



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2821 OF 2010

- 1) Balasaheb s/o Punjahari Shinde
Age 38 years, Occ. Service
- 2) Rajendra s/o Krushnaji Achari,
Age 43 years, Occ. Service
- 3) Kashinath s/o Shankar Wakchaure
Age 47 years, Occ. Service
- 4) Prakash s/o Savaliram Wagh,
Age 46 years, Occ. Service
- 5) Popat s/o Murlidhar Jadhav,
Age 42 years, Occ. Service
- 6) Hemant s/o Vijayrao Wankhedkar,
Age 42 years, Occ. Service
- 7) Sunil s/o Babanrao Avhad,
Age 37 years, Occ. Service
- 8) Rajendra s/o Ramrao Chavan,
Age 42 years, Occ. Service
- 9) Anil s/o Bhaskar Roham,
Age 42 years, Occ. Service
- 10) Pradip s/o Wamanrao Shinde,
Age 46 years, Occ. Service
- 11) Satish s/o Sudharak Bhalerao
Age 35 years, Occ. Service

- 12) Anil s/o Devidas Bhaskar,
Age 35 years, Occ. Servie
- 13) Tarachand s/o Babulal Biraris,
Died through L.R.

Ruchikesh s/o Tarachid Biraris
Age 25 years, Occ. Service,
R/o Ganpati Temple,
Nivara, Kojagiri Colony,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.
- 14) Umesh s/o Vyankatrao Devsale,
Age 40 years, Occ. Service
- 15) Vijay s/o Tukaram Ghogare,
Age 40 years, Occ. Service
- 16) Rajendra s/o Shivram Panghavane,
Age 35 years, Occ. Service
- 17) Sarang s/o Mohan Ahirrao,
Died through L.Rs.
- 17A) Pallavi w/o Dinesh Vispute,
Age 34 years, Occ. Household,
R/o Dongargaon, Tq. Shahada,
Dist. Nandurbar
- 17B) Vidya w/o Anil Sonar,
Age 28 years, Occ. Household,
R/o 60, Wankhedkar Nagar, Deopur,
Dhule, Tq. & Dist. Dhule
- 17C) Vijay s/o Sarang Ahirrao
Age 25 years, Occ. Service
R/o Neharunagar, Jagruti Housing
Society, Behind Bus Stop, Jalgaon,
Tq. & Dist. Jalgaon

- 18) Kailash s/o Punjaji Kate,
Age 47 years, occ. Service
- 19) Rajendra s/o Yadavrao Nikam,
Age 37 years, Occ. Service
- 20) Kundal s/o Chhagan Lohar,
Died through L.Rs.
- 20A) Shakuntala Chudaman Lohar @
Shakuntala w/o Kundan Lohar,
Age 56 years, Occ. Service
- 20B) Simita d/o Kundan Lohar,
Age 30 years, Occ. Nil.
- 20C) Sumit s/o Kundan Lohar,
Age 27 years, Occ. Nil
- Nos.20A to 20C R/o Shirurnaka,
Behind Durga Hospital, Amalner
Tq. Amalner, Dist. Jalgaon
- 21) Ashok s/o Changdeo Kekan,
Age 43 years, Occ. Service,
- 22) Chandrakant s/o Vitthal Parate,
Age 41 years, Occ. Service
- 23) Rajendra s/o Dyandeo Aghav,
Age 37 years, Occ. Service
- 24) Rajendra s/o Gangadhar Gorde,
Age 36 years, Occ. Service,
- 25) Raju s/o Rambhau Naikwade,
Age 42 years, Occ. Service
- 26) Balu s/o Bandu Avhad,
Age 42 years, Occ. Service

- 27) Kacharu s/o Haribhau Pathade,
Age 44 years, occ. Service
- 28) Pralhad s/o Gahinaji Dumbare,
Age 38 years, Occ. Service
- 29) Nivrutti s/o Hiralal Avhad,
Age 43 years, Occ. Service

All R/o Industrial Training Institute,
Old T.D.B. Building,
M.G. Udyan Pradarshan,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar

- 30) Smt. Manda Ashok Narode,
Deceased, through L.Rs.
- 30A) Sandip s/o Ashokrao Naqrode,
Age 38 years, Occ. Service
- 30B) Varsha Ashok Narode
age 36 years, Occ. Housewife,

Nos.30A & 30B R/o Shivaji Road,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar

... PETITIONERS

VERSUS

- 1) The State of Maharashtra
Through Principal Secretary,
Skill Development and Entrepreneurship
Department, Mantralaya,
Mumbai – 32
(Copy to be served on Govt. Pleader,
High Court of Bombay,
Bench at Aurangabad)
- 2) The Director,
Vocational Education and

Training, Mumbai

- 3) The Deputy Director,
Vocational Education and
Training, Regional Office, Nasik
- 4) Sanjeevani Rural Education Society,
Shahajahanandnagar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar
through its President/ Secretary
- 5) The Principal,
Industrial Training Institute,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar
- 6) Shivajirao s/o Manik Shelke,
Age 46 years, Occ. Agri.,
R/o Lavaki, Tq. Kopargaon,
Dist. Ahmednagar
- 7) Vaijinath s/o Changdeo Misal,
Age 41 years, Occ. Agri.
R/o Dahegaon, Tq. Kopargaon,
Dist. Ahmednagar
- 8) Babasaheb s/o Digambar Hon,
Age 35 years, Occ. Agri.
R/o Dauch, Tq. Kopargaon,
Dist. Ahmednagar
- 9) Subhash s/o Vitthal Khillari,
Age 45 years, Occ. Agri.,
R/o Savantsar, Tq. Kopargaon,
Dist. Ahmednagar
- 10) Laxman s/o Mahdu Randhwane,
Age 43 years, Occ. Agri.,
R/o Godhegaon, Tq. Kopargaon,
Dist. Ahmednagar

- 11) Gorakh s/o Eknath Bhokare,
Age 48 years, Occ. Agri.
R/o Godhegaon, Tq. Kopargaon,
Dist. Ahmednagar.

... **RESPONDENTS**

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Mr. R.N. Dhorde, Senior Counsel with
Mr. P.S. Dighe, Advocate for petitioners
Mr. Mukul Kulkarni, Advocate for Respondents No.1 to 3 & 5
Mr. A.D. Sonkawade, Advocate with
Mr. A.V. Hon, Advocate for respondent No.4.

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**CORAM : R.G. AVACHAT AND
SANDIPKUMAR C. MORE, JJ.**

Date of reserving judgment : 7th May, 2025

Date of pronouncing judgment : 10th July, 2025

JUDGMENT (PER : R.G. AVACHAT, J.) :

This petition, under Article 226 of the Constitution
of India, has been filed for following main reliefs :

- BB) Hold and declare that the said notice dated 23/3/2010
issued by the respondent No.3 is illegal, arbitrary and
violative of Articles 14, 19(1)(g) and 39(d) of the
Constitution of India and therefore same is liable to
be quashed and set aside and for that purpose issue
necessary orders.
- BBB) Issue writ of certiorari or any other appropriate writ,
order or direction in the nature of certiorari for
quashing and setting aside the order dated
31/3/2010, passed by the respondent No.3, thereby
terminating the services of petitioners and for that
purpose issue necessary orders.

- C) Issue writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the respondents Nos.1 to 3 to pay salary of the petitioners on equal footing as that of similarly situated Government employees in ITI regularly and for that purpose issue necessary orders.
 - E) Issue writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the respondent Nos.1 to 3 to regularize the services of petitioners since the date of their appointment by giving all service benefits with continuity of service as per similarly situated employees in same or similar Government ITI and for that purpose issue necessary orders.
2. Heard. Original petitioners were 30 in number. Pending the petition, petitioners No.13, 17, 20 and 30 passed away. Their legal representatives have been brought on record. For the sake of convenience, the L.Rs. and the petitioners are referred as “the petitioners”.
3. The respondents No.1 to 3 are the officials of the State Government (for short the State). Respondent No.4 was the Educational Society, based at Shahajahanandnagar, Kopargaon, District Ahmednagar. The respondent No.5 was the Principal of the Industrial Training Institute (ITI) run by respondent No.4 educational society.

4. The petitioners claim to have joined the services on various posts with the educational institute. They claim to have been appointed during the period from 1986 to 1996, after following due procedure of law. The petitioners were teaching and non-teaching staff in the cadre of Class III and Class IV employees of the ITI. Initially, their appointments were on temporary basis. They claim to have been made permanent on completion of probation. The petitioners claim to have been rendering services ever since their appointments.

5. It is the case of the petitioners that, the State took a policy decision to start ITI in each Taluka. An agreement was entered into between the State, the educational institute on one hand and the owner of the land (respondent No.4 Society) on the other. The State agreed to take over the ITI. A tri-party agreement came to be executed amongst them on 24/2/2004. The State granted provisional sanction on 11/10/2002 for transfer of the management of the ITI. Vide letter dated 29/4/2003, it granted permanent sanction for transfer of the ITI to the State. Salary to be paid to the petitioners was also quantified. The State agreed to create posts and absorb the

petitioners thereon.

6. Since the State did not keep its word of creation of the posts for absorption of the petitioners, the petitioners had filed a Writ Petition and consequential proceedings as well. A reference thereto would be made a little later. Since nothing material could be fructified, the petitioners filed the present petition.

7. The respondent- State, by filing affidavit-in-reply, contested the Writ Petition on various amongst other grounds. A reference thereto would be made while adverting to the oral submissions made by learned Special Counsel.

8. The learned Senior Advocate appearing for the petitioners first took us through the chronology of events and correspondence made by the State authorities. It was specifically submitted that the petitioners were not parties to the tri-party agreement. The terms and conditions of the agreement would, therefore, not be binding on the petitioners. He would further submit that, the petitioners were duly appointed as found to have been qualified for the post. The

State Government, after taking over the ITI, started four more courses in addition to 16 courses which were being conducted by the ITI. Besides the petitioners, there are other staff members appointed by the State Government. Those staff members render the job/s equal to the nature of the job/s rendered by the petitioners. These State Government employees are paid salary and various perks in terms of the respective Pay Commission recommendations. The petitioners, in view of the principle of “equal pay for equal work”, are entitled for the salary and perks equal to that of the pay of those employees. The learned Senior Advocate for the petitioners would further submit that, right to equal pay for equal work has been crystalised as a fundamental right. He would further submit that, the State Government has regularised the appointments of the employees of some other Departments. Government Resolutions (G.Rs.) issued in that regard have been placed on record. He would further submit that, the petitioners have rendered more than 15 years of service. On the ground of alternate remedy is concerned, learned Senior Advocate would submit that the Writ Petition has been admitted and it would, therefore, not be in the fitness

of things now to drive the petitioners to avail alternate equally efficacious remedy. He would, therefore, urge for allowing the Writ Petition as prayed for. The learned Senior Advocate for petitioners relied on the following authorities :

- (1) Rajesh Ashok Mankar Vs. Konkan Railway Corpn. Ltd. & ors. [(2023) 2 High Court Cases (Bom) 258]
- (2) State of Punjab & ors. Vs. Jagjit Singh & ors. (2017) 1 SCC 148
- (3) Grih Kalyan Kendra Workers' Union Vs. Union of India & ors. [AIR 1991 SC 1173]
- (4) State of W.B. Vs. Pantha Chaterjee & ors. AIR 2003 SC 3569
- (5) State of Tripura & ors. Vs. K.K. Roy 2004 AIR SCW 1
- (6) Central Inland Water Transport Corpn. Ltd. & anr. Vs. Brojo Nath Ganguly & anr. [AIR 1986 SC 1571]
- (7) Genpact India Pvt. Ltd. Vs. Deputy Commissioner of Income Tax & ors. [MANU/SC/1610/2019]

9. The learned Special Counsel for the respondent-State would, on the other hand, submit that the petitioner No.1 Balasaheb s/o Punjahari Shinde signed the tri-party agreement. The petitioners suppressed the fact that they had executed consent letters-cum-undertakings to render their

services on contract basis. The consent letters executed by the petitioners have all been placed on record along with the affidavit-in-reply. The learned Special Counsel would further submit that, there is no material to indicate the petitioners were appointed by following due procedure of law. There is no document indicating the concerned officer of the Education Department to have granted approval to the appointments of the petitioners. He would further submit that, even the petitioners had filed Writ Petition No.6023/2006 for enforcement of the terms of the tri-party agreement. The learned Special Counsel would mean to say that, the petitioners are now estopped. The petitioners agreed to render the services on the salary quantified in terms of the tri-party agreement. He would further submit that, the services of the petitioners have in fact been terminated. Having been conscious of their termination, the petitioners have suppressed the said fact. He would further submit that, continuation of the petitioners in service till date is only on the basis of interim order passed by this Court. According to the learned Special Counsel, since the petitioners claim to have been in Government service, they have an equally efficacious alternate

remedy of approaching the Administrative Tribunal to have their grievance redressed. He would further submit that, the State is not under obligation to pay the petitioners equal pay for equal work. According to him, those who have been paid the salary in terms of Pay Commission recommendations, were duly appointed. It is not a case of regular appointment of petitioners. The learned Special Counsel would further submit that, the State Government has returned the land and the building to its original owner, which was taken over pursuant to the tri-party agreement dated 24/2/2004. The owner of the land has been paid yearly rent. The petitioners could not be said to have been similarly placed to that of the employees appointed by following due process. In support of his submissions, the learned Senior Counsel has relied on the following authorities :

- (1) Secretary, State of Karnataka & ors. Vs. Umadevi (3) & ors. [2006) 4 SCC 1
- (2) Mohd. Ashif & ors. Vs. State of Bihar & ors. (2010) 5 SCC 475
- (3) Ramkrishna Chauhan Vs. Seth D.M. High School & ors. [2013 (2) Mh.L.J. 713]
- (4) L. Chandra Kumar Vs. Union of India & ors. 1997 (0) BCI 3

10. We have considered the submissions advanced. Perused the documents on record. Let us now address the issues raised in this Writ Petition.

Equally efficacious alternate remedy:

11. The learned Senior Advocate for the petitioners relied on the judgment in the case of Rajesh Mankar (supra) to submit that, since the Writ Petition has been admitted, the same needs to be heard on merits.

12. This may not be the correct legal position in view of the judgment of the Apex Court in case of Genpact India Pvt. Ltd. (supra), wherein it has been observed in paragraph Nos.15 and 16 as follows :

15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case MANU/SC/0255/1964 : AIR 1964 SC 1419, Titaghur Paper Mills case MANU/SC/0317/1983 : (1983) 2 SCC 433 : 1983 SCC (Tax) 131 and other

similar judgments that the High Court will not entertain a petition under article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

Recently, in *Authorised Officer, State Bank of Travancore & Anr. v. Mathew K.C.* MANU/SC/0054/2018 : (2018) 3 SCC 85, the principles laid down in *Chhabil Dass Agarwal* MANU/SC/0802/2013 : (2014) 1 SCC 603 were reiterated as under:

“The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well-defined exceptions as observed in *CIT v. Chhabil Dass Agrawal* [MANU/SC/0802/2013 : (2014) 1 SCC 603 ...].

16. We do not, therefore, find any infirmity in the approach adopted by the High Court in refusing to entertain the Writ Petition. The submission that once the threshold was crossed despite the preliminary objection being raised, the High Court ought not to have considered the issue regarding alternate remedy, may not be correct. The first order dated 25.01.2017 passed by the High Court did record the preliminary objection but was prima facie of the view that the transactions defined in Section 115QA were initially confined only to those covered by Section 77A of the

Companies Act. Therefore, without rejecting the preliminary objection, notice was issued in the matter. The subsequent order undoubtedly made the earlier interim order absolute. However, the preliminary objection having not been dealt with and disposed of, the matter was still at large.

In State of U.P. v. U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti and others MANU/SC/7603/2008 : (2008) 12 SCC 675 this Court dealt with an issue whether after admission, the Writ Petition could not be dismissed on the ground of alternate remedy. The submission was considered by this Court as under:

“38. With respect to the learned Judge, it is neither the legal position nor such a proposition has been laid down in Suresh Chandra Tewari MANU/UP/0076/1992 : AIR 1992 All 331 that once a petition is admitted, it cannot be dismissed on the ground of alternative remedy. It is no doubt correct that in the headnote of All India Reporter (p. 331), it is stated that “petition cannot be rejected on the ground of availability of alternative remedy of filing appeal”. But it has not been so held in the actual decision of the Court. The relevant para 2 of the decision reads thus: (Suresh Chandra Tewari case, AIR p. 331).

“2. At the time of hearing of this petition a threshold question, as to its maintainability was raised on the ground that the impugned order was an appealable one and, therefore, before approaching this Court the petitioner should have approached the appellate authority. Though there is much substance in the above contention, we do not feel inclined to reject this petition on the ground of alternative remedy having regard to the fact that the petition has been entertained and an interim order passed.”

Even otherwise, the learned Judge was not right in law. True it is that issuance of rule nisi or passing of interim orders is a relevant consideration for not dismissing a petition if it appears to the High Court that the matter could be decided by a writ court. It has been so held even by this Court in several cases that even if alternative remedy is available, it cannot be held that a writ petition is not maintainable. In our judgment, however, it cannot be laid down as a proposition of law that once a petition is admitted, it could never be dismissed on the ground of alternative remedy. If such bald contention is upheld, even this Court cannot order dismissal of a writ petition which ought not to have been entertained by the High Court under Article 226 of the Constitution in view of availability of alternative and equally efficacious remedy to the aggrieved party, once the High Court has entertained a writ petition albeit wrongly and granted the relief to the petitioner.

13. The legal position is that, Article 226 confers very wide powers in the matter of issuing writs on the High Courts. The remedy of writ is absolutely discretionary in character. The Court, in extraordinary circumstances, may exercise the powers if it comes to the conclusion that there has been a breach of the principles of natural justice. The ground of objection raised by the learned Special Counsel for the respondent- State is not without exception. The facts of the present case indicate the petitioners have been agitating their claim since 2006. Earlier the Writ Petition was filed. Therein, no such objection, as has been raised herein, was urged. It is

only in the additional affidavit-in-reply filed in April 2025, the said ground has been raised. This Court has granted interim relief in the petition. In these peculiar facts and circumstances of the case, it would not be legitimate to drive the petitioners to avail the alternate remedy and start de novo. We, therefore, propose to decide the Writ Petition on its own merit.

Direction for creation of posts and absorption of the petitioners:

14. Way back in 1984, the educational institute started ITI at Kopargaon. The petitioners were appointed by the educational institute on various dates. A tri-party agreement was executed on 24/2/2004 between the State on one hand and the educational institute and the owner of the land on the other. Although it has been averred in the petition that the petitioners are duly qualified and have been recruited by following due procedure of law, no document has been placed on record in support of the said claim. The terms of the tri-party agreement, relevant for deciding this Writ Petition are referred to and reproduced below in verbatim :

And Whereas the Government has on the faith of the

statement and representation made by the President Sanjivani Rural Education Society has accepted his application and agreed to transfer the Sanjivani Industrial Training Centre to Government by merging it into existing Government Industrial Training Institute.

Absorption of staff	Out of 33 teaching and non-teaching post of Sanjivani ITC. The post of Principal, Workshop Attendant, Storekeeper, these 3 posts will not be absorbed in Government. While remaining 30 posts along with working staff on that post will be absorbed in Government on contract basis. Each individual staff has to execute an agreement regarding his willingness to work on contract basis. During 2004-05 only 8 units will be started and only 50% staff of related trades will be absorbed on contract basis. Depending upon response of the students remaining 8 units will be started in 2005-06 and remaining 50% staff will be absorbed at that time.
Claims of Government Service :	The absorbed staff will not be given any benefits of Government service including leave, encashment of leave, medical facilities, and pension/retirement benefits etc. They will be paid only a fixed amount as described above. The services of absorbed staff will be of purely temporary in nature and they will not have any right of Government service or continuation. Their services may be terminated giving one month notice.

15. In terms of tri-party agreement, the State

Government took over the ITI. It is true that, the petitioners are not parties to the tri-party agreement. The fact is, however, that, the petitioners had filed Writ Petition No.6023/2006 for enforcement of the terms of the tri-party agreement. The petitioners had thus agreed for their absorption on contract basis. There is a communication indicating the State to have created the posts. The question is, whether direction for absorption of the petitioners thereon could be given. It is reiterated that, there is nothing on record to indicate the petitioners to have been duly appointed nor is there anything to indicate the State to have had undertaken to appoint the petitioners permanently. Reliance is placed on the G.Rs. dated 8/3/1999, 22/1/2009 and 8/7/2014 indicating the State to have taken decision to make certain employees permanent. The petitioners will have to make out their case in their own right. In the petition, there is no reference to these G.Rs. According to the State, those employees have been regularised since their appointments were by following due process of law and they held the requisite qualification. The same is not the case herein.

16. The Constitution Bench of the Apex Court in case of Umadevi & ors. (3) (supra), has observed :-

4. But, sometimes this process is not adhered to and the Constitutional scheme of public employment is by-passed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts. The Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that Courts desist from

issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

5.

6. The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily (See Basu's Shorter Constitution of India). Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That Article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedures which specify the necessary qualifications, the mode of appointment etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. The State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognized that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the Constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.

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12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public

employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.”

.....

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 regularize an appointment made after 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. Without keeping the above distinction in mind and without discussion of the law on the question or the effect of the directions on the constitutional scheme of appointment, this Court in *Daily Rated Casual Labour Vs. Union of India & Ors.* (1988 (1) SCC 122) directed the Government to frame a scheme for absorption of daily rated casual labourers continuously working in the Posts and Telegraphs

Department for more than one year. This Court seems to have been swayed by the idea that India is a socialist republic and that implied the existence of certain important obligations which the State had to discharge. While it might be one thing to say that the daily rated workers, doing the identical work, had to be paid the wages that were being paid to those who are regularly appointed and are doing the same work, it would be quite a different thing to say that a socialist republic and its executive, is bound to give permanence to all those who are employed as casual labourers or temporary hands and that too without a process of selection or without following the mandate of the Constitution and the laws made thereunder concerning public employment. The same approach was made in *Bhagwati Prasad Vs. Delhi State Mineral Development Corporation* (1989 Suppl. (2) SCR 513) where this Court directed regularization of daily rated workers in phases and in accordance with seniority.

.....

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

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

17. In view of the Constitution Bench judgment of the Apex Court, referred to hereinabove, we do not propose to refer to the other authorities relied on by the learned Special Counsel for the respondent- State on the same issue.

18. Since the record indicate the petitioners to have agreed to serve on contract basis and there being no material to indicate the State to have agreed to make them permanent, there is also no record to indicate the petitioners to have been appointed by following due procedure, we are not inclined to grant the petitioners relief of absorption in service.

PAY :

19. In most of the Talukas and in each District, the State runs ITI. Almost all the teaching and non-teaching staff of the other ITIs. and even the staff members, other than the petitioners, of the ITI in question appear to have been appointed by the State and paid salary and other perks in terms of respective Pay Commission recommendations.

20. It is true that, in terms of the tri-party agreement

and even the communication by the State, the salary of the petitioners way back in 2004 was as under :

Peon	:	2500/-.
Junior Clerk:		3000/-.
Senior Clerk:		3500/-.
Head Clerk:		4000 /-.

The same continued till this Court passed interim order dated 21/10/2021.

There is no clause at all to indicate hike in the pay of the petitioners commensurate with inflation. Article 39 clause (d) of the Constitution of India provides that, the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women.

21. The Apex Court, in case of Jagjit Singh (supra), held :

A. Service Law – Pay – Parity in pay/ pay scale – Principle of “equal pay for equal work” - Applicability to temporary employees – Entitlement of temporary employees to minimum regular pay scale (along with dearness allowance as revised from time to time) on account of their performing same duties as discharged by regular employees against sanctioned posts,

affirmed. -

Held, principle of “equal pay for equal work” expounded through various decisions of Supreme Court constitutes law declared by Supreme Court, which is binding on all courts in India – As such, it is also applicable to temporary employees performing the same duties and responsibilities as regular employees – It is fallacious to determine artificial parameters to deny fruits of labour – More so, in a welfare State – any act of paying less wages as compared to others similarly situated, constitutes act of exploitative enslavement emerging out of domineering position of the State – Thus held, temporary employees possessing requisite qualifications and appointed against posts which were also available in regular cadre, performing similar duties and responsibilities as being discharged by regular employees holding same/ corresponding posts, were entitled to claim wages on a par with minimum pay scale of regular employees holding the same posts – Constitution of India, Arts. 14 and 16.

B. Service Law – Pay – Parity in pay/ pay scale – Principle of “equal pay for equal work” - Parameters for applicability of – Summarised, on extensive survey of case law.

- Held, (i) claimant must prove that subject post occupied by him requires him to discharge equal work of equal value and sensitivity as reference post; (ii) mere fact that subject post occupied by claimant is in different department vis-a-vis reference post inconsequential; (iii) principle cannot be automatically invoked merely because subject and reference post have same nomenclature; (iv) differentiation of pay scales for posts with difference in degree of responsibility, reliability and confidentiality fall within realm of valid classification justifying pay differentiation; (v) persons performing similar functions, duties and responsibilities can be placed in different pay scales such as “selection grade” in same post but such difference must have

legitimate foundation such as merit, seniority, etc; (vi) reference post with which parity is claimed must be in same hierarchy as subject post; (vii) principle inapplicable where subject post and reference post are in different establishments having different management or even where establishments are in different geographical locations though owned by same master; (viii) priority given to different types of post under prevalent Government policy can be relevant factor for placing different posts under different scales; (ix) principle inapplicable where differential higher pay scale is extended to persons discharging same duties and holding same designation with objective of ameliorating stagnation of decrease of lack of promotional avenues.

D. Service Law – Pay – Parity in pay/ pay scale – Classification of temporary employees on basis of length of service – Held, is violative of Arts. 14 and 16 of the Constitution and hence unsustainable.

- On facts held, categorisation of temporary employees who were in continuous service (with notional breaks) for 10 years or more for granting benefit of minimum regular pay scale by Full Bench of High Court unsustainable and liable to be set aside – Constitution of India, Arts. 14 and 16.

22. The Apex Court has referred and relied on number of its judgments on similar issue and taking the same view. In para 51.1, it has been observed :

“51.1 It is apparent, that this Court in *State of Punjab v. Surjit Singh* (2009) 9 SCC 514, did hold, that the determination rendered in paragraph 55 of the judgment in case of *State of Karnataka V. Umadevi* (3) (2006) 4 SCC 1, was in exercise of the power vested in

this Court, under Article 142 of the Constitution of India. But the above observation does not lead, to the conclusion or the inference, that the principle of ‘equal pay for equal work’ is not applicable to temporary employees. In fact, there is a positive take-away for the temporary employees. The Constitution Bench would, in the above situation, be deemed to have concluded, that to do complete justice to the cause of temporary employees, they should be paid the minimum wage of a regular employee, discharging the same duties. It needs to be noticed, that on the subject of pay parity, the findings recorded by this Court in the Umadevi (3) case, were limited to the conclusions recorded in paragraph 55 thereof (which we have dealt with above, while dealing with the case law, on the principle of “equal pay for equal work”).

23. In case of Grih Kalyan Kendra Workers’ Union (supra), the Apex Court held :

(B) Constitution of India, Art. 14, Art. 16, Art. 12, Art.39(d) – Equal pay for equal work – It has assumed status of fundamental right – Is applicable with full vigour to establishment which is instrumentality of State.

24. In case of **Olga Tellis & ors. Vs. Bombay Municipal Corporation & ors. (1985) 3 SCC 545**, it has been held :

“No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce

any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding. Such concession, if enforced, would defeat the purpose of the Constitution.”

25. Moreover, in the judgment in case of Umadevi (supra), relied on by learned Special Counsel for the respondent – State, it is observed in para 18 as under :

“18. . . . While it might be one thing to say that the daily rated workers, doing the identical work, had to be paid the wages that were being paid to those who are regularly appointed and are doing the same work

44. The concept of “equal pay for equal work” is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf.”

26. It is true that, the State, vide its communication dated 23/3/2010, seems to have terminated the services of the petitioners. The matter has, however, a chequered history. The State being a model employer, ought not to have resorted to such action when it had in principle, agreed to absorb the

petitioners on contract basis. Even the State had created the posts. The so called termination of services of the petitioners is on the ground that they did not report on duty after executing requisite undertaking. In the meanwhile, the petitioners had approached this Court. Notice was issued. Head Master of respondent No.5 (ITI) was present. That time no whisper was made about termination of the services of the petitioners. It appears that, the respondent State did not have a good ground like misconduct or alike to issue order of termination of services of the petitioners. This Court, vide interim order, directed the State to allow the petitioners to resume duty and not to insist upon execution of an undertaking. In the peculiar facts and circumstances of the case, we find the said communication terminating the petitioners' services to be liable to be set aside. It should not be taken that the State has no right to terminate the services of the petitioners. It may exercise its right on the touchstone of the legal principle.

27. We are concerned with the petitioners' prayer for equal pay for equal work. In the authorities referred to hereinabove, it has been held that, the said claim has now

been crystalised into a constitutional right. Admittedly, for more than 20 Trades, training is imparted to the students in the ITI in question. Admittedly, there are other staff members/ employees (teaching and non-teaching) serving with the very ITI. True, their services are transferable. Admittedly, they are being paid salary in terms of Pay Commission recommendations. There is no dispute that the petitioners have been rendering the services equal to the services rendered by those employees. It is true that, salaries of those employees must have been different and even higher in view of them to have rendered services more than the years petitioners have put in.

28. A glaring circumstance needs to be referred to. Up till recent past, the petitioners were paid salary in terms of the quantum given in tri-party agreement. On 21/10/2021, this Court passed the order. Paragraph Nos.4, 5 and 8 thereof read thus :

“4. Shri. Dhorde, the learned Senior Advocate has placed before us a chart of the salary of these petitioners, which are ranging from Rs.5,500/- p.m. paid to the ‘Group Instructor’ to Rs.2,000/- p.m. to the ‘Peon’. The said chart is taken on record and marked as ‘X-1’ for

identification.

5. A single glance at the above stated chart would shock the conscience of any prudent person. As has been said quite often, it is impossible for a person to keep his mind, body and soul together and ensure the survival of his family in a monthly income of Rs.2,000/- p.m. to Rs.5,500/- p.m. Our judicial conscience is also shocked.

.....

8. We find favour with such recommendation without prejudice to the rights and claims of the petitioners set out in this petition. Having considered their earlier salary scales which would surely not enable a human being to survive even for a week, we find that the proposal forwarded deserves urgent attention and sanction.”

Thereafter only the State enhanced the salary of the petitioners to some extent.

29. In view of the authorities relied on by the petitioners to claim pay parity on the ground of the said right to have been recognised as a constitutional right, we grant the petitioners the said relief.

Ex-gratia payment to those who have passed away pending the petition :

30. It is unfortunate that, four of the petitioners have died in harness. In view of the contractual employment, their

legal representatives would not be entitled for the monetary benefits and even other benefits as well which are paid to the permanent employees. It would be travelling beyond our powers to direct the State to pay the legal representatives of the deceased employees a lumpsum amount towards ex-gratia payment. We are, therefore, not inclined to grant such a prayer or even other benefits which are available to the permanent employees.

31. For all the aforesaid reasons, the Writ Petition stands partly allowed in terms of the following order :

ORDER

(i) The Writ Petition is partly allowed. The communication dated 23/3/2010 issued by the respondent No. is set aside.

(ii) The respondents No.1 to 3 are directed to pay the petitioners salary on a par with minimum pay-scale of regular employees (in the concerned I.T.I.) holding the same post/s plus Dearness Allowance as has been/ may be revised from time to time from the date of the petition to the date of this order and shall continue to pay until they are in service

(iii) The amount payable to the deceased employees

(petitioners) be paid to their legal representatives (heirs) on production of succession certificate.

(iv) The amount shall be paid within a period of six months from the date of this order, failing which the amount shall carry interest at the rate of 6% p.a. thereafter to the date of payment.

(v) Due set off be given of the amount/ salary paid to the petitioners/ deposited with this Court.

Rule made absolute in above terms.

(SANDIPKUMAR C. MORE, J.)

(R.G. AVACHAT, J.)

At this stage, learned Advocate for Respondents No.1 to 3 & 5 urged for stay of this order. Since six months' time has been granted for compliance of the order, we are not inclined to grant stay.

(SANDIPKUMAR C. MORE, J.)

(R.G. AVACHAT, J.)

fmp/-