

(2009) 08 KL CK 0053
In the High Court Of Kerala
Case No : WA. No. 1165 of 2004 (B)

District Transport Officer and District Transport Officer	APPELLANT
Vs	
S. Kunchan (Retired Driver, K.S.R.T.C.)	RESPONDENT

Date of Decision : 12-08-2009

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21, 226
Industrial Disputes Act, 1947 — Section 25(T), 25(U)

Citation : (2009) 3 ILR (Ker) 808 : (2009) 3 KLT 954 : (2010) 1 LLJ 333

Hon'ble Judges : V. Giri, J;K. Balakrishnan Nair, J;C.T. Ravikumar, J

Bench : Full Bench

Advocate : James Koshy N., SC, for the Appellant; M.V. Bose, for the Respondent

Judgement

V. Giri, J.—The issues that have been formulated for consideration by the Full Bench can be, as a matter of convenience, encapsulated as hereunder:

(1) Whether the service as a daily wage employee rendered by a person, at the instance of the employer, after he has been selected for regular appointment by the Public Service Commission {for short "the Commission"} and duly advised in that regard, can be taken as qualifying service for the purpose of pension and other retirement benefits?

(2) As a corollary, does the service rendered as a daily wage employee or a casual employee in an organization, where the Kerala Service Rules have been adopted for all relevant purposes, in circumstances other than what is mentioned in Issue No. 1 above, be eligible to be treated as qualifying service for the purpose of pension?

2. The issues have arisen for consideration in the context of an employee, who after advice by the PSC, was nevertheless appointed by the Kerala State Road Transport Corporation (for short "the Corporation") as a Driver on daily wages. He was later absorbed into regular service and retired while continuing in the said post. The Corporation declined to count the services rendered by him as a

daily wage employee in the same post, as part of the qualifying service for pension and hence, the writ petition was filed by him for appropriate direction to the Corporation to take into account such service also for the purpose of determining whether he is entitled to draw pension. The learned single Judge allowed the writ petition. The Corporation appealed against the judgment.

3. The writ petitioner inter alia relied on the dictum laid down by a Bench of this court in *Idicula v. KSRTC* 2005 KLJ 602 and the judgment in W.A. No. 1066/03.

4. The Bench before which the appeal came up was inclined to take a different view and opined that it would be appropriate that the matter be referred to a larger bench. It is, therefore, that the matter has come up before us.

5. The writ petitioner was selected by the Public Service Commission {for short "the Commission"} to the post of driver in the Corporation. The selection consisted of a written test and an interview. Though the test and the interview were conducted in 1984 and 1986, appointment was delayed till 1989. In the meanwhile, the Commission had prepared a rank list. By Ext.P4 dated 22.4.1989, the petitioner was informed that he has been advised as a "Reserve Driver" in the Corporation, on the time scale of Rs. 145-270. By Ext.P5 appointment order dated 30.5.1989, the Corporation appointed the petitioner as a Reserve Driver. Ext.P5 refers to the advice list, Ext.P4. But, nevertheless, as per Ext.P5, the petitioner was appointed as a Reserve Driver, a cadre post otherwise borne on a time scale of pay, on daily wages to be calculated at the rate of Rs. 126/- at the minimum in the scale of pay for the lowest grade of Reserve Driver, plus Dearness Allowance admissible thereon.

6. It is common case that the petitioner commenced service pursuant to Ext.P5 and while so, by Ext.P6 dated 7.6.1990, he among others, were absorbed as Driver Grade II with effect from 21.3.1990. The petitioner continued in service till 31.8.1998, when he retired therefrom. After retirement, he continued in service as an Empanelled Driver, but the period during which he rendered service as Empanelled Driver, is not the subject matter of controversy. Therefore, we are not concerned with the same. The dispute relates to the manner in which the period, during which the petitioner had rendered service, from the date on which he commenced service on 30.5.1989 pursuant to Ext.P5 till the date on which he was absorbed into regular service as evidenced by Ext.P6 viz., 21.3.1990, is to be treated.

7. The Corporation took the stand that the service rendered by the petitioner for the aforesaid period was as a daily wage employee. The petitioner contended that his appointment by Ext.P5 as a daily wage employee was after he was included in the rank list for the said post by the Commission and he was advised to the said post by the Commission as evidenced by Ext.P4. In the circumstances, it was contended that the service rendered by him with effect from 30.5.1989 is eligible to be treated as qualifying service for pension as such.

8. It may be mentioned in this context that if the service for the period from

30.5.1989 to 21.3.1990 is excluded from consideration, then the total service rendered by the writ petitioner, on regular basis, i.e. service rendered after he was treated as absorbed into regular service with effect from 21.3.1990, would only be 8 years, 5 months and 10 days. The Corporation relied on G.O.(MS) No. 87/61 dated 22.2.1961 under which the Government had proceeded to issue a declaration in terms of Rule 10(1) of Part III of the KSR to the effect that 50% of the period during which the employee had rendered service as a contingent employee will be taken into account as qualifying service for pension. Thus, 50% of the service rendered by the petitioner with effect from 30.5.1989 till 21.3.1990, on which date, even according to the Corporation he was absorbed into regular service, was also added on to the service rendered by him from 21.3.1990 to 31.8.1998 and even then the qualifying service rendered by the petitioner was only 8 years, 10 months and 4 days, which could be rounded off as 9 years.

9. If the stand taken by the writ petitioner was to be accepted, the entirety of the service from 30.5.1989 to 21.3.1990 was eligible to be treated as qualifying service and consequently, the total service rendered by the petitioner was to be reckoned as 9 years and 3 months and 1 day.

10. Reference is made to Rule 57 of Part III of the Kerala Service Rules, which provides that fraction of an year in service will be rounded off to the nearest completed year. Thus fraction less than = will be ignored and that above = will be rounded off to the next completed year.

11. Clarifying Rule 57 of Part III of the Kerala Service Rules, the Government vide circular No. 7/89 dated 9.2.1989 declared that the upper rounding off will also be allowed for fraction less than = year for qualifying service above 9 years and 29 years respectively, for minimum service and maximum service for pension. The stand taken by the writ petitioner has been essentially accepted by the learned single Judge and it is, therefore, that the Corporation has come up in appeal.

12. Issue No. I: It is undisputed that the petitioner was selected by the Commission for the post of Driver in the Corporation, on a time scale of pay. It is also undisputed that by Ext.P4 dated 22.4.1989 the petitioner was actually advised for appointment as a Reserve Driver on a time scale of pay. Obviously, the petitioner, who was included in the rank list prepared and drawn up by the Commission, would have been advised by the Commission to the post in question only if there were adequate vacancies in the said post. The advice given by the Commission would have been pursuant to the reporting of vacancies by the Corporation. This would, therefore, legitimately lead to an inference that there were vacancies in the cadre post, borne on a time scale of pay when the Commission issued an advice memo as per Ext.P4. It is, in spite of the same, that by Ext.P5 the Corporation proceeded to issue an order of appointment Ext.P5 dated 30.5.1989 appointing the petitioner as Reserve Driver on daily wages at the rate of Rs. 126/-, the lowest Grade of Reserve Driver, plus

admissible dearness allowance. While continuing in the said post without break, the Corporation proceeded to issue Ext.P6 dated 7.6.1990 declaring the petitioner, as having been absorbed in service as Driver Grade II with effect from 21.3.1990. Was it justifiable on the part of the Corporation to appoint the petitioner as an employee on daily wages, in spite of the fact that, he had already been included in the rank list prepared by the Commission for the post in question and the Commission had proceeded to advise him to the said post? Was the said action taken by the Corporation otherwise legal? If it is not legal, then going by the admitted fact that the petitioner had actually rendered service in the cadre post to which he was advised by the Commission on a regular basis, then what is the manner in which such service will have to be treated for the purpose of pension?

13. Useful reference could be made to Sections 25T and 25U occurring in Chapter VI of the Industrial Disputes Act {for short "ID Act"} which read as follows:

25T. Prohibition of unfair labour practice No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (16 of 1926), or not, shall commit any unfair labour practice.

25U. Penalty for committing unfair labour practices:

Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

14. Unfair labour practices are enumerated in the 5th schedule to the ID Act. Clause 10 of the 5th schedule reads as follows:

(10) To employ workmen as "badalis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status or privileges of permanent workmen.

15. Thus, if a person is entitled to be treated as a regular employee, then the management of an establishment would be guilty of unfair labour practice, if nevertheless he is treated as a casual or badali employee. That is to say, if a person was entitled to be treated as a regular employee by the Corporation, he being advised in that regard by the Commission after having undergone selection by due process, then it would be illegal on the part of the Corporation to proceed to appoint him as a daily wage employee or a casual employee in a post, against a vacancy which was otherwise available and required to be filled up by an employee advised by the Commission in that regard. Such action on the part of the Corporation would amount to an unfair labour practice, within the meaning of Section 25T of the ID Act. Any such unfair labour practice on the part of the Corporation would tantamount to an offence u/s 25U of the ID Act.

16. The Kerala State Road Transport Corporation is a statutory Corporation incorporated under the Road Transport Corporations Act. It would, therefore,

qualify itself as "State" within the meaning of Article 12 of the Constitution. All its actions should, therefore, be fair and reasonable, when tested on the touch stone of Article 14 of the Constitution. The action taken by the Corporation should not be rendered liable to be treated as illegal, being in contravention of the provisions of any law. Thus, the Corporation cannot contend for the position that it had actually appointed the petitioner as per Ext.P5 as a daily rated employee, notwithstanding the fact that the petitioner had already been included in the rank list prepared by the Commission and consequently, the service rendered by him as a casual employee should be treated as such. Where the Corporation was acting illegally in treating the petitioner as a casual or badli worker, inasmuch as that the same amounted to unfair labour practice within the meaning of Section 25T of the Industrial Disputes Act, then apart from the question as to whether the Corporation could be penalised for having indulged in an unfair labour practice, it is necessary that the Corporation be compelled to treat the service rendered by the petitioner with effect from 30.5.1989 to 21.3.1990 as regular service. This is the only manner in which the Corporation could be required, in fact, to regulate its action to bring it in conformity with law. To permit the Corporation to do otherwise would be to permit an instrumentality of the State to take advantage of its own wrong and in effect perpetuate an unfair labour practice.

17. The fact that the writ petitioner accepted Ext.P5 order of appointment which appointed him as Reserve Driver on daily wages, will not really improve the case of the Corporation. As we have held supra, the order of appointment is issued by the Corporation in favour of a person, who had already been advised by the Commission to the post in question as evidenced by Ext.P5. The Commission had conducted a selection pursuant to a requisition made by the appointing authority. The Commission would have also issued an advice memo only against the vacancies which have been reported by the appointing authority. Therefore, the advice memo issued by the Commission would operate only in relation to an existing vacancy in the post in question. In spite of the factual situation being so, the Corporation had chosen to appoint the writ petitioner as a Reserve Driver on daily wages. The fact that the writ petitioner had joined service and proceeded to serve the Corporation, would not, therefore, lead to a case where the employee would later be precluded or estopped from claiming that the service rendered by him, pursuant to Ext.P5, classified as service on daily wages by the Corporation should, nevertheless, be treated as regular service for all intents and purposes. Apart from the conclusion that we have arrived at as above, that the action taken by the Corporation in appointing a person who has been advised by the Commission, as an employee on daily wages, would amount to unfair labour practice, within the meaning of the ID Act, it will also have to be noted that there was clearly unequal bargaining between the Corporation on one hand and an employee, like the writ petitioner, eagerly awaiting an order of appointment from the Corporation. He would have participated with a multitude of persons in the long drawn out process of selection to public service. After all, as could be seen

from Ext.P3, the interview forming part of the selection of Reserve Driver was conducted in 1986 and the Commission had proceeded to issue an advice memo only on 22.4.1989. The selection process commenced some time in 1985. By the time, the writ petitioner had already been waiting for a period of more than three years after participating in the interview, when he received the advice memo from the Commission. It is, at that juncture, that he was served with Ext.P5 order of appointment appointing him on daily wages. It would have been inconsistent for a normal person placed in such a situation, who has been waiting in queue, while receiving the order of appointment to take exception to the Corporation proceeding to appoint him as a daily wage employee, in spite of the fact that he had already been advised by the Commission. In a much celebrated, often quoted decision in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, , the Supreme Court, inter alia, considered a case where a contract of service entered into between parties with grossly unequal bargaining power. The court held as follows in paragraph 89 of the judgment:

Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample underfoot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality Clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable Clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustration. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a

prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a Clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporation with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.

18. The principle laid down in *Brojonath Ganguly*, was quoted and affirmed with approval by the Constitution Bench of the Supreme Court in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, .

19. Both the aforementioned decisions of the Supreme Court dealt with a case where employer had the power to resort to a provision dealing with the termination of the services of an employee, without following due process, akin to what is described in *Brojonath's* as Henry, the VIIIth clause. But, the principle laid down in the context of gross unequal bargaining power between the employer and the employee would apply on all fours to a case like the present one, where the acceptance of an order of appointment as a daily wage employee, by a person who has already been advised by the Commission to a regular post, is sought to be put against him as a conduct dis-entitling him from claiming that the entire service rendered by him, after being advised by the Commission is eligible to be treated as "regular service" for all intents and purposes.

20. We are, therefore, of the definite view that the entirety of the services rendered by the writ petitioner with effect from 30.5.1989 till the date of his retirement on 31.8.1998 is eligible to be treated as qualifying service for the purpose of pension and other retirement benefits. Consequently, the writ petitioner would also be entitled to the benefits that are due to a retired employee as per the long term settlement arrived at between the Corporation and the workers on 13.4.1999. We also take note of the fact that a Bench of this court had, in *W.A. No. 3146/01*, declared that employees, who retire between 1.3.1997 and 31.10.1999 are entitled not only to the revised monthly pension, but also other pensionary benefits such as Death Cum Retirement Gratuity, Commuted Value of Pension etc., subject to eligibility at the revised rate.

21. Issue No. II: Learned Counsel for the parties had, in the course of submissions made by them, referred to a judgment of a Bench of this court in *Idicula v. KSRTC* 2005 KLJ 602. *Idicula* was a case where the writ petitioner had rendered service as a daily rated Reserve Driver, on the strength of an advice by the Employment Exchange, prior to his entry into regular service as a Reserve Driver on advice by the Commission. The writ petitioner therein was appointed as

a driver on provisional basis on 29.6.1981 and continued in the said capacity till he was appointed on a regular basis on advice by the Commission on 29.5.1989. His provisional appointment was terminated on 3.6.1989 and he then joined duty as Reserve Driver on 5.6.1989. The writ petitioner wanted his provisional service from 29.6.1981 to 3.6.1989 also to be reckoned for pensionary purposes. The claim was negatived by the Corporation and the writ petition challenging the action of the Corporation was dismissed. But, in appeal, a Bench of this court referred to Clause 23 of the settlement arrived at between the Corporation and the Unions, relating to wage revision and other service conditions of the employees. Sub-Clause (3) of Clause 23 of the Conciliation settlement was construed by the Division Bench as enabling daily wages period of conductors, drivers and mechanical staff, before their regular appointment in full to be counted for pension, provided, there was at least 10 days of duty in a month. The Bench held that going by the terms of settlement, any kind of daily wage service of conductors, drivers and mechanical staff, would, subject to the conditions mentioned in the settlement, be treated as eligible to be reckoned for the purpose of pension. According to the Bench, the benefit of the settlement cannot be restricted to the service rendered as daily rated workers, rendered after being advised by the Commission. The Bench, before which the present appeal had come up for hearing, had doubted the correctness of the declaration made by another Bench in *Idicula* and in these circumstances, we think it is appropriate to resolve the controversy.

22. The Corporation is incorporated under the Road Transport Corporations Act. Undisputedly, it is an instrumentality of the State. The service in the Corporation will have to be treated as public service. Selection preceding appointment to the various posts in the Corporation is done by the Commission. When a vacancy arises, the Corporation notifies the vacancy to the Commission, which conducts a selection wherein all eligible candidates have an equal opportunity to participate and aspire for appointment. The Commission undertakes the selection when vacancies are notified and it is advisable to embark upon the processed selection against a certain number of vacancies. The Commission draws up a rank list and depending upon the number of vacancies which are reported and therefore available to be filled up, the Commission advises persons, who have been included in the list. The appointing authority is bound to act only as per the advice of the Commission. This, in broad terms, is the scheme for effecting regular appointments in the Road Transport Corporation.

23. We have already held that once the selected person is advised by the Commission and the Corporation appoints him, then whatever be the terms in the order of appointment, the appointment of such a person in the existing regular vacancy is bound to be treated as a regular appointment. It will not be open to the Corporation then to treat the service rendered by such a person as a daily rated, casual or badli service. But, would the situation be the same of an employee, who is appointed as a daily rated worker or a casual worker prior to his advice by the Commission? Can it be said, as a matter of law, that any kind

of daily rated service followed by regular appointment of such a person would be eligible to be treated as part of the regular service, irrespective of whether such daily rated service or casual service was rendered by the person prior to him being selected and advised by the Commission. In our view, to obliterate the distinction between casual service rendered by a person for a period, prior to he being advised by the Commission, as part of a regular selection process, and the service rendered by such persons, after being advised by the Commission, though sought to be treated as casual service by the Corporation would be to lose sight of a marked difference between the two. Whereas, the latter category, though described as casual or daily rated service, is actually service rendered by a person, who has been found eligible by the Commission and advised for regular appointment against an existing vacancy, the former is a category where the employee concerned cannot be considered as one rendering service against an existing regular vacancy after having been found eligible by the competent selecting body, to be appointed against the said post on a regular basis. We are of the view that there has to be a definite distinction between the two, as treating two kinds of service as synonymous, would, in an oblique way, amount to giving the seal of imprimatur on irregular and back door appointments in public service. In the words of the Constitution Bench of the Supreme Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , such back door appointments would always be anathema to the constitutional scheme, for effecting appointments in public service, in terms of Article 14 and 16 of the Constitution of India.

24. The Supreme Court in *Umadevi* was essentially concerned with the question of regularisation of persons, who were appointed on a casual or ad hoc basis. It was contended on behalf of casual employees seeking regularisation, that persons who are appointed in public service otherwise than by following the notified and established system of selection and appointment and who have continued for long period in such capacity should be treated as entitled to regularisation in service, as a recognition of their right under Articles 14, 16 and 21 of the Constitution. The Supreme Court held that adherence to the principles of equality is a basic feature of our Constitution and since the rule of law is the core of our Constitution, the court would certainly be disabled from passing an order upholding the violation of Article 14 or in overlooking the need to comply with the requirement of Article 14 read with Article 16 of the Constitution. The following observations made by the Supreme Court in paragraph 43 of the judgment is apposite in this context:

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. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, 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 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.

25. The Court held in categorical terms that appointments made otherwise than in accordance with the procedure notified for the public service in question are irregular appointments and an appointee rendering service on the basis such irregular appointment cannot, in law, claim parity with the regular employee. Such irregular appointments cannot be regularised as it would tantamount to regularizing back door or irregular appointments. This, the Supreme Court held, would be unconstitutional, apart from being illegal, as being violative of Articles 14 and 21 of the Constitution.

26. Keeping the aforementioned law laid down by the Supreme Court in the background, can it be said that casual service or daily rated service by an employee, should, in all circumstances, be treated as regular service to be so reckoned for all intents and purposes? As we have held above, the nomenclature of the service rendered by a person advised by the Commission to a post forming

part of the regular cadre service in the Corporation is not decisive. His service will have to be treated as regular service. This is because his entry into service, is not through the back door but by a regular legitimate process laid down in that behalf. It will not be open to the Corporation to appoint a person who has been advised by the Commission as casual employee because it suited the Corporation to do so. But, at the same time, it might even be necessary for the Corporation to appoint persons on a casual or daily wage basis. This administrative exigency is recognised by the Supreme Court in *Umadevi* as well. Such service is treated only as casual service and the fact that the said employee was later absorbed into regular service, after being found eligible in a due process of selection, cannot transform the earlier casual service rendered by him as a regular service. To recognise such a principle would, in effect, be a regularisation of an irregular appointment, which, as the Supreme Court held in *Umadevi* is anathema in the constitutional scheme of appointments in public service. Obviously, the direction to treat such casual service as regular service would mean that the employee concerned would be entitled to treat his entry into service as commensurate with the commencement of casual service.

27. For the reasons mentioned above, we are of the view that the principle laid down in *Idicula*, to the extent to which directs that any kind of casual service of an employee, followed by an entry of such employee in regular service would be eligible to be treated as regular service for all intents and purposes does not lay down the correct principle. No doubt, the Bench in *Idicula* was essentially trying to construe a term contained in the conciliation settlement between the management and the employees. But, we cannot, but take note of the fact that regular selection and appointment of persons in the Corporation has been done for the past 30 years, only on the advice of the Commission. The Corporation, an instrumentality of the State, cannot be considered as having agreed to any settlement which will not bear true allegiance to the constitutional principles that should invariably govern the affairs of an instrumentality of the State. Thus, where a term of settlement, to which an instrumentality of a State is a party, provides for treating casual service also as part of regular service for all intents and purposes, then it will only be appropriate to treat only such casual service, rendered by a person, who has already been advised by the Commission for regular appointment against the post in question as part of regular service. Any other kind of casual service would only be casual service, that cannot be considered as synonymous with regular service. We hold that the contrary principle laid down in *Idicula* does not lay down the correct law.

28. Having said so, we also think it is necessary to take note of the fact that the principle laid down in *Idicula* in the year 2005 would have been accepted and applied by the Corporation in the case of several hundreds of employees who have retired after 1.3.1997. We make it clear that where the retirement benefits of such persons have already been computed and worked out by applying the principles in *Idicula*, the same shall not reopened to the detriment of the employee concerned on the basis of this judgment.

Writ appeal is disposed of as above.