

(2007) 05 GAU CK 0072

In the Gauhati High Court

Case No : W.A. No's. 17 (K) , 18 (K) , 44 and 45 of 2007

Bharat Sanchar Nigam Limited

APPELLANT

Vs

Ashim Kumar Das and Others

RESPONDENT

Date of Decision : 17-05-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 226, 309

Citation : (2008) GLT 164 Supp

Hon'ble Judges : M.B.K. Singh, J;I.A. Ansari, J

Bench : Division Bench

Advocate : S. Dutta, for the Appellant; Yangerwati, for the Respondent

Judgement

I.A. Ansari, J.—Whether a High Court can issue a writ, in the nature of mandamus, commanding a State or an instrumentality of the State to regularize the service of an employee, who was appointed without following any selection process or as a daily wage earner, on the ground that the services of some others, similarly situated, have been regularized and that the refusal to regularize the service of the writ Petitioner is an act of discrimination and this discrimination must be removed by the High Court in exercise of its powers under Article 226? This is the moot question, which, in essence, the present two appeals have raised. While Writ Appeal No. 18 (K)/2007 has arisen out of the judgment and order, dated 03.11.2006, passed in WP(C) No. 152 (K)/2006, Writ Appeal No. 17(K)/2007 has arisen out of judgment and order, dated 10.11.2006, passed in WP (C) No. 153 (K)/2006. By the judgments and orders impugned in the two writ appeals, a learned Single Judge of this Court has directed the Appellants, who were Respondents in the said two writ petitions, to regularize the services of the writ Petitioners.

2. As both the present writ appeals are closely inter-linked and the disposal of one of these writ appeals would have a bearing on the out-come of the other writ appeal, both the appeals have been, on the request made by the learned Counsel for the parties, heard together and are being disposed of by this common

judgment and order.

3. The material facts giving rise to the present appeals may, in brief, be set out as follows:

(i) Following various orders issued from time to time by the Supreme Court and High Courts commanding the Government of India to regularize the daily rated workers and casual employees working under different Ministries and Departments of the Govt. of India, the Government framed, for regularization of the services of those employees of the Central Government, who had been working as daily wage earners or casual labourers, a Scheme called Casual Employees (Grant of Temporary Status and Regularisation) Scheme 1989 (in short, "the Scheme of 1989"). This Scheme was brought into force with effect from 01.10.89, the Scheme being applicable to casual labourers in the employment of the Ministries and Departments of the Government of India. In terms of this Scheme, a casual labourer, who had been engaged before 30.03.85, became, on completion of 10 years of service, eligible for regularization of his service. The Scheme, so brought into force, became, in course of time, applicable to the Bharat Sanchar Nigam Ltd. (in short, "the BSNL") too. This Scheme had two facets. It contained provisions for conferring of temporary status on casual labourers or daily rated workers. The temporary status, under the said Scheme, was conferrable on all those casual labourers, who had rendered continuous service of, at least, one year out of which they must have been engaged for work for a period of 240 days (and 206 days in the case of offices observing five days a week). A casual labourer, covered by this Scheme, was to be designated as temporary mazdoor. Though conferment of such status and designation of temporary mazdoor on a casual labourer did not make any change in his duties and responsibilities as a casual labourer and though his engagement was to remain on daily rates of pay on need basis, it gave him certain monetary benefits and also entitled him to avail leave. This apart, a casual labourer with temporary status, who had completed 10 years of service, became eligible for regularization under the Scheme of 1989.

(ii) By a letter, dated 12.02.99, issued by the Department of Tele-Communication, Govt. of India, it was decided to create posts of Mazdoor by regularizing the casual labourers under the Scheme of 1989, who had completed 10 years of service as on 31.03.97. Thus, the Scheme of 1989 came to be extended till 31.03.1997. As a fall-out of this extension, a person, who came to be engaged after 31.03.97, was neither entitled to conferment of status as temporary Mazdoor nor could he have been regularized even if he had put in 10 years of regular service. Consequently, any casual labourer, who had not been engaged, on work, on or before 31.03.97, for a period of 240 days or 260 days in the case of offices observing 5 days a week within one year, did not also remain entitled to conferment of status as temporary Mazdoor. The Scheme of 1989, which had been subsequently extended, as already indicated hereinbefore, up to 31.03.97, became, in course of time, applicable to the employees of the BSNL.

By a communication, dated 29.09.2000, issued by the Department of Tele-Communication, Govt. of India, all concerned were also directed that no casual labourer shall be engaged after 01.08.1998 and if anybody had been engaged, he shall be disengaged forthwith. As directions had been issued by the BSNL to its officers not to engage and continue to keep in engagement anyone as casual worker or daily rated worker contrary to the said Scheme, an order was passed, on 23.06.2006, directing the writ Petitioners not to report for work any further.

4. It is in the backdrop of above admitted facts that the writ petitions, which have given rise to these two appeals need to be considered. In WP (C) No. 152(K)/2007, there were two writ Petitioners, (i.e., Respondent Nos. 1 and 2 in Writ Appeal No. 45 (K)/2007 herein). While the writ Petitioner-Respondent No. 1 claimed to have been engaged by the Appellants as a daily rated worker in the year 1996, the writ Petitioner-Respondent No. 2 claimed to have been engaged by the Appellants, as casual Mazdoor, in the year 1998. As far as WP (C) No. 153(K)/2006 is concerned (which has given rise to Writ Appeal No. 44(K)/2007), it was instituted by only one writ Petitioner, who claimed to have been engaged as a casual labourer by the Appellants herein in the year 1999. It was, thus, clear that while the Petitioner No. 1 in WP (C) No. 152 (K)/2006 claimed to have been engaged as a daily rated worker in the year 1996, the Petitioner No. 2 claimed to have been engaged as a daily rated worker in the year 1998 and the sole Petitioner, in WP(C) No. 153(K)/2006, claimed to have been engaged as a daily rated worker in the year 1999. The case of these writ Petitioners, in brief, runs thus: Since after their engagement, the writ Petitioners had been working as Mazdoors in the BSNL. The Petitioners and some other similarly situated persons had, through their Union, made an application to the Central Administrative Tribunal, Guwahati, praying for, inter alia, regularization of their services. This application gave rise to Original Application No. 200/2000. This Original Application was disposed of, on 08.06.2000, with directions to the Applicants to make individual representation to the BSNL giving respective dates of their engagement and the period of service they had rendered along with all other relevant materials for consideration by the BSNL. The learned Tribunal further directed that the BSNL shall scrutinize and examine each case on merit and, then, do the needful in accordance with law. The writ Petitioners and some other similarly situated persons made applications seeking regularization of their services in terms of the directions contained in the order, dated 08.06.2000, passed in Original Application No. 206/2000. Acting upon the directions, so given on 08.6.2000, the BSNL to whom the services of the Petitioners had been transferred regularized the services of as many as 137 numbers of casual workers. The case of the writ Petitioners was that though they too had been rendering service as casual workers and though they too were covered by the said directions of the Central Administrative Tribunal, Guwahati, yet their services had not been regularized. Instead of regularizing their services, the BSNL, according to the writ Petitioners, passed illegally the said order, dated 23.06.2006, directing the writ Petitioners not to report for duty. Alleging that

they were being discriminated, these writ Petitioners accordingly sought for, inter alia, issuance of writ (s), in the nature of mandamus, commanding the BSNL and its authorities to regularize the services of the writ Petitioners.

5. The writ petitions were resisted by the Appellants herein as Respondents, the case of the Respondents herein being, in brief, that the writ Petitioners had been allegedly engaged, as Mazdoor, in the years 1996, 1998 and 1999 and none of them fell within the Scheme of 1989, for, the said Scheme had been extended only up to 31.09.97 and not thereafter. As the writ Petitioners, according to the BSNL, fell outside the relevant Scheme, they were not entitled to claim regularization of their services.

6. At the time of hearing of the writ petitions, pointed attention of the learned Single Judge was drawn to the fact that the engagement of the writ Petitioners was in violation of the Constitutional guarantee of public employment inasmuch as they had been simply picked up and chosen for appointment as daily rated workers, their services were inherently temporary in nature and they were not entitled to regularization of their services, particularly, when they were not covered by any Scheme or policy of the Government or BSNL meant for regularization. In support of their case, the Appellants herein also took help of, and cited, the decision of the Constitution Bench, in Secretary, State of Karnataka and Others Vs. Umadevi and Others, The learned Single Judge, however, held that when the BSNL had regularized the services of other casual workers similarly situated, there was no justification in not regularizing the services of the writ Petitioners and that the refusal to regularize the services of the Petitioners would be unfair and discriminatory. As a result of the conclusions, so reached, the learned Single Judge directed that within 45 days, services of the writ Petitioners shall be regularized and that the impugned order, dated 23.06.2006, whereby the writ Petitioners had been directed not to attend their duties, shall stand set aside and quashed. Aggrieved by the directions given for regularization of the services of the writ Petitioners-Respondents and also aggrieved by the setting aside and quashing of the order, dated 23.06.2006, aforementioned (whereby the writ Petitioners had been directed not to report for duty any further), the BSNL and its authorities are, now, before this Court with the help of the present two appeals.

7. We have heard Mr. S. Dutta, learned Counsel for the Appellants, and Mr. Yangerwati, learned Counsel, appearing on behalf of the writ Petitioner-Respondents.

8. While considering the present appeals, what is of paramount importance to note is that before a writ Court commands the State or any of its instrumentalities to pass similar order as has been passed in the case of another person in order to remove discrimination, the Court must be satisfied that the order, which has been passed in favour of the other person, is in accordance with law and sustainable. If an order has been illegally passed to give benefit to a person or an illegal benefit has been extended to a person, the writ Court, in the

name of removing discrimination, cannot command the person, who has passed the illegal order, to repeat the illegality for the purpose of removing discrimination. The test of Discrimination is, thus, not satisfied merely because of the fact that unequal treatment has been given to two persons. The test of discrimination really lies in the fact as to whether a benefit rightfully and legally given to one has been denied, without lawful reasons and justification, to the other person, who alleges discrimination. If the benefit given to anyone is illegal, such benefit cannot be directed by the Court to be extended to another person in the name of removing discrimination.

9. What emerges from the above discussion is that the mere fact that an authority has passed a particular order in the case of another person, similarly situated, cannot be a ground for issuing a Writ in favour of a Petitioner on the plea of discrimination if the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case. Noticing that the High Courts, in exercise of their writ jurisdiction, have been passing orders to remove discrimination and thereby asking the authorities concerned to repeat the illegality, the Apex Court has expressed its anxiety on such incorrect approach and has laid down the position of law in *Chandigarh Administration and another Vs. Jagjit Singh and another*, in the following words:

8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the Respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the Petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the Petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the Respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the Respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law--indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law--but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the Respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do

incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the Petitioner if it is found that the Petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the Petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the Petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course--barring exceptional situations--would neither be advisable nor desirable. In other words,--the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises).

10. In the light of the observations made in Chandigarh Administration (supra), there can be no escape from the conclusion that the services of the present writ Petitioners could not have been directed to be regularized merely on the ground that the services of some other persons, similarly situated as the Petitioners, had been regularized unless the learned Single Judge could have held that the regularization of the services of those persons was in accordance with law. If the services of those, who have been made beneficiary of a process of regularization of service, could not have made in law, or ought not to have been made in law, the services of the Petitioners cannot be directed to be regularised, for, such a direction would be a direction to perpetuate an illegality, which the State might have committed in the past. A direction to commit an illegality cannot be issued to the State in the name of removing discrimination unless one is able to confidently hold that what had been done by the State in favour of others was legally permissible. If the Court finds that the direction, sought for by a Petitioner, would, if granted, require the State to perpetuate the wrong done earlier, then, the Court must refuse to grant such a relief even if not granting of such a relief would amount to denying to the writ Petitioner a benefit, which others, similarly situated, maybe enjoying. In short, a writ Court cannot permit repetition of an illegality in the name of removing discrimination and before granting a relief in order to remove a discrimination, the Court must be satisfied that the relief, sought for, is legally permissible. The test, therefore, in a case of

present nature, is as to whether regularization of service is permissible in law, particularly, in the context of the facts of the present case. 11. Bearing in mind as to when a Court can command an authority to give benefit to a person in the name of removing discrimination, when we turn to the facts of the present case, what attracts our attention is that the source of claim of the writ Petitioners for regularization of their services is the Scheme of 1989, for, there is no Scheme, other than the Scheme of 1989, for regularization of the services of the casual labourers or daily rated workers. This Scheme was, admittedly, extended, vide letter, dated 12.02.99, upto 31.03.97. There is not even a particle of materials on record to show that this Scheme was extended any further. Though it has not been in dispute as to whether the dates of engagement, claimed by the writ Petitioners, were correct or not, the fact remains that even if, as had been claimed by the writ Petitioners, it were true that they had been engaged in the years 1996, 1998 and 1999, the cases of the writ Petitioners palpably fell outside the Scheme of 1989, for, none of them had completed ten years as a casual labourer.

12. To a pointed query made by this Court if there is any material showing that the Scheme of 1989 was extended beyond 31.03.97, nothing could be submitted, on behalf of the writ Petitioners-Respondents, before this Court, to show that the Scheme of 1989 stood extended beyond 31.03.1997. Though a letter, dated 29.03.2001, is produced by the writ Petitioners to show that the casual labourers have been continued to be engaged until 1.08.98, the fact remains that even if such an engagement took place, the person concerned shall not be entitled to regularization of his service, for, it is clear from the Scheme of 1989 that a person becomes eligible to seek regularization only on completion of a period of 10 years of service. Thus, neither the Scheme of 1989 could be proved to have been extended beyond 31.03.97 nor could the Petitioners show that notwithstanding the Scheme of 1989, they were entitled to regularization of their services. In fact, the case of the writ Petitioners was that while preparing the list of persons, who had been working as casual labourers, their names have been dropped from the list, dated 07.05.2007, by the office of the General Manager, BSNL, Nagaland Telecom district, Dimapur. The fact, however, remains -that had the names of the writ Petitioners been included in the list, dated 07.05.2007, aforementioned, they would have still not been entitled to claim regularization of their services under the Scheme of 1989. No wonder, therefore, that the Appellants claim that they have not regularized the services of even those persons, whose names appeared in the list, dated 07.05.20074 aforementioned.

13. The question, therefore, which, now, arises is this: whether it was possible to direct regularization of the services of the writ Petitioners even if they were not covered by the Scheme of 1989? In this regard, it is worth pointing out that a Constitution Bench, in Uma Devi (supra), has made it clear that the term temporary employee is a general category, which has under it several sub-categories, e.g., casual employee, daily-rated employee, ad hoc employee, etc. A daily-rated or casual worker is only a temporary employee and it is well settled

that a temporary employee has no right to the post, or to be continued in service, to get absorption, far less the right to be regularized or claim regular pay. No doubt, there can be occasions, when the State or its instrumentalities employ persons on temporary or daily-wage basis in a contingency as additional hands without following the required procedure, but this does not confer any right on such persons to continue in service or get regular pay. Unless the appointments are made by following a due selection process consistent with the rules, if any, or consistent with the concept of public employment as envisaged under the Constitution of India, such appointees do not have any right to claim permanent absorption in the establishment. The court cannot direct continuation in service of a non-regular appointee.

14. In *Uma Devi (supra)*, the Constitution Bench held:

Any public employment has to be in terms of the constitutional scheme.

It is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment.

The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

When rules framed under Article 309 of the Constitution are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules.

Though the High Court is entitled to exercise its judicial discretion in deciding writ petition or civil revision applications coming before it, the discretion had to be confined in declining to entertain such petitions and refusing to grant reliefs asked for.

Adherence to rule of equality in public employment is a basic feature of the Constitution. High Court acting under Article 226 of the Constitution, should not ordinarily issue direction for absorption, unless the recruitment itself was made regularly and in terms of the Constitutional scheme.

When the Court is approached for relief by way of a writ, the Court has necessarily to ask itself whether the person before it had any legal right to be enforced.

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.

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.

15. From what have been observed and held by the Constitution Bench, in *Uma Devi* (supra), it becomes transparent that Articles 14, 16 and 309 form part of the basic structure of the Constitution inasmuch as these constitutional provisions aim at ensuring that public employment is given only in a fair and equitable manner by giving all those, who are eligible, an opportunity to seek employment. Adherence to the rule of equal opportunity in public employment is, thus, a basic feature of the Constitution. When rules framed under Article 309 are in force, no regularization of service is permissible in exercise of the State's executive powers under Article 162, particularly, when the exercise of such executive power by the State contravenes the rules framed under Article 309. Even when no rules have been framed under Article 309, the public employment must be made following a fair and equitable selection process in terms of Articles 14 and 16 so as to enable every eligible person the liberty to seek employment. Our Constitution does not permit, in the light of the decision of the Constitution Bench, in *Uma Devi* (supra), making of public employment outside the Constitutional scheme and without fulfilling the requirements set forth hereinbefore. The High Court, while acting under Article 226, should not, ordinarily, issue direction for absorption, regularization or permanent continuance unless the recruitment, so made, is not illegal, but merely irregular and if the recruitment was not in violation of the Constitutional scheme. The fact that a person has been working, on the basis of an illegal appointment, for fairly long period of time cannot be made a ground for directing regularization of his service.

16. In *Uma Devi* (supra), the Constitution Bench observed, in Para 43, as under:

43. Thus, it is clear that adherence to the rule of equity in public employment is the 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 and 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 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 appointments, do not acquire any

right. The High Courts acting under Article 226 of the Constitution, 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 the 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 maybe possible for it to mould 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 regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The court 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 by passing of the constitutional and statutory mandates.

17. Referring to the above observations made in Uma Devi (supra), the Apex Court, in Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., held:

26. The underlined observations above clearly indicated that the casual, daily-rated, ad hoc employees, like the Respondents in the present appeal, have no right to be continued in service, far less of being regularized and getting regular pay.

18. In Para 4 and 5 of its judgment in Uma Devi (supra), the Constitution Bench observed:

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.

19. Taking note of the above observations made in Uma Devi (supra), the Court, in Indian Drugs & Pharmaceuticals Ltd. (supra), observed:

23. We have underlined the observations made above to emphasize that the court cannot direct continuation in service of a non-regular appointee. The High

Court's direction is hence contrary to the said decision.

20. What surfaces from the above discussion is that if an employee's appointment is a contractual appointment, the appointment

comes to an end with the end of the contract; if the appointments were an engagement or appointment on the basis of daily wage or on casual basis, the same would come to an end, when it is discontinued. Merely because of the fact that the service of a casual wage earner 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 on the strength of such continuance if the original appointment was not made by following a due process of selection as envisaged under the scheme of the Constitution with regard to public employment.

21. In the backdrop of what have been indicated above, when the cases of the present writ Petitioners-Respondents are examined, it clearly transpires that the Petitioners came to be appointed as casual labourers without any selection process. Thus, the process of appointment of the Petitioners was wholly arbitrary and in violation of the requirements of appointments, in public employment, as envisaged under Articles 14 and 16 of the Constitution. True it is that there are no recruitment rules for making appointment of casual labourer, but fact remains that such appointments are made on the basis of pick and choose method, though every appointment, in an establishment, such as, the BSNL, has to be consistent with the constitutional scheme of public employment. In the case at hand, it is not the case of the writ Petitioners that their appointment, as casual employee, was made following a due, fair and just selection process, which had permitted other eligible persons to participate in the selection process. In a situation, such as the present one, there

can be no escape from the conclusion that the Petitioners' appointment, as a casual labourer, was not merely irregular but wholly illegal. When the appointment of the writ Petitioners, as casual labourers, was wholly illegal and arbitrary, no direction could have been given by the High Court, under Article 226, to either appointment or regularize the services of such a person.

22. In the light of the position of law discussed above, it becomes transparent that the writ Petitioners-Respondents had been appointed without any due selection process and that there was no rule or scheme in existence for regularization of their services. In such circumstances and, particularly, when their appointment was inherently temporary in nature, the directions given by the order, dated 23.06.2006, not to report for work cannot be said to be illegal or unjustified, particularly, when the BSNL had already, as a matter of policy, directed its officers not to keep engaged any contractual labourers and when the writ Petitioners, having not completed 10 years of regular service as casual labourers, were not entitled to regularization of their services.

23. We may also hasten to point out that services of the writ Petitioners cannot, contrary to what Mr. Yangerwati has submitted, be directed to be regularized, for,

their appointment as casual labourers being wholly illegal, they cannot be regularized on the ground that the services of persons, similarly situated, have been regularized, for, it is not open to the High Court, in the light of the decision, in Chandigarh Administration (supra), to direct a State Government to perpetuate an illegality in the name of removing discrimination. When the writ Petitioners have no legal right to seek regularization of their services, regularization of their services cannot be directed on the ground that persons, similarly situated, as the writ Petitioners are, have been given benefit of regularization.

24. Because of what have been discussed and pointed out above, it becomes more than abundantly clear that the directions given in the writ petitions to the present Appellants to regularize the services of the writ Petitioners-Respondents herein and interference with the order, dated 23.06.2006, aforementioned, were wholly illegal and not sustainable in law.

25. In the result and for the reasons discussed above, these appeals succeed. The impugned orders, dated 03.11.2006 and 10.11.2006, shall accordingly stand set aside.

26. Before parting with the present appeals, we, however, make it clear that if any law or scheme is made for regularization of the services of the persons, who were included, as casual labourers, in the list, dated 25.02.2000, aforementioned, then, the rejection of the writ Petitioners' prayer for regularisation shall not be treated as a bar for their being considered for such benefits as the BSNL may make available to others, similarly situated, in accordance with law.

27. With the above observations and directions, both these appeals shall stand disposed of.

28. No order as to costs.