

(2015) 04 DEL CK 0150
In the Delhi High Court
Case No : WP (C) No. 3295 of 2015

Keshav Dutt and Others

APPELLANT

Vs

Delhi Tourism and Transport Development Corporation
Limited and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 16, 162, 226

Citation : (2015) 150 DRJ 406 : (2015) 2 LLJ 501 : (2015) 3 LLN 665

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Rakesh Tikku, Senior Advocate, Prakash Gautam, Vivek Ojha and Sandeep Kumar, for the Appellant; Sauyam Saxena and Sarvpreet Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J.—By this writ petition filed under Article 226 of the Constitution of India, 11 petitioners seek regularization of their services with the respondent no. 1/Delhi Tourism and Transport Development Corporation Limited. Petitioners claim that they should be regularized inasmuch as they were appointed against vacancies in sanctioned posts and they met the eligibility criteria/qualifications for being appointed to the posts in question being the posts of Helper/Attendant.

2. The advertisement pursuant to which petitioners were appointed is dated 26.6.2007 and this advertisement reads as under:-

" ADVERTISEMENT

DTTDC required Helper/Attendant for short period

Qualification 8th passed, desire experienced qualification is two years, Maximum age 25 years for (General), 30 years for (SC/ST), 28 years for (OBC). Interview shall be take place at Garden of Five Senses, Said-UI-Ajaib, Mehrauli Badarpur

Road, New Delhi on dated 27/06/2007 at 10:30 AM. Aspiring applicants may please bring their educational certificate and experience certificates on the above mention date for the interview.

General Manager"

3. A reference to the aforesaid advertisement shows that by the advertisement appointment was sought to be made of persons as Helper/Attendant only for a short period i.e appointments which were sought to be made were not permanent appointments as distinguished from contractual/short term appointments or casual appointments. The issue is that can these persons claim regularization of their services by seeking permanent employment only on the ground that they were appointed against vacancies in sanctioned posts and they had the necessary eligibility criteria/qualifications and were recruited through the process of advertisement.

4. It is now no longer res integra that in terms of the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 before a person can seek regularization, four aspects must exist viz first of there existing sanctioned posts, second of there existing vacancies in sanctioned posts for which there exists authority/entitlement to fill up, thirdly that the persons who are appointed in vacancies against sanctioned posts are duly qualified persons, and fourthly appointment is made of persons who have been called through advertisements widely circulated so that there is open competition among the eligible persons.

5. The issue in the present case is that whether the advertisement in question reproduced above by which appointments were sought to be made only for a short period, is an advertisement in accordance with the ratio of the judgment of the Supreme Court in the case of Umadevi (supra).

6. I have recently had an occasion to examine this aspect in the bunch of cases with the lead case being Radhey Shyam and Ors. Vs. GNCT of Delhi and Ors. W.P. (C) No. 471/2015 decided on 22.1.2015 and I have held in this judgment that to allow regularization of contractual employees or short period appointment employees, merely because such persons meet 3 out of 4 criteria in terms of the ratio of Umadevi's case (supra) being that they are qualified persons and appointed against vacancies in sanctioned posts, the same would result in fraud upon the ratio of Umadevi's case (supra) as also the general public because the object of Umadevi's case (supra) was to prevent back-door entry and spoils system in public appointment and there cannot be regularization of employees who have got appointment in terms of the advertisement only for a fixed period. The relevant paras in Radhey Shyam's case (supra) are paras 14 and 15 and which read as under:-

"14. Petitioners in this case seek appointment as Lab Technicians/Lab Assistants. In the present case, the relief which is claimed by the petitioners of their being regularized cannot be granted because if petitioners are specifically appointed for contractual period in terms of the advertisement which required only contractual employment for 11 months, then, if the petitioners are regularized only because they were appointed against sanctioned posts, the same would be clearly a violation of the ratio of the Constitution Bench judgment in the case of Umadevi (supra) because if the petitioners are directed to be regularized merely because there existed sanctioned posts, although the advertisement and appointments were only and specifically for 11 months only, then what will happen is that by issuing of an advertisement by the respondent no. 2 which was only for contractual appointments of a limited period of 11 months, injustice would be caused to dozens or hundreds of other persons who would not have applied to the posts on the ground that the posts are contractual posts only for 11 months and such persons, being the ordinary citizens, who therefore would seek appointment with other employers who would offer permanent posts. If this Court allows regularization of the petitioners, and merely because petitioners are appointed against sanctioned posts, the spirit of the ratio of Umadevi's case (supra) would be violated because then in such cases the authorities of the State instead of making regular appointments to sanctioned posts, will advertise and make contractual appointments to sanctioned posts for specified periods, and thereby play a fraud upon general public being persons who would have applied if the posts were advertised as permanent posts. Thus regularization cannot be granted only because petitioners were appointed against sanctioned posts, once the advertisement and appointments were only for a limited period of just 11 months.

15. It is not the ratio of Umadevi's case (supra) that contractual employees must be regularized only because there are vacant sanctioned posts to which they were appointed to limited contractual period of mere 11 months, inasmuch as, Umadevi (supra) requires that the appointments must be as per the regular recruitment process and rules which will require advertisement for appointments as permanent posts, and much less because in terms of the ratio of the Umadevi's case (supra), the Delhi State Services Selection Board (DSSSB), and who appoints employees for the respondent no. 2, has already issued a circular that there should not be appointments to regular posts except in accordance with the law and the process as specified in the regular recruitment rules."

7. The Supreme Court in the case of National Fertilizers Ltd. and Others Vs. Somvir Singh, AIR 2006 SC 2319 : (2006) 6 CompLJ 310 : (2006) 110 FLR 211 : (2006) 11 JT 279 : (2006) 2 LLJ 1113 : (2006) 6 SCALE 101 : (2006) 5 SCC 493 : (2006) SCC(L&S) 1152 : (2006) 2 SCR 397 Supp : (2007) 1 SLJ 151 : (2006) AIRSCW 2972 : (2006) 4 Supreme 290 by referring to the ratio of Umadevi's case (supra) has held that persons who have been only appointed for temporary periods or are temporary employees in posts, such persons cannot claim regularization. In National Fertilizers Ltd.'s case (supra) the Supreme

Court has reproduced the relevant paras of Umadevi's case (supra) and the relevant paras of National Fertilizers Ltd.'s case (supra) are paras 20,21 and 22 and which paras read as under:-

"20. The Constitution Bench opined that any appointment made in violation of the Recruitment Rules as also in violation of Articles 14 and 16 of the Constitution would be nullity. The contention raised on behalf of the employees that those temporary or ad hoc employees who had continued for a fairly long spell, the authorities must consider their cases for regularisation was answered, thus: [Umadevi (3) Case (supra), SCC p.29, para 26]

"26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent -- the distinction between regularization and making permanent, was not emphasized here -- can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 of State of Haryana and others Vs. Piara Singh and others etc. etc., AIR 1992 SC 2130 : (1992) 5 JT 179 : (1993) 2 LLJ 937 : (1992) 102 PLR 547 : (1992) 2 SCALE 384 : (1992) 4 SCC 118 : (1992) 3 SCR 826 : (1992) 3 SLJ 34 : (1992) 2 UJ 692 are to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent."

21. It was furthermore opined: [Umadevi (3) Case (supra), SCC p.32, para 33]

"33. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency an ad hoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment."

22. Taking note of some recent decisions of this Court, it was held that the State does not enjoy a power to make appointments in terms of Article 162 of the Constitution of India. It further quoted with approval a decision of this Court in Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and Others, AIR 2006 SC 1165 : (2006) 6 CompLJ 296 : (2006) 108 FLR 996 : (2006) 2 JT 137 :

(2006) 2 SCALE 115 : (2006) 2 SCC 482 : (2006) SCC(L&S) 339 : (2006) 1 SCR 1006 : (2006) 3 SLJ 28 : (2006) AIRSCW 844 : (2006) 2 Supreme 221 in the following terms: (SCC p. 490, para 12)

"The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution."

It was clearly held: [Umadevi (3) case (supra), SCC p.35, para 41]

"These binding decisions are clear imperatives that adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment."

(emphasis added)

8. A reference to para 22 above in the case of National Fertilizers Ltd. (supra) makes it abundantly clear that the advertisement which should be issued for inviting applications from eligible candidates has to be a proper advertisement and an advertisement in the prescribed manner. In my opinion, appropriate advertisement or advertisement in the prescribed manner necessarily means that advertisement issued for seeking appointment is advertisement for employment in permanent tenure and not an advertisement which seeks appointments to temporary posts or for temporary period in permanent posts or appointments are to be only contractual appointments. Para 22 above in the case of National Fertilizers Ltd. (supra) specifically notes that regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner, and prescribed manner necessarily has to mean that the posts have to be advertised as permanent tenure posts for being filled up, inasmuch as, otherwise multitude of people who would otherwise be eligible to apply, may prefer to skip the employment process thinking that it is only for a temporary period or a contractual period since posts are not for permanent employment. Para 22 above in the case of National Fertilizers Ltd. (supra) makes it clear that appointments made without issuing requisite advertisement would violate the guarantee under Articles 14 and 16 of the Constitution of India.

9. Supreme Court recently in the judgment in the case of Kendriya Vidyalaya Sangathan and Others Vs. L.V. Subramanyeswara and Another, (2007) 6 JT 594 :

(2007) 3 LLJ 174 : (2007) 7 SCALE 86 : (2007) 5 SCC 326 : (2007) 2 SCC(L&S) 143 : (2007) 6 SCR 335 : (2008) 1 SLJ 67 : (2007) AIRSCW 6535 : (2007) 2 Supreme 902 has held that if all the eligible candidates are not called by means of the advertisement, then, the process of recruitment will violate the ratio in the case of Umadevi (supra) as also Articles 14 and 16 of the Constitution of India. These observations have been made by the Supreme Court in para 10 of the judgment in the case of Kendriya Vidyalaya Sangathan (supra) and this para 10 reads as under:-

"10. Had such regular vacancies been created, appellants would have been directed to be appointed on All India Basis. Respondents did not get their names registered in the Central Employment Exchange. Keeping in view the nature of the job and in particular that the posts are transferable throughout the country, an opportunity within the meaning of Articles 14 and 16 of the Constitution of India would mean an opportunity to all who are eligible therefore. Advertisement was issued for a limited purpose, namely, for leave vacancies, local employment exchanges were contacted only for filling of such posts and not regular posts."

(underlining added)

10. Another recent judgment of the Supreme Court and which in a way lays down the same ratio is the judgment in the case of State of Orissa and Another Vs. Mamata Mohanty, (2011) 112 CLT 46 : (2011) 2 SCALE 377 : (2011) 3 SCC 436 : (2011) 2 SCC(L&S) 83 : (2011) 2 SCR 704 : (2011) AIRSCW 1992 : (2011) AIRSCW 1332 . In this judgment the Supreme Court has held that candidates who are not duly qualified if are appointed, the same would cause grave and irreparable injury to other unqualified candidates who would have otherwise applied, and therefore in such a case when unqualified persons seek regularization, that would be violative of the ratio in the case of Umadevi (supra) as also Articles 14 and 16 of the Constitution of India. The relevant observations of the Supreme Court in the case of Mamta Mohanty (supra) are made in para 36 of the judgment, and para 35 also is relevant because the same makes the legal position very clear that the object of issuing advertisement is to ensure open competition by calling of all the eligible candidates. These paras 35 and 36 read as under:-

"35. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the

Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, AIR 1992 SC 789 : (1992) 1 JT 394 : (1992) LabIC 847 : (1992) 2 LLJ 452 : (1992) 1 SCALE 294 : (1992) 4 SCC 99 : (1992) 1 SCR 565 : (1992) 1 SLJ 201 : (1992) 1 UJ 676 , State of Haryana and others Vs. Piara Singh and others etc. etc., AIR 1992 SC 2130 : (1992) 5 JT 179 : (1993) 2 LLJ 937 : (1992) 102 PLR 547 : (1992) 2 SCALE 384 : (1992) 4 SCC 118 : (1992) 3 SCR 826 : (1992) 3 SLJ 34 : (1992) 2 UJ 692 , Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, (1996) 8 AD 174 : (1997) 75 FLR 353 : (1996) 9 JT 638 : (1997) 1 LLJ 56 : (1996) 6 SCALE 676 : (1996) 6 SCC 216 : (1996) 5 SCR 73 Supp , Arun Tewari and Others Vs. Zila Mansavi Shikshak Sangh and Others, AIR 1998 SC 331 : (1997) 9 JT 593 : (1997) 7 SCALE 461 : (1998) 2 SCC 332 : (1998) SCC(L&S) 541 : (1997) 5 SCR 604 Supp , Binod Kumar Gupta and Others Vs. Ram Ashray Mahoto and Others, (2005) 4 SCC 209 , National Fertilizers Ltd. and Others Vs. Somvir Singh, AIR 2006 SC 2319 : (2006) 6 CompLJ 310 : (2006) 110 FLR 211 : (2006) 11 JT 279 : (2006) 2 LLJ 1113 : (2006) 6 SCALE 101 : (2006) 5 SCC 493 : (2006) SCC(L&S) 1152 : (2006) 2 SCR 397 Supp : (2007) 1 SLJ 151 : (2006) AIRSCW 2972 : (2006) 4 Supreme 290 , Telecom District Manager and Others Vs. Keshab Deb, (2008) 118 FLR 376 : (2008) 7 JT 257 : (2009) 1 LLJ 733 : (2008) 8 SCC 402 : (2008) 2 SCC(L&S) 709 : (2009) 1 SLJ 382 , State of Bihar Vs. Upendra Narayan Singh and Others, (2009) 4 JT 577 : (2009) 4 SCALE 282 : (2009) 5 SCC 65 : (2009) 1 SCC(L&S) 1019 : (2009) 4 SCR 866 : (2009) 2 SLJ 392 : (2009) 4 UJ 1651 and State of M.P. v. Mohd. Abraham : (2009) 15 SCC 214.)

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

(underlining added)

11. In Umadevi's case (supra) the only exception which was carved out with respect to regularization of persons was those persons whose appointments were irregular as distinguished from illegal. Such irregular appointees who had worked for 10 years prior to passing of the decision in Umadevi's case (supra), if they had worked in their posts without benefit of court orders, such eligible persons

who had been appointed against vacancies in sanctioned posts, the government and governmental organizations were to float schemes to regularize appointments of such irregularly appointed persons on account of the fact that appointments made were only irregular i.e the recruitment process was of filling posts from eligible candidates without means of advertisements in newspapers and/or through the employment exchange. Para 53 of the judgment in the case of Umadevi (supra) reads as under:-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore and Another Vs. S.V. Narayanappa*, AIR 1967 SC 1071 : (1967) 1 SCR 128 , *R.N. Nanjundappa Vs. T. Thimmiah and Another*, AIR 1972 SC 1767 : (1972) 1 LLJ 565 : (1972) 1 SCC 409 : (1972) 2 SCR 799 , and *B.N. Nagarajan and Others Vs. State of Karnataka and Others*, AIR 1979 SC 1676 : (1979) LabIC 1206 : (1979) 2 LLJ 209 : (1979) 4 SCC 507 : (1979) 3 SCR 937 : (1979) 11 UJ 518 , and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

(emphasis added)

12. A reference to para 53 above in the case of Umadevi (supra) shows that irregular appointments were to be regularized only as a one-time measure. One time measure by its plain and simple language means that only for once at the time of passing of the judgment in Umadevi's case (supra) there can be regularization of irregularly appointed employees ie after the decision in Umadevi's case (supra), there cannot be regularization of appointees who are irregularly appointed i.e the appointments may not be illegal and only are irregular in the sense that appointment is not through the means of calling of eligible candidates vide circulations in newspapers for ensuring competition amongst the eligible candidates but even such persons cannot be regularized

after the decision in Umadevi's case (supra) as even irregular appointments are in violation of recruitment rules and there cannot be violation of recruitment rules post Umadevi's case (supra). Therefore, in my opinion, the ratio of para 53 above of Umadevi's case (supra) makes it clear that the issue of regularization of irregularly appointed employees post Umadevi's case (supra) is time and again not permissible because that is exactly what the ratio of Umadevi's case (supra) prohibits i.e regularization of persons appointed in violation of recruitment rules which will require calling of candidates by proper advertisements through newspapers.

13. I may note that a Division Bench of two judges of the Supreme Court in the case of U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others, (2008) 116 FLR 1172 : (2007) 12 JT 179 : (2008) 1 LLJ 1021 : (2007) 11 SCC 92 : (2008) 1 SCC(L&S) 736 : (2007) 11 SCR 920 : (2008) 1 SLJ 314 sought to water-down the ratio of the Constitution Bench judgment of the Supreme Court in the case of Umadevi (supra), and this judgment of a Division Bench of the two Judges of Supreme Court was specifically overruled by a Division Bench of three Judges of the Supreme Court in the case of Official Liquidator Vs. Dayanand and Others, (2008) 4 CompLJ 401 : (2008) 11 JT 467 : (2009) 3 LLJ 305 : (2008) 13 SCALE 558 : (2008) 10 SCC 1 : (2009) 1 SCC(L&S) 943 . In Dayanand's case (supra) the Supreme Court has made very strong observations that a Division Bench of two or three judges of the Supreme Court cannot be allowed to water-down the categorical ratio of the Constitution Bench judgment of the Supreme Court in the case of Umadevi (supra) and made observations with respect to judicial discipline with respect to Benches of similar number of Judges being bound by the judgments passed by a Bench consisting of similar or larger number of judges. These observations are contained in paras 75 to 77 and 90 to 92 in Dayanand's case (supra) and these paras read as under:-

"75. By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in State of Karnataka v. Umadevi (3) (supra) is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed by different two-Judges Benches for declining to entertain the claim of regularization of service made by ad hoc/ temporary/ daily wage/casual employees or for reversing the orders of the High Court granting relief to such employees - Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., (2007) 112 FLR 474 : (2006) 10 JT 216 : (2006) 12 SCALE 1 : (2007) 1 SCC 408 : (2007) 1 SCC(L&S) 270 : (2006) 9 SCR 73 Supp : (2007) 2 SLJ 467 , Gangadhar Pillai Vs. Siemens Ltd., (2007) 112 FLR 152 : (2006) 10 JT 265 : (2006) 11 SCALE 635 : (2007) 1 SCC 533 : (2007) 1 SCC(L&S) 346 : (2006) 8 SCR 900 Supp , Kendriya Vidyalaya Sangathan and Others Vs. L.V. Subramanyeswara and Another, (2007) 6 JT 594 : (2007) 3 LLJ 174 : (2007) 7 SCALE 86 : (2007) 5 SCC 326 : (2007) 2 SCC(L&S) 143 : (2007) 6 SCR 335 : (2008) 1 SLJ 67 : (2007) AIRSCW 6535 : (2007) 2 Supreme 902 , Hindustan Aeronautics Ltd. Vs. Dan Bahadur Singh and Others, AIR 2007 SC 2733 : (2008) 1 CompLJ 381 : (2007) 114 FLR 204 :

(2007) 6 JT 320 : (2007) 3 LLJ 234 : (2007) 6 SCALE 415 : (2007) 6 SCC 207 : (2007) 2 SCC(L&S) 441 : (2007) 5 SCR 923 : (2007) AIRSCW 4933 : (2007) 4 Supreme 104 . However, in U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others, (2008) 116 FLR 1172 : (2007) 12 JT 179 : (2008) 1 LLJ 1021 : (2007) 11 SCC 92 : (2008) 1 SCC(L&S) 736 : (2007) 11 SCR 920 : (2008) 1 SLJ 314 on which reliance has been placed by Shri Gupta, a two-Judges Bench has attempted to dilute the Constitution Bench judgment by suggesting that the said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of the seven- Judges Bench in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, AIR 1978 SC 597 : (1978) 1 SCC 248 : (1978) 2 SCR 621 .

76. The facts of U.P. SEB v. Pooran Chandra Pandey (supra) were that the respondents (34 in number) were employed as daily wage employees by the Cooperative Electricity Supply Society in 1985. The Society was taken over by Uttar Pradesh Electricity Supply Board in 1997 along with daily wage employees. Earlier to this, the Electricity Board had taken a policy decision on 28-11-1996 to regularize the services of its employees working on daily wages from before 4-5-1990, subject to their passing the examination. The respondents moved the High Court claiming benefit of the policy decision dated 28-11-1996. The learned Single Judge of the High Court held that once the employees of the society became employees of the Electricity Board, there was no valid ground to discriminate them in the matter of regularization of service. The Division Bench approved the order of the Single Bench. A two-Judges Bench of this Court dismissed the appeal of the Electricity Board. In para 11 of its judgment, the two-Judges Bench distinguished State of Karnataka v. Umadevi (3) (supra) by observing that the ratio of that judgment cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution. The two-Judges Bench then referred to The State of Orissa Vs. Sudhansu Sekhar Misra and Others, AIR 1968 SC 647 : (1970) 1 LLJ 662 : (1968) 2 SCR 154 , Ambica Quarry Works Vs. State of Gujarat and Others, AIR 1987 SC 1073(1) : (1987) 1 SCC 213(1) : (1987) 1 UJ 174 , Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, AIR 2003 SC 511 : (2002) 10 JT 55 : (2003) 2 SCC 111 : (2003) 1 UJ 80 , Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another, (2004) 5 CTC 74 : (2004) 8 JT 171 : (2004) 8 SCALE 376 : (2004) 8 SCC 579 and observed: (Pooran Chandra Pandey case (supra), SCC pp. 98-99, paras 16 and 18)

"16. We are constrained to refer to the above decisions and principles contained therein because we find that often Umadevi (3) case (supra) is being applied by courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University (supra) and Bharat Petroleum Corp'n. Ltd. (supra) a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence, in our opinion, Umadevi (3) case (supra) cannot be applied

mechanically without seeing the facts of a particular case, as a little difference in facts can make Umadevi (3) case (supra) inapplicable to the facts of that case.

* * *

18. We may further point out that a seven-Judge Bench decision of this Court in *Maneka Gandhi v. Union of India* (supra) has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the Government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. *Maneka Gandhi* case (supra) is a decision of a seven-Judge Bench, whereas *Umadevi* (3) case is a decision of a five-Judge Bench of this Court. It is well settled that a smaller Bench decision cannot override a larger Bench decision of the Court. No doubt, *Maneka Gandhi* case (supra) does not specifically deal with the question of regularisation of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application."

(emphasis supplied)

77. We have carefully analyzed the judgment of the two-Judges Bench (in *Pooran Chandra Pandey* case (supra)) and are of the considered view that the above reproduced observations were not called for. The only issue which fell for consideration by two-Judges Bench was whether the daily wage employees of the society, the establishment of which was taken over by the Electricity Board along with the employees, were entitled to be regularized in terms of the policy decision taken by the Board and whether the High Court committed an error by invoking Article 14 of the Constitution for granting relief to the writ petitioners. The question whether the Electricity Board could frame such a policy was neither raised nor considered by the High Court and this Court. The High Court simply adverted to the facts of the case and held that once the daily wage employees of the society became employees of the Electricity Board, they could not be discriminated in the matter of implementation of the policy of regularization. Therefore, the two-Judges Bench had no occasion to make any adverse comment on the binding character of the Constitution Bench judgment in *State of Karnataka v. Umadevi* (3) (supra).

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90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the

frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed.

91. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

92. In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judges Bench in U.P. SEB v. Pooran Chandra Pandey (supra) should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench."

(emphasis added)

14. The ethos with respect to the ratio of Umadevi's case (supra) stating that the entire object was to prevent the spoils system in public employment which was existing prior to the Constitution Bench judgment in Umadevi's case (supra) has been further clarified by the Supreme Court in paras 66 to 68 in Dayanand's case (supra) and these paras read as under:-

"66. The judgments of 1980s and early 1990s - Dhirendra Chamoli and Another Vs. State of U.P., (1986) 52 FLR 147 : (1986) 1 LLJ 134 : (1986) 1 SCC 637 , Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, AIR 1986 SC 584 : (1986) 52 FLR 216 : (1986) LabIC 551 : (1986) 1 LLJ 403 : (1986) 1 SCALE 83 : (1986) 1 SCC 639 : (1986) 1 SCR 83 : (1986) 2 UJ 31 , Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, AIR 1987 SC 2342 : (1987) 4 JT 164 : (1988) LabIC 37 : (1988) 1 LLJ 370 : (1987) 2 SCALE 844 : (1988) 1 SCC 122 : (1988) 1 SCR 598 : (1988) 2 SLJ 31 , The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc., AIR 1990 SC 883 : (1990) 1 JT 343 : (1990) LabIC 625 : (1990) 2 LLJ 318 : (1990) 1 SCALE 288 : (1990) 2 SCC 396 : (1990) 1 SCR 544 , Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, AIR 1990 SC 371 : (1990) 60 FLR 157 : (1989) 4 JT

541 : (1990) 1 LLJ 320 : (1989) 2 SCALE 1337 : (1990) 1 SCC 361 : (1989) 2 SCR 513 Supp : (1990) 1 UJ 254 and *State of Haryana v. Piara Singh* (supra) are representative of an era when this Court enthusiastically endeavored to expand the meaning of equality clause enshrined in the Constitution and ordained that employees appointed on temporary/ad hoc/daily wage basis should be treated at par with regular employees in the matter of payment of salaries and allowances and that their services be regularized. In several cases, the schemes framed by the governments and public employer for regularization of temporary/ad- hoc/daily wag/casual employees irrespective of the source and mode of their appointment/ engagement were also approved. In some cases, the courts also directed the State and its instrumentalities/agencies to frame schemes for regularization of the services of such employees.

67. In *State of Haryana v. Piara Singh* (supra), this Court while reiterating that appointment to the public posts should ordinarily be made by regular recruitment through the prescribed agency and that even where ad-hoc or temporary employment is necessitated on account of the exigencies of administration, the candidate should be drawn from the employment exchange and that if no candidate is available or sponsored with the employment exchange, some method consistent with the requirements of Article 14 of the Constitution should be followed by publishing notice in appropriate manner for calling for applications and all those who apply in response thereto should be considered fairly, proceeded to observe that if an ad-hoc or temporary employee is continued for a fairly long spell, the authorities are duty bound to consider his case for regularization subject to his fulfilling the conditions of eligibility and the requirement of satisfactory service. The propositions laid down in *Piara Singh* case (supra) were followed by almost all High Courts for directing the concerned State Governments and public authorities to regularize the services of ad- hoc/temporary/daily wage employees only on the ground that they have continued for a particular length of time. In some cases, the schemes framed for regularization of the services of the backdoor entrants were also approved.

68. The above noted judgments and orders encouraged the political set up and bureaucracy to violate the soul of Article 14 and 16 as also the provisions contained in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 with impunity and the spoil system which prevailed in the United State of America in sixteenth and seventeenth century got firm foothold in this country. Thousands of persons were employed/engaged throughout the length and breadth of the country by backdoor methods. Those who could pull strings in the power corridors at the higher and lower levels managed to get the cake of public employment by trampling over the rights of other eligible and more meritorious persons registered with the employment exchanges. A huge illegal employment market developed in different parts of the country and rampant corruption afflicted the whole system. This was recognized by the Court in *Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others*, AIR 1992 SC 789 : (1992) 1 JT 394 : (1992) LabIC 847 : (1992) 2 LLJ

452 : (1992) 1 SCALE 294 : (1992) 4 SCC 99 : (1992) 1 SCR 565 : (1992) 1 SLJ 201 : (1992) 1 UJ 676 in the following words: (SCC pp. 111-12, para 23)

"23. Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is an Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularization knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularized. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such backdoor entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in government departments, public undertakings or agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularization has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days they have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts." "

15. It is therefore clear that the ratio of the judgment in the case of Umadevi (supra) really prevents regularization of persons who have been appointed pursuant to such an advertisement and which advertisement itself required employment only for a limited period, and therefore such persons who have been appointed for a limited period in terms of the advertisement requiring their appointments for limited periods, cannot seek regularization.

16. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.