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W.P.No.23799 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.01.2025

DELIVERED ON: 12.02.2025

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P.No.23799 of 2022

AND

W.M.P.Nos.22254 and 20755 of 2024

1.The General Secretary
ONGC All Employees Union
Throwbathi Amman Koil Street
Kovilpattu, Kodaikanal.

2.M. Saravankumar

3.S. Abdul Mazeed

4.G.Sakthivel

5.K. Ravi

6.P.B. Palanivelrajan

7.G. Chandiran

8.K. Balasubramanian

9.V. Balamurugan

10.D.K. Ramesb Babu

11.M. Rajasekar

12.M. Manimaran

13.K. Thanigaivel

14.R. Saravanakumar

15.S. Vengathnathan



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16.J. Ramasamy

17.B. Chandrakasan

18.V. Balasubramanian

19.P. Vinoth

20.A Michael Aruputhasamy

21.V.Udayachandran

(P1 & P21 cause title amended vide order dt.22.8.23

made in WMP.No.16747 of 2023)

.. Petitioners

Vs

1.The Assistant Manager

ONGC Ltd.

Cauvery Asset

Karaikkal 609 004

2.Diviya

W/o K.Alexander (deceased)

(R2 impleaded vide order dt.22.8.23

made in WMP.No.16501 of 2023)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to quash the order passed by the Industrial Tribunal-cum-Labour Court made in I.D.No.11 of 2016 dated 21.01.2022 and further direct the respondent/management to regularize the petitioners service as permanent employees of Oil and Natural Gas Corporation Ltd. and other benefits of salary, allowances and other allowances, concessions and to pay back benefits and unpaid allowances with interest at the rate of 12% within one month and career progression and promotions from the date of appointment in the ONGC Ltd. as per MR and PR Act, 1980.



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For Petitioners : Ms.R.Vaigai
Senior Counsel for
Ms.Anna Mathew & Ms.S.Meenakshi
For 1st Respondent : Mr.ARL.Sundaresan
Additional Solicitor General for
Mr.P.N.Radhakrishnan & Mr.Sai Surjan Tayi

ORDER

This writ petition had been filed challenging the award dated 21.01.2022 passed by the learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court & EPF Appellate Tribunal, Chennai, in I.D.No.11 of 2016 and to direct the respondent management to regularise the petitioners services as permanent employees of ***Oil and Natural Gas Corporation Ltd. (in short “ONGC Ltd.”)*** and other benefits of salary allowances and other allowances, concessions and to pay back benefits and unpaid allowances with interest at the rate of 12% within one month and career progression and promotions from the date of appointment in the ONGC Ltd. as per ***ONGC's Modified Regulations and Promotion Regulations (in short “MR and PR“), 1980.***

2. The dispute is in respect of 21 workers. The Union represents the workmen, who were employed as Field Operators on tenure basis by the ONGC Ltd., Cauvery Asset at Karaikal. The dispute is raised by the workmen seeking



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regularisation of their services. On reference by the Government, the dispute was heard by the Presiding Officer, Central Government Industrial Tribunal -cum-Labour Court & EPF Appellate Tribunal, Chennai and the Labour Court denied the relief to the petitioners.

3. Essential facts of the case :

The petitioners were originally engaged on a tenure basis for the post of Field Operators for 4 years in three batches in the years 2008, 2009 and 2013, respectively. At the expiry of first 4 years, their tenure was extended for a further period of 4 years and thereafter also, they have been re-engaged for every four years till 30.07.2024. The petitioners claimed regularisation and that is the origin of this industrial dispute. By virtue of an interim order passed by this Court, the petitioners continued to be in service. So far as the tenure appointment and the periodical extension is concerned, that is not in dispute and that has been recorded by the Labour Court also.

4. The Labour Court answered the reference (i) and (ii) in favour of the Union. The Labour Court deals with Ex.M7, which is a letter dated 15.04.2013, given by the GM, Head Corporate-R&P, Tel Bhawan, Dehradun, that the competent authority has approved granting relaxation of age to the extent of services rendered by the employees as Rigman on drilling rigs of ONGC, for



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the purpose of applying for the regular posts in drilling discipline as Assistant Rigman. Accordingly, the petitioners, by making use of the age relaxation given *vide* Ex.M7, have availed their opportunity for applying to the regular posts and thereafter, they have been permitted to write the written examination.

5. The Labour Court further observed that the petitioners have been engaged on *ad hoc* basis and their services have been engaged and re-engaged on tenure basis. It is further submitted that they have been allowed to apply as departmental candidates and they were allowed to appear for written examination for the purpose of regularisation of their services in regular post on that basis. So, those candidates who were found successful in the written examination and who had satisfied all the eligible criteria in respect of the required posts, have been regularised in regular posts in the respondent Corporation and hence, those employees who were not successful in that exercise, cannot claim that they have suffered unfair labour practice. On the above observation, the Labour Court held that there is no unfair labour practice and the reference (iii) and (iv) have been answered against the Union. Hence, the claim of the petitioners for regularisation has been negated. Reference was placed in the award in the case of ***Secretary, State of Karnataka Vs. Umadevi [(2006) 4 SCC 1]*** and observed that the backdoor entry cannot be

encouraged.
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6. Submission of the petitioners :

6.1. Ms.R.Vaigai, Senior counsel for the petitioner submitted that the backdoor entry as referred in *Umadevi's case (supra)* is not applicable to the petitioners case, in view of the fact that the petitioners' initial appointment itself was after an open advertisement, written examination and interview, which is a thorough selection process. The petitioners have also further raised a plea for permanency under the **Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, (hereinafter referred to as "Act 46 of 1981")**, in view of the completion of 480 days of continuous service within a period of two years.

6.2. Permission to raise the above plea has been granted in W.P.No.16743 of 2023 *vide* order dated 22.08.2023. The need for the petitioners engagement continued and that is borne by records. Even without the interim orders, the engagement of the petitioners have been continuing. The petitioners make out a distinction to the situation contemplated in *Umadevi's case (supra)*. The petitioners were workmen who continued to be in service, by virtue of the interim orders of the Court.

6.3. The petitioners have been working shoulder to shoulder with the regular workers, especially, with those persons, who have been appointed and



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called as Rigman and Topman and even now, the petitioners are discharging the functions of those posts. In fact, the petitioners have been admitted as experts in those roles and they have even been utilised to train those persons, who were newly appointed as Rigman and Topman on regular appointment by the management. The petitioners have been utilised for discharging regular functions and also to impart training to the new entrants. But, they have been denied permanency, which is unfair. Each time, when the tenure is extended, the petitioners were given to understand that they will not claim regularisation and they will not file any proceedings before the Court seeking permanency or regularisation. But, their services have been continuously utilised as that of the regular employees and it is only an unfair labour practice.

6.4. The letter of the management dated 24.12.2007 marked as Ex.W1, has been addressed to one of the petitioners viz., Rajasekar stating that his name has been sponsored to the post of Field Operator on a fixed tenure of 4 years for Cauvery Asset, Karaikal, from Employment Exchange and he has been requested to produce the qualification certificates. In the qualification criteria, it has been stated that the written test is likely to be conducted on 03.02.2008. After the petitioners got selected in the written examination, they have been called to attend the interview also. The petitioners after fulfilling the requirements, have undergone all medical examinations to get fitness



certificate, and after producing the fitness certificate they have been issued with the appointment orders.

6.5. Some of the essential terms of employment as it appears from the employment order dated 07.05.2008, given to one of the petitioners are as under:

a. It is an ad hoc engagement for a fixed tenure of maximum of 4 years.

b. The engagement would come to an end on completion of 4 years from the first day of reporting or attaining the age of 45 years or completion of a project/operation whichever occurs earlier.

c. The tenure engagement will not entitle in the regular or other appointment order re-engagement with ONGC Ltd.

d. During the period of tenure engagement, the engagement can be terminated by giving one month's time or wages in lieu thereof by the Corporation or on the part of the employee by giving such a notice to the Corporation.

e. The work demands high level of physical fitness and the deployment may be round the clock shift pattern and the standards prescribed for physical fitness is applicable.

f. The appointee may be assigned to work in any onshore/offshore location in India during the tenure.

g. The appointee shall sign an undertaking to the effect of acknowledging that the engagement is on tenure basis and that will not entitle him for any regular employment.

h. The appointee shall be governed by the relevant provisions of ONGC Service Rules (CDA Rules), 1994 and any violation of those rules will not result in termination of the tenure.



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i. The appointee shall produce the certificate of physical fitness from the prescribed medical authority.

j. The appointee shall produce discharge certificate from the previous employer in the prescribed form/affidavit.

k. The appointee shall produce a copy of the valid employment registration number.

6.6. By citing the above features of the terms of employment, it is submitted by Ms.R.Vaigai, learned Senior Counsel for the petitioners that the appointment has been made as though it is the same process for regular employment and the work assigned to the appointees are more or less similar to the regular employees.

6.7. After the expiry of the tenure, it was renewed each time without conducting any separate selection process. The extension order given to one of the petitioners who have been appointed as Field Operator *vide* Ex.W9 is produced to show the same. Each time when the extension is given, the petitioners were asked to give an undertaking similar to the one given by them at the time of the initial engagement. The petitioners had undergone training along with the regular employees in Rigman's training and training has been given to them on various stages. The petitioners have also been given computer operation training. Contributions for Contributory Pension Scheme (CPS) has



also been made each month from the salary of the petitioners and remitted it in their respective CPS accounts.

6.8. When the petitioners crossed 50 years and their engagement has been terminated in view of the maximum age of 50 years, prime time of their life has been spent during their engagement with the 1st respondent Corporation. The selection also follows the rules of reservation. The petitioners were given with various certificates, after having completed the required training. When the demand arose due to many vacancies in the regular employees, the petitioners were engaged to perform their duties also. Even though the Topman post is a higher post, the petitioners were deployed to perform their roles also. The works of the Topman post were also done on deputation and on getting proper training.

6.9. The petitioners claim for permanency revolves around the following two pertinent questions:

- i. Whether the petitioners are entitled for permanency and what are their statutory rights ?*
- ii. What are the nature of their work ?*

6.10. Regarding the factual aspects, there is no dispute and hence the



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relief can be granted by the High Court under Article 226 writ proceedings. The statutory authorities, at the best can decide the factual aspects and when there is no dispute about the facts, the relief can still be granted by the High Court. The petitioners services have been utilised by giving several extensions on various capacities and they have undergone various training programmes. Hence, the non-availability of the sanctioned posts, cannot be the reason for denying permanency to the petitioners. As per the ONGC's MR and PR, 1980, the post can be filled either by direct recruitment/promotion/deputation from the Central Government Service/State Government Service or Public Sector Undertaking or from local and other authorities or any other method, as may be decided by the ONGC and the reasons be recorded in writing.

6.11. By citing the above Regulation, the learned Senior Counsel for the petitioners submitted that the ONGC has got the power to employ any other method, including the absorption of existing employees to permanent post. Regulation No.6(13), which states about direct recruitment gives scope for department candidate on priority basis. According to the said regulation, the departmental candidates who fulfil the requisite qualification, will be given priority in the employment and only in the event of suitable candidates not available amongst departmental candidates, the unfilled vacancies will be



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notified for direct recruitment from outside.

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6.12. The pumping of oil is a manufacturing process under Section 2(k)(ii) of the Factories Act, 1948. The Mines Act deals with only general regulatory requirements. As per clause (2) of the Certified Standing Orders for Contingent Employees of ONGC, the classification “*workmen*” would include the temporary and casual employee of the ONGC. It also includes a workman, who has been on the rolls of the Commission and has put in not less than 180 days of attendance in any period of 12 consecutive months shall be a temporary workman and who has put in not less than 240 days in any period of 12 consecutive months and possessing the minimum qualification, can be considered for conversion as regular employee. Schedule-I of the Industrial Employment (Standing Orders) Central Rules, 1946, would classify workman and it includes fixed term employment also. The beneficial act like *Act 46 of 1981*, cannot be allowed to be defeated. The presidential assent has been given only because, there was no conflict and they are operating entirely on two different planes.

6.13. It is further submitted that the post of Assistant Rigman can be filled by recruitment within the ONGC employees, who possess certificate in fitting/mechanic trades and are put in three years service for consideration for



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appointment to the post. Only if the departmental candidates are not available, the names can be called for from the employment exchange. So, the stand taken by the 1st respondent Corporation that the departmental candidates have to undergo the selection process during direct recruitment itself, is contrary to its regulation. The post of Assistant Rigman is a feeder category for the promotional post of Rigman and Topman. So, the relief sought by the petitioners deserves to be granted to them.

7. First respondent's arguments :-

7.1. Mr.ARL.Sundaresan, Additional Solicitor General submitted that a notification has been issued calling for appointment to the post of Field Operators, which is not a sanctioned post in the 1st respondent Corporation. The notification itself would state that it is a tenure-based appointment or until the need continues and that the appointee can be terminated at any time by giving notice. Though the selection process is exhaustive, the appointees cannot claim any other benefits other than what is assured to them in the notification and the terms of their engagement. The petitioners were not put to surprise as to their tenure-based appointment and there was no compulsion on their part to sign any undertaking that they will not claim regularization and it forms part of the terms of the employment. After having issued notification for the tenure-based



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appointments and appointments have also been made on that basis, the same cannot be converted into regular appointment to the deprivation of others, who did not choose to apply, but, who are equally or more meritorious and competent and who did not opt to apply because of the limited tenure offered and that will be violative of Article 14 and 16 of the Constitution of India.

7.2. Merely because the 1st respondent Corporation has followed a fair procedure of rules and regulations, the petitioners claim regularization. If it is allowed, that would legalise the backdoor entry and the petitioners are estopped from claiming the same. Further, the 1st respondent Corporation will not come under the purview of “*industrial establishment*” as defined under the *Act 46 of 1981* and the petitioners cannot make a contention under the said Act and claim permanency. The petitioners have not raised any such contention before the Labour Court and it has been raised for the first time before the High Court as an additional ground. Even if it is presumed that the 1st respondent Corporation comes within the ambit of *Act 46 of 1981*, it is for the appropriate authority to deal with such application filed by the petitioners and against which, the 1st respondent Corporation shall have its defence.

7.3. All questions of permanency involve disputed questions of fact

and it cannot be redressed effectively, by invoking Article 226 of the



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Constitution of India. Even the role of the appropriate authority under the *Act*

46 of 1981 is also very limited and it cannot assume powers to adjudicate the terms and conditions of appointment. The award dated 21.01.2022 passed by the Labour Court in I.D.No.11 of 2016, which is under challenge, has been passed, only after proper appreciation and in the context of the facts and law applicable to the case and it does not deserve any interference. The periodical re-engagement of the petitioners cannot be held against the 1st respondent Corporation, even after the need has come to an end.

7.4. The tenure-based engagement may also result in relocation in connection with the services. Each time when the notification was given for tenure-based appointments, the same conditions have been prescribed and only after understanding the same, the applicants applied to the post. During the recruitment of regular posts also, some of the tenure appointees participated and got selected. Among the petitioners, some had participated in the selection process and failed and hence, they cannot claim parity with the selected candidates. In every communication that is being sent to the petitioners, it has been stated clearly that it is meant for tenure-based appointment and for the re-engagement also, the start date and end date is also specified. Hence the option was always with them either to agree or not to the terms of employment.



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Having accepted the terms of engagement and after having joined the employment, the petitioners are precluded and estopped from seeking more than what was offered and accepted.

7.5. As per the ONGC's *MR and PR, 1980*, the term “*employee*” means and includes any person holding post in executive cadre or non-executive category in the grade/scale of pay as defined in Schedule-I and it does not include deputationists/trainees/apprentices or those engaged on casual/contingent/ contractual/tenure/term basis (by whatever name they may be called or referred to) for specified job or specified period. The above regulation would also define the term “*post*” as a regular vacancy/post held under the ONGC other than a board level. The petitioners who are engaged on tenure basis, will not come under the purview of employees. Even according to the position settled down by the Hon'ble Supreme Court with regard to regularization, two things are required, viz.,

- i. The availability of sanctioned regular post; and*
- ii. The person appointed as against the said post temporarily has completed 10 years of service.*

7.6. There are no sanctioned regular posts for Field Operators and the Petitioners have not been temporarily engaged. The essential ingredients for regularisation are not present in the petitioners cases. So, there is no unfair



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labour practice. The Labour Court has recorded the reasons in its order and rightly recorded a finding that there is no unfair labour practice adopted by the 1st respondent Corporation.

7.7. Out of 60 persons who were recruited on tenure basis during the years 2008, 2009 and 2013, 26 persons have been appointed on regular basis, pursuant to their participation in selection for different posts. These petitioners who have filed the writ petitions, either participated but not selected or not participated in the recruitment for regular posts. As per the Tamil Nadu Government Gazette Notification dated 21.02.2020, Act 11/2020 (An Act to protect agricultural lands of the Cauvery Delta Region of the State of Tamil Nadu), there cannot be any more rigs in the State of Tamil Nadu. Hence, the need for engagement of the petitioners has come to an end and the 1st respondent Corporation cannot be compelled to engage them, even when the need ceased to exist.

7.8. The 1st respondent Corporation does not fall within the definition of “*industrial establishment*” as defined under Section (2)(3) of *Act 46 of 1981*, as the oil wells are situated outside Tamil Nadu. For instance, the appointments made in Cauvery Asset at Karaikal, the provisions of Tamil Nadu Act, 1948, is



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not applicable. “Factory” is defined in Section 2(m)(i) of the Factories Act, 1948, as under “

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“(i) as any premises where ten or more workers are employed, or were employed within the last year, and where a manufacturing process is carried out with the aid of power.”

7.9. The above definition of factory does not include mine and “mine” is defined under Section 2(j) of the Mines Act, 1952, reads as under :

“any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes –

... ..

(viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;

... ..

(x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;”

7.10. In view of the above definitions of “factory” and “mine”, the oil wells, rigs and the premises around it, should be considered as a mine and it will be excluded from the definition of factory. In view of such exemption from the definition of Factories Act, 1948, for the mines, the 1st respondent Corporation cannot be considered as an industrial establishment under the Act

46 of 1981. Oil Mines Regulation, 2017, has been framed under Section 57 of



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the Mines Act, which *inter alia* dealt with oil and gas production, transportation, environmental hazard management, etc. All of the oil and gas exploration and production activities are regulated under the Mines Act and therefore, Factories Act does not apply to the 1st respondent Corporation. Working in a well as a Rigman is directly connected to mine activity and hence, *Act 46 of 1981* will not be applicable.

8. Both the learned senior counsel for the petitioner and the learned Additional Solicitor General for the respondent have cited volumes of citations in support of their respective contentions and they have been referred as and when needed for discussion.

Discussion:

9. The terms of reference made by the Government to the Labour Court, Chennai, are as under :

- i. If the above mentioned petitioners were working as Field Operators at Cauvery Asset at Karaikal on tenure basis.*
- ii. If they were continuing to work even after completion of the term.*
- iii. If the fixed tenure should be regularized in the regular service of the Corporation/Establishment.*
- iv. To what relief the petitioners are entitled ?*

10. It is not denied that the petitioners were working as Field Operators



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at the 1st respondent Corporation's Cauvery Asset at Karaikal on tenure basis

and that they have been continuing to work, even after the completion of their first tenure. The Labour Court denied the relief of regularisation to the petitioners, on the finding that they are knowingly employed on tenure basis and hence, they cannot seek the benefit of the Standing Orders applicable to the temporary employees.

11. Regulation No.2 of the Certified Standing Orders for Contingent Employees of ONGC has the following classification of workmen under the folder of contingent employment. For a better understanding, the Regulation No. 2 of the standing orders is extracted below :

(2)(i) Classification of workmen

The contingent employees of the commission was hereinafter be classified as :

(a) Temporary; and

(b) Casual

(ii) A workman who has been on the rolls on the commission and has to put not less than 180 days of attendance in any period of 12 consecutive months shall be a temporary workman, provided with a temporary workman who has put not less than 240 days of attendance in any period of 12 consecutive months and to possess the minimum qualification prescribed by the commission may be considered for conveyance as regular employee.

(iii) A workman who is neither temporary nor regular shall be considered as casual workman.

12. As the above classification does not include the term-based



employees, it is claimed by the respondents that the petitioners are not the workmen within the above definition and hence they are not eligible to be considered for conversion of their employment into regular employment. The petitioners claimed that though they have been continuing with the name tenure based employees, their services have been utilised in the places of regular employees, but without granting them the benefit of permanency.

13. Before proceeding to discuss on the relief prayed by the petitioners, the fundamental argument about the coverage of the first respondent under the "***industrial establishment***" as defined under the *Act 46 of 1981* has to be dealt.

It is contended by the petitioners that though the entire establishment of the 1st respondent Corporation might not be a factory, part of its functions would fall under the purview of the Factories Act and hence it warrants registration under the Factories Act. The learned Additional Solicitor General for the 1st respondent submitted that activities of the first respondent are only mine related activities and those activities are exempted under the Factories Act.

14. *Act 46 of 1981* is applicable to all industrial establishments, establishment of a seasonal character or in which work is performed only intermittently and is situated within the State of Tamil Nadu. Cauvery Asset is



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located in Karaikal. Though the Cauvery Asset is situated within the jurisdiction of Tamil Nadu its corporation office is situated at Karaikal. As the operation was going in the Cauvery Asset which is situated in Tamil Nadu, there can not be much fuss about the jurisdictional coverage of *Act 46 of 1981* to the 1st respondent Corporation. As per the terms of engagement of the petitioners, they are supposed to take up job anywhere in India where their services are in demand.

15. Section 2(3) of *Act 46 of 1981* defines “*industrial establishment*” as various establishments viz., factory, plantation, motor transport undertaking, beedi industrial premises and establishment like shops, catering establishment and any other establishment which the Government may by notification declare to be an industrial establishment for the purpose of the Act. But, each of these establishments should fall within the definition of the respective legislations which governs them. The near relevant definition for '*industrial establishment*' for the purpose of this case would be Section 2(3)(a) which includes '*factory*' defined under the factories Act, is given as under:

(3) “ *industrial establishment* ” means –

(a) a factory as defined in clause (m) of Section 2 of the *Factories Act, 1948 (Central Act LXIII of 1948)* or any place which is deemed to be a factory under sub-section (2) of section 85 of that Act



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16. Section 2 (m) of the Factories Act, 1948 (Central Act LXIII of 1948), defines the term “factory” as below :

2(m) “factory” means any premises including the precincts thereof

(i)whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii)whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

[Explanation I - For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account;]

17. The learned Additional Solicitor General submitted that the activities that is being carried out by the 1st respondent Corporation is only mining operation and Cauvery Asset is an oil mine and hence it will not fall under the category of ‘factory’. It is asserted that there is no manufacturing process involved in the respondent corporation as contemplated under Section 2(m)(i) of the Factories Act, 1948.

18. Now, coming to the definition of “manufacturing process” under



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Section 2(k) of the Factories Act, it can be seen as under:

2(k) “manufacturing process” means any process for -

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or (vi) preserving or storing any article in cold storage;

19 ‘Mine’ is defined Section 2(j) of the Mines Act, 1952 and 2(j) (i) and (ii) could be relevant for the first respondent’s corporation and the said provision is reproduced hereunder:

Section 2 (j) of the Mines Act, 1952

Sec. 2 (j) “mine” means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes—

(i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oil fields;

(ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;

20. Attention of the Court in this regard was also drawn to Oil Mines Regulations, 2017, which has superseded the Oil Mines Regulations, 1984,

framed under Section 57 of the Mines Act, 1952. Though Oil Mines



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Regulations, 2017, lists out various activities relating to the mines, it does not speak about the activities of production, transportation and waste management etc., carried out by the company. It can not be strictly denied that these activities will not be covered under manufacturing process, though the functions of oil extraction should be considered as mining activity.

21. It is contended by the 1st respondent that the operations of the 1st respondent Corporation on the oil site, cannot be construed as manufacturing process. From the communication sent by the Tamil Nadu Pollution Control Board to the first respondent's General Manager, Production, it is seen that the crude oil is being pumped and the natural gas is transported to M/s.GAIL for distribution to various places after removing the moisture in the gas by the company. By pointing out some deficiencies in the effluent management and alleging that it is being injected in abundance, the Tamil Nadu Pollution Control Board has sought proper clarifications from the authorities of Cauvery Asset management. Some other concerns also raised by the Tamil Nadu Pollution Control Board, by narrating the various functions undertaken by the 1st respondent Corporation during the oil excavation.

22. By citing the above communication, Ms.R.Vaigai, the learned

Senior Counsel for the petitioners submitted that all the above functions would



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naturally make the 1st respondent Corporation as a manufacturing industry, apart from its mining activities. Attention was drawn to Oil Mines Regulations, 2017, which has superseded the Oil Mines Regulations, 1984, framed under Section 57 of the Mines Act, 1952. Though Oil Mines Regulations, 2017, lists out various activities relating to the mines, it does not speak about the activities of production, transportation and waste management etc., carried out by the company. It can not be strictly denied that these activities will not be covered under manufacturing process, though the functions of oil extraction should be considered as the mining activity.

23. For the reasons best known to the company it has not registered itself under the Factories Act. As the 1st respondent Corporation is carrying out various activities other than exploration, it cannot be called as a single one mining establishment by considering the work that is being carried out in one location or site and by ignoring the activities of segregation of the oil from the produced water and natural gas. Before making those products transportable to other plants it is also essential to give certain treatment.

24. As several functions are being carried out by several units of the establishment, there cannot be any watertight compartment to divide the



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functions of this kind of establishments. By taking note of the difficulty in applying a one single test to find out the nature of an establishment and in view of the complexities of modern industrial organisation, the Hon'ble Supreme Court has observed in the case of *Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpnai Vs Workmen (1959 SCC OnLine SC 80)* that in one case the unity of ownership, management and control may be the important test; in another case, functional integrality or general unity may be the important test; and in still another case, the important test may be the unity of employment.

25. In view of its various functions carried out by the 1st respondent Corporation, it has its units established not only at the site area, but also offshore. Hence, all the functions of the 1st respondent Corporation cannot be narrowly called as mining activities alone. No doubt, in the oil mines or the oil wells the produced water is taken by drilling and all other allied functions are also done. But, at the office site, some other functions other than drilling and mining could take place. When the crude oil is separated from the produced water, certain treatment has to be done and it can only be called as a process. It is also essential to do waste management.

26. An interesting explanation has been given by the Hon'ble



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Supreme Court for the manufacturing process in the case of ***Uttaranchal***

Forest Development Corporation and Another Vs. Jabar Singh and Others

[(2007) 2 SCC 112]. In the said judgment, it is held that the process of cutting trees by axe and changing the shape of the timber into logs by saw, would fall within the definition of the 'manufacturing process'. The change of the shape by saw would be included in the process of “altering” and “adapting” of the trees. It is further held that the conversion of trees into logs is for the purpose of sale, but not for the transport and hence, some manufacturing process is undertaken by the said Forest Development Corporation, while engaging personnel for cutting the trees.

27. The Hon'ble Supreme Court has segregated the ingredients of the definition of ‘*manufacturing process*’ under sec. 2(k) of the Factories Act, 1948 into three parts as below :

- i. the process - “making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting”;*
- ii. the object - “any article or substance”;*
- iii. the purpose - “with a view to its use, sale, transport, delivery or disposal”*

28. Though the oil is explored from the site area, 1st respondent



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Corporation involves itself not only in exploration by drilling the oil wells, but it also undertakes several allied functions. The ONGC group of companies are involved in production, refining and marketing and such onshore and offshore activities of the 1st respondent Corporation. The integrated annual report of the first respondent for the year 2023-2024 is produced to this court and that would also show that it involves in production.

29. In fact, all sites of the 1st respondent Corporation does not carry out the same functions. It ranges from receiving gas, oil and produced water, removing moisture gas and effluent treatment of produced water. From the produced water, crude oil is separated and the separated crude oil is pumped through pipelines and partly by tankers from Kamalapuram site to Narimanam plant. The effluent treatment facility provided on the onshore wells separates natural gas, oil and produced water with the help of three phase separators.

30. The natural gas so separated is being sent to M/s.GAIL for distribution, after removing moisture in the gas by adopting gas dehydration system. The produced water after the separation of oil and gas is partially treated in the Kamalapuram Effluent Treatment Plant and partly sent to Effluent Treatment Plant (ETP), Narimanam, Nagapattinam, through pipelines and



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tankers. Thus, the Extracellular Polymeric Substances (EPS) which is the mixture of gas, oil and produced water are being treated in the 1st respondent Corporation's plant itself at various stages to get various products. No doubt, the above said process that are being carried out by the 1st respondent Corporation are inclusive under the processes mentioned under Section 2(k) of the Factories Act, 1948.

31. The purpose of doing the above process is obviously for sale and earning profit. The 1st respondent Corporation cannot deny the fact that they are involved in business. As the 1st respondent Corporation is making profit by undertaking various activities such as production, refining and marketing of energy substances like crude oil, natural gas and LPG, the trade carried out by the company would fall within the definition of manufacturing process. To put it otherwise, the 1st respondent Corporation does not limit its functions just by engaging in oil exploration, but also doing various treatments for converting the produce into saleable product or atleast products given with penultimate stages of treatments for distribution or usage.

32. Though there may not be any raw material for producing the oil, the allied activities which make the oil saleable would necessarily involve certain processes for making it saleable. Such processes cannot escape from the



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definition of manufacturing process. So, there is a kind of making, altering, and partial finishing for the purpose of sale, transport and delivery. The above activities carried out by the 1st respondent Corporation is not limited, but, it extends beyond the mining activity and hence fall within the definition of 'manufacturing process' as defined under Section 2(m) of the Factories Act, 1948.

33. The learned Additional Solicitor General for the 1st respondent Corporation submitted that the 1st respondent Corporation is a Central Government Undertaking and cannot be considered as an industrial establishment. In this regard, it is appropriate to refer the judgment of this Court held in the case of ***The Asset Manager, ONGC Ltd. Vs. D.Rajendran and Another (W.A.No.600 of 2020 decided on 09.02.2024)***. In the said case, the respondents claimed that they have been working continuously as drivers on temporary basis in the Corporation by getting a consolidated pay and that their services have to be regularised. In fact, in one of the stands taken by the appellant Corporation, it is stated that the workmen have directly come to the High Court by invoking writ jurisdiction without raising an industrial dispute seeking permanency and that they have been engaged only on contractual basis. The Court observed that the drivers have been in service for more than 34 years



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and they got only 5 more years for superannuation.

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34. Though the above employment was labelled as contractual employment, the real nature of the employment was only a permanent employment and hence, the continuous service of the workmen have been taken into consideration and a direction has been given to create or sanction additional posts for the drivers who were respondents in the said case and regularise them by giving effect from the date of their original engagement. The said order has not been stayed as of now and it holds good.

35. By whatever definition the Factories Act means an industrial establishment, the 1st respondent Corporation falls within the said definition, by virtue of its every functions. Due to the majority shareholding of the Government machinery, it may exercise control over the affairs of the company. Just because the State has a higher stake in a company, that will not take away its character of an industrial establishment. So, the argument that the 1st respondent Company that it is a Central Government Undertaking and hence it is not an Industrial Establishment can not be countenanced.

36. For reasons best known to the 1st respondent Corporation, it did not find it convenient to get itself registered under the Factories Act. But that



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cannot exempt it from fulfilling the obligations attached to the factories and as regulated under the Factories Act and other related Acts. ***In view of the above reasons and the features of the functions carried out by the 1st respondent Corporation, the 1st respondent Corporation cannot escape from the coverage under the Act 46 of 1981.***

37. The term “employee” as found in ONGC's *Modified Recruitment and Promotion Regulations, 1980*, (in short ONGC’s MR & PR Regulations 1980) excludes deputationists /trainees /apprentices and those engaged on casual/contingent/contractual/tenure/term basis for any specific period. It also defines “post” means any regular vacancy held under ONGC other than at Board level. As the method of filling all the posts as found in the Regulations would be by direct recruitment, promotion of employees already in the service of the Corporation or by borrowing the services of the person from the Government Departments or Public Sector Undertakings or local or other authorities on deputation or any other mode, may be decided by the Corporation, however, by recording reasons in writing for adopting a particular method of appointment to any post or persons possessing special merit, qualifications or experience.

38. As per Section 13 of the above Regulations, whenever the vacancies



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are filled by direct recruitment, the departmental candidates who fulfill the requisite qualification should be given priority in appointments. Only if the required number of suitable candidates are not available amongst the departmental candidates, those vacancies can be notified for recruitment from outside. It would further stipulate that the proceedings of the selection committee for departmental candidates and outsiders, would be drawn separately.

39. By citing the above Regulations, the petitioners claim that even if they are not accorded regularisation, they can be absorbed as against regular vacancies, by giving them the benefit of departmental candidates and they should not have been compelled to participate in the open category under the notification for recruitment for the year 2009 for various posts including Junior Assistant, Technician, Assistant Rigman and Assistant Technician and Technical Assistant Grade III, etc. There is no separate quota seems to have been reserved for departmental candidates as per Section 13 of the Regulations.

40. As the tenure-based appointees are not considered as employees as defined under Section 8 of the Regulations, the 1st respondent Corporation would not have thought it fit to utilise the services of the tenure-based



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employees to be filled against the regular unfilled vacancies. The respondent's claim that the petitioners are bound by the terms and conditions of their contractual employment and they are estopped from claiming regularisation against their own undertakings. It is not denied by the petitioners that recruitment has been made only for tenure-based appointments. However, they have been subjected to serious selection process, in which reservations have also been given as per the Government norms. As the petitioners have undergone a thorough selection process, it is submitted that they should have been considered for filling up regular vacancies. As per the terms of tenure based appointment, the petitioners will be assigned to work in any offshore or onshore location in India, during the tenure and they are bound to carry out all the jobs assigned to them by the in charge officer from time to time. They are also required to sign an undertaking by accepting that their employment is on tenure basis and that they will not go to Court or approach any authority seeking regularisation based on tenure engagement. Before joining, they are required to produce discharge certificate from the previous employer.

41. From the documents submitted by the petitioners, it is seen that they have undergone a thorough selection process as though it is a regular employment. The petitioners have applied to the post knowingly that it is a



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tenure engagement and that their services would be terminated any time during the period of four year tenure engagement, by giving one month's notice or at the completion of their tenure. So, it is claimed by the 1st respondent Corporation that the petitioners are estopped from seeking regularisation.

42. The petitioners have been re-engaged for repeated tenures and on the whole, their services have been utilised for nearly 15 to 20 years. No doubt, they have been recruited to the post of Field Operators and there is an incharge officer for them. But, their services have been utilised, whenever there is a demand in the 1st respondent Corporation in other areas and they have also been given with rigorous training to rise up to those occasions. As per the role assigned to the Field Operators, they are expected to meet the specific work requirement in the field of oil exploration alone. However their services have been utilised in other areas as well and in fact, they have been assigned to do the roles of Rigman and Topman, when there was demand in the company due to unfilled vacancies in those posts.

43. But, the above contentions were vehemently denied by the 1st respondent Corporation. In the payslips issued to some of the Field Operators, the start date and end date of the tenure term is left blank. Each time, the tenure



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extension is given without any break, but on the same conditions. As per the

information furnished under the Right to Information (RTI) Act, it is stated by the 1st respondent Corporation that the Field Operators are doing Topman work, during the relevant point of time, *i.e.*, 2018. From the RTI information given, it is informed by the corporation itself that the Field Operators were not doing drilling operations in the rig and they are working as Topman and Foreman. Sometimes, they are also utilised to tide over the shortage of Topman and during tripping operations, they have been deputed to do the above work.

44. In fact, the trained personnel among the petitioners, have been utilised to impart training, when regular appointments have been made to the posts of Rigman and Topman. These trainings have been given by the Field Operators on shift basis. The petitioners are aggrieved not only because they were denied permanent employment, but they have been asked to give training to the newly recruited staff to the higher post, when they have been denied absorption as against those posts. Such training cannot be given by the Field Operators, unless they themselves had the experience of performing the roles of Topman and Rigman at certain point in time, due to operational exigencies and shortage of personnel. In this regard, they have been even given with written letters, calling them to perform the duty of Topman during their off period.



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Such movement orders were given to all the Field Operators and their deployment to such works have also been given approved by the competent authority as well.

45. In fact for the regular recruitment, they have been given with the age relaxation during the period when they had discharged the duties of Rigman. Having got all these things on record, it cannot be stated now by the 1st respondent Corporation that the Field Operators have been utilised only to perform the works assigned to their posts. Admittedly, the role of Topman is not a tenure-based employment and it is a regular post. There was an acute shortage of Topman at some point of time and that was the time when the services of the field operators were utilised to fill up the gap in those services of the Topmen. All along it is claimed by the 1st respondent Corporation that there is no unfair labour practice and the petitioners were employed only on tenure basis. The petitioners who have been appointed on four years tenure initially were re-engaged continuously by getting their tenure renewed each time. So they did not have the will to leave the 1st respondent Corporation. Obviously, it is due to the demand for the job, the petitioners have chosen to stick on to their services, by giving whatever declarations the 1st respondent Corporation reinforced on them. The petitioners will not be in a position to bargain or negotiate with the 1st respondent Corporation, in view of their



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insecurity to loose their livelihood. In such a pressure they can not deny but to give a declaration that they will not file any litigations in the Court for seeking regularisation.

46. In the case of *Olga Tellis & Others Vs. Bombay Municipal Corporation and Others [(1985) 3 SCC 545]*, the petitioners were the pavement and basti/slum dwellers of Bombay City on a pavement or a slum in the vicinity of their place of work. The respondent Bombay Municipal Corporation have taken a decision to forcibly evict them and demolish their pavement and slum dwellings. The above petitioners challenged the same by filing a writ petition under Article 32 before the Hon'ble Supreme Court urging that their fundamental rights are violated. The respondent local authority of that case defended the writ petition stating that there could not be any fundamental right to dwell on footpaths or on public roads. It is further submitted that the pavement dwellers have already given an undertaking before the High Court that they will not obstruct the demolition of their huts and hence, they are estopped from filing this writ petition claiming their right to livelihood, which is comprehended within the fundamental right to life is affected. The Hon'ble Supreme Court held that there cannot be any estoppel against the petitioners. It is observed that the doctrine of estoppel is based on the principle that there should be consistency between the words and action and



hence the action should be in such a way that it ensures certainty and honesty in public affairs.

47. It is also pertinent to refer the judgment of the Hon'ble Supreme Court in the case of *Somesh Thapliyal and Another Vs. Vice Chancellor, H.N.B. Garhwal University and Another [(2021) 10 SCC 116]*, wherein, it is observed that the incumbent may lose his job opportunity if he questions the terms and conditions of his employment and hence, he is not estopped from questioning it at any stage where he finds himself aggrieved. It is only because of the job insecurity, the petitioners could not object when they were asked to raise up to the demand of the 1st respondent Corporation to do the job of others post without claiming them to be appointed in that post first. No litigant can be assured of a relief, just because he has come to Court, unless he could establish an acceptable case and ground that would get him a relief in his favour. So, the undertaking given by the petitioners will not estop them from approaching the Court and test their chances for getting the relief claimed and that too, when their livelihood is affected due to termination of their employment.

48. Ms.R.Vaigai, learned Senior Counsel appearing for the petitioners cited various judgments in support of the contention that the object of legislating *Act 46 of 1981* is to curb various unfair labour practices adopted



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by the employers. It is further submitted that in the name of contractual employment, the petitioners and similar others have been utilised to render their services for decades by not only performing the job roles for which they have been recruited, but also by performing the jobs of other roles, when there was a demand in the company. Hence any undertaking obtained from the petitioners that they should not go to court for seeking relief relating to their employment is violative of their fundamental rights under Article 19 and 21 of the Constitution of India.

49. Such contention of the learned Senior Counsel appearing for the petitioners was vehemently resisted by the learned Additional Solicitor General appearing for the 1st respondent Corporation. It is submitted that the petitioners are not daily wagers or temporary workers and they are knowingly agreed to the terms of the employment. So, it is stated that there cannot be any question of regularisation, in the absence of any rules of scheme. By citing various decisions and by highlighting the judgment of the Hon'ble Supreme Court in *Umadevi (supra)*, it is submitted by the learned Additional Solicitor General that the Courts would not grant reliefs which might give raise to perpetuating an illegality. It is further submitted that the persons who continue in employment under the cover of an order of the Court, cannot be entitled to be

absorbed or made permanent, unless the recruitment itself was made against



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regular posts and they can not be allowed to come through backdoor entries.

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50. It is further submitted that allowing the persons who have been engaged on tenure basis to become permanent, would deprive other potential persons who would have also applied, had they known that the recruitment notice given for tenure employment and persons who recruited thereunder will be absorbed as permanent employees. Deprivation of such an opportunity to all other qualified aspiring persons from the job offers will be violative of right to equality and will go against the constitutional scheme. Apart from citing the case of *Umadevi (supra)*, attention of this Court was also drawn to the cases in *Vidyavardhaka Sangha and Another Vs. Y.D.Deshpande and Others [(2006)12 SCC 482]* and *Official Liquidator Vs. Dayanand and Others [(2008)10 SCC 1]*, wherein, the Hon'ble Supreme Court has held that predictability and certainty should be an important hallmark of judicial jurisprudence and the conflicting judgments of the superior judiciary will do incalculable harm to the system and the Courts below may be able to decide as to which judgments of the superior Court would be correct and should be followed.

51. In all the decisions cited by the learned Additional Solicitor

General on the above point, the matter in issue is in respect of employment is



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not industrial employment. They are in relevant to the public employment.

The Hon'ble Supreme Court has held in the case of ***State of Haryana and Others Vs. Piara Singh and Others [(1992) 4 SCC118]*** that a temporary employee should be replaced only by a permanent employee.

52. The case of ***Union of India and Others Vs. N.Murugesan and Others [(2022) 2 SCC 25]***, involves cases filed by persons who have been appointed on tenure basis and for whom extension of tenure has not been given, as they have been found to be not suitable for re-appointment. The individuals claimed that for the tenure based employment direct recruitment procedure is followed and hence they should be presumed to have the status of regular employees. In the said case the Supreme Court has taken up an issue as to whether in the absence of any prohibition under mandatory mode of appointment, the tenure appointment made through direct recruitment is valid. The situation and the basis of the case in hand is distinguishable from ***Murugesan's*** case (*supra*). In the instant case, the petitioners have not disputed the method of recruitment and claim permanency not on the basis of the recruitment process under which they got engaged.

53. In ***Umadevi's*** case (*supra*), the distinction between a temporary employee and permanent employee is well settled by holding that a permanent



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employee has a right to the post, but a temporary employee has no right to the post. In the case of ***Indian Drugs & Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd. [(2007) 1 SCC 408]***, the Hon'ble Supreme Court has directed in some cases to regularise temporary and *ad hoc* employees without laying down any principle of law, cannot be considered as a precedent.

54. No doubt, the employees who were illegally and irregularly employed in the establishment of the Government and whose service conditions are governed under the rules framed and who have not gone through the process of selection as provided under the respective rules, cannot be given with the benefit of regularisation, by considering their long continuation in employment on *ad hoc* basis. However, the above law laid down by the Hon'ble Supreme Court in ***Umadevi's case (supra)*** is only with regard to the public employment and it did not deal with the continuous temporary employment made in industrial establishments. The workmen rules and service conditions are unfair and who are victims of unfair labour practice adopted by such establishments, can have their grievance redressed by raising industrial disputes, including claim for permanency under the labour legislations.



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55. Attention was drawn to the judgment of the Division Bench of

this Court in ***The Asset Manager, ONGC Ltd.'s case (supra)***, which confirmed the judgment of the learned Single Judge made in W.P.No.19311 of 2015. The 1st respondent Corporation who was the appellant therein had raised a contention with regard to regularisation of drivers who were appointed on consolidated pay and who had rendered more than 10 years of service. The above case has already been referred *supra* in connection with the contention raised by the 1st respondent Corporation that the petitioners ought to have raised an industrial dispute and they can not invoke writ jurisdiction.

56. The learned Single Judge while granting the relief sought by the petitioner in the above case had observed that ***Umadevi's case (supra)*** can be applied only in respect of claim relating to service law and as such, the dictum cannot be *ipso facto* applied to all industrial employees who are governed by the standing orders. On the factual aspect it is observed that the employees have been working from 1990. As the said fact has been admitted, it did not require a factual adjudication. Hence the relief is granted to the petitioner who had invoked the writ jurisdiction of this court under Article 226 of the Constitution of India. The Division Bench has also upheld the relief so granted by the learned Single Judge.



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57. When the factual position is uncontroverted, it is not necessary to drive back the petitioners to raise the very same dispute before the authorities prescribed under the Act, as the present first respondent was the appellant in the above proceedings and the above order which is in force binds on him.

58. In fact, in the case on hand the petitioners have subjected themselves to industrial adjudication on the reference made by the Government and after having become unsuccessful only filed this writ petition challenging the award passed by the Labour Court.

59. In the case of ***R.Lakshmi Vs. The Chief Engineer, Tamil Nadu Electricity Board (2012 SCC OnLine Mad 2941)***, it is held that the word “employed” in Section 3(1) of *Act 46 of 1981* is mandatory in nature and it admits no exception. It is further held that even in the absence of any enquiry conducted by the Inspector under the Act, the right conferred upon the workmen to claim the benefit of permanent status cannot be denied by any means, even on the deceased employee who is entitled to permanency, but on whom permanency was not conferred by the authorities during his lifetime. In the above case, the petitioner is the wife of the deceased employee who claimed permanency to her deceased husband, in view of his qualifying days of



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employment to get the conferment of permanency.

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60. Section 3(1) of the *Act 46 of 1981* has a *non obstante* clause and its applicability is irrespective of anything contained in any other law in force. As per Explanation (II), “*law*” includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of this Act. So, the above beneficial provision Section 3(1) of the *Act 46 of 1981* supersedes even a contract of service which has anything contrary to the conferment of permanent status. Hence in that case also, the workmen qualify to get permanency for having rendered continuous period of service for a period of 480 days within a period of 24 calendar months in an industrial establishment.

61. By virtue of the functions of the 1st respondent Corporation which also included manufacturing processes, it has been already recorded in the earlier part of this order that it would come under the ambit of industrial establishment for the purpose of the Act. The definition of “*workman*” under the Act would mean any person employed in any industrial establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment has been expressed or implied and also include temporary workman.



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62. It is to be noted that as per the ONGC's *MR and PR, 1980*, the term “*employee*” would exclude the tenure employee. In view of the *non obstante* clause operating Section 3(1) of *Act 46 of 1981*, the exclusion of the petitioners under the Model Rules of ONGC, can not create any obstacle for the petitioners to claim the benefits under the Act.

63. So far as the entitlement for permanency is concerned, one strong argument that has been put forth by the learned Additional Solicitor General is that the petitioners who had agreed to the terms and who had been recruited for the tenure based employment, cannot claim permanency in violation of their terms of contract. No doubt, contract of employment is a bipartite agreement between the employer and the employee. If the petitioners are to be stopped in view of that terms of understanding, the 1st respondent Corporation should also be equally stopped to call them tenure employees. Because, the first respondent corporation knowing well that as per the terms of tenure based employment, the petitioners were appointed to do a specific role of ‘Field Operator’, have utilised them for performing more than one role. Because the terms of contract equally binds the employer. As the tenure based employee is not expected to be compelled to perform other roles extraneous to the terms and conditions of his engagement, inducting them to do other roles would either frustrate the contract



and covert their status as temporary employees or label the practice adopted by the company as an unfair labour practice.

64. The repeated re-engagement of the petitioners for more than a decade would show that there was a continuous demand in the company. Despite that, the 1st respondent Corporation did not feel it necessary to create permanent posts for the roles performed by the petitioners and absorb them. Instead of creating regular posts at the earliest point of time and absorbing the petitioners by considering them as fit department candidates for the post, their terms have been renewed each time but continuously.

65. As per the principle laid down in **Piara Singh's case** (*supra*), an *ad hoc* employee should be replaced by a permanent employee. But, the 1st respondent Corporation found itself convenient enough to renew the term based employment of the petitioners each time, without opting to either make them permanent by creating permanent posts or fill up those posts through direct recruitment at the earliest point of time.

66. Obviously, there is no level playing field between the employees and the 1st respondent Corporation. The petitioners were anxious to retain their jobs would be in compelling circumstances to sign renewal of tenure agreement



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each time. The petitioners would have still been contented had they not terminated but given with renewals as usual. It struck them to come to court to claim permanency only after they had given to understand that there is no more renewal for them. This itself would show that they could not even imagine of any better or equal bargain with the company when their so called contracts are renewed each time. Even though the petitioners have been rendering their services in the name of tenure based employees for decades, the 1st respondent Corporation was in no mood to confer them atleast the status of '*employees*' by amending their rules and by invoking Regulation No.6/2013 or frame any scheme, in order to absorb them as regular employees. In fact the petitioners could have been a better asset for the company as they had been given with various trainings and they have requisite qualification for more than one role.

67. The 1st respondent Corporation though excluded the petitioners from the ambit of the term '*employee*', had extracted their services whenever the demand and contingency arose in other posts. It is not the title but the role played by the petitioners would confirm their status. As the petitioners have also been performing the roles of regular post employees when such contingency arose in the company, they can only be seen as the employees within the definition given by the standing rules of the company.



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68. At the risk of repetition it is reiterated that *Act 46 of 1981* supersedes any of the Regulations or any of the law time being in force and hence the petitioners will fall within the definition of “*workmen*” under the said act as well. As the recruitment of the petitioners have been made only by adopting a thorough selection process, their absorption as permanent employees cannot be called as back-door entry. The petitioners who had put long tenure of service and spent their prime life time in the first respondent company cannot be equated with those person who might wait for any notification or announcement for direct recruitment for regular posts and then apply. If such consideration is shown no temporary employee who has put a required days of service in any industrial establishment falling under either private sector or public sector can be given with the benefit of permanency/ regularisation in accordance with *Act 46 of 1981*. Hence conferring the benefit of regularisation on the private petitioners cannot be construed as a loss to any other person, who might wait to compete in the job market for regular posts.

69. The judgments relied on by the learned Additional Solicitor General in the line of *Umadevi's case (supra)* relate to the permanency claimed by the employees who have been working as temporary or contingent



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employees in any of the services falling under the “state” or the “bodies” that would fall under the definition of “state”. As per Entry 10 of Schedule 5 of the Industrial Disputes Act, which enumerates unfair labour practice adopted against the employees would state that to continue the services of an employee as a casual or temporary for years with an object of depriving them of their status or privileges of permanent workmen is an unfair labour practice.

70. The 1st respondent Corporation tried to claim exception by stating that the petitioners employment is term based employment and it does not fall under casual or temporary as stated under Entry 10 of Schedule 5. As it has been held in several of the judicial pronouncements, it is the nature and actual role played by the employees define their status and not the title given to them. The tenure employees are replaced each time by themselves without getting the benefit of permanency, despite they have served for a long tenure and been deployed to assume the roles of other posts when such contingency arose in the 1st respondent Corporation. The above nature of the petitioner’s performance would drastically change the character of their employment from tenure to contingency or temporary.

71. The convenient practice of continual renewal of tenure for years

together, adopted by the first respondent company against the petitioners who



do not have the equal and better bargaining power and who depended upon the employment for their livelihood, is nothing but an unfair labour practice.

72. In this regard, Ms.R.Vaigai, the learned senior counsel for the petitioner cited the recent judgment of the Hon'ble Supreme court in the case of ***Jaggo Vs. Union of India & Others (2024 SCC OnLine SC 3826)***. In the said case, the Hon'ble Supreme Court in unequivocal terms had deprecated the pervasive misuse of temporary employment contracts by public sector entities. The Hon'ble Supreme Court has observed that such unfair labour practice of misuse of temporary contracts not only sets concerning precedent, but would also erode public trust in the governmental operations. By employing a term '***gig economy***' the Supreme court made a direct reference about the short term employment practice adopted by both private and public sector entities and cautioned that such trends tend to pervade the government institutions also. The relevant part of the above judgment is extracted below :

*22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the **gig economy** has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and*



justice, bear an even greater responsibility to avoid such exploitative employment practices. ***When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.***

23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's *Multinational Enterprises Declaration* (International Labour Organization-Tripartite declaration of Principles concerning Multinational Enterprises and Social Policy) encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.

24. The landmark judgement of the United State in the case of ***Vizcaino v. Microsoft Corporation [97 F.3d 1187 (9th Cir.1996)]*** serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should



determine employment status and the corresponding rights and benefits.

It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade longterm obligations owed to employees. These practices manifest in several ways:

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

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

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

- ***Using Outsourcing as a Shield:*** *Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a*



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deliberate effort to bypass the obligation to offer regular employment.

• **Denial of Basic Rights and Benefits:** Temporary employees

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

73. However, the learned Additional Solicitor General for the first respondent submitted that the facts of the above case is different from the facts involved in this case. But to my appreciation the facts, features of employment taken up for discussion, principles laid down and the position of law settled in **Jaggo's** case (*supra*) is very much appropriate to the claims made by the petitioner in this case.

74. In the said case, reference has also been made to **Umadevi's case** (*supra*) to make a distinction as to how the principles of law set down in **Umadevi's case** (*supra*) is misinterpreted and misapplied to deny the legitimate claims of long serving employees. The above observation of the Hon'ble Supreme Court is given under the following paragraphs :

*26. While the judgment in **Uma Devi** (*supra*) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving*



employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in **Uma Devi** (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.

28. In view of the above discussion and findings, the appeals



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are allowed. The impugned orders passed by the High Court and the Tribunal are set aside and the original application is allowed to the following extent: i. The termination orders dated 27.10.2018 are quashed; ii. The appellants shall be taken back on duty forthwith and their services regularised forthwith. However, the appellants shall not be entitled to any pecuniary benefits/back wages for the period they have not worked for but would be entitled to continuity of services for the said period and the same would be counted for their post-retiral benefits.

29. There shall be no order as to costs.”

75. The above judgment is inclusive of not only the labels given to employee as temporary, but also inclusive of misuse of the contractual employees also. The petitioners have been in continuous and substantive engagements, despite they have been called as tenure based employees and the nature of the duties executed by them were also that of regular employees. Their services have not been at any point of time found to be dis-satisfactory or not up to the mark. Further, they have not been appointed through any illegal or irregular means and they have been appointed only through a well defined and detail selection process.

76. In case, the petitioners have been given with the title of temporary employees instead of contractual employees, they would have got the benefits



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of permanency as per the Standing Orders. Depriving them even such a nomenclature benefit, despite having them engaged repeatedly for years together would also contribute to the discriminatory nature of regularisation offered in the company. So far as the qualification of the petitioners is concerned, there is no dispute and they have been appointed only after found to be fulfilling the essential qualification for the post. By undergoing the special trainings of different kind they had even superseded the educational requirement with performance fulfilment.

77. It is submitted by the first respondent that the need to engage the petitioners has ceased to exist now and the said submission is not acceptable. Despite knowing that the petitioner's engagement is needed on a long term basis, they have been engaged on a short term basis. The 1st respondent Corporation is at fault for not creating posts and roles suiting to the petitioners who have rendered their service for more than two decades. Hence, non-availability of sanctioned posts cannot be an excuse to perpetuate unfair labour practice. The observation and reasoning given by the Hon'ble Supreme Court in *Joggo's case (supra)* is squarely applicable to the petitioners' claim.

78. The short tenure engagement of gig workers is beneficial to the workers only when there is a demand for such engagements and services. In



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such situations, a gig worker is able to negotiate terms with his service availing agency in view of the demand for his services or expertise in the job market. In all other cases where there is acute demand for employment and the employees have the insecurity of loosing their job and face struggles to find a better livelihood, the practice of tenure employment and its continual renewal can only be viewed as an unfair labour practice.

79. Gig workers or gig economy can have no labour friendly features in places or sectors where the jobs are less, but takers are more. It can work out well and profitable only in those sectors where the demand for the specific service is more but persons who have the expertise to do those services are less. Only in such cases the gig workers can bargain better terms in their favour by not subjecting themselves as victims of unfair labour practice. In view of the above stated reasons, I feel that the petitioners have made out a positive case for getting the conferment of permanency. As the Labour Court has not considered the essential aspects in a proper perspective the award of the labour of court is liable to be set-aside.

80. As some persons similar to the petitioners have participated in the recruitment for regular posts and got selected and get the benefit of regular



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posts on and from the date of their joining in the regular posts only, no disparity can be shown to these petitioners by granting them the benefit from the date of their initial appointment. The petitioners have raised the dispute only after their engagement was brought to an end or in view of their non-selection in the direct recruitment. Hence the petitioners can be given with the benefit of regularisation on and from the date when the last of such selected candidates similar to the petitioners got selected in the direct recruitment for regular posts and joined against the regular post. It may be claimed that those persons who participated and selected in the direct recruitment can not be equated with the petitioners who have not been selected in the regular recruitment. Just because those selected persons who did not choose to claim regularisation under the *Act 46 of 1981*, the petitioners can not be deprived to get the benefit or the relief prayed under the Act.

81. In the result, this writ petition is **partly allowed** and the award of the dated 21.01.2022, Central Government Industrial Tribunal-cum-Labour Court & EPF Appellate Tribunal, Chennai dated 21.01.2022 made in I.D.No.11 of 2016 dated 21.01.2022 is set aside and I.D.No.11 of 2016 is partly allowed and the first respondent/management is directed :

- (i) *to formulate a scheme in order to regularize the petitioners by creating regular posts suiting to their qualification and*



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experience by giving age relaxation wherever needed;

- (ii) to give effect to such regularisation on and from the date on which the last candidate similar to the petitioners who got selected in the last direct recruitment and joined as against the regular post;
- (iii) to extend similar benefits granted to those selectees similar to the petitioners who participated in the direct recruitment and got appointed in the last recruitment to the petitioners also from the date of giving effect to their regularisation as stated (supra);
- (iv) to complete the above exercise within one month from the date of receipt of the copy of this order;
- (v) till the completion of the above exercise the private petitioners shall continue to be in service with the first respondent and the first respondent shall not discharge them. However, this will not prevent the first petitioner union to hold any better negotiations with the management on behalf of the private petitioners and arrive at any amicable settlement on their behalf;
- (vi) the deceased husband of the second respondent shall also be extended with the similar benefit of regularisation if he was alive at the time when the regularisation is ordered to be given effect;



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(vii) *with respect to the rest of the reliefs claimed by the petitioners*

*this Writ Petition is **partly dismissed**;*

(viii) *No costs. Connected miscellaneous petitions if any are closed.*

12.02.2025

gya

Index : Yes

Neutral Citation : Yes

Speaking order

To

1.The Assistant Manager
ONGC Ltd.
Cauvery Asset
Karaikkal 609 004.



WEB COPY



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R.N.MANJULA, J.

gya/jrs

Pre-Delivery Order in
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12.02.2025