

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5148 OF 2026

Yuvraj Balasaheb Vharamble
Residing at – Room No.228,
Type-I Building No.19, Hill Side,
IIT Bombay, Campus
Powari, Mumbai – 400076

...Petitioner

Versus

1. Indian Institute of Technology, Bombay
Represented by its Director,
I Floor, Nandan Nilekani Main Building.
IIT Bombay,
Powai, Mumbai – 400 076
E-mail – director@iitb.ac.in
2. The Registrar,
Indian Institute of Technology, Bombay
II Floor, Nandan Nilekani Main Building.
IIT Bombay,
Powai, Mumbai – 400 076.
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3. Section Head, Staff Recruitment
II Floor, Nandan Nilekani Main Building,
IIT Bombay,
Powai, Mumbai – 400 76.
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...Respondents

Mr. Aseem Naphade a/w Adv. Divya Yajurvedi, Adv. Pradeep Kumar for the
Petitioner.
Mr. Naushad Engineer, Senior Counsel a/w Adv. Yohaam Limathwale, Adv.
Hormuz Mehta, Adv. Ahsan Allana i/b. J. Sagar Associates for the
Respondents.

**CORAM : R. I. CHAGLA AND
ADVAIT M. SETHNA, JJ.**

**RESERVED ON : 22nd APRIL, 2026
PRONOUNCED ON : 8th MAY, 2026**

Judgment: (Per Advait M. Sethna, J.):

1. Rule. Rule made returnable forthwith with the consent of the parties.
2. The Petitioner has prayed for the following substantive relief/s:-

“A) This Honorable Court in exercise of powers under Article 226 and/or 227 of the Constitution of India be please to issue a writ of Mandamus or any other writ of like nature and be please to call for records and proceedings leading up to passing of impugned letter dated 13th March, 2026 and thereafter be pleased to quash and set aside the Impugned letter dated 13th March, 2026 issued by the Respondent No.01 to the Petitioner.

B) This Honorable Court in exercise of powers under Article 226 and/or 227 of the Constitution of India be please to Issue the writ of mandamus or any other appropriate writ, direction, or order directing the Respondents to regularize the service of the petitioner in the post of Deputy Registrar (Legal) and fix the pay of the Petitioner and to pay arrears the full difference calculated as - the full difference between (a) the pay and admissible allowances at the minimum pay-level applicable to the post of Deputy Registrar (Legal) from time to time, and (b) the amounts actually paid, for the period of joining in duties till the date of regularization alongwith promotional benefits with 8% simple interest per annum on calculated arrears from due date till actual payment.

OR ALTERNATIVELY

B) Issue the writ of mandamus or any other appropriate writ, direction, or order to regularize the service of the petitioner in his present post Executive Officer (Legal) from the date of his initial appointment by fixing pay scale as applicable to the post of Deputy Registrar (Legal) or any other pay scale as this Hon'ble Court may deem fit and to pay arrears for the period of joining in duties till the date of regularization along with promotional benefits with 8% simple interest per annum on calculated arrears.”

3. The Petitioner has been appointed as Executive Officer (Legal) with the first Respondent purely on contractual basis on such post which is temporary, in terms of the advertisement dated 8 July 2015. The Petitioner is primarily aggrieved by the Communication/Order dated 13 March 2026 (Impugned Communication/Order). This was to the effect that his tenure as Executive Officer (Legal) for a period of one year w.e.f. 24 April 2025 had come to an end on 23 April 2026. Accordingly, he would not be given any further extension, to his appointment. The Petitioner has assailed the said Impugned Communication/Order along with his prayer seeking regularization in his post of Executive Officer (Legal) and/or Deputy Registrar (Legal), which forms the fulcrum of the proceedings.

Factual Matrix:-

4. The facts necessary for the adjudication for this Petition are set out below:-

5. The Petitioner completed LL.B. degree in First Class with distinction from Shahaji Law College, Kolhapur in April of 2000. The Petitioner thereafter pursued and completed his LL.M. (Commercial and Criminal Laws) from Shivaji University, Kolhapur in April of 2002 wherein he secured 50.05% marks in the LL.M. examination.

6. The Respondent No.1 published an advertisement dated 8 July 2015 inviting online application for 1 unreserved post of Executive Officer,

Administration, specifying that the post is temporary and that the appointment would be on a contract for a period of 3 years.

7. The Petitioner on 17 July 2015 successfully submitted an application for selection to the said post, the receipt of which was duly acknowledged by the first Respondent.

8. The Petitioner received a call letter on 18 January 2016 from Assistant Registrar (Admin-I) for the post of Executive Officer (Legal). The Petitioner then appeared before the Selection Committee for interview on 27 January 2016 and submitted the relevant documents.

9. The Petitioner by a letter dated 8 February 2016 addressed by the first Respondent offered the Petitioner the position of Executive Officer (Legal) in the Administration Office on contract basis with the first Respondent for a period of 3 years.

10. The Petitioner on 9 February 2016 addressed an email to the Respondents indicating his willingness to accept the offer of appointment by the first Respondent dated 8 February 2016. The Petitioner joined the services of the first Respondent as Executive Officer (Legal) on 11 April 2016.

11. The Deputy Registrar (Admin-I) by an office order dated 12 April 2017 communicated the enhanced consolidated salary of the Petitioner, clarifying that all other terms and conditions of his assignment shall remain unchanged.

12. The above was followed by another office order dated 3 April 2018 which was issued pursuant to the meeting of the Respondents held on 11 July 2015 with regard to increase in the consolidated salary of the temporary staff, which included the Petitioner.

13. The first Respondent issued another office order dated 29 May 2019 with regard to increase in the consolidated salary of the Petitioner, reiterating that all other terms and conditions shall remain unchanged.

14. The Petitioner received an email communication from the Assistant Registrar (Legal, RTI) with regard to reappointment of the Petitioner as Executive Officer (Legal) in EO.2 for a period of one year with a working day break in service. The duration of his renewed contractual appointment period as indicated in the said email communication was from 15 April 2020 to 14 April 2021.

15. The first Respondent issued an office order dated 3 May 2021 approving the re-appointment of the Petitioner as Executive Officer (Legal) to a Legal Unit for a period of 1 year, from 16 April 2021 to 15 April 2022. This was followed by another office order dated 8 April 2022 re-appointing the Petitioner for a temporary period of one year from 19 April 2022 to 18 April 2023.

16. The first Respondent issued an office order dated 6 February 2023 communicating enhancement of the Petitioner's consolidated salary for the present tenure of appointment from 19 April 2022 to 18 April 2023. It was

specified that all other terms and conditions of assignment shall remain unchanged. Similar orders were issued by the first Respondent to the Petitioner on 19 April 2023 and 1 April 2024, respectively.

17. The first Respondent issued an office order dated 4 April 2025 to the Petitioner with regard to his re-appointment as Executive Officer (Legal) to the Legal Unit. This is for a period of 1 year from 24 April 2025 to 23 April 2026 indicating his consolidated salary for the said period.

18. The first Respondent issued an experience certificate to the Petitioner tabulating his period of appointment governed by the Institute of Technology Act, 1961, as Executive Officer (Legal), on contract basis from 11 April 2016 to 24 April 2025 i.e. for a period of 9+ years. Such certificate was issued on the request of the Petitioner, made to the first Respondent.

19. The Petitioner addressed an email dated 9 March 2026 to the Section Head and Administration of the first Respondent, *inter alia*, asking for information/documentation regarding the post of Chief Legal Officer. In the said email, the Petitioner addressed as officer of the Court under the provisions of the Advocates Act, 1961 expressing doubt regarding appointment to the post, for the purposes of Criminal, Civil, CBI and High Court proceedings, for which the documents would be required.

20. The first Respondent issued the Impugned Communication/Order dated 13 March 2026 to the effect that the tenure of the Petitioner as Executive Officer (Legal) for a period of 1 year w.e.f. 24 April 2025 would

expire on 23 April 2026. Accordingly, as per approval of the Competent Authority the Petitioner was informed that there would be no further extension to his appointment.

21. The Petitioner being aggrieved by the above has filed the present Petition before this Court on 6 April 2026. According to the Petitioner, he completes 10 years of service with the first Respondent on 11 April 2026.

Rival Contentions:-

Submissions of Petitioner:-

22. Mr. Naphade, learned counsel appearing for the Petitioner would submit that the Petitioner was appointed to the post of Executive Officer (Legal) pursuant to the Advertisement dated 8 July 2015 (**Exh.- A to the Petition**). It is pursuant to such appointment as Executive Officer (Legal), that the Petitioner worked for almost 10 years with the first Respondent.

23. The Petitioner's appointment was renewed from time to time. The office order dated 4 April 2025 (**Exh.-“O”**) would show that the last renewal of the Petitioner's appointment was from 24 April 2025 to 23 April 2026. It is after serving for almost 9 plus years that the Petitioner was served out with the Impugned Communication/Order dated 13 March 2026 informing him that his appointment is not renewed further.

24. According to Mr. Naphade, the impugned order is contrary to law as it abruptly terminates the appointment of the Petitioner without assigning any reasons in support thereof, in a manner which is arbitrary and

unreasonable. Mr. Naphade has placed due reliance on the decision of the Supreme Court in *Bhola Nath Vs. The State of Jharkhand & Ors.*¹ followed by *Dharam Singh & Ors. Vs. State of U.P. & Anr.*² to first contend that the State and/or instrumentality of the State should act as a model employer and not in an arbitrary and capricious manner as done in the present case.

25. He would submit that merely by using words like temporary, contractual, *ad hoc*, the employer cannot deprive the individual of his Constitutional right of employment which is otherwise lawful.

26. He would urge that the Petitioner was given continuous increments, his work was rewarded on record, there were no complaints against the Petitioner. He has a record of long standing, unblemished service with the first Respondent.

27. Mr. Naphade would submit that after offering his services for almost a decade, the manner in which his services are sought to be terminated by the Respondents are completely contrary to the judgments of the Supreme Court in *Bhola Nath* and *Dharam Singh* (supra) which warrants interference by this Court.

28. According to Mr. Naphade, the first Respondent is duty bound to sanction the post of Executive Officer (Legal) and regularize the Petitioner against the said post. This is more particularly as during the entire tenure, the Petitioner has performed the duties of Deputy Registrar (Legal) and

1 SLP (Civil) No.30762 of 2024 decided on 30 January 2026

2 Civil Appeal No.(S). 8558 of 2018

Assistant Registrar (Legal) which are permanent posts and therefore he is entitled to be regularized on such posts.

29. Mr. Naphade has urged that the Respondents have acted contrary to the principle of Legitimate Expectation. The Petitioner would legitimately expect that after working for about a decade with the first Respondent he would be regularized in the post of Executive Officer (Legal) or Deputy Registrar (Legal). In this context he has relied on the decision of the Supreme Court in ***Bhola Nath*** (supra) which according to the Petitioner has not been followed by the Respondents.

30. Mr. Naphade would submit that by not recognizing the Petitioner's continuous service for the purposes of regularization the Respondents have acted in an arbitrary and unreasonable manner contrary to the constitutional mandate under Article 14.

31. Mr. Naphade has urged that for all of the above reasons the Petition deserves to be allowed and the Rule be made absolute.

Submissions of the Respondent:-

32. Mr. Naushad Engineer, the learned Senior Counsel appearing for the Respondents has submitted that admittedly and undisputedly, the Petitioner does not belong to the category of workman or employee falling under Article 311 of the Constitution of India.

33. He has urged that the post of Executive Officer (Legal) to which the Petitioner was initially appointed, was a temporary post. Further, it is not a

sanctioned post at all. In view thereof, the decisions in ***Bhola Nath*** followed by ***Dharam Singh*** (supra) relied upon by Mr. Naphade will in the very first instance, not be applicable to the Petitioner.

34. He has then submitted that the prayer in the Petition clearly refers to the relief sought by the Petitioner to be regularized on the post of Deputy Registrar (Legal). He has tendered a document being in the nature of tabular chart of administrative posts to demonstrate that the Petitioner does not possess the necessary qualifications in terms of the marks and/or otherwise to be promoted to such post of Deputy Registrar (Legal). Thus, on this very ground, the Petitioner cannot seek regularization to the post of Deputy Registrar (Legal) in as much as the Petitioner is not qualified and/or does not possess the requisite qualifications required for the said post.

35. Mr. Engineer has invited the Court's attention to certain provisions from the IIT Statutes which clearly distinguish between a regular employment and a contractual employment. Statue No. 12 of the said Statutes deal with regular employment whereas Statute No. 15 deals with contractual employment under the Statutes.

36. In this context, Mr. Engineer would submit that this is clearly not a regular employment and it is purely a contractual employment as would be clearly revealed from his terms and conditions of appointment, for which he would place reliance on the appointment letter which was tendered across the bar.

37. Mr. Engineer, would then place reliance on the landmark judgment of the Supreme Court in the case of ***Secretary, State of Karnataka and Ors. Vs. Umadevi & Ors.***³, more particularly, on paragraphs 41, 42 and 43 and paragraphs 51 to 53 of the said decision to distinguish between irregular and illegal appointments. He would submit that the plea/prayer of the Petitioner to be appointed to the post of Deputy Registrar (Legal) as prayed for in the Petition would not merely be irregular but also illegal. This is in as much as the Petitioner does not possess the requisite qualifications for the said post. The requirements as they stand, without any relaxation, does not render the Petitioner eligible to the said post of Deputy Registrar (Legal). The Petitioner, is therefore seeking relaxation, as his prayers in the Petition would clearly indicate. This would deprive the other deserving candidates from the said post who otherwise possess such qualifications for the said post of Deputy Registrar (Legal). He would submit that the decision of the Supreme Court in ***Umadevi*** (Supra) would refer to such practice as backdoor entry, which is condemned. He would also submit that in such case/instances, even grant of interim relief cannot be considered as observed by the Supreme Court, in ***Umadevi*** (supra). Mr. Engineer has also relied on a subsequent Supreme Court decision in ***State of Karnataka and Ors. Vs. M.L. Kesari & Ors.***⁴, which follows the ratio in the case of ***Umadevi*** (supra) to emphasize the distinction between an irregular and illegal

3 (2006) 4 SCC 1

4 (2010) 9 SCC 247

appointment.

38. He would contend that the post of the Executive Officer (Legal) to which the Petitioner was initially appointed was not a sanctioned post, is temporary in nature and created only to meet administrative exigencies at the relevant time. The Petitioner was always made aware of this, which is evident from the timely renewals of his contractual employment which he has been accepting from time to time. The Petitioner does not dispute that the post of Executive Officer (Legal) is a temporary and/or not a sanctioned post. Thus all these facts taken together does not make out a case of regularization of the Petitioner either on the post of Executive Officer (Legal) or the Assistant / Deputy Registrar (Legal).

39. For all the above reasons, Mr. Engineer would urge that the Petition is devoid of merit and the same be dismissed.

Mr. Naphade's Submissions in Rejoinder:-

40. Mr. Naphade in response to the submissions made by Mr. Engineer has controverted and disputed the stand taken by the Respondents. Mr. Naphade has referred to the advertisement dated 8 October 2025 (Exhibit-R to the Petition) to the post of Assistant Registrar (Legal). This is to submit that the Petitioner is entitled to be regularized at least on such post, if not to the post of Deputy Registrar (Legal) as prayed for in the Petition.

41. According to Mr. Naphade, the post of Assistant Registrar (Legal) is lower than the post of Deputy Registrar (Legal). In fact, the salary that the

Petitioner is presently earning on the post of Executive Officer (Legal) is much higher than that of the Deputy Registrar (Legal). This would be a relevant factor in favour of the Petitioner to be regularized for the post of Deputy Registrar (Legal). Merely because a separate prayer for regularization to the post of Assistant Registrar (Legal) is not made in the Petition, the Petitioner cannot be made to suffer on the ground of mere technicalities.

42. Mr. Naphade, learned counsel for the Petitioner would urge that even if the Petitioner does not comply with the age limit for such posts, this cannot be taken as a ground to defeat the Petitioner's substantive right after serving for almost a decade with the Respondents. The Respondents can always relax such age limits and this has been done in appropriate cases, this being one such case, according to Mr. Naphade.

Analysis:-

43. We have extensively heard the learned counsel for the parties and with their assistance, we have perused the record.

44. At the very outset, the proceedings before us concern the appointment of the Petitioner to the post of Executive Officer (Legal) with the first Respondent. It is not in dispute that the said post is a temporary post as clearly indicated in the advertisement issued by the first Respondent dated 8 July 2015. So also, this is not a sanctioned post. Further, the advertisement clearly clarifies that the appointment is contractual for a

period of three years. The Petitioner has accepted the said advertisement in toto, which is also not in dispute.

45. It is true that the Petitioner was re-appointed to the said post from time to time as indicated in the factual matrix above. However, every office order issued to the Petitioner in this regard clearly specified that all the other terms and conditions with regard to the Petitioner's appointment would remain unchanged. It was therefore duly clarified that the nature of the Petitioner's appointment was purely contractual for a temporary period of one year, terminable by giving one month's notice from either side.

46. We have carefully perused the Impugned Communication/Order dated 13 March 2026. It clearly refers to the office order of the first Respondent dated 4 April 2025. The said office order had clearly specified that the tenure of the Petitioner as Executive Officer (Legal) is for a period of one year w.e.f. 24 April 2025 and would lapse on 23 April 2026. The Petitioner was categorically informed that with the approval of the competent authority, there would be no further extension to his appointment/re-appointment. The Impugned Communication/Order is confined to the fact that the Petitioner's term of appointment cannot be further extended as it has come to an end by efflux of time. This, therefore, is clearly not a case of terminating the services of the Petitioner by the Respondents, whose contractual appointment period expired on 23 April 2026, as clearly indicated in the said office order dated 4 April 2025. It is

pertinent to note that the Petitioner has duly accepted the same, as well as the terms of his appointment.

47. We have noted the submissions made by Mr. Engineer in regard to his reliance on the Statutes of IIT Bombay viz. Statute No.11(C) - Classification of Members of the Staff of the Institute, would include the post of the Petitioner. Statute No.12 deals with Appointments to be normally filled by advertisement. However, the Board of the first Respondent has the power to decide on the recommendation of the director that a particular post be filled by invitation or promotion from the members of the staff of the first Respondent. Evidently, Statute No.13 provides for Terms and Conditions of service of permanent employees. Whereas, Statute No.15 stipulates appointment on contracts. A holistic reading of the said provisions would indicate that the said Statutes clearly demarcate and distinguish between permanent employees and those appointed on contracts including their terms and conditions which are specified in the said Statute Nos.13 and 15, respectively.

48. In our view, the Respondents have issued the Impugned Communication/Order by duly considering and lending credence to the said statutory provisions coupled with the terms of the advertisement dated 8 July 2015 and the appointment letter dated 8 February 2016, issued to the Petitioner. This is coupled with the fact that the Petitioner's re-appointment was clearly contractual, renewable from year to year, the last

of the renewal being until 24 April 2025, as clearly reflected in the Impugned Communication/Order. We are not impressed with Mr. Naphade's submission that merely because such contractual appointment of the Petitioner was renewed from time to time along with increments, it would create some vested right in favour of the Petitioner and/or a corresponding obligation on the Respondents to regularize the same. Such submission in our view, for the reasons further discussed below is not well founded, much less convincing.

49. We have perused the tabular chart of administrative posts handed over by the Mr. Engineer during the course of hearing. This provides for entry level post of Deputy Registrar, the first advancement being that of Joint Registrar and the second to that of Additional Registrar. The qualifications and experience required for the post of Deputy Registrar (Legal) would be Masters Degree in the relevant discipline with a minimum of 55% of marks or equivalent grade point average with relevant experience of 11 years, after the qualifying Degree, out of which five years shall be as Assistant Registrar or in a post in Level 10 and above or equivalent. We have also perused the job application form of the Petitioner also tendered across the Bar by Mr. Engineer. The form along with the personal details and Qualifications indicate that the Petitioner has a Masters Degree in Law from Shivaji University, Kolhapur with a percentage of 50.5. The said document is not controverted by the Petitioner. Therefore, clearly the

Petitioner does not possess the minimum prescribed qualifications mandated for the next level posts as stipulated in the Qualifications and Experience criteria, of the Respondents.

50. The Petitioner neither has the minimum prescribed qualifications for the post of Deputy Registrar (Legal) nor has he worked as Assistant Registrar (Legal) for a period of 5 years. In the absence of the Petitioner satisfying such minimum qualifying criteria, it cannot be assumed that the Petitioner has performed the duties of Deputy Registrar (Legal) and Assistant Registrar (Legal) and the Petitioner cannot claim for regularization to the same, merely because they are permanent posts. Even if the Petitioner is earning salary which may be higher than that in the post of Assistant Registrar (Legal) and/or Deputy Registrar (Legal) as stated by him, that cannot be a determinative factor to regularize him in the said post, in the absence of valid/prescribed qualifications, criteria (as noted supra). Accepting such contention of the Petitioner would tantamount to giving a back door entry in the employment of the first Respondent which is not what the law would require. Moreover, the post of Executive Officer (Legal) is not a sanctioned post as it was created only to meet the administrative exigencies at the given time. It was always a temporary post as clearly indicated in the advertisement dated 8 July 2015 and appointment letter/terms of appointment, which the Petitioner duly accepted.

51. We have noted the reliance placed by Mr. Naphade on the advertisement for the post of Assistant Registrar (Legal) (Exhibit-R to the Petition). He would submit that the Petitioner has fulfilled the criteria for minimum qualification and experience under the said advertisement. However, it is undisputed that the Petitioner has not even applied for such post of Assistant Registrar (Legal), which requires 55% in Masters Degree in Law (LL.M.) with an experience of 6 years as specified in the said advertisement.

52. In the above context, Mr. Engineer would submit and rightly so that in the event the Petitioner had applied, the same would have been considered as per the terms and conditions for such post on its own merits and in accordance with law as applicable. The Petitioner has not adopted such course at all. This would be necessary for the Respondents to even consider relaxation, if any in terms of age or otherwise *qua* the Petitioner. Pertinently, there is no prayer/relief sought for in the Petition in this regard. It is therefore not warranted for this Court, at this stage, to direct the Respondents to consider the Petitioner's appointment to the post of Assistant Registrar (Legal), in the given factual complexion. The Supreme Court in *Manohar Lal (Dead) By LRS Vs. Ugrasen (Dead) By LRS. And Ors* ⁵ summarizing the legal position, has held that the Court cannot grant a relief which has not been specifically prayed for by the parties.

5 (2010) 11 SCC 557

53. We have carefully gone through the prayers/reliefs sought for in the Petition. In this regard, the Petitioner has specifically prayed for a direction to the Respondents to regularize the service of the Petitioner in the post he holds and or to that of Assistant and/or Deputy Registrar (Legal) and fix the pay of the Petitioner along with arrears for the difference in amounts. However, as noted above the Petitioner does not possess the minimum qualifying criteria of 55% marks in the LL.M. examination as mandated by the Respondents including relevant experience of 5 years as Assistant Registrar (Legal) or (Level 10 post) to qualify for the post of Deputy Registrar (Legal). For such reasons, we cannot accept Mr. Naphade's contention that merely because the prayer clause does not specify consideration of the Petitioner to the post of Assistant Registrar (Legal), the Respondents ought not to consider him, in the given facts and circumstances. So also, we cannot direct the Respondents to regularize the services of the Petitioner in his present post of Executive Officer (Legal) which is not even a sanctioned post. This being a contractual appointment it came to an end at the expiry of the contract. As held by the Constitutional Bench in *Umadevi* (supra) a temporary employee cannot claim to be made permanent on expiry of his term of appointment. This is considering the statutory framework under the IIT Statutes coupled with the terms and conditions of the Petitioner's appointment/re-appointment (supra). Such statutory/legal framework of the Respondents which is equally applicable to

the Petitioner, does not warrant and/or obligate the Respondents, to regularize the appointment of the Petitioner as Executive Officer (Legal), in the given factual matrix.

54. In the above backdrop, we now advert to the decision of the Constitutional Bench of the Supreme Court in ***Umadevi*** (Supra). This is considered to be the *locus classicus* on the issue of regularization. Considering the submission of Mr. Engineer in this regard, it would be useful to extract certain paragraphs from the said decision, as under :-

“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, 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 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 constitutional and statutory mandates.

52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda* [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. **This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.**

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as

explained in S.V. Narayanappa, [(1967) 1 SCR 128] R.N. Najundappa [(1972) 1 SCC 409], and B.N. Nagarajan [(1979) 4 SCC 507], and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitment are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

55. The Supreme Court in the above decision has categorically distinguished between irregular and illegal appointment of duly qualified persons in duly sanctioned vacant post, which might have been made when such employees have continued to work for ten years or more, but without intervention of orders of Courts or Tribunals. It is in such context, the Supreme Court observed that the State Government and their instrumentalities should take steps to regularize as a one - time measure, the service of irregularly appointed person who have worked for ten years or more in duly sanctioned posts. Evidently, in the present case, it is not

disputed that the post of Executive Officer (Legal) which the Petitioner has been occupying is not a sanctioned post. Moreover, the claim of the Petitioner for regularization to the post of Deputy Registrar (Legal) is not merely irregular but also illegal as the Petitioner does not meet the requisite qualification for the same as noted (Supra). In view thereof, the Petitioner has not able to carve out a distinction from the Constitutional Bench decision in *Umadevi* (Supra) which would apply with all force, even in the given factual complexion.

56. Mr. Naphade has strenuously urged that the Impugned Communication/Order was issued without prior intimation to the Petitioner and contains no reasons in support thereof. However, a perusal of the same would clearly indicate that the Petitioner was always aware of the nature of his appointment/re-appointment, renewable from year to year. It was only due to efflux of time i.e. on 23 April 2026 that the tenure as Executive Officer (Legal) was to expire, as is set out in the Impugned Communication/Order.

57. Pertinent it is to note that the Constitutional Bench decision in *Umadevi* (supra) has clearly considered this aspect/issue. The Supreme Court therein has held that the High Court may not be justified in issuing interim directions if the employee approaching the Court is not found entitled to such relief. This is in as much as an interim direction to continue his employment would hold up regular procedure for selection or impose

on the State the burden of paying an employee who may not be really required. Juxtaposing these observations to the given facts, it is evident that the Petitioner's claim/relief for regularization to the post of Deputy Registrar (Legal) would not merely be irregular but also illegal as the Petitioner does not meet the qualifying criteria for the said post, as noted (supra). Moreover, the post which the Petitioner has been currently deployed is not a sanctioned post. A temporary employee cannot claim to be made permanent on the expiry of his term of appointment, as also held in *Umadevi* (Supra). For such reasons, we see no deficiency, irregularity, much less illegality in the Impugned Communication/Order passed by the First Respondent.

58. We are not in agreement with Mr. Naphade's submission that merely because the Petitioner occupies the post of Executive Officer (Legal) which is not a sanctioned post, nothing prevents the authorities from creating the same in the given case. Such contention is misconstrued, much less untenable in the given factual scenario, and would depart from what the law mandates in such situations.

59. Let us now examine the decision in *State of Karnataka and Ors. Vs. M.L. Kesari And another* (Supra) relied on by Mr. Engineer. We find that, the Supreme Court in paragraph 7 of the said decision has reiterated the exceptions to the general principles carved out against regularization in the judgment of *Umadevi* (Supra). Accordingly, where the employee has

worked for ten years or more in a duly sanctioned post or where the person appointed/regularized does not possess the prescribed minimum qualification, such appointments would be considered as illegal. It is only when the person employed possess a prescribed qualification and working against sanctioned post, has been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular. In the given facts, as the claim of regularization by the Petitioner to the post of Deputy Registrar (Legal) not merely being irregular but illegal, for want of requisite qualifications, in light of which, the judgment of the Supreme Court in *M.L. Kesari* (Supra) would squarely apply to the given facts.

60. Mr. Naphade has placed due emphasis on the decision of the Supreme Court in *Bhola Nath* (Supra). We have noted the submission of Mr. Nahpade in this regard that the State and/or the instrumentality of the State is to act as a model employer and the dispute ought not to be reduced to one of acceptance of contractual terms, divorced from its larger constitutional context. He has also emphasized on the observations in the said judgment to the effect that the Courts are empowered to invalidate unconscionable element of a contract, where the parties lack the ability to exercise any real or meaningful choice in negotiating its terms. Mr. Naphade has also relied on the said judgment to buttress the aspect of legitimate expectation which in the present case as he would submit, does exist in

favour of the Petitioner.

61. At the first blush, the submissions of Mr. Naphade in the above context does appear attractive. However, on deeper scrutiny and careful reading of the judgment, such interpretation of Mr. Naphade is not tenable. The present is a case where the appointment of the Petitioner to the post of Executive Officer (Legal) was at all times purely contractual, renewable on a yearly basis, by the employer/first Respondent. The Supreme Court in the said decision of ***Bhola Nath*** (Supra) has referred to the Constitution Bench decision in ***Umadevi*** (Supra), where the Supreme Court clarified the legal position in regard to the doctrine of legitimate expectation *qua* contractual, temporary or casual employees. The Supreme Court clarified that it cannot be that the State has held out any promise while engaging persons either to continue them where they are, or to make them permanent. The State cannot constitutionally make such promise. In the given case, the legitimacy of expectation is neither rooted in the Recruitment Rules nor under the IIT Bombay Statutes which, therefore, will have no application in the given factual scenario.

62. In any event, in the case of ***Bhola Nath*** (supra) the Supreme Court in its conclusion emphasized on sanctioned vacant posts for continuation of the Appellants therein. It is in this context, that the nomenclature in regard to part-time, contractual or temporary employment is to be construed and not *dehors* the same. In view thereof, Mr. Naphade's submissions in this

context are not supported by the observations and decisions in the case of ***Bhola Nath*** (supra) read with ***Jaggo vs. Union of India & Ors.***⁶ which apart from being delivered in a set of completely different facts and circumstances, do not make any departure from the law settled in the case of ***Umadevi*** (Supra). Moreover, we find merit in the submissions of Mr. Engineer in this regard that the Appellants before the Supreme Court in ***Bhola Nath*** (supra) were employees governed by Article 309 of the Constitution of India.

63. It cannot be disputed that an instrumentality of a State also ought to act as a model employer. However, in the given facts and from the record, it appears that the contractual employment of the Petitioner with the Respondents for a fixed period of one year subject to renewal from time to time was fully known to the Petitioner who accepted such terms, ultimately culminating in the non-renewal of his reappointment as Executive Officer (Legal). Therefore, such decision of the Respondents who has acted within the four corners of law cannot be faulted, *inter alia*, on the ground of violation of Article 14 of the Constitution of India, as urged by the Petitioner. The same is neither infringed nor violated *qua* the Petitioner in the given factual matrix, in any manner whatsoever.

64. The decision of the Supreme Court relied on by Mr. Naphade in ***Dharam Singh and Ors.*** (supra) is also clearly distinguishable. The Supreme

6 (2024) SCC OnLine SC 3826

Court in that case was dealing with class 3 and class 4 employees employed on daily wage basis with the State of UP. It is in such fact situation that the Supreme Court observed that temporary employees particularly in Government Institutions often face multifaceted forms of exploitation. This practice is manifest in ways like arbitrary termination; lack of career progression; using outsourcing as a shield; denial of basic rights and benefits. That was a situation where ad-hocism was examined in the context of similarly placed workers who were treated differently. Such situation is clearly absent in the given factual complexion and therefore reliance on the said decision by Mr. Naphade, would not take the case of the Petitioner any further.

65. It is apposite at this juncture to refer to another three Judge Bench decision of the Supreme Court in *State of Maharashtra and Ors. Vs. Anita And Anr.*⁷. The Supreme Court in paragraph 15 therein observed that the appointments of employees made initially for 11 months, but were renewed twice. After serving maximum contractual period, such services came to an end and the Government initiated a fresh selection process. After having accepted the contractual appointment, the Respondents are estopped from challenging the terms of their appointment. They are not precluded from applying for the said post afresh subject to the satisfaction of other eligibility criteria. In the present case also, the Petitioner after having

7. (2016) 8 SCC 293

exhausted his contractual period as Executive Officer (Legal) could have easily applied to the post of Assistant Registrar (Legal) which as noted above, would then warrant consideration, in terms of such appointment. However, the Petitioner chose to seek regularization to the post of Deputy Registrar (Legal) from his current post which is not even a sanctioned post. Moreover, he does not fulfill the qualifying criteria for the said post of Deputy Registrar (Legal). The law clearly does not mandate such backdoor entry.

66. We have duly noted the submission of Mr. Engineer that the Petitioner has applied to the post of Chief Legal Advisor (on contract basis) where he has been selected vide advertisement no. 01/2025 dated 30 April 2025 issued by Maharashtra Transco, a Government undertaking. The necessary communication in this regard has been tendered across the bar. The Petitioner has clearly explored other alternative sources/job prospects and does not depend only on the first Respondent for his employment/livelihood. Such fact is not disclosed in the petition. We are not impressed, much less convinced with the explanation/justification of Mr. Naphade pursuant to such development which is factually not controverted or disputed. It thus cannot be ruled out that the Petitioner is taking his chance by way of the present petition.

67. Before concluding, we may observe that clear lines are drawn post the Constitutional Bench decision of the Supreme Court in *Umadevi*

(Supra). The distinction between irregular and illegal appointment has been followed in the subsequent decision by the Supreme Court in ***M. L. Kesari and Others*** (Supra). Deviating from such well settled legal position that too in the given case where the contractual appointment has come to end by efflux of time, pursuant to which the Petitioner has applied for regularization/permanency, would, in our view would unsettle the settled law. We cannot countenance such an approach. We respectfully agree with the settled legal position that fairness in engagement and transparency in administration are not matters of grace but are obligations under Articles 14, 16 and 21 of the Constitution of India, in regard to which, there is no contravention in the given factual complexion. This is a case where the Petitioner seeking justice by invoking the extraordinary jurisdiction of the writ court has not been able to demonstrate that granting relief as prayed for would do justice and/or that justice lies on his side⁸.

68. In light of the foregoing discussion, we are not inclined to entertain the petition, we pass the following order:-

ORDER

- i) The Petition is dismissed. The Rule is discharged.
- ii) No order as to cost.

[ADVAIT M. SETHNA, J.]

[R.I. CHAGLA, J.]

⁸ The State of Bombay vs. Morarji Cooverji [1958 SCC OnLine Bom 188]

69. After pronouncement of the judgment, Mr. Naphade, the learned Counsel for the Petitioner, has made a request that the Petitioner may be permitted to continue his stay in the official residence / accommodation for a further period until 8 June 2026. He would submit that the Petitioner is already eligible to occupy the said official residence until 22 May 2026. In view thereof, he would request for a 15 days extension until 8 June 2026. The learned counsel for the Respondents would submit that he has no instructions at this stage. However, the Court may pass appropriate orders.

70. Having considered this request, we deem it appropriate to grant such extension to the Petitioner making it very clear that this should only be until 8 June 2026, subject to an appropriate Undertaking be furnished/filed by the Petitioner, to this Court by the end of today.

[ADVAIT M. SETHNA, J.]

[R.I. CHAGLA, J.]