against un-aided post to be treated against aided. In*

WEB COPY

Sumangal Roy's case, (Supra) decided in 2007 by this Court, ad hoc appointment to the post of Lecturer, made in the year 2001 was directed to be treated as regular and to grant consequential benefits. Since that direction was not implemented, once again they approached the Court. In the said case, there is no reference to Umadevi's case, (Supra). In Maninder Singh's case, (Supra), decided by this Court in 2009, with reference to Sumangal Roy's case, (Supra) and there is no reference to Umadevi's case. In Nihai Singh's case, (Supra) decided in the year 2013, having regard to the factual aspects of the case, Umadevi's case, was distinguished and direction was given to regularise the services by creating posts. In Narendra Kumar Tripathi's case, (Supra) issue involved was of counting of ad hoc service towards seniority.

17. *The respondent's counsel relied on Sadanandam's case, (Supra) and S.L. Dutta's case, (Supra), both relate to policy matters pertaining to recruitment. In Sukanti Mohapatra's case, (Supra), the judgment pertains to inter se seniority between regular and irregular appointees, which is not relevant to the present case. The decision by Constitution Bench in Umadevi's case, (Supra), of the year 2006, is relevant to the present case.*

18. *The decision in Tutu Das (Dutta)'s case, (Supra), relied upon by the respondent's counsel is relevant to the present case, wherein Supreme Court has referred to number of judgments including Umadevi's case, (Supra), to hold that regularisation of daily wagers is not permissible. It is necessary to take note of paragraph 12 of the judgment, which reads as follows:—*

WEB COPY

"12. What was considered to be permissible at a given point of time keeping in view the decisions of this Court which had then been operating in the field, does no longer hold good. Indisputably the situation has completely changed in view of a large number of decisions rendered by this Court in last 15 years or so. It was felt that no appointment should be made contrary to the statutory provisions governing recruitment or the rules framed in that behalf under a statute or the proviso appended to Article 309 of the Constitution of India."

In Nanuram Yadav's case, (Supra) though matter relates to ad hoc appointment and regularisation, the facts of the case are entirely different. Therefore, it is not a relevant to the present case. The decision in Mamata Mohanty's case, (Supra) of the year 2011, is also not relevant, since the matter pertains to grant of UGC pay scales with reference to lack of qualification etc."

19. *The Administration of the States has to be carried on through the agency of large number of persons employed in various services and posts under the States. The services under the State Governments consist of civil services. There is relationship of master and servant between the States and its servants but such relationship is not left to be regulated as a mere contractual relationship in view of the provisions contained in part III of the Constitution (Fundamental rights) and part XIV (Articles 309 to 323). Their rights and obligations are all required to be determined by the*

WEB COPY

provisions of statutes and statutory rules which may be framed or altered by the competent authority unilaterally and are not to be determined by consent of both the parties as in the case of contractual relationship. Matters relating to the services include the power to create or abolish the services or posts fixing the strength of a cadre, prescription of powers and duties attached to the post and every matter relating to services including matters relating to recruitment and conditions of service. It is competent for the legislature to provide for all matters relating to the services in exercise of its legislative power. Rules framed under Article 309 have to be strictly confined to recruitment and conditions of services of persons mentioned therein. Under Article 309 the power of legislature to regulate recruitment and conditions of service is wide and includes power to constitute a new cadre by merging certain existing cadres. Subject to the law made by legislature the rule has the same efficacy as that of legislative enactment. This legislative power carries with it the power to amend or alter the rules with retrospective effect. A rule made in exercise of the power under the proviso to Article 309 constitutes law within the meaning of Article 235. For the same reason such rule may be struck down only on such ground as may invalidate a legislative measure, e.g., violation of Articles 14 and 16 and not because the Court considers it to be unreasonable.

20. *In Umadevi's case, (Supra) it was held that adherence to the rule of equality in Public Employment is a basic feature of our Constitution. Court would certainly be disabled from passing an order upholding of Article 14 in ordering the overlooking of the*

WEB COPY

need to comply with the requirements of Article 14 read with Article 16 of the Constitution of India. The Court further rejected the prayer that ad hoc appointees working for long to be considered for regularisation as such a course only encourages the State to flout its own rules of recruitment and would confer undue benefits on some at the cost of many waiting to compete.

21. *The next word, which is of utmost important in deciding the issue in this case, is the meaning of the word 'regularisation'. The Constitution Bench in Umadevi's case, (Supra) has approved die judgments in (1) State of Mysore v. S.V. Narayanappa, (1967) 1 SCR 128 (2) R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409 and (3) B.N. Nagarajan v. State of Karnataka, (1979) 4 SCC 507 : (1979) 3 SCR 937, where this word has been explained. To understand the concept of regularisation, it is necessary to look into these decisions.*

22. *In R.N. Nanjundappa's case, (Supra), the Hon'ble Supreme Court while considering the rules providing for methods of recruitment by promotion, selection or competitive examination has held as under: —*

> *"26…….regularisation cannot be said to be a form of appointment. Counsel on behalf of the respondent contended that regularisation would mean conferring the quality of permanence on the appointment whereas Counsel on behalf of the State contended that regularisation did not mean permanence but that it was a case of regularisation of the rules under Article 309. Both the contentions are fallacious. If*

WEB COPY

the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularised. Ratification or regularisation is possible of an act, which is within the power and province of the authority, but there has been some non-compliance with procedure or manner, which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

23. *In B.N. Nagarajan's case, (Supra), the meaning of the word 'regular' and 'regularisation' has been further explained:—*

"Firstly, the words "regular" or "regularisation" do not connote permanence. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to the methodology followed in making the appointments. They cannot be construed so as to convey an idea of the nature of tenure of the appointments. When rules framed under Article 309 of the Constitution of India are in force, no regularisation is permissible in exercise of the executive powers of the Government under Art. 162 thereof in contravention of the rules…….

24. *A three judge Bench of the Apex Court in A. Umarani v. Registrar of Co-operative Societies,*

WEB COPY

(2004) 7 SCC 112 dealing With regularisation has held as under:

> *"Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body Or authority governed by a statutory Act or the Rules framed thereunder. It is also now well settled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.*
>
> *40. It is equally well settled that those who come by back door should go through that door.*
>
> *41. Regularisation furthermore cannot give permanence to an employee whose services are ad hoc in nature.*
>
> *45. No regularisation is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointment have been made in contravention of the statutory rules."*

25. *The Constitution Bench in Umadevi's case, (Supra) dealing with regularisation has held as under:—*

> *"17. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularise an appointment made after*

WEB COPY

following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

18. xxxxxx

19. One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality of the project is also of equal concern for the State. The State works out the scheme taking into consideration the Financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counter-productive"

WEB COPY

xxxxxx

26. *Subsequently, the ratio of the Constitution Bench judgement has been followed as reiterated for declining the claim of regularization of services made by the ad hoc/temporary daily wage/casual employment in (i) Indian Drugs and Pharmaceuticals Ltd(2007) 1 SCC 408; (ii) Gangadhar Pillai v. Simens Ltd., (2007) 1 SCC 533; (iii) Kendriya Vidyalaya Sangthan v. L.V. Subramanyeshwara, reported (2007) 5 SCC 326; and (iv) Hindustan Aeronautics Ltd. v. Dan Bahadur Singh, reported in (2007) 6 SCC 207.*

27. *The doubts raised in UP State Electricity Board v. Pooran Chandra Pandey, (2007) 11 SCC 92, on the applicability of Constitution Bench in Umadevi's case, (Supra) in a case where regularisation is sought for in pursuance of Article 14 of the Constitution or the conflict with the judgment of the seven judges bench in Maneka Gandhi v. Union of India, (1978) 1 SCC 248, has also been set at rest in the case of Official Liquidator v. Dayanand, (2008) 10 SCC 1.*

28. *From the above discussion, it is clear that the law regarding regularisation is now well settled by the decision of the Constitution Bench of the Apex Court in Umadevi's case, (Supra). The said judgment holds the field and is binding.*

29. *What could be deduced from the cited decision is as under:—*

(i) Any public employment has to be in terms of the Constitutional scheme.

(ii) Adherence to the rule of equality in public employment is a basic feature of our Constitution.

WEB COPY

(iii) Regular appointment must be the rule.

(iv) A regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up.

(v) The appointment should be in terms of relevant rules and after a proper competition among the qualified persons. Otherwise, such appointment would not confer any right on the appointee.

(vi) If a contractual appointment is made, the appointment comes to an end at the end of the contract. The Government or the instrumentality of the State cannot confer any permanency of such employment either by way of regularisation or by way of absorption.

(vii) If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.

(viii) A temporary employee could not claim to be made permanent on the expiry of his term of appointment.

(ix) Merely because a temporary employee or a casual wage worker is continued for a time being beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength on such continuance, if the original appointment was not made by following a

WEB COPY

due process of selection as envisaged by the relevant rules.

(x) Regularisation is not a mode of appointment.

(xi) The Government or the instrumentality of the State cannot regularise the appointment made contrary to the course of selection as envisaged by the relevant rules governing the Posts.

(xii) The High Court acting under Article 226 of the Constitution of India should not issue directions for regularisation or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.

(xiii) There should be no further by-passing of the constitutional requirement and regularization or making permanent those not duly appointed as per the constitutional scheme.

30. *The Constitutional principle is thus for providing equality of opportunity to all which mandatorily requires that each vacancy must be notified in advance, meaning thereby that information of the recruitment must be disseminated in a reasonable manner in public domain ensuring maximum participation of all eligible candidates, thereby the right of equal opportunity and merit is effectuated.*

31. *"The petitioner though contended that she has been appointed on contract basis with due procedure, like advertisement and selection and in accordance with the Constitutional Scheme, but the nature of appointment is only for contract and it is for a limited period, that too*

WEB COPY

with the condition that such appointment would be till regular recruitment is made through UPSC. Therefore, contention of the petitioner that due procedure has been followed while appointing her as a Lecturer/Assistant Professor, is distinguishable for the purpose of regularisation. In Umadevi's case, (Supra), the Supreme Court has made clear that "we also clarify that regularisation, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

32. *In Umadevi 's case, (Supra) there is an exception. General principles against regularisation like the employees who have worked for 10 years or more against a sanctioned post without the benefit or protection of the interim order of any Court or Tribunal. Thus the employee should have been continued in service voluntarily and without break of more then 10 years and 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 would be considered to be illegal. However, the employee while possessing the prescribed qualification and was working against sanctioned post but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular. Umadevi's case, (Supra) casts a duty upon the concerned Government or instrumentality to take necessary steps to*

WEB COPY

regularise the services of those irregularly appointed employees who had served for more than 10 years without the benefit or protection of any interim orders of Court's or Tribunals as a one-time measure. The said direction was to be set in motion within 6 months from the date of its decision i.e. w.e.f. 10.4.2006. The true effect of the direction is that all employees who have worked for more than 10 years as on 10.4.2006, the date of decision in Umadevi's case, (Supra) are entitled to be considered for regularisation, if otherwise they are eligible. Unfortunately, petitioner's case, does not fall within the principle laid down by the Supreme Court in the case of Umadevi's case, (Supra). The conditions stipulated for regularisation would be prior to the date of disposal of Umadevi's case, (supra) i.e.' 10.4.2006. Consequently, it has no prospective application.

33. *The equality clause enshrined in Article 16 requires that every appointment be made by an open advertisement as to enable all eligible persons to compete on merit. However, appointment of the petitioner on contract basis, it is crystal clear, was only for a limited period for 6 months, even though it was extended from time to time, one of the condition is that appointment is till the regular recruitment is made through UPSC. It is to be understood that a contractual appointment comes to an end at the end of the contract. It is also a term of the contract as well as the law regulating recruitment of persons on contract basis. Therefore, when such persons are to be recruited into service on permanent basis the law must again be followed i.e. all persons who are eligible be considered for appointment on permanent posts in accordance with*

WEB COPY

the rules of recruitment and all of them should be given an opportunity by inviting applications indicating that selection and appointment to permanent/regular post/vacancy. That is the mandatory Policy of Articles 14 and 16 of the Constitution. If the regularisation of the petitioner is made, it is per se illegal and discriminatory as those eligible candidates, who had the requisite merit are denied the right to compete for the subject post. There is no intelligible differentia to treat the petitioner as a class by itself, so as to exclude other eligible candidates who possess requisite qualification and other eligibility criteria from being considered as Lecturer/Assistant Professor.

34. *One of the petitioner's contention is that she has rendered service more than a decade on contract basis when she is over age for the recruitment. In such eventuality, at the most the petitioner can seek for relaxation of age as approved by the Supreme Court in Umadevi's case, (Supra).*

35. *In view of the principles laid down by the Constitution Bench of the Supreme Court in Umadevi's case, (Supra) and other subsequent judgments, the petitioner is held not entitled to seek for regularisation of her service either to the post of Lecturer or as Assistant Professor. Accordingly, we decline to interfere with so far as denial of regularisation of the petitioner's services on the post of Lecturer/Assistant Professor is concerned. We also uphold the AICTE (Pay Scales, Service Conditions and Qualifications for the Teachers and Academic Staff in Technical Institutions (Degree) Regulations, 2010; Chandigarh College of Engineering and Technology, Chandigarh Administration. Professor, Associate*

WEB COPY

Professor, Assistant Professor, Assistant Professor in Applied Sciences and Senior Librarian (Group 'A' Post) Recruitment Rules, 2012 and advertisement dated 20.9.2013"

23. The Hon'ble Supreme Court in the case of ***Renu and Others vs. District And Sessions Judge, Tis Hazari Courts, Delhi and Another*** reported in **(2014) 14 SCC 50** in para Nos. 6 to 14 and 16, it is held as under :

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

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

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

8. *As Article 14 is an integral part of our system, each and every State action is to be tested on the touchstone of equality. Any appointment made in violation of mandate of Articles 14 and 16 of the Constitution is not only irregular but also illegal and cannot be sustained in view of the judgments rendered by*

WEB COPY

this Court in Delhi Development Horticulture Employees' Union v. Delhi Admn. , State of Haryana v. Piara Singh , Prabhat Kumar Sharma v. State of U.P. , J.A.S. Inter College v. State of U.P. , M.P. Housing Board v. Manoj Shrivastava , M.P. State Agro Industries Development Corpn. Ltd. v. S.C. Pandey and State of M.P. v. Sandhya Tomar.

9. *In Excise Supt. v. K.B.N. Visweshwara Rao , a larger Bench of this Court reconsidered its earlier judgment in Union of India v. N. Hargopal , wherein it had been held that insistence on recruitment through employment exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution. However, due to the possibility of non-sponsoring of names by the employment exchange, this Court held that any appointment even on temporary or ad hoc basis without inviting application is in violation of the said provisions of the Constitution and even if the names of candidates are requisitioned from employment exchange, in addition thereto, it is mandatory on the part of the employer to invite applications from all eligible candidates from open market as merely calling the names from the employment exchange does not meet the requirement of the said articles of the Constitution. The Court further observed : (K.B.N. Visweshwara Rao case , SCC p. 218 para 6)*

> *"6. ... In addition, the appropriate department ... should call for the names by publication in the newspapers having wider circulation and also display on their office notice ... and employment news bulletins; and then consider the cases of all candidates who have*

WEB COPY

applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

10. *In Suresh Kumar v. State of Haryana, this Court upheld the judgment of the Punjab and Haryana High Court wherein 1600 appointments made in the Police Department without advertisement stood quashed though the Punjab Police Rules, 1934 did not provide for such a course. The High Court reached the conclusion that process of selection stood vitiated because there was no advertisement and due publicity for inviting applications from the eligible candidates at large.*

11. *In UPSC v. Girish Jayanti Lal Vaghela , this Court held : (SCC p. 490, para 12)*

"12. ... The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made ... Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution."

WEB COPY

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

> *"(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.*
>
> *(2) Regularisation cannot be a mode of appointment.*
>
> *(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.*
>
> *(4) Those who come by back door should go through that door.*
>
> *(5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.*
>
> *(6) The court should not exercise its jurisdiction on misplaced sympathy.*
>
> *(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be*

WEB COPY

possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

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

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

14. *In State of Orissa v. Mamata Mohanty, this Court dealt with the constitutional principle of providing equality of opportunity to all which mandatorily requires that vacancy must be notified in advance meaning thereby that information of the recruitment must be disseminated in a reasonable manner in public domain ensuring maximum participation of all eligible candidates, thereby the right of equal opportunity is effectuated. The Court held as under : (SCC p. 452, para 36)*

"36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting

WEB COPY

applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

16. *Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others."*

WEB COPY

24. Learned senior counsel for the appellants relied on the Hon'ble Supreme Court decision in the case of ***Jaggo vs. Union of India and Others*** (cited *supra*), Paragraph Nos. 22 and 25 which read as under :

> ***"22.*** *The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.*
>
> ***25.*** *It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:*
>
> • ***Misuse of "Temporary" Labels:*** *Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives*

WEB COPY

workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

• ***Arbitrary Termination:*** *Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*

• ***Lack of Career Progression:*** *Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*

• ***Using Outsourcing as a Shield:*** *Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.*

• ***Denial of Basic Rights and Benefits:*** *Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances."*

Similarly, Paragraph No. 15 of ***Shripal and Another*** (cited *supra*) reads as under :

"15. *It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain*

WEB COPY

muster rolls were not produced in full, the Employer's failure to furnish such records—despite directions to do so—allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite "temporary" employment practices as done by a recent judgment of this court in Jaggo v. Union of India3 in the following paragraphs:

"22. *The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.*

……

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address

WEB COPY

short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

• ***Misuse of "Temporary" Labels :*** *Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labelled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*

• ***Arbitrary Termination :*** *Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*

• ***Lack of Career Progression :*** *Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*

• ***Using Outsourcing as a Shield :*** *Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.*

• ***Denial of Basic Rights and Benefits :*** *Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue*

WEB COPY

hardship, especially in cases of illness, retirement, or unforeseen circumstances."

25. In the aforementioned decisions, there was no occasion for the Hon'ble Supreme Court to examine relevant Rules of recruitment governing the post like in the present case pursuant to Notification / Communication dated 23.10.2006 *vide* Annexure - 4 to the writ petition relating to sanction of post. Public posts are required to be filled up only after due following Articles 14 and 16 of the Constitution and other constitutional provisions, therefore, cited two decisions on behalf of the appellants do not assist the appellants.

26. The Hon'ble Supreme Court in the case of ***Tej Prakash Pathak and Others vs. Rajasthan High Court and Others*** reported in **(2025) 2 SCC 1** in paragraph Nos. 14, 16, 22, 23 and 65, it is held as under :

"14. *In various judicial pronouncements, the law governing recruitment to public services has been colloquially termed as "the rules of the game". The "game" is the process of selection and appointment. Courts have consistently frowned upon tinkering with the rules of the game once the recruitment process commences. This has crystallised into an oft-quoted legal phrase that "the rules of the game must not be changed midway, or after the game has been played". Broadly speaking these rules fall in two categories. One which prescribes the eligibility criteria (i.e. essential qualifications) of the candidates seeking employment; and the other which stipulates the*

WEB COPY

method and manner of making the selection from amongst the eligible candidates

16. *The law is settled that after commencement of the recruitment process the eligibility criteria is not to be altered because candidates even if eligible under the altered criteria might not apply by the last date under the belief that they are not eligible as per the advertised criteria. Such alteration/change, therefore, deprives a person of the guarantee of equal opportunity in matters of public employment provided by Article 16 of the Constitution. The reference order therefore acknowledges this legal position and in clear terms accepts that "the rules of the game" cannot be changed after commencement of the recruitment process insofar as the eligibility criteria is concerned*

22. *The process of recruitment begins with the issuance of advertisement and ends with the filling up of notified vacancies. It consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment.*

23. *The doctrine proscribing change of rules midway through the game, or after the game is played, is predicated on the rule against arbitrariness enshrined in Article 14 of the Constitution. Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the concept of equality in all matters relating to public employment. These two articles strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that*

WEB COPY

State action must be based on valid relevant principles alike to all similarly situate and not to be guided by any extraneous or irrelevant considerations. In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary State action which Article 14 of the Constitution adopts. A deprivation of the entitlement of private citizens and private business must be proportional to a requirement grounded in public interest.

65. *We, therefore, answer the reference in the following terms :*

65.1. *Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;*

65.2. *Eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness.*

65.3. *The decision in K. Manjusree [K. Manjusree v. State of A.P., lays down good law and is not in conflict with the decision in Subash Chander Marwaha deals with the right to be appointed from the select list whereas K. Manjusree deals with the right to be placed in the select list. The two cases therefore deal with altogether different issues;*

WEB COPY

> ***65.4.*** *Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved;*
>
> ***65.5.*** *Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the rules are non-existent, or silent, administrative instructions may fill in the gaps;*
>
> ***65.6.*** *Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list."*

27. No doubt the learned Single Judge has rejected the appellants' litigation on different ground that the appellants do not fulfill certain conditions relating to cut-off date. The learned Single Judge has also not taken note of Articles 14 and 16 read with Article 309 and 166 of the Constitution in respect of filling up of public post. Contract appointment is one of the mode of appointment and it is a tenure appointment. By virtue of contract appointment, contract appointee cannot have any vested or legal right to claim over the post on permanent basis unless and until he is subjected to regular recruitment process by means of

WEB COPY

advertisement for the regular post and also providing ample opportunity to such of those similarly situated persons who are not appointed on contract basis. In other words, open competition is required to be taken into consideration for the purpose of adhering to Articles 14 and 16 of the Constitution. Appellants grievance for their regularization is that their initial appointment on contract basis was after following due procedure like inviting applications. Due to administrative or financial exigency, official respondents might have resorted to contract appointment. Such contract appointees cannot be made permanent or regularized as it would violate Articles 14, 16 and 309 read with executive orders, instructions issued under Article 166 of the Constitution, for the reason that another contract appointee in yet any other organization as on that date, did not submit his application apparently for the reason that he was already on contract appointment with some other organization. If the official respondents had notified that contract appointment is followed by regularization, in such an event, those contract employees who are working elsewhere would have opted for Accountant or any other post in the official respondent agency. Thus, if the appellants' contract appointment is followed by regularization, in such an event, that would be violative of Articles 14 and 16 and so also

WEB COPY

misleading such of those contract appointees other than working in Agency like appellants to the extent that contract appointment is followed by regularization. For public post, mode of recruitment should be in accordance with the Constitutional provision in particularly, Articles 14 and 16 of the Constitution. Time and again, Supreme Court after decision in ***Umadevi's (3)*** *case* and in subsequent decisions have clearly held that public posts are required to be filled up after duly following the Constitutional provision read with relevant Rules of Recruitment. Therefore, appellants grievance relating to regularization read with the cited decisions are hereby distinguished in view of the Constitution bench decisions. In the light of these facts and circumstances, appellants have not made out a case so as to seek regularization with reference to their initial appointment on contract basis.

28. Accordingly, present LPA No. 211 of 2021 stands dismissed. Pending I.A., if any, stands disposed of.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

GAURAV S./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	24.04.2025
Transmission Date	

WEB COPY