

(2016) 09 AHC CK 0194
In the Allahabad High Court
Case No : Writ A No. 42450 of 2016

Abha Srivastav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-09-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2016) 9 ADJ 477 : (2016) 6 ALLJ 42 : (2016) 6 AllWC 6107

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Rohit Upadhyay, Advocate, for the Petitioners; C.S.C, Anurag Pathak, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J.— Heard Sri Rohit Upadhyay, learned counsel for the petitioners, Sri P.P. Choudhary, learned standing counsel for respondent nos. 1, 2 and 3 and Sri Harshit Pathak holding brief of Anurag Pathak, learned counsel for the respondent nos. 4 and 5.

2. Petitioners have filed this writ petition for the following relief:

I. Issue a writ, order of direction in the nature of certiorari quashing the order dated 12.4.2016 passed by the M.D. (Managing Director U.P. Bhumi Sudhar Nigam).

II. Issue a writ, order of direction in the nature of mandamus directing the respondents to regularise the services of the petitioners on the posts held by them.

Submissions of Parties

3. Learned counsel for the petitioner submits that in terms of Government Order dated 13.8.2015 and Government Order dated 24.2.2016 for regularisation of work charge/contractual employee, the petitioners are entitled for regularisation

on the post they are working but the impugned order dated 12.4.2016 has been passed in contravention of the aforesaid Government Orders. He submits that in case the respondent no.4 was finding difficulty due to shortage of funds to meet the expenses of salary on account of regularisation of the petitioners then in that situation the respondent no.4 should have asked for funds from the State Government.

4. He submits that on the ground of non availability of funds to meet the extra burden on account of regularisation, the claim of petitioners under the aforesaid two Government Orders for regularisation can not be rejected and consequently the impugned order is wholly arbitrary and illegal and therefore deserves to be quashed.

5. Learned standing counsel and Sri Harshit Pathak jointly submit that the aforesaid two Government Orders clearly provides for regularisation of daily wagers or work charge and contractual employee continuously working prior to the cut of date, subject to the three conditions provided in the aforesaid two Government Orders. Condition No.1 clearly stipulates that a Nigam may regularise the services of the duly appointed contractual employee only in the situation that it shall meet the extra financial burden from its own resources and there shall be no need to demand any financial grant from the State Government. Condition No.2 provides that in case of local bodies, Jal Sansthan, Jila Panchyat and such autonomous institutions which are being run by hundred percent or partial State Financial grant, then regularisation may be done only in the circumstances that to meet the extra financial burden, the financial grant has not to be increased. Condition no.3 provides class of persons on which these Government Orders shall not be applicable.

6. They further submit that in the impugned order a finding has been recorded that the respondent no. 4 is not being given hundred percent or partial State grant. It has also been recorded in the impugned order that respondent no.4 is not able to bear the extra financial burden from its own resources. They, therefore, submit that the impugned order has been passed lawfully and it does not suffer from any infirmity.

7. I have carefully considered the submissions of learned counsel for the parties.

Facts

8. Briefly stated the facts of the present case are that according to the petitioners they were engaged on contractual basis in the year 1999 for a definite period. The contract was renewed from time to time. They have neither faced the regular selection process for appointment nor the provisions of Article 14 and 16 of the Constitution of India were applied. Respondent no. 4 undertakes projects which are funded by agencies like European Economic Community and World Bank. This fact has also been admitted by the petitioners in paragraph 8 of the writ petition.

9. According to the own case of the petitioners the respondent No. 4 Nigam has been constituted for carrying out projects relating to development of land. The projects undertaken by it are funded by the World Bank or other such types of agencies. The respondent no. 4 is a Government company constituted under the Companies Act 1956. Depending upon the requirement of man power, it engages persons to complete its project which are either assigned to it or which are undertaken by it.

10. It appears that some contractual employees were insisting for their regularisation and therefore they filed a Writ A No. 3208 of 2016, Sanjay Kumar Mishra and two others v. State of U.P. and 4 others which was disposed of by order dated 27.1.2016 as under:

It is submitted that petitioners have been working on contractual basis for last more than 20 years, and their claim for regularisation is not being examined. Reliance has been placed upon a Government Order dated 13th August, 2015, and it has been contended that in view of the policy decision taken by the State to regularise employees working since prior to 31st March, 1996, petitioners' claim is also liable to be examined. Various representations in this regard have been made by petitioners, which are pending, and it is stated that no decision has been taken.

Learned Standing Counsel, who has accepted notices on behalf of respondent nos. 1, 2 and 3, and Sri Anurag Pathak, learned counsel appearing for the respondent nos. 4 and 5, submit that the claim of petitioners, noticed above, shall be examined, in accordance with law.

Considering the above, the writ petition stands disposed of with a direction upon respondent no.5 to examine the claim of petitioners, noticed above, strictly in accordance with law, by means of a reasoned speaking order, within a period of three months from the date of presentation of a certified copy of this order.

However, it is made clear that this Court has not examined the entitlement of petitioners, on merits, and all questions are left open to be examined, at the first instance, by the authority concerned, in accordance with law.

11. Pursuant to the directions of this Court in the writ petition as afore noted, the representation of the petitioners of the aforesaid Writ A no.3208 of 2016 was decided by the respondent no. 5 by order dated 12.4.2016.

12. Aggrieved with this order the petitioners have filed the present writ petition.

Discussion and Findings

13. I have perused the impugned order in which the three conditions of the aforesaid Government Orders have been examined as under :-

"kklukns" k la[;k 44@2015@os0vk0&2&795@nl&54@,e@2008 Vh0lh0 fnukad 13-08-2015 esa mfYyf[kr "krsZaA

lfefe dk earO;@laLrqfr

1-lkoZtfud midzeksa@fuxe@fodkl izkf/kdj.k@,slh Lo''kklh laLFkk;sa] tks Lo;a ds L=ksrksa ls lapkfyf gS] muesa mijksDr fofu;ferhdj.k dh dk;Zokgh mlh fLFkfr esa dh tk;sxh] tc blls vkus okys vfrfjDr O;; Hkkj dks lacaf/kr midze@fuxe@Lo''kklh laLFkk Lo;a ds L=ksrksa ls ogu djus esa l{ke gksa vkSj bl vfrfjDr O;; Hkj dks ogu djus gsrq mUgs jkT; ljdkj ls dksbZ foRrh; lgk;rk ekaxs tkus dh vko'';drk u gksA

jftLV~kj vkWQ dEiuh] m0iz0] dkuqj }kjk tkjh foKfIr fnukad 27-11-1996 ds ek;/e ls m0iz0 Hkwfe lq/kkj fuxe dks dEiuh ,DV 1956 ds varxZr iathd`r dEiuh ? kksf''kr fd;k x;k gSA rRdkyhu izca/k funs''kd] m0iz0 Hkwfe lq/kkj fuxe ds i=kad 9263 fnukad 26-12-1996 ds vuqlkj mDr lanfHkZr iathdj.k ds QyLo:i fuxe ,d fcuk ykHk&gkfu okyh dEiuh esa Hkh ifjofrZr gks x;k gSA fuxe dk viuk vk; dks dksbZ L=ksr ugha gSA fuxe }kjk o''kZ 1993 ls jkT; ljdkj@dsUnz ljdkj@fo''o cSad ds lg;ksx ls fofHkUu lksfMd ifj;kstukvksa dk dk;kZUo;u fd;k tkrk jgk gS rFkk fuxe esa dk;Zjr dfeZ;ksa dks O;; Hkkj bu ifj;kstukvksa esa miyC/k /kujkf''k ls gksrk jgk gSA blh dkj.k o''kZ 2007 esa m0iz0 lksfMd yS.M fJDyses''ku f}rh; ifj;kstuk ds lekiu ij rRle; vfr vijgk;Z dk;ksZa gsrq vYi la[k esa furkar vko'';d inksa ls lacaf/kr dfeZ;ksa dks NksM+dj fuxe esa izfrfu;qfDr@lafonk ij dk;Zjr leLr dkfeZdksa dks ewy foHkkx esa izR;kofrZr@ dk;ZeqDr dj fn;k x;k Fkka ifj.kkeLo:i o''kZ 2007 ls o''kZ 2009 rd mijksDrkuqlkj of.kZr vYi dkfeZdksa dks NksM+dj dksbZ dkfeZd dk;Zjr ugha jgsA flracj] 2009 esa fo''o cSad iksf''kr m0iz0 lksfMd yS.M fJDyses''ku r`rh; ifj;kstuk dh Lohd`fr ds mijkar iqu% vko'';drkuqlkj ''kklu }kjk l`ftr vLFkk;h fofHkUu inksa dks izfrfu;qfDr@lafonk vkfn ds vk/kkj ij Hkj x;k gS rFkk lacaf/kr dkfeZdksa ds osru ,oa HkRrs ij vkus okyk foRrh; vf/kHkkj ifj;kstuk fdz;kUo;u gsrq izkIr /kujkf''k ls fd;k tk jgk gSA ifj;kstuk dh lekiu frfFk 29 fnlacj] 2017 gSA

mijksDr rF;ksa ls Li''V gS fd fuxe Lo;a ds L=ksrksa ls lapkfyf ugha gS rFkk ''kklukns''k fnukad 13-08-2015 ds vuqlkj fnukad 31-03-1996 rd fu;qDr nSfud osru@odZpktZ ,oa lafonk ds dkfeZdksa dk fofu;ferhdj.k fd;s tkus dh dk;Zokgh dh fLFkfr esa] blls vkus okys vfrfjDr O;; Hkkj dks Lo;a ds L=ksrksa ls ogu djus esa l{ke ugha gS vkSj ;fn fofu;ferhdj.k fd;s tkus dh dk;Zokgh dh tkrh gS rks jkT; ljdkj ls foRrh; lgk;rk ekaxs tkus dh vko'';drk gksxhA

mijksDr vk[k; ds vuqlkj fuxe ''kklukns''k fnukad 13-08-2015 esa nh x;h izFke ''krZ dks iw.kZ ugha djrk gSA

2- LFkkuh; fudk;] ty laLFkku] ftyk iapk;r ,oa ,slh Lo''kklh laLFkk;sa] tks ''kr izfr''kr vFkok vkaf''kd :i ls jktdh; vuqeku ls lapkfyf gSa] muesa mijksDr fofu;ferhdj.k dh dk;Zokgh bl izfrc/k ds v/khu dh tk;sxh fd blls vkus okys vfrfjDr O;; Hkkj dks lacaf/kr laLFkk ogu djsxh vkSj bl gsrq jkT; ljdkj }kjk orZeku esa vf/k''Bku O;; en dks ogu djus gsrq ftrus va''k dh foRrh; lgk;rk nh tk jgh gS] mlesa dksbZ o`f) ugha dh tk;sxhA

m0iz0 Hkwfe lq/kkj fuxe }kjk orZeku esa fo''o cSad iksf''kr m0iz0 lksfMd yS.M fJDyses''ku r`rh; ifj;kstuk dk dk;kZUo;u fd;k tk jgk gS rFkk bl ifj;kstukUrxZr izkIr /kujkf''k ls dk;ksZa dk lapkyu djrs gq;s ifj;kstuk esa dk;Zjr dkfeZdksa ds

osru ,oa HkRrksa dk Hkqxrku fd;k tk jgk gSA fuxe dks fdLH Hkh en esa "kr izfr"kr vFkok vkaf"kd :i ls dksbZ jktdh; vuqnku ugha fn;k tk jgk gSA ,slh fLFkfr esa izFke "krZ esa fn;s x;s fooj.k ds vuqlkj fofu;ferhdj.k dh dk;Zokgh ls vkus okys vfrfjDr O;; Hkkj dks fuxe Lo;a ds L=ksrksa ls ogu djus esa l{ke ugha gSA

mijksDr vk[;k ds vuqlkj fuxe "kklukns" k fnukad 13-08-2015 esa nh x;h f}rh; "krZ dks iw.kZ ugha djrk gSA

3- mijksDr fofu;ferhdj.k esa lhtuy laxzg vehu@lhtuy vuqlsod] m|ku foHkkx@d`f`k foHkkx@d`f`k f`k{k k foHkkx ds varxZr lhtuy dk;Z gsrq yxk;s x;s dkfeZdksa eujsexk@vkaxu ckMh@vk"kk cgw@gksexkMZ Lo;a lsod@izkarh; j{k d ny Lo;a lsod@f`k{k fe= vFkok Hkkjr ljdkj@jkT; }kjk lapkfyr ;kstuvksa ds v/khu ekuns; ;k vU; vk/kkj ij j[ks x;s deZpkfj;ksa vkfn dks lfeefyr ugha ekuk tk;sxA

m0iz0 Hkwfe lq/kkj fuxe }kjk lapkfyr m0iz0 lksfMd yS.M fjdyses"ku r`rh; ifj;kstuk ds varxZr fuxe ds fu;fer dkfeZdks ds vfrfjDr izfrfu;qfDr@lafonk@lsok iznk; laLFkk@{ks=h; nj ds vk/kkj ij dkfeZd dk;Zjr gSA vr% bl laca/k esa vk[;k okafNr ugha gSA

14. Thus in the impugned order findings of fact have been recorded that since the year 1993 the respondent no.4 is carrying out projects assigned to it by the State Government/Central Government/World Bank and the burden of salary of employees is born from the amount available under the project. In the year 2007, the U.P. Sodic Land Reclamation 2nd Project was completed and consequently leaving small number of employees, all the employees on deputation or on contract basis engaged by the respondent no.4, were disengaged. Consequently, during the year 2007 to 2009 except little number of employees, no employees were working in the respondent no. 4, Nigam. The U.P. Sodic Land Reclamation - 3rd Project was again started in September 2009 and the date fixed for its completion is 29.12.2017. The respondent no. 4 Nigam is not receiving any grant-in-aid from the State Government. The respondent no. 4, Nigam is not able to bear additional burden from its own resources on regularisation being insisted.

15. The afore noted findings of fact recorded in the impugned order, have not been disputed by the petitioners in the writ petition. Rather the averments made in the writ petition particularly in paragraphs 7,8, and 9 supports the findings.

16. Thus the fact that the respondent no. 4, Nigam do not receive any grant-in-aid from the Government and it executes projects funded by the World Bank or the Government and only from that fund the expenses are met. The finding in the impugned order that respondent no.4 is not able to bear additional financial burden on account of regularisation being insisted by contractual employees, is wholly undisputed. The afore noted two Government orders are conditional and one of the important condition is that regularisation shall be done only if the Nigam is able to bear additional financial burden from its own resources without any additional assistance from the State Government. Under the circumstances

the impugned order is in conformity and well within four corners of the aforesaid two Government orders. It does not suffer from any infirmity.

17. In the case of Secretary, State of Karnataka and others v. Uma Devi (3) and others, (2006) 4 SCC 1 the Constitution Bench of Hon''ble Supreme Court considered the question of regularisation of daily wagger/contracted employees and held as under:-

"2. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

3. A sovereign government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages. Going by a law newly enacted, The National Rural Employment Guarantee Act, 2005, the object is to give employment to at least one member of a family for hundred days in an year, on paying wages as fixed under that Act. But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule.

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

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

5. This Court has also on occasions issued directions which could not be said to be consistent with the Constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin, has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the Constitutional scheme, certainly tend to water down the Constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

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

departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognised that no Government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the Constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.

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.

45. While directing that appointments, temporary or casual, be regularised or made permanent, courts are swayed by the fact that the 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 arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to 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 employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not 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.

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 recognised 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 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.

51. The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in Government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

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 v. The Governing Body of the Nalanda College* [(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.

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

(emphasis supplied by me)

18. The law laid down by the constitution Bench of Hon''ble Supreme Court in the case of Umadevi (supra) has been consistently followed.

19. Admittedly, the petitioners were not appointed in terms of the relevant rules or in adherence to Article 14 and 16 of the Constitution of India. This Courts cannot encourage appointments which are made outside the constitutional scheme. The respondents are bound to comply with the constitutional requirements as enumerated in Article 14 and 16 of the Constitution of India. To allow the prayer of the petitioners would mean to permit them to be recruited through back door which this Court cannot do.

20. The appointments in bodies which are state within the meaning of Article 12 of the Constitution of India should be made after issuing proper advertisement for inviting applications from eligible candidates in accordance with the relevant statutory provisions or the Government orders. Selection should be held as provided under the relevant statutes and after compliance of the provisions of Article 14 and 16 of the Constitution of India. The selection should be fair and impartial through a written examination or interview or some other rational criteria in judging inter-se merit of candidates who apply pursuant to the advertisement. In some cases applications may be invited from the employment exchange where eligible candidates get their name registered. The selection should be such in which eligible candidates get a fair chance to compete.

21. Equal opportunity is the basic feature of the constitution of India. Public employment is repository of the state power. The framers of the constitution clearly intended and shown strong desire and constitutional philosophy to implement principle of equality in the true sense in the matter of public employment in view of unambiguous constitutional scheme as reflected from Article 14 and 16 and 309 of the Constitution of India. Under the circumstances, it would be wholly improper for this Court to give any direction for regularisation of services of the petitioners, who were engaged on daily wage basis or as contractual employees and not appointed following due procedure of law.

22. The question of regularisation of contractual employee and daily wager was also considered by Hon''ble Supreme Court in the case of State of Urisa v. Chandra Sekhar Mishra, (2002) 10 SCC 583, wherein Hon''ble Supreme Court

held that relief of appointment as regular employee cannot be granted to a contractual employee. In the case of *Surender Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mandi Parisad and others* (2006) 7 SCC 684, Hon"ble Supreme Court considered the scheme of the Constitution and held that dismissal of writ petitions by the High Court of the contractual employees seeking directions for regularisation was wholly proper.

23. Petitioners got engagement as a contractual worker without any proper selection. Therefore they can not even invoke the theory of legitimate expectation for regularisation as they knew the consequences of contractual appointment. Since the appointment of the petitioners was not consistent with the scheme for public employment, the same would not confer any right on the petitioners. Therefore, this Court under Article 226 of the Constitution of India can not issue direction for regularization.

24. In view of the aforesaid, I do not find any merit in this writ petition and as such the writ petition is dismissed. However, there shall be no