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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-02-2025

CORAM

THE HONOURABLE MR JUSTICE M.DHANDAPANI**WP No. 3626 of 2025****AND****WMP Nos. 4022 & 4024 of 2025**

1. Air India Causal Labour Union

Rep by its Secretary, Mr.R.Rajaujjal
singh, No.19/8, Nehru colony 6th street
palavanthangal chennai 600 114

Petitioner(s)

Vs

1. Assistant Labour Commissioner
(Central), Office of the Deputy chief
Labour, commissioner (central) shastri
bhavan, Chennai 600 006

2.Government Of India
Rep by Secretary, Ministry of Labour
and Employment, Sharam Sakthi
Bhavan, Rafi Marg, New Delhi 110 001

3.Air India Limited Rep By Chief
Executive Director, Airlines House,
Meenambakkam, Chennai 600 027

4.Chairman and Managing
Director, Air India Limited Hansalaya



Building, V Floor No.15, Barakamba
Road, New Delhi 100 001

5. Air India Air Transport Service

Ltd, (wholly owned subsidiary of Air
India Limited) Rep by Nodal Officer,
Air India Unity Complex, Pallavaram
cantonment, Chennai 600 043

6. General Manager-GH

(Co-ord), Southern Region, Air India
Airport Services, Air India Unity
Complex, Pallavaram Cantonment
Chennai 600 043

7. Government Of India

Rep by Secretary, Ministry of Civil
Aviation, New Delhi

**8. Deputy Chief Labour Commissioner
(central)**

Ministry Of Labour And Employment
Office Of The Deputy Chief Labour
Commissioner (central) A Wing 5th
Floor, Shastri Bhawan No 26,
Haddows Road, Nungambakkam,
Chennai 600 034

Respondent(s)

PRAYER

Calling for the records in No. M. 8 (18) /2016 -B3/ Adj / A1 dated 19.12.2023 on the file of the 8th respondent herein and quash the same and direct the 2nd respondent to refer the dispute following the report of the 1st respondent passed in M8 (18) / 2016-B3 dated 15.12.2016 to the Industrial Tribunal at Chennai for adjudication of the claim of regularization of the services of the members of the petitioner union.

**WP No. 3626 of 2025**

For Petitioner(s) S.Sadasharam

For R3 Mr.Srinivasamurthy

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ORDER

This writ petition has been filed seeking to quash the order of the 8th respondent in No. M. 8 (18) /2016 -B3/ Adj / A1 dated 19.12.2023 herein and quash the same and direct the 2nd respondent to refer the dispute following the report of the 1st respondent passed in M8 (18) / 2016-B3 dated 15.12.2016 to the Industrial Tribunal at Chennai for adjudication of the claim of regularization of the services of the members of the petitioner union.

2. The petitioner union which is espousing the cause of casual labourers employed with Air India has filed this writ petition seeking regularisation of its members.

3. According to the petitioner union, the third respondent Air India was in the habit of employing casual labourers for years together denying their rightful regularisation in the services. The petitioner union and Air India limited



entangled in a number of litigations culminating in filing of writ petitions. The prayer in this writ petition is only for a direction to the third respondent for regularisation of services.

4. The question regarding absorption, regularization of temporary, contractual, casual, daily wage and ad hoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment was considered by the Supreme Court in its path breaking judgment in *Secretary, State of Karnataka and others vs. Uma Devi, [2006(4) SCC 1]*. The relevant paragraphs are extracted hereunder:-

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of [Article 14](#) or in ordering the overlooking of the need to comply with the requirements of [Article 14](#) read with [Article 16](#) of the Constitution. Therefore, consistent with the scheme for public employment,



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this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts



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acting under [Article 226](#) of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the



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constitutional and statutory mandates.

44. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases



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before us from the State of Karnataka. Therein, after the Dharwad decision, the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under [Article 226](#) or 32 of the Constitution or in exercise of power under [Article 142](#) of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the



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concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get



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employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up,



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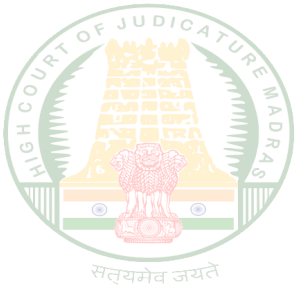
is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in [Article 14](#) of the Constitution of India.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in Dharwad (supra), Piara Singh (supra), Jacob, and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or



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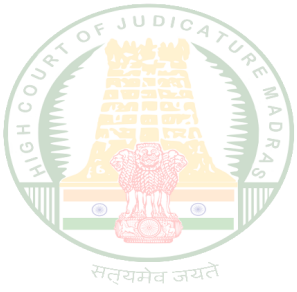
(ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn {See Lord Diplock in Council of Civil Service Unions V. Minister for the Civil Service (1985 Appeal Cases 374), National Buildings Construction Corpn. Vs. S. Raghunathan, (1998 (7) SCC 66) and Dr. Chanchal Goyal Vs. State of Rajasthan (2003 (3) SCC 485). There is no case that any assurance was given by the Government or the concerned department while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after the Dharwad decision. Though, there is a case that the State had made regularizations in the past of



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similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some case by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

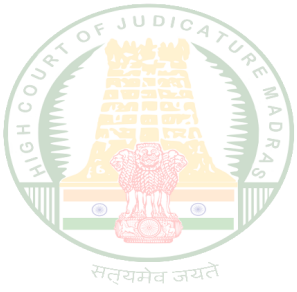
47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of



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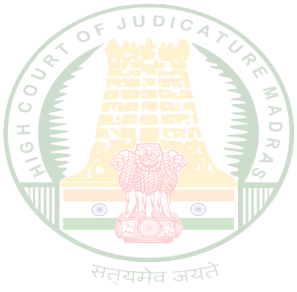
legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned



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department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating



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unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way



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of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of [Article 21](#) of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under [Article 21](#) of the Constitution of India, a set of persons cannot be



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preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by [Article 21](#) of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of [Article 21](#) of the Constitution. The argument that [Article 23](#) of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.”

5. In view of the same the review claimed by the petitioner union cannot be granted in this writ petition. However, in future, any Government Order is



issued or any rule is made for absorption of such employees, the third respondent may consider regularising the services of the petitioner union.

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6. With this observation, the writ petitions are disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

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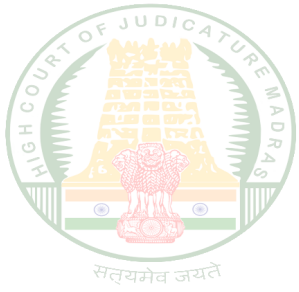
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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. Assistant Labour Commissioner
(Central), office of the Deputy chief
Labour, commissioner (central) shastri
bhavan, Chennai 600 006

2. Government Of India
Rep by Secretary, Ministry of Labour
and Employment, sharam sakthi
bhavan, Rafi Marg, New Delhi 110 001

3. Air India Limited Rep By Chief
Executive Director, Airlines House,
Meenambakkam, Chennai 600 027

4. Chairman And Managing
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7. Government Of India

rep by secretary, ministry of civil
Aviation, New Delhi

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8. Deputy Chief Labour Commissioner
(central)

Ministry Of Labour And Employment
Office Of The Deputy Chief Labour
Commissioner (central) A Wing 5th
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