



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4337 OF 2023

1. Vinod Nakushrao Bhosle, Aged 45 yrs, Occu. Service,
R/o Pardhi Colony, Camp Amravati, Tah. & Dist. Amravati.
2. Deepak Manoharrao Photfode, Aged 45 yrs, Occu.
Service, R/o Gautam Ward, Hinganghat, Tah.
Hinganghat, Dist. Wardha.
3. Nitin Shankarrao Dabharde, Aged 43 yrs. Occu.
Service, R/o Pradhnya nagar, nanduri road,
saint Tukdoji ward, Hinganghat, Dist. Wardha.
4. Sudhir Kisanrao Thorat, Age 46 years, Occu. Service,
R/o Gajanan Nagar, Bicchu Tekadi Camp, Amravati,
Tah. & Dist. Amravati.
5. Manoj Marotrao Sawant, Age 43 yrs, Occu. Service,
R/o Sawant Plot, Namdev Mandir Road, Gadge
Nagar, Amravati, Tah. & Dist. Amravati.
6. Pravin Sudhakar Adhau, Age 46 yrs., Occu. Service,
R/o Praful Colony, Sai Nagar, Amravati, Tah. &
Dist. Amravati.
7. Vinod Ramesh Harne, Age 43 yrs., Occu.Dr.R/o Panjabrao
Hospital, Amravati, Tah. & Dist. Amravati.
8. Sachin Nanasaheb Raut, Age 44 yrs, Occu. Service,
R/o Kalefile, Washim, Tah. & Dist. Washim.
9. Sheikh Nayum Sheikh Nawab, Age 42 yrs. Occu.
Service, R/o Isapur, Tah.Digras, Dist.Yavatmal.
10. Sheikh Ayyub Sheikh Ghudu, Age 43 yrs. Occu.Service,
R/o Malipura, Achalpur, Tah.Achalpur, Dist.Amravati.
11. Manoj Nandlal Tank, Age 44 yrs., Occu. Service,
R/o Walmiknagar, Mehkar, Tq. Mehkar, Dist. Buldana.
12. Sumedh Samadhan Wankhade, Age 47 yrs.
Occu.Service, R/o shikshak Colony, Tathagat Nagar,
Khamgaon, Dist. Buldana.
13. Jayendra Punjaram Rokade, Age 45 yrs. Occu.
Service, R/o Sant Gajanan Sankul, Gita Nagar,
Akola, Tah. & Dist. Akola.

14. Samarth Vilas Manwatkar, Age 44 yrs., Occu. Service, R/o Samata Colony, Caulkhed, Ring Road, Akola, Tah. & Dist. Akola.
15. Bandu Mahadeo More, Age 45 yrs., Occu. Service, R/o At Dasbdk, Post Bhaurad, Tah. & Dist. Akola.
16. Pankaj Devidas Navalkar, Age 42 yrs, Occu. Service, R/o Vanashri Colony, Kandli, Post. Paratwada, Tah. Achalpur, Dist. Amravati.
17. Haridas Nivrutti Jagtap, Age 45 yrs., Ajisapur, Post Nandrakoli, Tah. & Dist. Buldana.
18. Mangal Mahadevrao Meshram, Age 45 yrs., Occu. Service, R/o Talavfail, Panchashil Chowk, Yavatmal, Tah. & Dist. Yavatmal.
19. Umesh Awdhuttrao Mohod, Age 43 yrs, Occu. Service, R/o Prabuddha Nagar, Near Dr. Babasaheb Ambedkar Statue, Wadhali, Amravati, Tah. & Dist. Amravati.
20. Akash Shivcharan Makeswar, Age 41 yrs, Occu. Service, R/o Behind VMV College, Ganeshpeth, Naredi Nagar, Amravati, Tah. & Dist. Amravati.
21. Rajendra Gopalrao Sakhare, Age 45 yrs, Occu. Service, R/o Chincholi (Bk), Tah. Anjangaon Surji, Dist. Amravati.
22. Vinod Harishchandra Parakhi, Age 39 yrs, Occu. Service, R/o Bodhe Nagar, Chikhalgaon, Tah. Wani, Dist. Yavatmal.
23. Punjab Namdeo Tayade, Age 48 yrs, Occu. Service, R/o 7A, Mayur Residency, Mahadev Khor, Gajanan Nagar, Amravati, Tah. & Dist. Amravati.
24. Sunil Panditrao Susatkar, Age 47 yrs., Occu. Service, R/o Flat No.107, Godawari Apartment, Yogiraj Colony, Tapowan, Tah. & Dist. Amravati.
25. Sudhakar Madhukar Chaudhari, Age 44 yrs, Occu. Service, R/o Khallar Balaji, Post. Uttamsara, Tah. Bhatkuli, Dist. Amravati.
26. Ravindra Sadashivrao Kamatkar, Age 38 yrs. Occu. Service, R/o Gaikwad Fail, Near Bus Stand Wani, Tah. Wani, Dist. Yavatmal.
27. Ajay Narayanrao Dhawas, Age 44 yrs., Occu. Service, R/o Chikhalgaon, Tah. Wani, Dist. Yavatmal.
28. Dinesh Sureshrao Bamnote, Age 42 yrs, Occu. Service, R/o Nimbhora Raj, Tah. Dhamangaon Rly. Dist. Amravati.

29. Sandeep Madhukar Mundawane, Age 41 yrs, Occu. Service, R/o Virul (Ronghe), Tah. Dhamangaon Rly, Dist. Amravati.
30. Umesh Sadashivrao Neware, Age 42 yrs, Occu. Service, R/o Dabhada, Tah.Dhamangaon Rly, Dist. Amravati.
31. Vinod Dnyandev Chimankar, Age 44 yrs., Occu. Service, R/o Kadampur Post Long Gurav, Tah. Khamgaon, Dist. Buldana.
32. Devidas Dattatray Kamble, Age 42 yrs, Occu. Service, R/o Ambedkar Nagar, Digras, Tah. Digras, Dist. Yavatmal.
33. Yogiraj Kacharu Patange, Age 44 yrs., Occu. Service, R/o Talao Layout, Pusad, Tah.Pusad, Dist. Yavatmal.
34. Vijayrao Vasantrao Akhadkar, Age 43 yrs., Occu. Service, R/o Bhojala, Tah.Pusad, Dist. Yavatmal.
35. Santosh Datta Sawant, Age 46 yrs, Occu.Service, R/o Poharadevi, Tah.Manora, Dist. Washim.
36. Gajanan Parashram Kele, Age 44 yrs, Occu.Service, R/o Jambhrun Parande, Post Kata, Washim, Tah. & Dist. Washim.
37. Anil Govindrao Pinjarkar, Age 45 yrs, Occu.Service, R/o Near Balaji Mandir, Washim, Tah.&Dist. Washim.
38. Ravi Dipakrao Sonone, Age 42 yrs, Occu. Service, R/o Near Ghantibaba Mandir, Digras, Tah.Digras, Dist. Yavatmal.
39. Virendra Kashinath Shirsat, Age 43 yrs, Occu.Service, R/o Old I.U.D.P. Colony, Beside Bang Hospital, Washim, Tah. & Dist. Washim.
40. Azharoddin Anwaroddin Momin, Age 42 yrs., Occu. Service, R/o Old City, Mominpura, Ward No.10, Murtizapur, Dist. Akola.
41. Gopal Ashokrao Langde, Age 45 yrs., Occu.Service, R/o Shastri Nagar, Godamfail, Yavatmal, Tah. & Dist. Yavatmal.
42. Suresh Dnyandeo Sonune, Age 43 yrs, Occu. Service, R/o At Post Dusha, Tah.& Dist. Buldana.
43. Ramkisan Mungilal Mavaskar, Age 44 yrs, Occu. Service, R/o Makhala (Temburdhana) Tah. Chikhaldara, Dist. Amravati.

44. Rajendra Ramchandra Gondane, Age 45 yrs., Occu.Service, R/o Bangar Nagar, Near Waghapur Naka, Yavatmal, Tah. & Dist. Yavatmal.
45. Maroti Sakharam Bachalkar, Age 45 yrs, Occu. Service, R/o Jagat Mandir Road, New Umarsara, Yavatmal, Tah. & Dist. Yavatmal.
46. Pradip Janardhan Wakode, Age 47 yrs., Occu. Service, R/o Wazar, Tah.Khamgaon, Dist.Buldana.
47. Mohammad Sameer Gaffar Sheikh, Age 44 yrs, Occu.Service, R/o Near Nagina Masjid, Mominpura, Ward No.10, Wani, Dist. Yavatmal.
48. Yogesh Dnyandeo Wankhade, Age 47 yrs., Occu. Service, R/o Zilla Parishad Colony, Khadki Bk. Tah. & Dist. Akola.
49. Avinash Wamanrao Pachghare, Age 46 yrs, Occu. Service, R/o Yavali Shahid, Tah. & Dist. Amravati.
50. Sandip ashokrao Barde, Age 45 yrs., Occu.Service, R/o Shastri Nagar, Godamfail, Yavatmal, Tah. & Dist. Yavatmal.
51. Gopal Tukaram Jadhao, Age 44 yrs., Occu.Service, R/o Annabhau Sathe Nagar, Ward No.7, Mehkar, Dist. Buldana.
52. Vishal Ramesh Ingole, Age 38 yrs. Occu.Service, R/o Saraswati Nagar, Akot, Tah. Akot, Dist. Akola.
53. Vinod Ramesh Chandan, R/o Near Water Supply Office,Sindhi Camp, Akot, Tah.Akot, Dist. Akola.
54. Raju Daduji Narnaware, Age 46 yrs. Occu.Service, R/o Pusla, Ambedkar Nagar, Ward No.5, Tah.Warud, Dist. Amravati.
55. Gajanan Bhaskar Wankhade, Age 45 yrs, Occu.Service, R/o Dongar Khandala, Tah.& Dist. Buldana.
56. Amarsing Kisansing Solanke, Age 48 yrs, Occu. Service, R/o Dasarkhed, Tah.Malkapur, Dist.Buldana.

PETITIONERS**- VERSUS -**

1. Life Insurance Corporation, Central Office Mumbai, YOGAKSHEM, Jeevan Bima Marg, Post Box No.11709, Mumbai, Through its Chairman.
2. Life Insurance Corporation, Central Office Mumbai, YOGAKSHEM, Jeevan Bima Marg, Pos Box No.11709, Mumbai, Through its Zonal Manager.

3. Life Insurance Corporation, Near Dafrin Hospital, Amravati, Through its Senior Divisional Manager.
4. Life Insurance Corporation, National Insurance Building, Sardar Vallabhai Patel Marg, Nagpur, Through its Senior Divisional Manager.

RESPONDENTS

Shri D.N. Mudghale, Counsel for the petitioners.

Shri C.S. Kaptan, Senior Advocate with Shri R.N.Badhe, Counsel for the respondents.

CORAM : NITIN W. SAMBRE AND VRUSHALI V. JOSHI, JJ.

DATE : APRIL 07, 2025

ORAL JUDGMENT (PER : NITIN W. SAMBRE, J.)

RULE. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. The petitioners' prayer in the present writ petition filed under Article 226 of the Constitution of India are as under :-

“(i) Allow the petition in the interest of justice.

(ii) issue writ of mandamus or any other appropriate writ, order or direction to respondents to regularize the service of the petitioners as they are completed the 13 to 17 years in service on temporary basis as on today.

(iii) issue writ of mandamus or any other appropriate writ, order or direction to the respondent nos.1, 2 and 3, Life Insurance Corporation of India shall conduct special written examination of petitioners at par with the petitioners in W.P. No.5407/2022 passed by this Hon'ble Court (Annexure-J).

(iv) In view of peculiar facts and circumstances of the case, the petition may kindly be heard and decided at the stage of admission.

(v) direction to the respondents to conduct the examination of the petitioners as per the procedure followed in Civil Appeal Nos.953-968 of 2005 of Apex Court dtd. 18.01.2011 and the judgment passed by Hon'ble Gujarat High Court in Special Civil Application No.4553 of 2015 dated 29.06.2018 and allied matters. (Annexure-M)

(vi) Grant any other relief, which this Hon'ble Court deems fit in the facts and circumstances of the case."

3. All the petitioners were registered with the District Employment Exchange in Nagpur and Amravati District and their candidature was accordingly sponsored which led to their selection on Class-IV post. Each petitioner has put in more than ten years of continuous service with the respondents in the said capacity as some of the petitioners were appointed way back in 2003, whereas one of the petitioners was appointed in 2010. It appears that the Apex Court in **Civil Appeal Nos.953-968 of 2005** [*LIC of India & Another Etc. Versus D.V. Anil Kumar Etc.*] had issued directions on January 18, 2011 which read thus:-

"Mr. Ravinder Sethi, learned Senior Counsel appearing for the Life Insurance Corporation of India has placed before us an affidavit dated 18th January, 2011, filed by Shri C.B. Paliwal, Secretary (Legal), LIC of India. In the said affidavit, it is stated that as a one time measure, appellant No.1 has formulated a Scheme whereunder all the eligible temporary Class IV employees as also the open market candidates who had taken the examination for recruitment as Class IV employees in the year 1996, and are respondents in these cases shall be absorbed. The terms and conditions of the said Scheme are enumerated in the affidavit and read as follows:

"One time limited examination for those temporary persons who are working in LIC of India for more than five years and who had possessed minimum eligible qualification and age as prescribed at the relevant time of their entry into LIC of India would be considered. For this purpose, LIC of India will hold a limited written examination which will be in the vernacular language with a limited syllabus which will be announced in advance.

5. The successful short listed candidates shall be called for the interview. Such of those persons who are successful in the

interview shall be initially appointed and posted anywhere in the respective Zone.

6. Such of those temporary employees who do not apply and or not successful shall cease to be in the employment. It is clarified that those temporary persons who are not governed under these submissions, shall also cease to be in the employment.

7. Those who are recruited shall be governed by the rules as applicable to Class IV employees and they shall not be entitled to claim any other benefit regarding their past service rendered as temporary employees.

8. In so far as open market candidates who had appeared in the written test at the relevant time and who were successful in the same shall be called for interview along with temporary employees. Such of those persons who shall be successful in the interview shall be offered appointment and the conditions as applicable to temporary persons in so far as offer of appointment shall be applicable to the open market persons as well.”

The above scheme for absorption is acceptable to learned counsel appearing for respondents.

In that view of the matter, these appeals are disposed of with the direction that the respondents shall be absorbed in terms of the afore-extracted policy as expeditiously as practicable and in any case not later than six months from today.

The original affidavit is also taken on record.

All the appeals are disposed of in the above terms with no order as to costs.”

Since the aboveresferred directions issued by the Apex Court were to be implemented in the establishment of respondents throughout the country, the petitioners moved their respective applications for regularization of their services. However, the candidature of each of the petitioner was rejected on the ground that they have put in less than five years' service as on 08.01.2011, i.e. the date of the order passed by the Apex Court.

4. The same has led to the petitioners preferring a petition being **Writ Petition No.2703 of 2011** [*Nilesh Bhaskarrao Chaudhari & Others Versus Life Insurance Corporation & Others*] thereby questioning the decision of the respondents of disqualifying their candidature. The said writ petition preferred by the petitioners came to be dismissed on 14.06.2011 by the Division Bench of this Court. The order of dismissal reads as under :-

“Heard.

Challenge is to stipulation in the scheme for appointment of Peons in Life Insurance Corporation of India. The scheme has been pronounced as per the order of the Hon’ble Apex Court dated 18.1.2011 and as per clause 5(ii), it is stipulated that temporary persons working in Class IV cadre who are not governed under said notice of employment shall cease to be in employment.

Contention before us is Hon’ble Apex Court has permitted implementation of scheme for absorption as one time measure and there is no question of anybody being thrown out of employment because of the said scheme.

Fairly our attention is also drawn to the order of the Hon’ble Apex Court dated 18.1.2011. We find that an affidavit was filed before the Hon’ble Apex Court by LIC of India and as per clause (6) therein, the temporary employees not applying or not getting success, were to cease to be in employment. It is also clarified in that clause that those temporary persons who are not governed under it, shall cease to be in employment. Hon’ble Apex Court has accepted this affidavit and permitted its implementation.

In view of this, we find challenge as presented, misconceived. Petition rejected.”

5. The petitioners feeling aggrieved thereby preferred a special leave petition being Special Leave to Appeal (Civil) No.16446 of 2011. The said special leave petition was withdrawn with following order which was delivered

by the Apex Court on 23.04.2012.

“After addressing us for some time, learned counsel appearing for the petitioners seeks leave to withdraw the petition stating that the petitioners would like to pursue some other appropriate remedy as may be available to them in accordance with law. Accordingly, the special leave petition is dismissed as not pressed. Application for impleadment is also dismissed as not pressed.

Needless to add that we have not expressed any opinion on the merits of the submissions made by learned counsel. As and when afresh petition is filed, the same may be considered on its own merits.”

6. Subsequent thereto, it appears that some of the petitioners in Writ Petition No.2703 of 2011, to be more precise, S/shri Nilesh Bhaskarrao Chaudhari, Sudhir Ashokrao Bhatkar, Amol Vijayrao Patne, Narendra Ajabrao Tayade, Amol Ramdas Hurbade, Nilesh A. Fartode, Amol Gopal Belgane, Vinod Bhagwant Gadail, Ravindra Bhimrao Kokane, Prafulla Amrut Chinchamalature, Rameshwar R. Watkar, Shailendra A. Ambekar and Rajesh J. Kamble preferred Writ Petition No.5407 of 2022 seeking the relief of consideration of their candidature for permanency on the establishment of the respondents. The said writ petition came to be disposed of on 27.03.2023 by the Division Bench of this Court. The order therein reads thus:-

“We are not required to consider the submissions of the petitioners on merits in view of the additional affidavit dated 27.03.2023 filed on behalf of the respondents.

2. We extract the affidavit verbatim :

“The Respondents 1 to 3 submit that without admitting any of the grounds raised in the petition, they have taken a decision to consider appointment of the Petitioners herein under the scheme of 2011, (in terms of Hon’ble Supreme court order Dated 18.1.2011 in

C.A.No.953-968 LIC of India //vs// D.V Anilkumar and others) i.e. conducting written examination/ interview/pre-recruitment medical examination of the petitioners. Such appointment shall be offered as special case and only to those petitioners who are declared successful in such examination/interview and other norms and the appointments offered shall be with prospective date only and the same shall not be treated as a precedent.”

3. *The learned Counsel for the petitioners Mr.Desai would submit that the process may be made time-bound.*

4. *The learned Counsel for the respondents Mr.Kothari states, on the basis of instructions received, that the entire process shall be complete with the next four months. We accept the statement as an undertaking to the Court.*

5. *Considering that the contentions are not considered on merits, we are reserving liberty to the petitioners to file substantive petition, insofar as relief at prayer (C) is concerned.*

6. *The petition is disposed of in the aforesaid terms.”*

As a sequel of the aforesaid order, since the petitioners are claiming that they are being discriminated by the respondents though they are similarly situated to that of the petitioners in Writ Petition No.5407 of 2022, they have approached this Court claiming the aboveresferred reliefs.

7. The learned counsel for the petitioners in support of the prayer for consideration of petitioners' claim for regularization in the employment of the respondent-Life Insurance Corporation (LIC) has invited our attention to the joining date of each of the petitioner in their respective offices at Nagpur or Amravati. According to him, the petitioners are continuously working since 2006 and 2010 onwards till this date on temporary basis and have completed service between fifteen to nineteen years, still they are not being considered for regularization though other similarly placed employees have been granted the

benefit. According to him, even if in the first round of litigation, the petitioners tried to have the benefit of the judgment in the matter of *D.V Anilkumar*, (supra) at Annexure E to the petition and their claim was turned down on the ground that they have not completed five years of service, the aforesaid factual matrix would reflect that the petitioners now have completed more than fourteen years of service with the respondent LIC. The counsel for the petitioners, in this background, would urge that the petitioners are entitled for the benefit of consideration of their claim for permanency in the service in the light of the judgment in the matter of *D. V. Anilkumar* (supra) and other judgment delivered in the case of other similarly placed persons by the High Court of Bombay at Aurangabad in Writ Petition No 5020/2011 *with connected matters, Pandurang Kashinath Shelke and others vs. Union of India and others* dated 27.07.2018, the judgment in the matter of Special Civil Application No. 4553 of 2015 decided by the High Court of Gujarat at Ahmedabad on 29.06.2018 with connected matters, Special Civil Application No. 16059 of 2018 by the High Court of Gujarat at Ahmedabad decided on 29.11.2021 and in the matter of *Meghmathi Natvargiri Mansukhgi vs. Life Insurance Corporation of India and others* in Special Leave Application No. 16058 of 2018 decided on 29.11.2021 reported in [**2021 O Supreme (Guj) 1129**] and the judgment delivered by the High Court of Madhya Pradesh at Principal Seat Jabalpur in the matter of *Sunil Somwane and others vs. Life Insurance Corporation of India and others*, decided on 25.09.2024 with connected matters.

8. According to the learned counsel for the petitioners the other similarly placed employees who were also co-petitioners in Writ Petition No.2703/2011

decided on 14.06.2011 by this Court, are considered for grant of continuity in service whose details are already narrated in the factual matrix referred hereinabove. These co-petitioners in Writ Petition No.2703/2011 preferred Writ Petition No. 5407/2022. In this background, it is urged that the petitioners be granted benefit for consideration of their claim for regularization in the employment of the respondent-LIC having regard to their long standing service of more than fourteen years and the similar benefit being given to the other employees like the petitioners.

9. While resisting the aforesaid claim, Mr. C.S.Kaptan, learned Senior Counsel appearing for the respondents has invited our attention to the repeated unsuccessful attempts carried out by the petitioners upto the Hon'ble Apex Court. He has invited our attention to the order of this Court passed in Writ Petition No. 2703/2011 on 14.06.2011 and the order dated 23.04.2012 delivered by the Hon'ble Apex Court in the SLP preferred by the petitioners against the aforesaid order dated 14.06.2011 delivered in Writ Petition No. 2703/2011. According to Mr. Kaptan, the learned Senior Counsel, the said orders will come in the way of the petitioners in claiming the relief, as the Court has already adjudicated the claim of the petitioners and rejected the same.

According to Mr. Kaptan, the observations by the Division bench of this Court in the matter of Writ Petition No. 5407/2022, which was preferred by the co-petitioners along with other petitioners in Writ Petition No. 2703/2011 are based on the concessions and as such, said order will not bind the respondents to grant or extend the benefit to the petitioners. Mr. Kaptan, would further urge that

just because the petitioners have put in more than fourteen years of uninterrupted service by itself will not entitle them to claim the benefit of consideration of their claim for the permanency particularly when, the petitioners are not qualifying the requirements.

To substantiate the aforesaid contentions, Mr. Kaptan, has drawn support from the judgment of the Apex Court in the matter of *Neelima Srivastava vs. State of Uttar Pradesh and others* reported in **[2021 (17) SCC 693]** particularly paragraphs 29 and 35, which read as under:

“29. It becomes absolutely clear from the above clarification that similar decisions running counter to the principles settled in the decision of Umadevi (State of Karnataka v. Umadevi (3), (2006) 4 SCC 1, will not be treated as precedents. It cannot mean that the judgment of a competent court delivered prior to the decision in Umadevi (3) and which has attained finality and is binding inter se between the parties need not be implemented. Mere overruling of the principles, on which the earlier judgment was passed, by a subsequent judgment of higher forum will not have the effect of uprooting the final adjudication between the parties and set it as naught. There is a distinction between overruling a principle and reversal of the judgment. The judgment in question itself has to be assailed and got rid of in a manner known to or recognised by law. Mere overruling of the principles by a subsequent judgment will not dilute the binding effect of the decision inter partes.

35. Thus, it is very well-settled that it is not permissible for the parties to reopen the concluded judgments of the court as the same may not only tantamount to an abuse of the process of the court but would have far-reaching adverse effect on the administration of justice.”

As such, he would urge that the decision already rendered by the Division Bench of this Court against the petitioners in 2011 which was confirmed by the Apex Court cannot be re-opened. Mr. Kaptan would further urge that the Apex Court in the matter of *M. Nagabhushana vs. State of Karnataka* reported in

[**2011 (3) SCC 408**] has considered the applicability of doctrine of res judicata and has made the following observations in paragraphs 11, 12, and 13.

“11. We find that disregarding the aforesaid clear finding of this Court, the appellant, on identical issues, further filed a new writ petition out of which the present appeal arises. That writ petition, as noted above, was rejected both by the learned Single Judge and by the Division Bench in clear terms. It is obvious that such a litigative adventure by the present appellant is clearly against the principles of Res Judicata as well as principles of Constructive Res Judicata and principles analogous thereto.

12. The principles of Res Judicata are of universal application as they are based on two age old principles, namely, ‘interest reipublicae ut sit finis litium’ which means that it is in the interest of the State that there should be an end to litigation and the other principle is ‘nemo debet bis vexari, si constet curiae quod sit pro un aet eadem cause’ meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will his succeed infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res Judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing Court for agitating on issues which have become final between the parties.”

10. According to Mr. Kaptan, Articles 14 and 16 of the Constitution of India will have no applicability in the facts of the case in hand, in view of unsuccessful earlier

round of litigation contested by the petitioners, and has drawn support from the judgment of the Hon'ble Apex Court in the matter of *Ranbirsingh Vs. S. K. Roy, Chairman, Life Insurance Corporation of India and others* reported in [2022 Live Law (SC) 417] particularly paragraph 57 which reads as under:

*“57. The Court is now confronted with claims on behalf of the workers that the principle which has been enunciated in the Srivastav Award and which has been restored by the two-judge Bench in **TN Terminated Employees Association** (supra) much apply to all workers subsequently engaged by applying Section 18(3)(d) read with Section 17A of the ID Act. Hence, a balance will now have to be drawn by this Court, in the exercise of its jurisdiction under Article 142 of the Constitution, which while on the one hand factors in the finality which has attached to the judgment in **TN Terminated Employees Association** (supra) but on the other hand also factors in the essential concerns which have been expressed before this Court by LIC. The formula of providing absorption to part-time, badli or temporary workers who have put in 85 days in any two calendar years in a Class III post or 70 days in any three calendar years in a Class IV post will, unless a balance were to be drawn, become an avenue for disregarding the need for an open and transparent process of recruitment by a public section corporation governed by the rule of law and the mandate of Articles 14 and 16 of the Constitution. The judgments of this Court, in the context of public employment, lay stress on providing equality of opportunity. As we have recorded earlier in the course of the statements of facts, LIC had been restrained, due to the interim orders which were passed in the course of the various proceedings, from taking recourse to recruitment through the open market. LIC having been restrained by judicial orders from pursuing an open recruitment process, the situation which has now arisen is that unless a balance were to be drawn, absorption of part-time and badli workers would become a substitute for a recruitment process based on sanctioned posts, consistent with the principles of reservation and pursued on the basis of a structured recruitment which gives equal opportunities to all applicants. Such a consequence is a serious detriment to constitutional parameters and to the duty of LIC as a public employer to follow a process which is fair and in consonance with Articles 14 and 16 of the Constitution. An open and competitive process for recruitment will enable LIC to recruit the best among the available*

talent. Substituting this by a back-door entry will be detrimental to the interests of the corporation which is governed by statute.

As such, he has sought dismissal of the writ petition.

11. We have considered the rival claims in the matter.

12. On facts, we are first required to be clearer particularly about the conduct of the respondent employer. The fact about the petitioners having put in continuous service in Class-IV category for a period of more than fourteen years is not disputed by the respondents. It is also not in dispute that in the earlier round of litigation initiated by the petitioners way back in 2011 they were held to be not qualified as the requirement as was directed by the Apex Court in the matter of *D.V.Anilkumar, etc* (supra) was not satisfied by the petitioners by putting in five years of compulsory service. Such status of the petitioners has led to their writ petition bearing Writ Petition No. 2703 of 2011 being dismissed on 14.06.2011 which was confirmed in SLP (Civil) No. 16446 of 2011 decided on 23.04.2012.

However, we are equally required to be sensitive to the fact that the SLP was withdrawn by the petitioners and they were permitted to take appropriate remedy as is available in accordance with law. The order passed by the Apex Court, so also by this Court in Writ Petition No. 2703 of 2011, read thus:

Order in Writ Petition No. 2703 of 2011

“Heard.

Challenge is to stipulation in the scheme for appointment of Peons in Life Insurance Corporation of India. The scheme has been pronounced as per the order of the Hon’ble Apex Court dated 18.1.2011 and as per Clause 5(ii), it is stipulated that temporary persons working in Class IV cadre who are not governed under the said notice of employment shall cease to be in

employment.

Contention before us is Hon'ble Apex Court has permitted implementation of scheme for absorption as one time measure and there is no question of anybody being thrown out of employment because of the said scheme.

Fairly our attention is also drawn to the order of the Hon'ble Apex Court dated 18.1.2011. We find that an affidavit was filed before the Hon'ble Apex Court by LIC of India and as per clause (6) therein the temporary employees not applying or not getting success, were to cease to be in employment. It is also clarified in that clause that those temporary persons who are not governed under it, shall cease to be in employment. Hon'ble Apex Court has accepted this affidavit and permitted its implementation.

In view of this, we find challenge as presented, misconceived. Petition rejected."

Order in SLP(Civil) No. 16446/2011

"After addressing us for some time, learned counsel appearing for the petitioners seeks leave to withdraw the petition stating that the petitioners would like to pursue some other appropriate remedy as may be available to them in accordance with law. Accordingly, the special leave petition is dismissed as not pressed. Application for impleadment is also dismissed as not pressed.

Needless to add that we have not expressed any opinion on the merits of the submissions made by the learned counsel. As and when afresh petition is filed the same may be considered on its own merits."

13. It appears that subsequent thereto, the co-petitioners in Writ Petition No. 2703 of 2011 have preferred Writ Petition No. 5407 of 2022. In the said writ petition, the respondents have taken a stand supporting their claim of consideration for grant of recruitment. The writ petitioners in Writ Petition No. 5407 of 2022 were the petitioners in Writ Petition No.2703 of 2011 at Serial Nos. 1, 4, 5, 6, 10, 13, 14, 17, 22, 43, 44, 47 and 53 whose names in the cause title as could be gathered from page 161, are as under:

1. Shri Nilesh Bhaskarrao Chaudhari
2. Shri Sudhir Ashokrao Bhatkar
3. Shri Amol Vijayrao Patne
4. Shri Narendra Ajabrao Tayade
5. Shri Amol Ramdas Hurbade
6. Shri Nilesh A. Fartode
7. Shri Amol Gopal Belgane
8. Shri Vinod Bhagwant Gadail
9. Shri Ravindra Bhimrao Kokane
10. Shri Prafulla Amrut Chinchamalapur
11. Shri Rameshwar R. Watkar
12. Shri Shailendra A. Ambekar
13. Shri Rajesh J. Kamble

In Writ Petition No. 5407 of 2022, the respondents have taken the stand in their affidavit which led to the passing of the order dated 27.03.2023. The order dated 27.03.2023 along with the extract of affidavit filed by the respondents have been referred above.

14. As a sequel of the aforesaid order dated 27.03.2023 and the affidavit filed by the respondents in the said writ petition leads this Court to draw a conclusion that the respondents are conducting themselves even though they are State within the meaning of Article 12 of the Constitution of India in a most discriminatory manner thereby violating the mandate provided under Articles 14 and 16 of the Constitution of India. The petitioners who were initially contesting the claim for grant of employment in 2011 along with the present petitioners are treated favourably by the respondents by making concessions in the above referred writ petition i.e. Writ Petition No. 5407 of 2022.

Apart from above, the similarly placed candidates like the petitioners who are in the employment of the respondents have approached the various High Courts

including that of High Court of Gujarat at Ahmedabad and High Court of Madhya Pradesh at Jabalpur and based on the scheme laid down by the Hon'ble Apex Court in the matter of *D.V Anilkumar (supra)*, the High Courts extended the benefit to the similarly placed candidates of consideration of their claim for the permanency in the employment. The details of the judgment are already referred by us in the factual matrix viz. the submissions of the counsel for the petitioners.

15. In the aforesaid background, if we consider the position of law laid down by the Hon'ble Apex Court in the matter of *State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others* reported in **2015 (1) SCC 347**, paragraph 22 of the said judgment is worth referring to, which reads as under:

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both the appellants as well as the respondents, can summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more empathically as the service jurisprudence evolved by this Court from to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time

succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delay, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated person, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

16. The Hon’ble Apex Court has held that identically situated persons need to be treated alike by extending the benefits which are granted to the similarly placed persons. However, the said principle is required to be applied in the service matter as the similarly situated persons who have not approached the Court would not be entitled for the similar benefit on the ground of well recognized exceptions in the form of delay and laches as well as acquiescence. The Hon’ble Apex Court has authoritatively pronounced that the similarly placed employees must be treated as fence-sitters, however it has further held that this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with an

intention to give benefit to similarly placed persons having approached the Court or not for seeking the same benefit. As such, the obligation is cast upon the respondent employer to treat the petitioners similar to that of the other candidates who were the petitioners in Writ Petition No. 5407 of 2022.

In case, if the respondents intend to have some different stand in the matter as has been taken in the case in hand, the same will lead to violation of Articles 14 and 16 of the Constitution being endorsed by this Court. The respondents who are the State within the meaning of Article 12 can not conduct themselves contrary to the mandate provided under Article 14 and 16 of the Constitution of India.

17. No doubt, Mr. Kaptan, learned Senior Counsel, has relied on the order of this Court delivered in Writ Petition No. 2703 of 2011 and the order passed in SLP (Civil) No.16446 of 2011 so as to argue that the petitioners are not entitled to the benefit in view of attraction of principle of res judicata. It is no more *res integra* that the principle of res judicata is applicable to Writ Petitions also as has been reiterated in *P. Bandopadhyaya v. Union of India*, [(2019) 13 SCC 42]. However, for the purpose of adjudicating on the issue of res judicata, it is necessary that the same issue has been adjudicated in the former suit. (*Prem Kishore v. Brahm Prakash* [2023 SCC OnLine SC 356]). We are required to be sensitive to the factual matrix of the case and what was sought to be adjudicated therein. In the said writ petition, the petitioners' claim of consideration for grant of permanency was rejected on the ground that they have not completed the tenure of five years in the employment of the respondents. The said claim of the petitioners was rightly rejected by the High Court being contrary to the mandate provided under the

judgment of the Hon'ble Apex Court in the matter of *D. V. Anilkumar* (supra). The Hon'ble Apex Court while dealing with the challenge to the order of the High Court in Writ Petition No. 2703 of 2011 dated 14.06.2011 has permitted withdrawal of the SLP and granted liberty to take recourse to such remedy as is permissible and available in law. Not only the Hon'ble Apex Court has permitted withdrawal of the SLP, but it has also permitted filing a fresh petition which was directed to be considered on its own merits.

18. That being so, the earlier round of litigation taken out by the petitioners will not come in their way and in any case will not attract the principle of res judicata, particularly when there was no adjudication on the issue under controversy as they had not completed the tenure of five years in the employment of the respondents at that point of time. The fact remains that the petitioners now have completed more than five years of service, in the present case more than fourteen years of service has been completed and the other similarly placed employees, who were co-petitioners in Writ Petition No. 2703 of 2011, were treated differently by favouring/by considering their claim for permanency. That being so, the reliance placed by the learned Senior Counsel for the respondents on the judgment of the Hon'ble Apex Court in the matter of *Neelima Srivastava* (supra) and of the *M. Nagabhushana* (supra) will be of hardly any assistance.

Apart from above, if we consider the directions issued in the matter of *D. V. Anilkumar* (supra), particularly Clause 6, the respondents have conducted themselves in a most discriminatory manner thereby not considering the claim of the petitioners for more than fourteen years. As the respondents have for all these

years continued the petitioners in their service on temporary basis.

19. In the aforesaid backdrop, we are of the view that the petitioners have made out a strong case for exercising extraordinary jurisdiction. That being so, the petition stands allowed. We hereby direct the respondents to consider the claim of the petitioners for regularization in the light of the observations made hereinabove.

The respondents must have regard to their stand in Writ Petition No.5407 of 2022 and the mandate issued in the case of other similarly placed employees which were dealt with by the High Court of Gujarat at Ahmedabad and High Court of Madhya Pradesh at Jabalpur. Let the decision be communicated to the petitioners within a period of three months from today.

20. In case if the respondent-employer decides to confer the status of permanency or absorption on permanent basis, needless to clarify that the petitioners shall be entitled for continuity of service from the date of appointment for all practical purposes.

21. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W SAMBRE, J.)