

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Writ Appeal No.122/2019

Nana Bhau v/s The State of Madhya Pradesh & Others

Writ Appeal No.133/2019

Asha Rahtore v/s The State of Madhya Pradesh & Others

Writ Appeal No.136/2019

Santosh Barde v/s The State of Madhya Pradesh & Others

Writ Appeal No.137/2019

Lalita Sharma v/s The State of Madhya Pradesh & Others

Writ Appeal No.140/2019

Kailash Choudhary v/s The State of Madhya Pradesh & Others

Writ Appeal No.141/2019

Sadaram Kanoje v/s The State of Madhya Pradesh & Others

Writ Appeal No.142/2019

Madhukar Khernar v/s The State of Madhya Pradesh & Others

Writ Appeal No.143/2019

Tulsi Bai v/s The State of Madhya Pradesh & Others

Writ Appeal No.144/2019

Puni Bai Gangele v/s The State of Madhya Pradesh & Others

Writ Appeal No.145/2019

Nirmala Bai v/s The State of Madhya Pradesh & Others

Writ Appeal No.146/2019

Roop Singh Vaskale v/s The State of Madhya Pradesh & Others

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Nahar Singh v/s The State of Madhya Pradesh & Others

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Writ Appeal No.189/2019

Janadi Bai v/s The State of Madhya Pradesh & Others

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Babulal Kagle v/s The State of Madhya Pradesh & Others

Writ Appeal No.197/2019

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Writ Appeal No.209/2019

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Writ Appeal No.212/2019

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Writ Appeal No.218/2019

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Jagdish Goyal v/s The State of Madhya Pradesh & Others

Writ Appeal No.278/2019

Laxman Chouhan v/s The State of Madhya Pradesh & Others

Writ Appeal No.319/2019

Ramesh Oswal v/s The State of Madhya Pradesh & Others

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Darbar Singh v/s The State of Madhya Pradesh & Others

Writ Appeal No.672/2019

Jagdish Yadav v/s The State of Madhya Pradesh & Others

Writ Appeal No.1103/2019

Gajanand v/s The State of Madhya Pradesh & Others

Indore, dated 02.08.2019

Shri Rahul Sethi, learned counsel for the appellant.

Shri Abhishek Tugnawat, learned Government

Advocate for the respondents / State.

Regard being had to the similitude in the controversy involved in the present cases, the writ appeals were analogously heard and by a common order, they are being disposed of by this Court. Facts of the Writ Appeal No.122/2019 are narrated hereunder.

The present Writ Appeal is arising out of the order dated 01.10.2018 passed by the learned Single Judge in W.P. No.4964/2018 (Nanabhau Patil v/s Tirbal Welfare Department & Others). The order dated 01.10.2018 has been passed in a batch of writ petitions involving similar controversy, and therefore, a common order is being passed in the connected writ appeals.

The facts of the case reveal that the appellant is a daily rated employee has filed the writ petition i.e. W.P. No.4964/2018 being aggrieved by the order dated 19.06.2017 passed by the respondents. The respondents, by the aforesaid order, have held that the appellant, who is a daily wager, is not entitled for a regular pay-scale.

The order passed by the respondents dated 19.06.2017 reads as under:-

“ / / आदेश / /

श्री नानाभाऊ पाटील दिनांक 25.10.1999 को दैनिक वेतन भोगी के पद पर नियुक्त हुए थे तथा उनके द्वारा प्रस्तुत याचिका क्रमांक [9606/2012](#) माननीय उच्च न्यायालय खण्डपीठ इन्दौर के समक्ष प्रस्तुत कर पांच वर्ष की सेवा पूर्ण होने के दिनांक से नियमित वेतनमान दिये जाने हेतु याचिका दायर की गई बड़वानी जिले में याचिकाकर्ता के प्रकरण के समान अन्य प्रकरण बहुतायत में होने से कलेक्टर जिला बड़वानी के आदेश अनुसार 4 सदस्यीय कमेटी गठित की गई तथा इस कमेटी द्वारा अपनी कार्यवाही विवरण दिनांक 30.06.2014 द्वारा याचिकाकर्ता के पक्ष में याचिका दायर करने के दिनांक से नियमित वेतनमान देने की अनुशंसा की गई। उक्त कमेटी की अनुशंसा के पालन में आदेश क्रमांक/5680-81/आदिम/न्या [1090/2014](#) बड़वानी, दिनांक 10.07.2014 द्वारा श्री नानाभाऊ पाटील दैनिक वेतनभोगी कर्मचारी वर्तमान में शासकीय

माध्यमिक विद्यालय खेतिया विकासखण्ड पानसेमल को उसकी मांग अनुसार आकस्मिकता निधि के कर्मचारियों को देय नियमित वेतनमान के समान वेतन स्वीकृत किया गया है, जिसका भुगतान कार्यभारित/आकस्मिकता निधि से किया जा रहा है। उक्त स्वीकृत किये गये नियमित वेतनमान पर एरियर राशि की गणना याचिका प्रस्तुत किये जाने के दिनांक 01.10.2012 से दिये जाने हेतु आदेशित किया गया था।

याचिकाकर्ता द्वारा पुनः रिट याचिका क्रमांक [6116/2014](#) माननीय उच्च न्यायालय खण्डपीठ इन्दौर में दायर की जाकर नियमित वेतनमान का वास्तविक लाभ सेवा में 5 वर्ष पूर्ण करने के दिनांक 25.10.2004 से दिये जाने की मांग की गई। रिट याचिका क्रमांक [6116/2014](#) में माननीय उच्च न्यायालय खण्डपीठ इन्दौर द्वारा पारित निर्णय दिनांक 31.10.2014 में याचिकाकर्ता को रिट अपील क्रमांक [359/2010](#) श्री कैलाशचन्द्र तलवरे विरुद्ध म0प्र0 शासन में पारित निर्णय दिनांक 10.04.2014 में दी गई व्यवस्था अनुसार सेवा में पांच वर्ष पूर्ण किये जाने के उपरान्त नियमित वेतनमान हेतु याचिकाकर्ता के प्रकरण में विचार करते हुए सक्षम अधिकारी को निर्णय लिये जाने हेतु निर्देशित किया गया।

रिट याचिका क्रमांक [6116/2014](#) में पारित निर्णय दिनांक 31.10.2014 का पालन न होने से याचिकाकर्ता द्वारा अवमानना याचिका क्रमांक [464/2015](#) माननीय उच्च न्यायालय खण्डपीठ इन्दौर में दायर की गई है जो वर्तमान में प्रचलित है।

बड़वानी जिले में याचिकाकर्ता की अलावा अन्य दैवेभो कर्मचारियों के लगभग 81 अन्य प्रकरण हैं जिसमें तथा उनके द्वारा सेवा में पांच वर्ष पूर्ण होने के दिनांक से वित्त विभाग के परिपत्र क्रमांक डी-302/95/नि-1/4/78 दिनांक 17.03.1978 के परिप्रेक्ष्य में कार्यभारित एवं आकस्मिकता निधि में नियमित वेतनमान दिये जाने की मांग की जा रही है।

वित्त विभाग द्वारा जारी उक्त परिपत्र दिनांक 17.03.1978 में स्पष्ट उल्लेखित है कि कार्यभारित/आकस्मिकता निधि में नियुक्त ऐसे कर्मचारी जिनकी दिनांक 01.01.1974 को एक वर्ष की सेवा पूर्ण हो चुकी हो अथवा 01.01.1974 के पश्चात कार्यभारित एवं आकस्मिकता निधि में नियुक्त ऐसे कर्मचारी जिनकी पांच वर्ष की सेवा पूर्ण हुई हो, उन्हें नियमित वेतनमान (स्थापना) दिये जाने का प्रावधान है। जबकि याचिकाकर्ता श्री नानाभाउ पाटील दिनांक 25.10.1999 में दैनिक वेतनभोगी पद पर नियुक्त हुए हैं और वर्तमान में भी दैनिक वेतनभोगी ही हैं। ऐसी स्थिति में याचिकाकर्ता के प्रकरण में वित्त विभाग का परिपत्र दिनांक 17.03.1978 लागू नहीं होता है। उल्लेखनीय है कि वित्त विभाग का परिपत्र क्रमांक एफ-8-1/2014/नियम/चार भोपाल दिनांक 28.02.2014 अनुसार दिनांक 17.03.1978 वर्तमान में अप्रासंगिक हो जाने से लागू नहीं रह गया है।

आयुक्त आदिवासी विकास भोपाल के आदेश क्रमांक 13704-05 दिनांक 19.06.2017 द्वारा कलेक्टर जिला बड़वानी द्वारा गठित पूर्व समिति की अनुशंसा के आधार पर मान. उच्च न्यायालय में अवमानना प्रकरणों का जवाब प्रस्तुत करने हेतु त्वरित रूप से 5 वर्ष की सेवा पूर्ण करने के दिनांक से नियमित वेतनमान दिए जाने तथा रिट याचिका प्रस्तुत करने के दिनांक से नियमित वेतनमान व एरियर्स राशि भुगतान हेतु किसी भी प्रकार से गुण दोषों पर विचार नहीं किए जाने से यह पाया कि याचिकाकर्ता व अन्य समस्त याचिकाकर्ता कार्यभारित/आकस्मिकता निधि के अंतर्गत नियुक्त नहीं हुए हैं तथा दैनिक वेतनभोगी, चतुर्थ श्रेणी के पद पर रखे गए हैं, नियमित वेतनमान की पात्रता नहीं रखते हैं। अतः याचिकाकर्ता व अन्य समस्त याचिकाकर्ताओं के प्रकरणों पर म0प्र0 शासन द्वारा प्रदेश में कार्यरत दैनिक वेतन भोगी कर्मचारियों के उत्थान व उनके हितों के संरक्षण के उद्देश्य से म0प्र0 शासन सामान्य विभाग भोपाल के पत्र दिनांक 07.10.2016 द्वारा दैनिक वेतन भोगी/श्रमिकों के लिए स्थायी कर्मियों को

विनियमित करने की योजना के तहत वेतन श्रेणी का लाभ देने के लिए कार्यवाही करने हेतु निर्देशित किया गया है।

बड़वानी जिले में समरूप प्रकरणों बहुतायत को देखते हुए इन सभी दैनिक वेतन भोगियों द्वारा चाही गई सहायता की समानता को दृष्टिगत रखते हुए याचिकाकर्ता सहित सभी दैनिक वेतन भोगियों के प्रकरणों की परीक्षण कमेटी का गठन कलेक्टर महोदय बड़वानी के आदेश दिनांक 06.02.2017 द्वारा किया गया।

न्यायालयीन प्रकरणों के निराकरण हेतु गठित जिला स्तरीय समिति द्वारा दिनांक 06.05.2017, 16.05.2017, 25.05.2017, 30.05.2017 एवं 12.06.2017 को बैठकों का आयोजन किया गया। समिति द्वारा न्यायालयीन प्रकरणों के संबंध में परीक्षण करते हुए सामान्य प्रशासन विभाग मंत्रालय भोपाल के परिपत्र दिनांक 07.10.2016 अनुसार जिलान्तर्गत कार्यरत दैनिक वेतन भोगी कर्मचारियों/श्रमिकों के लिए लागू “स्थायी कर्मी” योजना के तहत नियमितिकरण से वंचित दैनिक वेतन भोगी कर्मचारियों को स्थायी कर्मी योजना तहत श्रेणी/वेतनमान का लाभ दिये जाने के संबंध में कार्यवाही का निर्णय लिया गया। इस हेतु कार्यालय स्तर पर समिति गठित कर स्थायी कर्मी योजना के क्रियान्वयन हेतु दैनिक वेतन भोगी कर्मचारियों को सूचना पत्र जारी करते हुए समक्ष में सुनवाई का अवसर प्रदान किया जाकर प्रकरणों का परीक्षण किया गया :-

1- श्री नानाभाऊ पाटील दैनिक वेतन भोगी कर्मचारी को समक्ष में सुना गया तथा उनके प्रकरण के समग्र परीक्षण उपरांत यह पाया की वे दैनिक वेतनभोगी कर्मचारी कलेक्टर पर नियुक्त हुए थे आज दिनांक तक उनको नियमित नहीं किया गया है ऐसी परिस्थिति में अतः आयुक्त आदिवासी विकास भोपाल के आदेश क्र. 13704-05 दिनांक 19.06.2017 के परिपालन में उन्हें नियमित वेतन कार्यभारित आकस्मिकता निधि से नियमित वेतनमान के बराबर वेतन की पात्रता नहीं आने से श्री नानाभाऊ पाटील दैनिक वेतनभोगी कर्मचारी को लंबित वेतन ऐरियर भुगतान का प्रश्न ही नहीं उठता है। अतः याचिकाकर्ता की लंबित ऐरियर की मांग अस्वीकार की जाती है। सुनवाई के दौरान संबंधित द्वारा शासन की स्थायी कर्मी योजना के तहत वेतन श्रेणी प्राप्त करने के संबंध में असहमति प्रदान की है। श्री पाटील का पक्ष सुनने एवं योजना नियमानुसार परीक्षण करने पर जिन दैनिक वेतन भोगियों द्वारा असहमति दी गई उन्हें पूर्वानुसार कलेक्टर दर पर मानदेय का भुगतान करने की कार्यवाही करने हेतु कार्यवाही सुनिश्चित करें।

2- समिति ने ऐसे दैनिक वेतनभोगी कर्मचारियों को समक्ष में उपस्थित होने पर सुना गया जिन्होंने शासन की नवीन स्थायी कर्मी योजना में सम्मिलित होने हेतु सहमति प्रदान की गई है। अतः जिन दैनिक वेतन भोगियों द्वारा स्थायी कर्मी योजना में सम्मिलित होने की सहमति प्रदान की गई उन्हें स्थापना शाखा स्थायी कर्मी योजना के तहत पृथक से परीक्षण कर आदेश जारी करने की कार्यवाही सुनिश्चित करें।

अतः आयुक्त आदिवासी विकास भोपाल के आदेश क्र 13704-05 दिनांक 19.06.2017 के परिपालन में तथा जिला स्तरीय समिति द्वारा किये गये परीक्षण उपरांत जिला बड़वानी अन्तर्गत कलेक्टर दर पर कार्यरत याचिकाकर्ता को कार्यभारित आकस्मिकता निधि से नियमित वेतनमान के बराबर वेतन की पात्रता नहीं आने से दैनिक वेतन भोगी श्री नानाभाऊ पाटील दैनिक वेतनभोगी कर्मचारी शासकीय माध्यमिक विद्यालय खेतिया विकासखण्ड पानसेमल एवं अन्य समान प्रकरणों में पूर्व में निर्धारित ऐरियर राशि कि पात्रता नहीं आती है। समिति द्वारा याचिकाकर्ता एवं याचिकाकर्ता के समान अन्य कर्मचारियों को भी समक्ष सुना गया अतः शासन द्वारा जारी नियम निर्देशो पर पूर्ण विचार उपरांत दायर अवमानना प्रकरण तथा अन्य

समान प्रकरणों में पूर्ववत् कलेक्टर दर पर वेतन भुगतान करने की अनुमति प्रदान की जाकर इन्हें पूर्व में निर्धारित एरियर्स राशि की स्वीकृति निरस्त की जाती है। ”

Another important aspect of the case is that earlier also the appellant has approached this Court and an order was passed on 31.10.2014 in W.P. No.6116/2014 in the case of *Nana Bhau Patil v/s The State of Madhya Pradesh & Others* and as the order passed by this Court was not complied with, a contempt petition was preferred i.e. Conc (Civil) No.464/2015 and the same has been dismissed by an order dated 03.07.2017, however, liberty was granted to the appellant to challenge the order passed by the respondents dated 19.06.2017.

The undisputed fact makes it very clear that the appellant is daily wager and he has not been regularized. The order passed in Conc (Civil) No.464/2015 dated 03.07.2017 reads as under:-

“The present case is having a chequered history. The petitioner before this Court, a daily wager, has filed Writ Petition ie., W.P.No. 9608/2012 claiming regularisation as well as regular pay scale on the basis of some earlier judgments delivered by this Court, to be more specific Writ Petition No. 3593/2012 (Ravindra Choudhary Vs. State of Madhya Pradesh and others). Reliance was also placed upon the judgment delivered by the apex Court in the case of State of Karnataka Vs. M. L. Kesari reported in **2010 (9) SCC 247** and in the case of State of Karnataka Vs. Uma Devi reported in **(2006) 4 SCC 1**.

The learned Single Judge on 24/6/2013 has directed the authorities to decide the petitioner's representation keeping in view the order passed in the case of Ravindra Choudhary (supra) and also taking into account the judgment delivered by the Hon'ble Supreme Court in the case of M. L. Kesari (supra). The case of the petitioner was scrutinised by the respondents and a Committee was constituted and as many as 70 employees were given regular pay scale. In the case of the petitioner, by order dated 10/7/2014 he was also granted regular pay

scale. The order has been filed by the respondent as Annexure R/3 and the same reflects that the petitioner is a Daily Wager and he has been granted regular pay scale. After an order was passed granting regular pay scale on 10/7/2014 to the petitioner who was never regularised by the respondent by passing any order, came up before this court for grant of regular pay scale on completion of 5 years of service. The second Writ Petition was registered as W.P.No. 6116/2014 and this Court by order dated 31/10/2014 has directed the respondents to decide the case of the petitioner keeping in view the judgment delivered in the case of Kailash Chandra Talware (ie., W.A.No. 359/2010 – Kailash Chandra Talware Vs. State of Madhya Pradesh). It is true that the Division Bench of this Court in the case of Kailash Chandra (supra) has held that Kailash Chandra will be entitled for regular pay scale on completion of 5 years of service. Said Kailash Chandra has been granted benefit of regular pay scale on completion of 5 years of service. The judgment delivered in the case of Kailash Chandra is under review.

The respondents have now decided the case of the petitioner by passing a speaking order and they have stated that the petitioner being daily wager who has not been regularised, is not entitled for regular pay scale after completion of 5 years service.

This Court has carefully gone through the order passed by the respondents. It is true that in large number of cases, regular pay scale has been granted by the respondents. It is also true that the respondents in the case of Kailash Chandra who was also a daily wager, have granted regular pay scale on completion of 5 years of service.

The judgment delivered by this Court in such cases are arising out of only two Districts ie., Khargone and Barwani out of 51 Districts in the State of Madhya Pradesh. In the State of Madhya Pradesh people are languishing as daily wages for 20 – 30 years and they are still getting wages fixed by the Collector on daily wages basis. They have not been granted permanent status in other Districts and only in two Districts, on account of the judgment delivered in one particular case that the employees are receiving regular pay scale. The petitioner was also granted regular pay scale, but the petitioner wanted regular pay scale after completion of 5 years of service.

It is really strange that in two Districts employees want regular pay scale after completion of 5 years of service and in other Districts the circular dated 16/5/07, 8/2/08 and 6/9/08 issued by the State Government pursuant to the judgment delivered by the Hon'ble apex

Court in the case of Uma Devi (supra), are applicable, meaning thereby, their cases have been scrutinised for regularisation after completion of minimum 10 years of service that too subject to various terms and conditions and they are being granted a sum of Rs.500/- and Rs.1000/- respectively (now enhanced to Rs.1000/- and Rs.2000/- respectively) on completion of 10 years and 20 years of service.

The apex Court in a recent case ie., Ram Naresh Rawat Vs. Shri Ashwini Ray and Ors., **Contempt Petition (Civil) No. 771/2015** while dealing with the issue of employees who have been conferred permanent status has arrived at a conclusion that the employees who have been designated as permanent employees will be entitled for minimum of the pay scale only. The cases of the employees before the Hon'ble Supreme Court were on better footings. They were designated as permanent employees and they were claiming regular pay scale. In the case of the petitioner at no point of time they have been designated as permanent employees. The fact remains that they are daily wagers. The apex Court in the case of Ram Naresh Rawat (supra) in paragraphs 10 to 24 has held as under :

Before we consider the respective submissions, we want to make two observations which are crucial to the issue involved. These are:

(i) The matter is being examined in the contempt jurisdiction of this Court. From the chronology of events given, it would be clear that initially these petitioners had claimed their classification as 'permanent' to the respective posts. They succeeded in this attempt and the orders passed therein in their favour was that they would be classified as 'permanent' and that they would also be entitled to pay-scale of permanent posts from the dates specified in the award given by the labour court.

In the second round of litigation, out of which present contempt petitions arise, direction of the High Court is to grant them pay- scales attached to the posts to which they are working.

This order has been upheld by this Court as well inasmuch as Special Leave Petitions filed by the State Government have been dismissed by common orders dated 21st January, 2015. However, there is no specific direction for grant of increments.

(ii) In order to implement the directions of High Court, against which special Leave Petitions have been dismissed, the State Government has passed order dated 11th March, 2016 vide which the pay-

scale of the petitioners has been fixed in the pay-scale attached to these posts. This has also been given from the dates to which these petitioners are held entitled to and on that basis arrears of pay have also been paid. However, the pay is fixed at the minimum of the said pay-scales and there is also stipulation in the said orders dated 11th March, 2016 that these employees would not be entitled to increment of salary.

It is clear from the above that the petitioners have been given pay in the regular pay-scale. Petitioners, however, have joined issue by contending that orders dated 11th March, 2016 do not carry out the complete compliance of the directions given by the High court that on fixation of pay in the regular pay-scale the petitioners are also entitled to increments of salary, as is given to the regular employees, on annual basis.

Therefore, the question that arise for consideration is as to whether the petitioners are also entitled to the increments.

It is not in dispute that the petitioners were initially engaged on daily wage basis. Their engagement was also done without following any selection procedure. It also does not emerge from record that the initial engagement of these petitioners was against regular vacancies. Normally, in such a situation even if these persons, because of their long service and also on the assumption that they are discharging the same duties as discharged by regular employees, such employees can claim the salary which is being paid to regular employees holding similar posts on the principles of 'equal pay for equal work'. This aspect has exhaustively and authoritatively being dealt with by this Court in a recent judgment dated 26th October, 2016 in Civil Appeal No. 213 of 2013, titled [State of Punjab and Ors. vs. Jagjit Singh and Ors.](#)[3] and other connected appeals, though, there is one distinguished factor, viz. the petitioners herein have been conferred the status of 'permanent' employees. However, an important question which arises is as to whether such 'permanent' employees are same as employees appointed on 'regular' basis or their services stand regularized. This aspect shall be touched upon and dealt with a little later. At this stage, reference is made to the aforesaid judgment in the case of Jagjit Singh³ for the purpose that even if principle of 'equal pay for equal work' is applicable and the pay in the regular pay-scale is admissible to such employees, these employees would be entitled to minimum of the regular pay- scale and not the

increments. This case is taken note of and discussed in Jagjit Singh³ in the following manner:

“36. [Secretary, State of Karnataka v. Umadevi](#) [(2006) 4 SCC 1], decided by a five-Judge Constitution Bench: Needless to mention, that the main proposition canvassed in the instant judgment, pertained to regularization of government servants, based on the employees having rendered long years of service, as temporary, contractual, casual, daily-wage or on ad-hoc basis. It is, however relevant to mention, that the Constitution Bench did examine the question of wages, which such employees were entitled to draw. In paragraph 8 of the judgment, a reference was made to civil appeal nos. 3595-612 of 1999, wherein, the respondent-employees were temporarily engaged on daily-wages in the Commercial Taxes Department. As they had rendered service for more than 10 years, they claimed permanent employment in the department. They also claimed benefits as were extended to regular employees of their cadre, including wages (equal to their salary and allowances) with effect from the dates from which they were appointed. Even though the administrative tribunal had rejected their claim, by returning a finding, that they had not made out a case for payment of wages, equal to those engaged on regular basis, the High Court held that they were entitled to wages, equal to the salary of regular employees of their cadre, with effect from the date from which they were appointed. The direction issued by the High Court resulted in payment of higher wages retrospectively, for a period of 10 and more years. It would also be relevant to mention, that in passing the above direction, the High Court had relied on the decision rendered by a three-Judge bench of this Court in [Dharwad District PWD Literate Daily-Wage Employees Association v. State of Karnataka](#)[(1990) 2 SCC 396]. The Constitution Bench, having noticed the contentions of the rival parties, on the subject of wages payable to daily-wagers, recorded its conclusions as under:-

“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. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. Nos. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under [Article 142](#) of the Constitution to do justice to them.” We have extracted the aforesaid paragraph, so as not to make any

inference on our own, but to project the determination rendered by the Constitution Bench, as was expressed by the Bench. We have no hesitation in concluding, that the Constitution Bench consciously distinguished the issue of pay parity, from the issue of absorption/regularization in service. It was held, that on the issue of pay parity, the High Court ought to have directed, that the daily-wage workers be paid wages equal to the salary at the lowest grade of their cadre. The Constitution Bench expressed the view, that the concept of equality would not be applicable to the issue of absorption/regularization in service. And conversely, on the subject of pay parity, it was unambiguously held, that daily-wage earners should be paid wages equal to the salary at the lowest grade (without any allowances). ” Another significant reason for referring to the judgment of Jagjit Singh³ is that the Court culled out the principles of 'equal pay for equal work' from the earlier judgments on the subject and collated them at one place. Further, the Court also drew an important distinction between the grant of benefit of 'equal pay for equal work' to temporary employees on the one hand and the status of regular employees on the other hand. Insofar as parameters of principles of 'equal pay for equal work' deduced by the Court are concerned (para 42), our purpose of deduction stated in sub-para vi thereof is important, which is reproduced below:

“(vi) For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see – Orissa University of Agriculture & Technology Vs. Manoj K. Mohanty^[4]). ” Insofar as distinction between pay parity and regularisation of service is concerned, referring to the Constitution Bench judgment in Uma Devi², the Court made the following observations:

“We are of the considered view, that in paragraph 44 extracted above, the Constitution Bench clearly distinguished the issues of pay parity, and regularization in service. It was held, that on the issue of pay parity, the concept of ‘equality’ would be applicable (as had indeed been applied by the Court, in various decisions), but the principle of ‘equality’ could not be invoked for absorbing temporary employees in Government service, or for making temporary employees regular/permanent. All the observations made in

the above extracted paragraphs, relate to the subject of regularization/permanence, and not, to the principle of 'equal pay for equal work'. As we have already noticed above, the Constitution Bench unambiguously held, that on the issue of pay parity, the High Court ought to have directed, that the daily-wage workers be paid wages equal to the salary, at the lowest grade of their cadre. This deficiency was made good, by making such a direction. " Thus, it follows that even if principle of 'equal pay for equal work' is applicable, temporary employee shall be entitled to minimum of the pay-scale which is attached to the post, but without any increments.

Insofar as petitioners before us are concerned they have been classified as 'permanent'. For this reason, we advert to the core issue, which would determine the fate of these cases, viz., whether these employees can be treated as 'regular' employees in view of the aforesaid classification? In other words, with their classification as 'permanent', do they stand regularized in service?

For this purpose, we would first like to refer to the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 and the Rules made thereunder known as the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963. [Section 3\(c\)](#) of the Act defines "Standing Orders" and as per [Section 6](#), the State Government may, by notification, apply Standard Standing Orders to such class of undertakings and from such date as may be specified therein. [Section 21](#) empowers the State Government to make rules to carry out the purposes of the said Act which are required to be notified. It empowers the State Government to frame Standard Standing Orders as well. It is in exercise of powers under [Section 21\(1\)](#) of the Act that the State Government has framed Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 (hereinafter referred to as the 'Rules'). Annexure to these Rules contains standard Standing Orders for all undertakings in the State. Standing Order No. 2 of this Order enumerates classification of employees which has already been reproduced above. As per this classification, an employee would be known as 'permanent employee' who has completed six months' satisfactory service in a clear vacancy in one or more posts whether on probation or otherwise or a person whose name has been entered in the muster roll and who is given a ticket of 'permanent employee'. It follows from the above that merely

by putting in six months' satisfactory service, an employee can be treated as 'permanent employee'. Rights which would flow to different categories of employees including 'permanent employee' are not stipulated in these Rules or even in the parent Act. It can be gathered from Rule 11 of the said Rules, which relates to termination of employment, that in case of a 'permanent employee' one month's notice or wages for one month in lieu of notice is required when the employment of a 'permanent employee' is to be terminated. On the other hand, no such notice or wages in lieu thereof is needed to be given to any other category of employees. Additional obligation casts on the employer is to record reasons for termination of service in writing and communicate the same to the employee.

With this, we advert to the question posed above. In the first blush, this question appears to be somewhat puzzling, as to how such a question can arise because normally an employee who is given the designation of 'permanent employee' should be treated as 'regular employee' as well. However, this puzzle vanishes when we examine the standing orders, acts and rules in question under which designation of 'permanent employee' is acquired. Fortunately for us, we are not trading on a virgin territory.

This Court has already examine the issue in the context of these very standing orders of Madhya Pradesh. In the case of [Mahendra L. Jain & Ors. v. Indore Development Authority & Ors.](#)[5], this Court analyzed the Standard Standing Order in question and held that permanent classification does not amount to regularization, inasmuch as it was noted that the matter relating to the recruitment is governed by a separate statute, as can be seen from the following discussion therein:

“28. The 1961 Act provides for classification of employees in five categories. The 1973 Act, as noticed hereinbefore, clearly mandates that all posts should be sanctioned by the State Government and all appointments to the said cadre must be made by the State Government alone. Even the appointments to the local cadre must be made by the Authority. The said provisions were not complied with. It is accepted that no appointment letter was issued in favour of the appellants. Had the appointments of the appellants been made in terms of the provisions of the Adhiniyam and the Rules framed thereunder, the respondent Authority was statutorily enjoined to make an offer of appointment in writing which

was to be accepted by the appellants herein. Who made the appointments of the appellants to the project or other works carried on by the Authority is not known. Whether the person making an appointment had the requisite jurisdiction or not is also not clear. We have noticed hereinbefore that in the case of Om Prakash Mondloi, the CEO made an endorsement to the effect that he may be tried in daily wages and should be entrusted with the work of progress collection of ODA work. The said order is not an “offer of appointment” by any sense of the term.

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31. The Standing Orders governing the terms and conditions of service must be read subject to the constitutional limitations wherever applicable. Constitution being the *suprema lex*, shall prevail over all other statutes. The only provision as regards recruitment of the employees is contained in Order 4 which merely provides that the manager shall within a period of six months, lay down the procedure for recruitment of employees and notify it on the notice board on which Standing Orders are exhibited and shall send copy thereof to the Labour Commissioner. The matter relating to recruitment is governed by the 1973 Act and the 1987 Rules. In the absence of any specific directions contained in the Schedule appended to the Standing Orders, the statute and the statutory rules applicable to the employees of the respondent shall prevail.” The issue came up again in the case of [M.P. State Agro Industries Development Corporation Ltd. & Anr. v. S.C. Pandey](#)[6] wherein this Court held that only because a temporary employee has completed 240 days of work, he would not be entitled to be regularized in service. The Court also reiterated that the Standing Orders categorize the nature of employment and do not classify individual employees in different post according to the hierarchy created in the Department and thus proviso to Rule 2 does not apply to promotions or regularization in higher grade. We would like to reproduce following paras from the said judgment:

“17. The question raised in this appeal is now covered by a decision of this Court in [M.P. Housing Board v. Manoj Shrivastava](#) [(2006) 2 SCC 702] wherein this Court clearly opined that: (1) when the conditions of service are governed by two statutes; one relating to selection and appointment and the other relating to the terms and conditions of service, an endeavour should be

made to give effect to both of the statutes; (2) a daily-wager does not hold a post as he is not appointed in terms of the provisions of the Act and the Rules framed thereunder and in that view of the matter he does not derive any legal right; (3) only because an employee had been working for more than 240 days that by itself would not confer any legal right upon him to be regularised in service; (4) if an appointment has been made contrary to the provisions of the statute the same would be void and the effect thereof would be that no legal right was derived by the employee by reason thereof.

18. The said decision applies on all fours to the facts of this case. In Mahendra L. Jain [(2005) 1 SCC 639 : 2005 SCC (L&S) 154] this Court has categorically held that the Standing Orders governing the terms and conditions of service must be read subject to the constitutional and statutory limitations for the purpose of appointment both as a permanent employee or as a temporary employee. An appointment to the post of a temporary employee can be made where the work is essentially of temporary nature. In a case where there existed a vacancy, the same was required to be filled up by resorting to the procedures known to law i.e. upon fulfilling the constitutional requirements as also the provisions contained in the 1976 Regulations. No finding of fact has been arrived at that before the respondent was appointed, the constitutional and statutory requirements were complied with.

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22. Such appointments, in our opinion, having regard to the decisions in Mahendra L. Jain [(2005) 1 SCC 639 : 2005 SCC (L&S) 154] and Manoj Shrivastava [(2006) 2 SCC 702] must be made in accordance with extant rules and regulations. It is also a well-settled legal position that only because a temporary employee has completed 240 days of work, he would not be entitled to be regularised in service. Otherwise also the legal position in this behalf is clear as would appear from the decision of this Court in Dhampur Sugar Mills Ltd. v. Bhola Singh [(2005) 2 SCC 470 : 2005 SCC (L&S) 292] apart from Mahendra L. Jain [(2005) 1 SCC 639 : 2005 SCC (L&S) 154].” A direct judgment on the subject is State of M.P. & Ors. v. Lalit Kumar Verma[7] wherein it was held that a workman would be entitled to classification as permanent or temporary employee if the conditions precedent are satisfied. It was held that the respondent was

not appointed against the clear vacancy, he was not appointed in a permanent post or placed on probation. This Court, thus, held that working on daily wages alone would not entitle him to the status of permanent employee. Para 7 of this judgment needs to be looked into.

“7. A workman, therefore, would be entitled to classification of permanent or temporary employee, if the conditions precedent therefor are satisfied. The respondent was not appointed against a clear vacancy. He was not appointed in a permanent post or placed on probation. He had also not been given a ticket of permanent employee. Working on daily wages alone would not entitle him to the status of a permanent employee.” It is, thus, somewhat puzzling as to whether the employee, on getting the designation of 'permanent employee' can be treated as 'regular' employee. This answer does not flow from the reading of the [Standing Orders Act](#) and Rules. In common parlance, normally, a person who is known as 'permanent employee' would be treated as a regular employee but it does not appear to be exactly that kind of situation in the instant case when we find that merely after completing six months' service an employee gets right to be treated as 'permanent employee'. Moreover, this Court has, as would be noticed now, drawn a distinction between 'permanent employee' and 'regular employee'.

We may mention, at this stage that this aspect has come up for consideration, in another context, in [State of Madhya Pradesh and Others vs. Dilip Singh Patel and Others](#)[8]. That was a case where similarly situated employees, who were classified as 'permanent employees' under the [Standing Orders Act](#), were given minimum of the pay-scale attached to their posts. However, after the implementation of Sixth Pay Commission, benefits thereof were not extended to these employees. High Court held that they would be entitled to have their pay fixed as per the revised scales in accordance with the recommendations of Sixth Pay Commission which were accepted qua regular employees. This Court, though, upheld the orders of the High Court giving them the benefit of revision of pay-scale pertained to Sixth Pay Commission, but at the same time made it clear that they would be entitled to minimum salary and allowances as per the said revised scales and would not be entitled to any increments. It was further held that such increments would be admissible only after regularisation of their

services which regularisation was to take place as per the seniority list with due procedure. Following passage from the said judgment, which captures the aforesaid directions, is quoted hereunder:

“We have heard learned counsel for the parties and perused the records. It appears that the respondents earlier moved before the Administrative Tribunal, Gwalior by filing original applications such as O.A. No. 648 of 1995, O.A. No. 293 of 1991 etc. In compliance of the orders passed in such original applications, the Chief Engineer, Yamuna Kachhar, Water Resources Department, Gwalior (M.P.) (by orders issued in between April, 2004 and June, 2004 provided the minimum wages and allowances to the respondents without increment as per the Schedule of the pay scale from the date of the order of the Tribunal. It was further ordered that the regularization of the daily wages employees shall be made as per the seniority list with due procedure and the benefit of increment and other benefits can only be granted after the regularisation as per the Rules. It was ordered that the order of the Court for benefit of minimum wages and allowances shall be

From the aforesaid facts, it is clear that the respondents are entitled for minimum wages and allowance as per the fixed Schedule of the pay scale but without any increment. In such case, if the pay scale is revised from time to time including the pay-scale as revised pursuant to Sixth Pay Commission, the respondents will be entitled to minimum wages and allowance as per the said revised scale without increment. Only after regularisation of their service, as per seniority and rules, they can claim the benefit of increment and other benefits.” From the aforesaid, it follows that though a 'permanent employee' has right to receive pay in the graded pay-scale, at the same time, he would be getting only minimum of the said pay-scale with no increments. It is only the regularisation in service which would entail grant of increments etc. in the pay-scale.

In view of the aforesaid, we do not find any substance in the contentions raised by the petitioners in these contempt petitions. We are conscious of the fact that in some cases, on earlier occasions, the State Government while fixing the pay scale, granted increments as well. However, if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under [Article 14](#) is

not in negative terms (See Indian Council of Agricultural Research & Anr. v. T.K. Suryanarayan & Ors.[9]).

Keeping in view the judgment of the apex Court, this Court is of the opinion that the respondents were justified in passing the impugned order. The petitioner is still a daily wager. There is no order brought on record by either side regularising the petitioner on the post he is working and, therefore, this Court is of the considered opinion that no contempt is made out in the matter. However, liberty is granted to the petitioner to challenge the order passed by the respondents dt. 19/6/2017, if so advised. The repercussions of the order passed by this Court will affect large number of employees in the entire State of Madhya Pradesh and, therefore, a uniform policy should be followed in respect of daily wagers working in the State of Madhya Pradesh by the State Government Departments. The Departments shall ensure that the policy framed by the State Government are strictly adhered to.

The present contempt petition and the connected contempt stand dismissed.”

The aforesaid order passed in the contempt petition makes it very clear that in the State of Madhya Pradesh only in respect of two districts, there is some order in respect of some daily wager for granting pay-scale. The daily wager employees are claiming regular pay-scale, which has not been granted to any other individual in the entire State of Madhya Pradesh. Merely because some persons have been granted regular pay-scale, on the ground of negative equality, the question of grant of regular pay-scale to backdoor entrants, keeping in view the the judgment delivered in the case of *State of Karnataka v/s Uma Devi reported in (2006) 4 SCC 1*, does not arise.

The State Government has issued various executive instructions pursuant to the judgment delivered in the case of *Uma Devi (supra)* and after completion of ten years and 20 years of service, extra emoluments are given to the daily

wager.

The State Government has also issued executive instruction for granting them permanent status and in light of the judgment delivered in the case of ***Ram Naresh Rawat v/s Shri Ashwini Ray & Others (Conc (Civil) No.771/2015)*** and in case, they are conferred permanent status, they shall be entitled for only minimum of the pay-scale. In those circumstances, the learned Single Judge has dismissed the writ petition.

No statutory provision of law has been brought to the notice of this Court by the appellant, which entitles him for grant of regular pay-scale even though he is not the regular employee. For appointment to the regular post, there is a prescribed procedure under the law, there are circulars issued by the State Government and the process has to be followed. The appellant's case was certainly considered by the department for regularization and the order passed by the learned Single Judge reveals that the State Government in the counter affidavit has categorically stated that as and when, vacancies are available, the case of the appellant shall be considered for regularization and in those circumstances, the learned Single Judge, as the appellant was not the regular employee, has dismissed the writ petition.

In the considered opinion of this Court, as no statutory provision of law has been pointed by the appellant and as the appellant is not a regular employee who is entitled for grant of regular pay-scale, the question of granting him relief and setting the order passed by the learned Single Judge dated 01.10.2018 does not arise.

The appellant does not enjoy special status merely because, he posted in a particular district. All daily wager in the State of Madhya Pradesh are to be treated at par and the judgment of the Hon'ble Apex Court delivered in the cases of *Uma Devi (supra)* and *Ram Naresh Rawat (supra)* is applicable in respect of all daily wager.

In the considered opinion of this Court, the learned Single Judge was justified in dismissing the writ petition. No case for interference is made out in the matter.

Resultantly, the admission is declined.

The order passed by this Court in the present case shall govern the connected writ appeal also, and therefore, the connected writ appeals also stand dismissed.

Let a copy of this order be kept in the connected writ appeals also.

Certified copy as per rules.

(S.C. SHARMA)
J U D G E

(SHAIENDRA SHUKLA)
J U D G E

Ravi

Digitally signed by Ravi Prakash
Date: 2019.08.21 17:52:27 +05'30'