

**(2014) 06 AP CK 0079**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition Nos. 6470, 7805, 17882 and 26274 of 2006, 9109 of 2007, 7806, 7807, 7808, 12151, 15481, 15486, 15852, 15855, 15868, 15869, 16053, 16470, 17079, 17880, 17881, 17883, 18107, 18108, 18109, 18111, 18324, 18326, 18327, 18328, 20875, 20877, 20878,

Kondamudi Chandrasekhara Rao

APPELLANT

Vs

State Bank of India

RESPONDENT

**Date of Decision :** 23-06-2014

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1  
Constitution of India, 1950 — Article 136, 14, 141, 16, 21  
Industrial Disputes Act, 1947 — Section 10(1)(d), 12(3), 18(1), 18(3)(d), 2(p)

**Citation :** (2014) 06 AP CK 0079

**Hon'ble Judges :** D. Seshadri Naidu, J

**Bench :** Single Bench

**Advocate :** Challa Ajay Kumar, V. Mallik, O. Manohar Reddy and K.R. Prabhakar, Advocate for the Appellant; Y. Padmavathi, SC for SBI, P. Vishnuvardhan Reddy Assistant Solicitor General and E. Madan Mohan Rao (SC for SBI), Advocate for the Respondent

## Judgement

Dama Seshadri Naidu, J.—All these writ petitions filed by the similarly placed erstwhile workmen of the respondent-bank arose out of a common award dated 17.05.2005 passed by the Central Government Tribunal-cum-Labour Court, Hyderabad ("the Tribunal", for brevity) in response to a reference, dt. 18.09.2001, from the Ministry of Labour, Government of India, under Section 10(1)(d) of the Industrial Disputes Act, 1947 ("the Act", for brevity). Since the issue is common in all the writ petitions involving similarly placed workmen on one hand and a nationalised bank on the other, under the same factual background, all the writ petitions are adjudicated and pronounced upon through this common order. For case of reference and felicity of expression, the facts are culled out from the Writ Petition No. 26274 of 2006, arising out of I.D. No. 222 of 2001, as the basis, and reference to the parties to the proceedings is made as

they have been arrayed in the said writ petition.

The facts in brief:

2. The facts in brief, as pleaded by the petitioner, are that the petitioner joined the services of the respondent-bank as Messenger in 1998 and continued in service for more than a decade. Eventually his services were terminated by the respondent bank through an oral order on 01.04.1997. The petitioner and many other persons, having basic qualification and having met the other eligibility criteria, had been engaged as Messengers, etc., in the last grade service of the respondent bank in view of severe manpower shortage in its branches across the state beginning from 1998.

3. In course of time, the management took a policy decision to offer permanent appointments to all those temporary employees working as Messengers or Non-messengers on waitlist basis, "as and when the opportunity arises" if they are found suitable for appointment. In the wake of the said policy decision, the respondent-bank entered into what is said to be the first settlement dated 17.11.1987 with the workmen's union. Later, on 16.08.1990, the Central Government issued an approach paper dated 16.08.1990 declaring that the recruitment of all the temporary employees in the clerical and subordinate cadres should be stopped forthwith and that those who were presently on the rolls of the bank should have their services regularised in terms of the approach paper.

4. On 01.08.1988, the respondent bank issued a notification, followed by a written test and viva voce in May, 1989, all of which culminated in the preparation of a panel of selected candidates, who were informed that they had, been provisionally selected for the purpose of regularisation as and when vacancies arose. The first settlement dated 17.11.1987 was superseded by the second settlement dated 16.07.1988, which in turn was superseded by the third one dated 27.10.1988.. Incorporating all those changes, the respondent bank issued a circular on 26.04.1991.

5. In view of the enormity of the problem and extension of the currency of the panel through the successive settlements, the circular dated 26.04.1991 provided for further opportunity to the remaining, empanelled candidates to be absorbed in the vacancies arising in the subsequent years. In fact, in terms of the circular dated 26.04.1991, a separate panel was prepared on the basis of selection process undertaken on 22.02.1993. Further, in terms of the settlements, the panel so prepared was undertaken to be kept alive till 31.03.1997. Thus, two separate select panels came into existence with limited currency. Every few years when the currency of the panel had to come to an end, the management entered into a fresh settlement with the workmen's union extending the life of the panel, thereby giving rise to a reasonable expectation on the part of the candidates that gradually based on the availability of vacancies their services would be regularised and that the process would continue until the entire panel was exhausted.

6. In 1997, tired of waiting, some of the empanelled workmen, including the petitioner, approached this Court and filed W.P. No. 4194 of 1997 contending that the respondent-bank failed to implement the settlement referred to above. Through order dated 05.03.1997, this Court directed the respondent bank to implement the terms of the settlement as amended from time to time. When the petitioner and other workmen were under the bona fide impression that the directions of this Court in W.P. No. 4194 of 1997 would be implemented in letter and spirit, the management of the respondent bank, much to the consternation of the workmen, issued directions to all branches not to continue the temporary employees beyond 01.04.1997.

7. Aggrieved by the abrupt dispensing with of their services, the workmen once again approached this Court by filing W.P. No. 9206 of 1997 impugning the directions of the management of the respondent bank, apart from seeking a consequential direction to have the services of the temporary employees absorbed into the mainstream.

8. Once again, this Court, through an order dated 01.01.1998, allowed the writ petition. This time, it is the turn of the respondent bank to assail the order dated 01.01.1998 in W.P. No. 9206 of 1997 by taking recourse to an intra-court appeal. Eventually, a learned Division Bench of this Court allowed the Writ Appeal No. 86 of 1998 and the batch through its common judgment dated 01.05.1998 holding that the workmen ought to have exhausted the alternative remedy provided under the Act before invoking Article 226 of the Constitution of India. Thus, the workmen were constrained to raise an industrial dispute in terms of Section 10(1) (d) of the Act. In turn, the Tribunal consolidated all the industrial disputes and rendered a common award dated 17.05.2005, whereby and where under the reference made by the Government of India was negated. Accordingly, the petitioner and all other workmen are before this Court.

The petitioners' contentions:

9. Sri S.Ramachandra Rao, the learned Senior Counsel, representing the learned counsel on record in a substantial number of writ petitions, has made elaborate submissions, citing innumerable authorities in support thereof. To begin with, the learned Senior Counsel has contended that the Tribunal has missed the woods for the trees; thus it returned a "nil" award without discussing the issues on hand. Taking this Court through the award of the Tribunal and also the voluminous material on record, the learned Senior Counsel has submitted that the Tribunal has laboured under a misconception of fact and law, thereby rendering an award, which is susceptible on various counts, including jurisdictional error, error apparent on the face of the record and the vice of perversity.

10. The learned Senior Counsel has contended that the non-consideration of their cases for absorption into permanent service and a fortiori the termination of the service of the petitioners are not only violative of the provisions of the ID Act, but also violative of the constitutional mandate as enshrined under Chapter-III,

as well as the judicial dicta of the Hon"ble Supreme Court and this Court. According to the learned Senior Counsel, though there are a substantive number of vacancies, for reasons not far to seek, the management has chosen to replace one set of temporary employees with another set, in the name of freedom of contract. Placing reliance on *Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others*, , the learned Senior Counsel has termed it an unfair labour practice, falling foul of Section 2(ra) of the Act, r/w Schedule V thereof. The learned Senior Counsel has also stated that putting an abrupt end to the services of approximately 1200 temporary employees working for more than a decade with a blanket oral termination is unconscionable as per the ratio laid down in *The Tata Oil Mills Co., Ltd. Vs. Workmen and Another*, . The whole action of the respondent-bank in retrenching the workmen is simply without jurisdiction and is nothing but an arbitrary exercise of power, as enunciated in *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*, .

11. The learned Senior Counsel has also assailed the action of the respondent bank as being whimsical and indiscriminate, inasmuch as the authorities have taken recourse to a method of pick and choose either in dispensing with the services of the workmen or in regularising the services of certain other workmen, giving a go-bye to the established seniority. Illustratively, the learned Senior Counsel would cite the case of one Sri B.Venkateswara Reddy whose services were regularised through an order dated 31.03.1997, though the said employee is stated to have served fewer days than most of the other claimants. The learned Senior Counsel has laid much stress in contending that the Federation (Union) or its affiliates, through the settlements and conciliation proceedings, have been empowered only to further the cause of the workmen, but not barter it away, thereby hastening the workmen's termination. In other words, the espousal of a cause does not mean its extinction.

12. Referring to the violation of the principle of natural justice, the learned Senior Counsel has stated that prior to the termination of the services of the petitioners neither notice was given nor any enquiry was conducted. In this regard, reliance is placed on *Globe Synthetics Ltd. And Ors. vs CCE 2002 (3) LLJ 209* and *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, .

13. As an alternative submission, the learned Senior Counsel chose to contend that neither the petitioners nor any other similarly situated workmen were parties to settlements, particularly the fourth and the fifth settlements, as well as the alleged memorandum of understanding. Ipso facto, the clause, if any, of non-renewal or that of terminating the services of the petitioners does not bind the claimants. The learned Senior Counsel has hastened to add that it is always open for the workmen to claim a benefit under a particular scheme, despite their being not a party to the proceedings; but, at the same time, it cannot, however, be stated that the benefits accrued thereby can be taken away to the prejudice of the claimants without notice to them. In this regard, the learned Senior Counsel

has placed reliance on General Manager, Security Paper Mill, Hoshangabad Vs. R.S. Sharma and Others, .

14. In the light of the repeated renewal of the terms of the settlement and the repeated revival of the panels of selected candidates, the petitioners have, contends the learned Senior Counsel, genuinely been lead to believe that the panels would continue to be in force until the list of their names was exhausted. Accordingly, the conduct of the management has given rise to a legitimate expectation on the part of the petitioners. In other words, until most of the petitioners have been barred by age to claim any new job, the respondent bank kept them in service with periodic revival of the panels and later chose to dispense with their services. Expatriating on the said submission, the learned Senior Counsel has submitted that on the promise held out by the respondent management, the petitioners acted to their own prejudice. In this regard, reliance is placed on Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, , U.P Awasthi Vs. U.P. Sahasr Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., , National Buildings Construction Corporation Vs. S. Raghunathan and Others, and M.P. Oil Extraction and Another Vs. State of M.P. and Others, .

15. The learned Senior Counsel has also stated that the action of the respondent-management falls foul of Article 21 of the Constitution of India, affecting the right of the petitioners to livelihood, as has been held in D.K. Yadav Vs. J.M.A. Industries Ltd., , Consumer Education and Research center and others Vs. Union of India and others, and Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, .

16. Finding fault with the conduct of the respondent bank, the learned Senior Counsel has strenuously contended that it has violated the guidelines and instructions issued by the Central Government in the case of absorption of the workmen, or in the alternative, continuing the workman on a temporary basis. The learned Senior Counsel has also assailed the action of the respondent bank contending that it has never made public the vacancy position right from 1988 to 1997 or even the particulars of those absorbed candidates. According to the learned Senior Counsel, the entire exercise of absorption of the candidates from the panels in the substantive vacancies has been shrouded in secrecy.

17. The learned Senior Counsel has contended that the findings of the learned single Judge in the judgement, dated 01.01.1998, in W.P. No. 9206 of 1997, has never been set aside by the learned Division Bench of this Court on merits. In the words of the learned Senior Counsel, the learned Division Bench has only observed that the workman should have approached the forum provided under the provisions of Industrial Disputes Act, 1947 before approaching this Court. Even the Hon"ble Supreme Court, when the matter was taken to it with Special Leave, did not pronounce otherwise. Thus, the findings of the learned single Judge in judgement dated 01.01.1998 in W.P. No. 9206 of 1997 stand undisturbed and accordingly bind the respondent bank.

18. Referring to the provisions of the Industrial Disputes Act, especially Section 25(F), the learned Senior Counsel has submitted that the termination or disengagement of the petitioners by the respondent bank amounts to retrenchment without following the procedure, thus falling foul of the ratio laid down in *State of Andhra Pradesh v. Chitra Venkata Rao* 1979 (2) ALT 411, *Lyon v. South Carolina Highway Department* 1981 SCC 1253 and *Maharashtra General Kamgar Union vs Haldyn Glass Works* 2004 (1) LLJ 190. He has also contended that the action of the respondent bank in replacing one set of temporary employees with another set is also unsustainable and unconscionable.

19. The learned Senior Counsel has assailed the periodic artificial breaks introduced in the services of the petitioners as another instance of unfair labour practice, apart from being at variance with the dictum of the Hon'ble Supreme Court in *Sri Rabinarayan Mohapartra Vs. State of Orissa and others*, , *Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others*, and *Baseruddin M. Madari and others v. State of Karnataka and others* 1995 Supp. (4) SCC 111. According to the learned Senior Counsel, every person employed in any establishment as a workman, whether temporary or permanent, as has been held in *Narendra Nath Chatterjee vs Commissioners of Bally* 2004(1) LLJ (Feb) 227, should be given the protection. Ipso facto, the claimants are entitled for regularisation with all benefits, as per the dictum in *State of Haryana and others Vs. Piara Singh and others etc. etc.*, , *Gammon India Ltd. Etc v. Union of India & Ors* 2001(1) LLJ 596, *High Court of judicature at Bombay v. Shashikant S. Patil* 2003(3) LLJ 904, *Kailash Nath Gupta v. Registrar of Trade Unions* 1979(2) LLJ 80, *Shyamsunder v. Labour Court* 1986(2) LLJ 624 and *Shrikishan Mittal Vs. UCO Bank and Others*, .

20. Placing reliance on the judgement of the Hon'ble Supreme Court in *Delhi Transportation Corporation (supra)*, the learned Senior Counsel has contended that the memorandum of understanding alleged to have been entered into between the local unit of the Federation and the Management is secretive. It has never been published; on the contrary, it was brought out post the definitive judgment of this Court in W.P. No. 9206 of 1997, only with a view to defeating this Court's judicial pronouncement of un-questionable efficacy. According to the learned Senior Counsel, memorandum of understanding is in subversion of the judgment dated 05.03.1997 of this Court in W.P. No. 4194 of 1997.

21. In furtherance of his submissions, the learned Senior Counsel has stated that the oral termination of the employees, who served the respondent-bank for several years is a stark example of colourable exercise of power as decided in *The Tata Oil Mills Co., Ltd. Vs. Workmen and Another*, . Assuming that the petitioners were liable to be retrenched, contended the learned Senior Counsel, the respondent-bank ought to have followed the safeguards set out under Section 25-F of the Industrial Disputes Act, as has been mandated in *State of Andhra Pradesh v. Chitra Venkata Rao* 1979(2) ALT 411 and *Paradip Port Trust v. Its Workmen* 2004 (1) LLJ 190.

22. Adverting to the policy enunciated by the Government of India, and also initially expounded by the respondent bank through its circulars, the learned Senior Counsel has submitted that the subsequent termination by way of non-revival of panels of temporary employees is in negation of the letter and spirit of those policies and circulars.

23. Summing up his submissions, the learned Senior Counsel has stated that all the petitioners have worked continuously, regardless of the artificial breaks, in the respondent bank ranging from 2 to 23 years against substantive vacancies. According to him, the respondent bank has miserably failed to establish that after dispensing with the services of the petitioners, the respondent bank has taken recourse to regular appointments and that only those employees who have been regularly appointed are presently serving the bank.

24. Referring to the impugned common award, the learned Senior Counsel has stated that the Tribunal has simply extracted the rival pleadings and has, in the end, concluded the award abruptly by merely placing reliance on a judgment of the Hon'ble Orissa High Court, which has no relevance to the facts of the present case. The learned Senior Counsel has taken pains to distinguish the facts of both the cases, one before the Orissa High Court and the other before this Court - the present one. He has also submitted that the SLP was disposed of with a cryptic order, and that it had not laid down any ratio, both precedentially and as a matter of merger of judicial pronouncements.

25. To obviate any remand of the matter, the learned Senior Counsel, employing some colourable metaphors, has pleaded before the Court that after decades of delay, any remand on any technicality sounds death knell to the claims of the petitioners who are already in their 40s or even early 50s.

26. The learned Senior Counsel has eventually urged this Court to set aside the award of the Tribunal. According to him, it suffers from many shortcomings calling for the judicial review under Article 226. In sum, the learned Senior Counsel has urged that the respondent bank be directed to re-engage the petitioners until the entire panels of temporary employees have been exhausted by way of regularisation vis-?-vis substantive vacancies.

#### The Contentions of the Respondent Bank:

27. Sri D.Prakash Reddy, the learned Senior Counsel, appearing for Dr. Padmavathi, the learned Standing Counsel for the respondent Bank, has strenuously countered the assertions of the petitioners. The learned Senior Counsel has contended that the petitioners have not worked continuously for a decade, since then engagement has been intermittent on a casual basis. With reference to the circular dated 16.08.1990 of the Government of India, the learned Senior Counsel has asserted that the respondent bank has not only implemented the said circular, which contemplated a one-time settlement, in letter and spirit, but has also gone beyond its terms, by extending the benefits under the settlement till 31.03.1997. The workmen were represented by All India

State Bank of India Staff Federation, which comprises about 98% of the workforce of the respondent bank. As per the periodic settlements, the temporary employees were classified under three categories, viz., Category-A, comprising those workmen who completed 240 days of temporary service in 12 calendar months or less after 01.07.1975; Category-B, comprising those workmen who completed 270 days of temporary service in any continuous block of 36 calendar months after 01.07.1975; and Category-C, comprising those workmen who completed a minimum of 30 days aggregate of temporary service in any calendar year after 01.07.1975, or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 01.07.1975. These categories of temporary workmen were required to be adjusted, as far as possible, in the vacancies arising between 1987 and 1991.

28. Referring to the approach paper of the Government of India, the learned Senior Counsel for the respondent bank has contended that para-6(h) of the said approach paper provides for considering the cases of those temporary employees who put in service of 90 days or more after 01.01.1992. Yet, the respondent bank went beyond it and provided further concession in the subsequent settlements accommodating the workmen who had put in less than 90 days" temporary service. In view of the subsequent settlements, dated 17.11.1987, 16.07.1988 and 27.09.1988, the vacancies that arose up to 1995-96 were also taken into account to provide permanent employment to as many temporary employees as possible. After categorizing temporary employees, the panels were prepared zone-wise separately for messengers and non-messengers in the descending order, commensurate with the number of days of service those workmen had put in during the stipulated period from 01.07.1975 to 31.07.1988.

29. In fact, the Federation, representing the interests of the petitioner and other workmen, contended the learned Senior Counsel, approached the Regional Labour Commissioner (Central), Hyderabad, raising a dispute concerning the alleged non-implementation of bipartite settlements in respect of absorption of temporary employees. As a result of the conciliation proceedings dated 09.06.1995, both the Management and the Federation agreed to keep panels of temporary employees alive up to March, 1997. The last of the series of settlements, dated 30.07.1996, was entered into between the Management and the Federation based on the said conciliation proceedings. The learned Senior Counsel has also submitted that in the said 5th settlement, dated 30.07.1996, after referring to all the previous settlements, dated 17.11.1987, 16.07.1988, 27.10.1988 and 09.01.1991, the Management and the Federation agreed to keep the panels alive only up to March, 1997 for filling up the vacancies existing as on 31.12.1994.

30. Only in furtherance of the 5th settlement dated 30.07.1996, once again did the Management and the Federation's local affiliate enter into a memorandum of understanding dated 27.02.1997 recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 had been completed by

Central Office, that 403 messengerial vacancies were sanctioned, that these vacancies would be filled from 1989 panel of temporary employees, and that both the panels of temporary employees, be it daily wages or casual employees, would lapse on 31.03.1997.

31. Till the time of lapsing of the panels, the respondent bank had absorbed as many temporary employees as it could, and as such, those who still remained unaccommodated in the lapsed panels could not ventilate any grievance. Precisely for this reason, even the contempt petition in C.C. No. 725 of 1997 which had been filed alleging non-implementation of the orders in W.P. No. 4194 of 1997 was also closed by this Court through order dated 02.01.1998. The judgment in W.A. No. 86 of 1998, directing the workmen to exhaust alternative remedies provided under the Act, having been refused to be interfered with by the Hon''ble Supreme Court in S.L.P. (Civil) Nos. 11886-11888/1998, the workmen cannot fall back on the directions given by the learned single Judge in W.P. No. 9206 of 1997. There has been no temporary engagement of the workmen after 31.03.1997 and lapsed panels of temporary employees cannot be revived.

32. Eventually, the learned Senior Counsel has defended the impugned common award contending that the case of temporary employees earlier working in Bhubaneswar Circle was adjudicated upon and eventually rejected by the High Court of Orissa in O.J.C.9039 of 1997, through judgement, dated 16.07.1998. When the aggrieved workmen took the matter to the Hon''ble Supreme Court, through its order dated 16.07.1999 in S.L.P. (CC) 3082 of 1999, the Hon''ble Supreme Court dismissed the said S.L.P. on merits, thus confirming the judgment of the Orissa High Court in O.G.C.9039 of 1997. Since the petitioner workmen are similarly placed, staking their claim to permanency cannot be sustained.

33. The learned Senior Counsel has contended that the temporary appointment of the petitioner has never been in a substantive vacancy, nor has it been made in accordance with the rules of recruitment within the scope prescribed for each category. In support of the said submission, the learned Senior Counsel has placed reliance on a judgment of the Hon''ble Supreme Court in State of Rajasthan and Others Vs. Jagdish Narain Chaturvedi, . He has also contended that regularisation is not a mode of recruitment as has been held in CSIR and Others Vs. Ramesh Chandra Agrawal and Another, .

34. According to the learned Senior Counsel, any direction to regularize the service of the petitioner amounts to giving a judicial imprimatur to a back door entry of appointment, in the light of the ratio laid down by the Hon''ble Supreme Court in State of U.P. Vs. Neeraj Awasthi and Others, . Placing reliance in Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., , the learned Senior Counsel has reminded this Court that the Courts must exercise judicial restraint not to encroach upon the executive domain of creation of posts, appointment in those posts or regularization thereof, apart from fixation

of the pay etc.

35. The learned Senior Counsel has strenuously contended that even the services of the workmen or contract workmen are dispensed with on the determination of the said Contract. Under those circumstances, it does not amount to retrenchment as has been held in *M.D., Karnataka Handloom Dev. Corpn. Ltd. Vs. Sri Mahadeva Laxman Raval*, .

36. Touching briefly on the well-established legal principles as to the scope of interference by this Court under Article 226 of the Constitution of India with an Award passed by an Industrial Tribunal, the learned Senior Counsel for the respondent bank has stated that unless the Award is perverse, there shall not be any interference. In this regard, the learned Senior Counsel has drawn the attention of this Court to the judgement of the Hon'ble Supreme Court in *G.M. ONGC, Shilchar Vs. ONGC Contractual Workers Union*, .

37. According to the learned Senior Counsel, it is perhaps possible to regularize irregular appointments but not illegal appointments. In other words, since the petitioner has secured his entry into service illegally, his services cannot be regularized, as has been held in *State of M.P. and Others Vs. Lalit Kumar Verma*, and *Govt. of A.P. and Others Vs. K. Brahmanandam and Others*, .

38. The learned Senior Counsel has also placed reliance on certain other judicial precedents, which are discussed by and by, and has contended that the petitioners are not entitled to any relief, much less the relief of regularisation of their services.

Discussion:

39. Surfeit of submissions and plethora of precedents: This Court, however, proposes to examine only those pleas and precedents which have a bearing on the issue.

40. The process of adjudication in the batch of writ petitions is essentially a judicial review of the award of a quasi-judicial adjudicatory body, i.e., the Industrial Tribunal. As such, this Court does not don the role of an appellate court or that of a fact finding mission, much less can it probe into the disputed questions of fact. Taking into account the well-established attributes of judicial review in terms of certiorari, this Court proceeds to decide the following issues:

"1. Whether the Common Award, dated 17.05.2005, of the Industrial Tribunal suffers from any legal infirmities as have been recognised under Art. 226 of Constitution, and, if so, do they call for the interference of this Court?

2. Whether the petitioners are entitled to the relief of absorption into the service of the respondent bank as messengers/non-messengers? And

3. Whether the petitioners are entitled to any other relief, if they are not entitled to the relief of absorption?"

The Reference:

41. The facts being not much in dispute, it can be seen that the Ministry of Labour, Government of India, through its Order No. L- 12012/126/2001-IR (D-I), dated 18.09.2001, referred the following dispute under Section 10(1)(d) of the Act for adjudication to the Industrial Tribunal between the Management of the respondent bank and its workmen:

"Whether the action of the Management of State Bank of India, Local Head Office, Hyderabad, in terminating the service of Sri P. Anil Kumar, temporary/non messenger, State Bank of India, with effect from 31.03.1997 is justified or not ? If not, what relief the applicant is entitled to?."

The Findings of the Tribunal:

42. The Tribunal inter alia has held:

"The position is now that under the Industrial Dispute Act, 1947, those who have completed 240 days in a year have some right as to the notice or notice pay on retrenchment compensation. But all of them entered into settlements, no doubt, these persons are not the members of the All India State Bank of India Staff Federation. But those who have worked even for 30 days in the calendar year or 70 days in 36 calendar months and various other categories could not have got any rights but for the settlements entered into by All India State Bank of India Staff Federation and even those who have completed 240 days in a year their rights also got merged due to these settlements. But for the settlements except those who have completed 240 days in a year others do not have any right under the I.D. Act and this is an All India problem and unfortunately for the petitioners the same agreement dated 30.07.1996 marked as Ex. M.6 herein, dismissed by the Orissa High Court in OJC No. 9039 of 1997 (WP) and batch, which was lapsed on 31.03.1997".

43. The Tribunal has discussed, briefly though, the Judgment of the High Court of Orissa and that of the Hon"ble Supreme Court in S.L.P, which is said to have been dismissed on merits, and has finally echoed the observations of the High Court of Orissa in the following manner:

"As the Hon"ble High Court of Orissa also stated in the end of the Judgment, it goes without saying if the petitioners feel aggrieved about the norms when communicated, the same can be questioned before the appropriate forum/ authority. The reference here is whether the termination is justified or not."

44. Having acknowledged that it involved about 700 persons, their families and the human problem they present, the Tribunal has concluded that in view of the Judgment of the High Court of Orissa, as confirmed by the Hon"ble Supreme Court on merits, when SLP was dismissed, it has no other option than holding that the termination of the services of the petitioners with effect from 31.03.1997 is justified and that they are not entitled to any relief. Indeed, the Tribunal, before parting with the matter, exhorted the Management of the

respondent bank to take into consideration the plight of those employees, who are temporary/daily wage/casual labourers and provide them suitable avenues depending upon the vacancy position without going into the technicalities of the expiry of the term period as justice is always required to be tempered with mercy.

45. A plain reading of the Order of the Tribunal makes it manifestly clear that after extracting the rival pleadings and submissions, it has essentially determined the issue based on the Judgment of the High Court of Orissa, as was confirmed by the Hon'ble Supreme Court. In that context, it is appropriate to examine the Judgment rendered by the Orissa High Court.

The Judgement of High Court of Orissa:

46. It can be seen that before the High Court of Orissa, a batch of Writ Petitions has been filed raising more or less similar issues involving the respondent bank and its temporary employees working across the State of Orissa. In fact, OGC No. 9039 of 1997 was decided based on an earlier judgment of a learned Division Bench of Orissa High Court in O.G.C. No. 2787 of 1997. In its judgment dated 15.05.1998, the learned Division Bench has held as follows:

"All the previous settlements as referred to above were taken note of and composite scheme was formulated and the modalities were left to be determined administratively on circular to circular basis depending upon the local requirements in consultation with the federation's affiliate. There is no dispute about correctness of the minutes recorded. The decision was taken administratively and on the basis of the settlement arrived at. The currency of the arguments made on the basis of impugned decisions/settlements has come to an end on 31.03.1997. It is pleaded by the petitioners that the modalities are followed in future though norms have not been fixed as yet We did not have necessary to go into the hypothetical questions. It goes without saying that if the petitioners feel aggrieved about the norms when formulated can be questioned before the appropriate forum/authority.

(7) Above being the position, we find no scope the Writ Appeal, which are dismissed. No costs".

47. It is to be observed that the final settlement dated 31.07.1996 was arrived at under Section 2(p) and Section 18(1) of the Industrial Dispute Act, 1947, r/w rule 58 of the Industrial Disputes (Central) Rules, 1957.

48. Their Lordships of the Orissa High Court have observed that the panel of temporary employees, etc., was kept alive till March, 1997 as per the terms agreed to between the Bank and the Federation. What cannot, however, be lost sight of is the further observation of the Court that the messengerial vacancies are to be identified based on the new norms to be finalised thereafter. In fact, their Lordships have left it open for the petitioners to question those norms once formulated, if they are aggrieved thereby. Evidently, the learned Division Bench of Orissa High Court has given its judicial imprimatur to the non-revival of the

panels, the currency of which was kept alive only up to March, 1997, only based on the assurance of the bank that it had been working out the norms for further engagement of the workmen. In other words, the learned Division Bench has only stated that the Management has been in contemplation of formulating new parameters to identify the vacancies and to fill them up. Ipso facto, if the norms to be established for the purpose of filling up those vacancies are not favourable to the temporary workmen who approached the Court, they could as well re-agitate the issue based on those newly formulated parameters. It is pertinent to observe that as those parameters are only in contemplation of the Management, the learned Division Bench has specifically observed that it is not proper for them to go into those hypothetical questions.

The Decision of the Hon''ble Supreme Court:

49. Indeed, when the matter was taken to the Hon''ble Supreme Court through Order dated 16.07.1999 in S.L.P (Civil) 3061 of 1999, the Hon''ble Supreme Court made the following Order:

"Delay condoned.

The Special Leave Petitions are dismissed on merits".

50. If a ratio can be culled out from the Judgment of the High Court of Orissa, it can be stated that the Court has declined to examine the hypothetical questions as to the norms or the modalities to be formulated by the respondent Management for the identification and filling up of managerial vacancies in future. Proceeding further in the same vein, it cannot be stated that there is any ratio laid down by the Hon''ble Supreme Court in the above SLP.

Principle of Stare Decisis:

51. In U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others, , it has been held that the ratio of any decision must be understood in the background of the facts of that case and that the case is only an authority for what it actually decides but not what logically flows from it. In the said decision the question was whether casual employees working in the Electricity Board were entitled to regularisation of their services. This is what the learned Division Bench has to say in paras 16 and 17:

"16. We are constrained to refer to the above decisions and principles contained therein because we find that often Secretary, State of Karnataka and Others Vs. Umadevi and Others, 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 case Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, and Bharat Petroleum Corpn. Ltd. case Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another, 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 cannot be applied mechanically without seeing the facts of a particular case, as a little

difference in facts can make Umadevi (3) case inapplicable to the facts of that case."

52. Further, in G.M. ONGC, Shilchar Vs. ONGC Contractual Workers Union, , it was observed that each case has to be examined, to a very large extent, on its specific facts, and a universal yardstick should not be attempted.

Doctrine of Merger:

53. Having appreciated the precedential parameters, we may have to examine the principle of merger. In other words, what is to be appreciated is whether the judgement of the learned Division Bench of the High Court of Orissa has merged with that of the Supreme Court.

54. The Order, dated 16.07.1999, of the Hon"ble Supreme Court in S.L.P. (Civil) 3061 of 1999 is cryptic to the effect that "delay condoned; the Special Leave Petitions are dismissed on merits".

55. In Kunhayammed and Others Vs. State of Kerala and Another, , the Hon"ble Supreme Court, on an exhaustive survey of the case law on the point of the doctrine of merger, has held as follows:

"27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal... The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the Apex Court of the country. No court or tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply..."

(emphasis added)

56. Having stated thus, the Supreme Court has summed up the principle of merger as under:

"44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court,

tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.

(iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties,

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by Sub-

rule (1) of Rule ( order 47 rule 1) of Order 47 of the C.P.C."

57. In the light of the above definitive judicial dictum, it cannot be stated that there is any merger of the judgement of the High Court of Orissa with that of the Supreme Court, so as not to subject the judgement of the High Court of Orissa to an analysis on the principle of comity.

58. Indeed, an ad hoc employee has no right to post and an ad hoc appointment does not count for service. Further, in order to become "a member of service" a candidate must satisfy four conditions, namely:

"(i) the appointment must be in a substantive capacity;

(ii) to a post in the service i.e. in a substantive vacancy;

(iii) made according to rules; and

(iv) within the quota prescribed for the source. (see Jagdish Narain Chaturvedi, *supra*)."

59. Recruitment must be in consonance with the principles of equality enshrined in Articles 14 and 16 of the Constitution of India. Regularization is not a mode of recruitment, nor does it mean permanence. Only an irregularity can be regularized; an illegality cannot be. (see Ramesh Chandra Agrawal, 31 *supra* & Lalit Kumar Verma, *supra*).

60. If retrenchment is effected in terms of Industrial Disputes Act, 1947, the question of compliance with the principles of natural justice does not arise. The fact that all appointments have been made without following the procedure, or services of some persons appointed have been regularised in the past, cannot be said to be a normal mode which must receive the seal of the Court. Past practice is not always the best practice. If illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. In the absence of any right to continue in the employment by an employee, there cannot be any judicial fiat framing schemes for the said purpose. An attempt to induct an employee without following the procedure would be a back-door appointment. Such back-door appointments have been deprecated by this Court times without number, (see Neeraj Awasthi, *supra*).

61. Sympathy cannot be a factor in adjudication of the legal rights of the parties. The right to livelihood was found not feasible to be incorporated as a fundamental right in the Constitution and therefore employment was also not guaranteed under the constitutional scheme. The State is also controlled by economic considerations and financial implications of any public employment. There cannot be a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. So, the court ought not to impose a financial burden on the State by such directions, for such directions may turn out to be

counterproductive. Creation and abolition of posts and regularisation are purely executive functions. Hence, the Court cannot create a post where none exists. Also, Court cannot issue any direction to absorb the workmen or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. In other words, Court cannot arrogate to itself the powers of the executive or legislature. (see *Indian Drugs & Pharmaceuticals Ltd., supra*).

62. Even assuming that that the workmen had worked 240 days continuously, yet he cannot claim that his services should be continued because the number of 240 days does not apply to the workmen whose services were purely contractual. The termination of his contract does not amount to retrenchment and, therefore, it does not attract compliance with Section 25-F of the ID Act at all. (see *Sri Mahadeva Laxman Raval, supra*).

63. The Courts have the authority to enquire as to whether a finding arrived at by the Tribunal was based on evidence and to correct an error apparent on the face of the record. Thus the Court would be fully justified in interfering with an award of an Industrial Tribunal on account of a patent illegality. The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those tribunals. (see *ONGC, supra*).

64. The equality clause contained in Articles 14 and 16 of the Constitution of India, it is trite, must be scrupulously followed. The Court ordinarily would not issue a writ of or in the nature of mandamus for regularisation of the service of the employee which would be violative of the constitutional scheme. (*K. Brahmanandam, supra*).

65. Broadly those are the legal principles that have been gathered from the numerous authorities cited by the respondent bank. There cannot be any quarrel with the proposition of law in the manner of a binding precedent, but the issue is how far they apply to the facts of the case.

Claim based on a long service:

66. The question is whether long service in an organisation confers any indefeasible right on an employee to stake a claim to the post.

67. In *Gurbachan Lal Vs. Regional Engineering College, Kurukshetra and Others*, , employees were recruited to work in the employment generated under a scheme. When the scheme came to an end and when the services of the workmen were terminated, they raised an Industrial Dispute seeking regularization of their services. Under those circumstances, the Hon"ble Supreme Court has held that notwithstanding the length of temporary services, there cannot be any direction for regularization.

68. In *Kendriya Vidyalaya Sangathan and Others Vs. L.V. Subramanyeswara and Another*, the facts are that a Registered Society, autonomous though, under the control of the Central Government, has been running schools throughout the country with its teachers liable to transfer throughout India. In leave vacancies, the Society called for applications from the Local Employment Exchange, but not the Central Employment Exchange. From and out of those candidates, who were sponsored by the Local Employment Exchange, those leave vacancies were filled up but not by a regular selection committee.

69. After continuing for a considerable time under the cover of Orders from the High Court and also having obtained parity of pay again under the judicial directive, when the said teachers sought for regularization of their services, the Hon''ble Supreme Court has held that had there been any intention on the part of the Society to go for regular appointment, they could have called for applications from Central Employment Exchange, thus giving opportunity to all the eligible candidates across the Board. Further, since the selection has not been effected by a regular selection committee, it was only a stop gap arrangement in leave vacancies. As such, in terms of the ratio laid down in *Umadevi (3)* those temporary teachers cannot stake any claim for permanency.

70. In *Rajasthan Krishi Vishva Vidhyalaya, Bikaner Vs. Devi Singh*, , the Hon''ble Supreme Court has held that mere length of service alone is not a determining factor for regularization of services. Again, in the said judgment, reliance was placed in *Umadevi (3)* to hold that unless all the parameters have also been satisfied, regularization is not automatic.

71. In *L. Parameswaran v. Chief Personal Officer* 2008 AIR SCW 1594, the employee working in Electrical Wing of Railways, volunteered to work in the post of Diesel Mechanic Grade-II. On such expression of willingness, he was promoted to the said post, and, in course of time, he was again promoted as Diesel Mechanic Grade-I. Those posts, however, are on mechanical side, being ex-cadre. After the employee completing a period of 12 years in those posts he was reverted to parent cadre. Thereafter, when reverse orders were passed, they were challenged by the employees. Under those circumstances, the Supreme Court has held that the person holding an ex-cadre post does not deserve to continue thereof.

72. In *Man Singh Vs. Commissioner, Garhwal Mandal, Pauri and Others*, , the workman was appointed a peon on a short term vacancy for a fixed period, with time to time extension. He continued to work as a Peon for a long time on the basis of periodical extensions. Based on those periodical extensions/appointments a selection list was prepared in the year 1995 with a validation period of one year and that period was not extended. In the absence of any Notification extending the validity of such Selection List, the Hon''ble Supreme Court has held no appointments can be directed to be made from such selection list. Ipso facto, it was declared that the appointee did not acquire any indefeasible right to become a permanent employee of the Department.

73. The learned Senior Counsel for the respondent bank has contended that even the petitioners fall under the same category.

Legitimate Expectation:

74. The learned Senior Counsel for the respondent bank has strenuously contended that mere reasonable or legitimate expectation of the citizen may not by itself be a distinct enforceable right. Elaborating further, he has stated that whether the expectation of the employee is reasonable or legitimate in the factual context of the case is a question of fact. Whenever the question arises, it is to be determined not in accordance with the claimant's perception, but in a larger public interest, wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the employee.

75. In this regard, the learned Senior Counsel has placed reliance in *Official Liquidator Vs. Dayanand and Others*, . Since heavy stress has been laid on this decision, it is meat to examine the judgment in some detail. A three Judge Bench of the Hon'ble Supreme Court surveyed the substantive part of the case law obtaining on the issue of public employment, especially regularization of temporary, contractual, casual, daily wage or ad hoc employees, in the light of the ruling of Constitutional Bench in *Umadevi (3)*. Their Lordships have also examined what is said to be an attempt by a Division Bench of the same Court in *U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others*, to water down the binding effect of *Umadevi (3)*. Their Lordships have traced down the shift in the judicial stand on the issue of public employment in Paras 66 and 68 of the Judgment, which are as follows:

"The judgments of 1980s and early 1990s - *Dhirendra Chamoli and Another Vs. State of U.P.*, , *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, , *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, , *The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc.*, , *Bhagwati Prasad v. Delhi State Mineral Development Corporation (supra)*, *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."

76. 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 States 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*, in the following words:

"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."

77. Having thus traced the course of judicial pronouncements on the public

employment, their Lordships have further held that the menace of illegal and back-door appointments compelled the Courts to re-think of the issue in a large number of subsequent judgments. Thus, the backdrop has been supplied to the subsequent refusal of the Hon"ble Supreme Court to entertain the claims of ad hoc and temporary employees for regularization of their services.

78. Going to the facts of the case, it may be observed that Company Paid Staff were employed in the offices of Official Liquidators attached to different High Courts. In course of time, those employees staked claim to the status of permanent Central Government Employees. In that factual background, the Hon"ble Supreme Court has held that given the mode and source of their recruitment and remuneration under the Company Paid Staff category, the said employees constitute a different class from the regular employees appointed against the posts sanctioned by the Central Government. It has further been held that the Company Paid Staff joined with full knowledge of their status and terms and conditions of their employment. In fact, given the temporary nature of the employment, more qualified and more meritorious persons must have shunned applying because they knew that the employment would be temporary. Accordingly, only mediocre people must have responded to the advertisements and joined as Company Paid Staff. Their Lordships have held that any direction for absorption would be detrimental to public interest in more than one way; firstly it will compel the Government to abandon the policy decision of reducing the direct recruitment to various services; secondly this will be virtual abrogation of the statutory rules which envisage appointment to different cadres by direct recruitment. Interestingly, in that case, based on the direction of the Calcutta High Court, the Government of India created 51 posts for absorption of staff employed by the Court Liquidator. In that context, the Supreme Court has held that it cannot be made the basis for granting relief to the other employees, because those posts were created under the pain of contempt, for which proceedings had already been initiated by the aggrieved employees. In conclusion, the Hon"ble Supreme Court has held that the directions given by the High Courts for creation of supernumerary posts to facilitate absorption of the Company Paid Staff are legally unsustainable.

79. Addressing the issue of legitimate expectation, after referring to a catena of Judgments, the Hon"ble Supreme Court on facts has held that the respondents were employed by the Official Liquidators as additional staff pursuant to the sanction accorded by the Courts concerned. The conditions of their appointment clearly envisaged cessation of employment at the end of fixed tenure or on completion of liquidation proceedings. The respondents made to work in relation to different liquidation proceedings and for that purpose, the term of their employment/engagement was extended from time to time and they continued in service for many years in the same capacity. Their Lordships have stressed that no material has been placed before the Court to show that any promise was made or any assurance was held out to the respondents by any competent authority of the Government of India for their absorption in the regular cadres.

In sum and substance, since the Government of India has taken a policy decision to reduce the number of posts in direct recruitment quota and consequential abolition of posts in the department of Company Affairs, the Hon'ble Supreme Court has found that the policy has not been vitiated by arbitrariness or violative of the doctrine of equality, nor does it suffer from the vice of mala fides.

80. In my considered view, the factual circumstances of Dayanand (*supra*) are not to be found in the present case. In fact, the petitioners along with others continued to work for decades in the bank. They had been subjected to selection process and later were empanelled. Having regularised a few of them, the respondent bank scrapped the remaining panel of candidates in the name of an MOU with the union. The policy of the Union Government in this regard is entirely different - to continue them until their services have been regularised. The shunning of meritorious candidates may be an issue in the case of employment based on skill and higher qualification; in contrast, in the present instance, the last grade employees of the bank are required to possess elementary educational qualification and expected to discharge manual or menial tasks requiring no skill.

The Impact of Sections 25-G and 25-H of the ID Act:

81. The learned Senior Counsel for the respondent bank has drawn the attention of the Court to Section 25-G and 25-H of the Act. In that regard, he has contended that since the petitioners have been appointed totally on ad hoc basis, without following any procedure in law or under any Award or Settlement, it could not be said that should be given the benefit of those provisions, by very violation of which they secured employment in the first place.

82. Section 25-G requires the employer to "ordinarily retrench the workman who was the last person to be employed in a particular category of workman unless for reasons to be recorded the employer retrenches any other workman". This "last come first go" rule predicates (1) that the workman retrenched belongs to a particular category; (2) that there was no agreement to the contrary; and (3) that the employer had not recorded any reasons for not following the principle. These are all questions of fact in respect of which evidence would have to be led, the onus to prove the first requirement being on the workman and that of the second and third requirements, on the employer. Necessarily a fair opportunity of leading such evidence must be available to both the parties. This would in turn entail laying of a foundation for the case in the pleadings. If the plea is not put forward, such an opportunity is denied, quite apart from the principle that no amount of evidence can be looked into unless such a plea is raised. (See AIR 1930 57 (Privy Council) and *Bondar*

83. *Bondar Singh and Others Vs. Nihal Singh and Others*, , as quoted in *Regional Manager, SBI v. Rakesh Kumar Tewari*,).

84. While construing a statute, "sympathy" has no role to play. The Court cannot interpret the provisions of an Act ignoring the binding decisions of the larger Benches of the Court only by way of sympathy to the workmen concerned. (see

Maruti Udyog Ltd. Vs. Ram Lal and Others, I believe the respondent bank has placed reliance on the above proposition of law as a caveat on this court to urge that the matter be decided on merits and on merits alone. So shall it be.

UMADEVI (3):

85. Making a copious reference to Umadevi reference to Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the learned Senior Counsel for the respondent bank has submitted that in order that a mandamus may be issued to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party has a legal right under the statute to be enforced.

86. In Umadevi (3), a Constitution Bench of the Supreme Court has held that regular recruitment should be insisted upon, and only in a contingency an ad hoc appointment can be made in a permanent vacancy. The Court has affirmed that such an arrangement should soon be followed by a regular recruitment. It has also stressed that appointments to non-available posts should not be taken note of for regularization. What has been stressed is that regularisation is not and cannot be a mode of recruitment by any State and it cannot give permanence to an employee whose services are ad hoc in nature.

87. The Supreme Court has further held that adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment, and that the adherence to the rule of equality in public employment is a basic feature of our Constitution. The Constitution Bench has further gone on to observe that 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 himself to be made permanent on the expiry of his term of appointment. An explicit observation is made to the effect that High Courts acting under Article 226 of the Constitution of India should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional scheme.

88. In Surendra Kumar Sharma Vs. Vikas Adhikari and Another, , the petitioner was working under a scheme, his tenure being coterminous with the length of the scheme. Once the scheme is over and funds flow is stopped, the post automatically stands abolished. Under those circumstances, it has been held by the Hon"ble Supreme Court that no claim can be made for regularization.

89. In State of A.P. and others v. D. Dastagiri and others (2003) 5 SCC 372, the issue with regard to the right of a candidate, whose name was found in the selection list, which has not been finalised, much less published. It is held by the Hon"ble Supreme Court that in the absence of publication of selection list, selection process was not completed. Even if the selection process is complete and only the selection list remains to be published, that does not advance the

case of the selectee for the simple reason that even the candidates, who have been selected and whose names have been found in the selection list, do not get vested right to claim appointment based on the selection list.

90. In *National Fertilizers Ltd. and Others Vs. Somvir Singh*, , the recruitment rules having not been followed, the Selection Committee having not been properly constituted as required, and the appointments of the said employees having been in violation of recruitment ban that had been in place, with other irregularities plaguing the appointments, the Hon"ble Supreme Court has held that those employees do not have any legal right to continue in service. The fact that they are working for a long time cannot be a ground for regularization of their services, especially in the light of the ruling in *Umadevi* (3).

91. In *Surendra Prasad Tewari Vs. Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad and Others*, , the same ratio has been laid down.

92. It may have to be further seen that the learned Senior Counsel for the respondent Bank, placing reliance in *National Engineering Industries Ltd. Vs. State of Rajasthan and Others*, , has strenuously contended that a settlement arrived at in the course of conciliation with a recognised majority union will be binding on all in the establishment, even those who belong under the minority unions, which may have objected to it. Recognised Union having majority of members is expected to protect the legitimate interests of labour and enter into a settlement in the best interest of labour. In that case, it can be seen that the High Court came to the conclusion that the settlement arrived at in conciliation proceedings was binding on the workmen and one of the clauses of the settlement kept the service conditions intact and another clause did not permit raising of any demand throwing an additional financial burden on IOCL. Despite that, when the certified Standing Order was amended, the High Court has held that it was not permissible to modify the certified Standing Order by an amendment as that would alter the service conditions and increase the financial burden on the Management. The High Court, therefore, quashed the orders amending the Standing Orders. Aggrieved, the Union approached the Supreme Court.

93. The Hon"ble Supreme Court in the above factual back ground has held as follows:

"A settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. The recognised union having the majority of members is expected to protect the legitimate interest of the labour and enter into a settlement in the best interest of the labour. This is with the object to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. When a settlement is arrived at during the conciliation proceedings it is binding on the

members of the Workers" Union as laid down by Section 18(3)(d) of the Act. It would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12(3) of the Act. The Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. "This principle of industrial democracy is the bedrock of the Act," as pointed out in the case of P. Virudhachalam and Others Vs. Management of Lotus Mills and Another, . In all these negotiations based on collective bargaining the individual workman necessarily recedes to the background. Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out."

(emphasis added)

94. It can be seen that the settlement in the above case has been arrived at during the conciliation proceedings, and with the active assistance of conciliation officer. In the present instance, the so called local unit of the Union simply contracted the rights of the petitioners out. A workman remains a member of the Union so long as he or she is in service of the industry, where the Union espouses the cause of the workers. While the Union bargains, the basic requirement is that it ensures that those workers continue in the industry. Within the said confines of the said basic safeguard, the Union can negotiate and fine tune, in concert with the management, the rights of the workmen. If a Union simply agrees that a section of workmen should cease to be workmen it cannot be a representation on the part of the Union to protect the interests of those soon to be extinct workmen, in terms of their continuation in service. Any such agreement, unilateral as it is, causes a severance of relationship between the Union and the workmen.

95. The learned Senior Counsel for the respondent bank has also repelled the contention of the petitioner on the issue of right to livelihood in terms of Articles 21 and 41 of the Constitution of India by placing reliance on Delhi Development Horticulture Employees" Union Vs. Delhi Administration, Delhi and others, , wherein it was held that to determine the said right, the limits of economic capacity and development should also be taken into account.

96. In Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, , it was held that where the appointment is purely on ad hoc basis and is contractual and by efflux of time, the appointment comes to an end, the person holding such post can have no right to continue in the post. This is so even if the person is continued from time to time on ad hoc basis for more than a year. In any event, in the end, the three Judges bench of the Hon"ble Supreme Court has directed the management to consider sympathetically the case of the workmen if regularisation in service is possible.

97. In Syndicate Bank and others Vs. Shankar Paul and others, , it was held that temporary appointments were made from a panel of eligible candidates prepared

by calling names from employment exchange. The panel was valid for only one year. When the said employees claimed permanent absorption in service, the Hon''ble Supreme Court has held that whatever conditional rights those empanelled candidates had, they came to an end on the expiry of one year.

98. In *Ashwani Kumar and Others Vs. State of Bihar and Others*, , it was held that recruitments were made in T.B Eradication Programme of Government supported by planned expenditure. The selection committee was entrusted to recruit 2250 Class III and IV employees. The Selection Committee, however, recruited 6000 employees by adopting pick and choose principle. In fact, the established procedure for recruitment of Class III and IV employees has not been followed. Holding that the recruitment was ex facie illegal and not binding on the Government, the Hon''ble Supreme Court has held that there could not have been any recruitment without sanctioned post backed by financial budget support. Accordingly, the claim for regularization of services has been rejected.

99. Do the above Precedents Apply to the Facts of the Case?

100. The respondent bank has more than 800 branches all over the State of Andhra Pradesh, as it then was. It has one local Head Office at Hyderabad with four modules namely Hyderabad, Vijayawada, Visakhapatnam and Tirupati. Without assuming any numerical accuracy, it can be stated that Hyderabad module has 253 branches, Vijayawada 190 branches, Visakhapatnam 195 branches and Tirupathi module, 170 branches. From the tabulated details provided by the petitioners in their pleadings, it can be seen that some of the petitioners have been working for more than a decade, in some cases two decades, and most of them have on an average put in a service of about 5 to 6 years in different branches. Incidentally, neither the length of the service of the petitioners nor the wages that have been paid to them have been in dispute.

101. The learned Senior Counsel for the petitioners has illustratively stated before the Court that all the petitioners have worked continuously for many years, but with only artificial breaks induced to avoid statutory liabilities. According to him, all the petitioners have worked in substantive vacancies. Going to the specifics of the matter, it is to be observed that Sri V. Madditeti, (I.D. No. 77 of 2002), one of the petitioners, worked during the period of 1987-1997. As per the records, he worked for 1370 days in all those 10 years. As to his community, he belongs to Scheduled Caste and as to the qualification, he passed 9th class, whereas the basic qualification for the post of Messenger is 8th class. It is further evident that the said petitioner worked both in the Messenger category and in non-Messenger category.

102. It could further be seen that the first settlement dated 17.07.1997 divided the employees into three Categories, viz., the employees, who worked for 240 days in a calendar year, the employees, who worked for 270 days in 36 months, and the employees, who worked for 30 days in 12 months in a calendar year.

103. In Circular No. PER/IR.18/88, dated 27.04.1988, the respondent Bank has

formulated a policy in terms of temporary employees settlement dated 17.12.1997 to consider those temporary employees for permanent appointments/absorption. In fact, under the caption "rationale", it is stated thus:

"As per the provision contained in bipartite settlement dated 17.12.1997, a chance for further employment is required to be given to retrench the temporary employees. The above exercise is being undertaken in the light thereof."

104. Before empanelling the temporary employees, the respondent bank released advertisements in two leading dailies in different circles advising eligible candidates to apply for permanent appointment within 30 days of the publication thereof. Later, in the initial settlement, it was stated to be a one-time measure without its being perpetual, as well as its being without prejudice to the other existing guidelines of the respondent bank. The age and educational qualifications were taken into account, apart from the community status of the workmen. After scrutiny of all the applications, a Selection Committee comprising Higher Grade Officers of the Bank interviewed the workmen and eventually prepared the Waiting List.

105. Through second settlement dated 16.07.1988, the currency of the panel was extended without further changes to the parameters fixed in the first settlement. In the 3rd settlement, dated 27.10.1998, once again the temporary employees were divided into A, B and C categories, as had been done during first settlement.

106. The vacancy position has been agreed to be recognized up to the year 1992. In the 4th Settlement, dated 09.01.1991, the currency of the panels had been extended up to 1994-1996 and the vacancy position, up to the year 1996. It has also been stated that if the panel of temporary employees were to be exhausted before December, 1994, the panel of daily wages would become operative. In fact, at the end of the 4th Settlement on 26.04.1991, another Circular was issued encapsulating all the terms and conditions for regularisation including that of the Rule of Reservation. Eventually, the 5th settlement was entered into on 30th July, 1996, and it contained a specific observation to the following effect:

"It was agreed that all the messengerial posts in the subordinate cadre including part time attendance specifically provided as leave reserved will be filled up before 31st March, 1997."

107. It may have to be observed that before the 5th settlement was entered into, conciliation proceedings were held on 09.06.1995. One of the issues in the conciliation proceedings was concerning the non-implementation of bipartite settlement in respect of absorption of the temporary employees. It was eventually agreed that those panels would be implemented after arriving at the number of messengerial posts created before in terms of the Settlement. It was also agreed that another Joint Committee would be constituted to review the existing norms and reach further settlement. In fact, the panels were agreed to

be kept alive up to March, 1997, and the vacancies to be filled from both the panels concurrently. In the meanwhile, certain temporary employees, aggrieved by the action of the Management in not implementing the Settlement, filed W.P. No. 4194 of 1997 in the first week of February, 1997, questioning their non-regularisation. The Writ Petition was disposed of on 05.03.1997. In fact, when this Writ Petition was pending consideration before this Court, the Management of the respondent bank is said to have entered into an MOU on 27.02.1997 with State Bank of India Staff Union, Hyderabad Circle, an affiliate of the Federation.

108. Before adverting to the adjudicatory aspects before the Tribunal, it can be seen that one of the Chief Managers working in SBI Zonal Office, Vijayawada in his deposition as witness MW.1, has stated;

"It is further fact that the Letter G.O. No. F-3/3/104/87/IR/ Government of India, Ministry of Finance, is an instruction to all chief executives of the Bank to recruit all the empanelled employees of the Bank and not to engage any temporary employees".

(emphasis added)

109. One of the Assistant General Managers, Kurnool Main Branch, deposed as M.W.1 in I.D. No. 222 of 2001. He has stated to the effect:

"It is correct from 1988 onwards we were empanelling the candidates for absorption after conducting the selection process through an advertisement as per the Settlement entered into. The settlement, empanelment were for absorption. The witness adds that those could not be absorbed or terminated. It is not true to suggest that all those candidates, who were empanelled should have been absorbed as they were empanelled on advertisement on interview i.e., through selection process.

The petitioners and others who were asked not to come were not selected. The witness adds that as per the Memorandum of Understanding, the panels lapsed on 31.03.1997. It is true no notice or notice pay in lieu thereof was given to the petitioner or other similarly situated. The witness adds that it was not necessary as per the Settlements and Memorandum of Understanding. All these petitioners were asked not to come from next day, i.e., 01.04.1997."

(emphasis added)

110. In I.D. No. 156 of 2002, one of the Chief Managers of Tirupathi Zone, deposed to the effect;

"The exercise of interview and empanelment was done to give them permanent appointments. If the empanelment the candidates were changed as per the Empanelment List, but the Management has not filed any Empanelment List or Seniority List.

After Empanelment, the candidates were sent to the concerned branch for

permanent appointments as per the requirement. The extension of the Settlement is only to accommodate and absorb more candidates. The Management witness adds that the Bank has not come out with any Notification subsequent to 1998."

(emphasis added)

111. It is pertinent to observe that the witness has stated in his deposition that there are vacancies in the Bank after 1997. Since the whole process of empanelment and absorption of the temporary employees, piecemeal though, has been based on an earlier decision of the Government of India, it is apposite to examine its directive in

G.O. No. F-3/3/104/87-IR, dated 16.08.1990, which is as follows:

"Attention of Banks is specifically invited to Para 6 (1) of the toto which lays down that the recruitment of all temporary employees in the clerical/subordinate cadres shall be stopped forthwith. For the staff which is presently on the rolls of the banks their services will be regularized in terms of the approach paper. For the current recruitments, banks may utilise their existing panel of temporary employees and in case, these employees were not taken from the Employment Exchanges, the banks would be required to approach the DGET directly seeking exemptions. Until the problem of existing temporary employees is fully resolved, no bank will be permitted to make any temporary appointments. For future requirements, banks would have to approach Government and would have to go by such modalities as would be said down by the Government."

(emphasis added)

112. On 25.03.1997 and on 27.03.1997, directions were issued to all the branches in commercial network by the respondent management not to engage any temporary messengers in any of the branch/office under any circumstance even on casual/daily basis/on payment of petty cash. The reason supplied for this imperative direction is that the panels of temporary employees and daily wages/casual labour maintained by Zonal Offices stood lapsed by 31.01.1997. In a sense, the respondent bank has treated these communications as orders of termination en masse.

113. Indeed, having been compelled to compete in the open, for the State or an instrumentality of the State, the appellation of "Model Employer" is no longer a term of acclaim, but it has become an albatross in its neck. The regulatory regimes, the statutory schemes, and an abundance of executive instructions have cribbed and caged the State, the employer, in the matters of employment, notwithstanding the sovereign power of the State to employ people of choice, apart from the doctrine of pleasure. Indeed, in a nation of Constitutional Democracy or Democratic Republic, wedded to the welfare of the people, no one can complain against the limitations imposed on the freedom of the employer. At the same time, the instrumentalities of the State, such as Corporations or

Financial Enterprises, for example Nationalised Banks, do not have a level playing field to compete with their counterparts in the open market, given the statutory straight jacket they have been put in. Precisely, for this reason, to match them in performance, most of the Nationalized Banks have taken recourse to various methods to spruce up its service cadres. Long ago recruitment notifications were a regular phenomenon, an annual jamboree, and every aspiring youth had a dream of securing a bank job, placed next to Civil Services.

114. The banking industry knew only hiring, but not firing. Came economic liberalisation, the doors for competition were opened. The State is pitted against a private enterprise - one has the power to hire, firing being an exception; the other has the power to hire and fire both without much of a constraint. Definitely not a level playing field. On the contrary, the job-security, as a concept of socialistic talisman, in some instances, has been over-employed and over-emphasised, almost to the extent of being counter-productive. Banks were pushed to the wall. Then came the innovative methods of engaging the workmen under different nomenclatures, such as outsourcing - once unheard of, now the norm. Prophetically, in course of time, it may be the only source of recruitment.

115. If this Court poses unto itself a question why this disparity or despair in the sphere of public employment, the answer may not be far to seek. Indeed, with the opening up of economy, the geographical boundaries have remained for the purpose of political sovereignty, but not for the purpose of economic sovereignty, now an elusive concept. At the click of a mouse button, Amazon delivers a product of any country at your door step in a trice. In this competitive environment, the entrepreneurs are not only expected to compete with one another at national level, but also are expected to compete with everyone else in the world; nationalisation has given way to globalization .

116. To put the issue in its perspective, if we take the case of the respondent bank, it has no regular recruitments for the post of Sub-staff (Attenders), the foot soldiers, since 1997. It is afraid of recruiting new people, so does it appear. It has taken recourse to every other stratagem to see that it is not burdened with the staff. Once banks implored the Governments to permit them to hire more hands, now they are shying away to have employees recruited, especially at the lower level.

117. Republic being synonymous with the rule of Law, this Nation has a sworn allegiance to a socialistic form of democratic polity, as has been solemnly secured in the Preamble. The Constitutional Courts have keenly watched the transition of the Nation. Taking a note of all these changes, the Apex Court has delivered a definitive Judgment in Umadevi (3), with its echo further getting amplified in Dayanand (supra).

#### Illegal and Irregular Appointments:

118. Though the vigour of Umadevi (3) is palpable in every sphere of public employment, it has however taken a practical view of the situation. It is not

dismissive of every form of appointment other than the regular recruitment. In fact, the Constitution Bench has sagaciously held as follows:

"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, , R.N. Nanjundappa Vs. T. Thimmiah and Another*, and *B.N. Nagarajan* [(1979) 4 SCC 507] and referred to in para 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 the courts or of tribunals. The question of regularisation 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 regularise 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 the 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 regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

119. It is evident from the above that their Lordships have not lumped together all those instances of employment in one block to be thrown out. Indeed, a desirable distinction has been made in terms of illegal appointments and irregular appointments. Without indulging in semantic speculations of what is illegal and what is irregular, suffice if it is stated illustratively, especially in the present factual context, for the nuances are endless. In a company like the respondent bank, if any authority, who is not authorised to recruit employees, goes on a recruitment spree, illegal at that, and makes the very organisation a feather bedding, it is illegal. On the other hand, if the very organisation, in the light of restrictions that have been placed by the legislature or the executive, still goes on to recruit people to tide over the situation for the organisational benefit, having thus known the consequences flowing out therefrom, at some length of time in future, it cannot be heard saying that it has made all those appointments illegally, and that only the work force should suffer, but not the organisation. It is legally impermissible and constitutionally immoral.

120. To put in other words, an institution, in its personification, may say that one of its errant constituent elements has violated the law without its knowledge; and as such, it cannot be asked to pay for it. Continued in the same vein, this personified institution cannot itself say that it violated the law, for the situation has compelled it, that it tidied over the situation by making use of that violation,

and that, despite the same, it cannot be asked to pay for it. Factum valet may have its role in personal laws, but not in service jurisprudence, at least as yet. A thing that is irregular, if not illegal, having been deliberately done, should visit upon the perpetrator with all its consequences. Even Umadevi (3) has taken note of it, though not explicitly.

121. Once again moving from the abstract to the concrete, since early 1980s, the respondent bank engaged thousands of temporary sub-staff with artificial breaks in substantive vacancies. Since 1997 it has stopped engaging the said work force, notwithstanding numerous retirements and subsequent vacancies in the face of establishment of new branches. Despite all this, the respondent bank refuses to go for either regularisation of those temporary employees, whose services stood terminated subsequently, or for regular recruitment.

122. The constitutional conscious of this Nation abhors the method of hire and fire. The doctrine of pleasure has been watered down. The constitution and myriad laws of many hues, and a plethora of executive instructions have sought to inculcate in the civil service, not confining to the sphere of Article 309 of the Constitution, a sense of security and fair play.

123. It is difficult to imagine that the respondent has been surviving without recruitment of sub-staff for about 17 years, with all the retirements and expansion. It is common knowledge that, people are, perhaps, still engaged pseudonymously, but never the respondent calling them its own workmen. There has been a perception prevalent in the banking circles that those who are permanent never work, and those who are temporary work, so long as they are kept on the tenterhooks of uncertain career prospects. It is time balance was restored. It is time the firing too had its place, with statutory hedging, along with hiring.

124. Very recently, a learned Division Bench of the Hon"ble Supreme Court in Nihal Singh and Others Vs. State of Punjab and Others, has dealt with the question whether the Court can compel the State to create posts and absorb the appellants into the services of the State on a permanent basis consistent with the Constitution Bench decision of the Court in Umadevi (3) case. While examining the ratio of Umadevi (3), their Lordships have held as under:

"22. It was further declared in Umadevi (3) case Secretary, State of Karnataka and Others Vs. Umadevi and Others, that the jurisdiction of the constitutional courts under Article 226 or Article 32 cannot be exercised to compel the State or to enable the State to perpetuate an illegality. This Court held that compelling the State to absorb persons who were employed by the State as casual workers or daily-wage workers for a long period on the ground that such a practice would be an arbitrary practice and violative of Article 14 and would itself offend another aspect of Article 14 i.e. the State chose initially to appoint such persons without any rational procedure recognised by law thereby depriving vast number of other eligible candidates who were similarly situated to compete for such employment.

23. Even going by the principles laid down in Umadevi (3) case, we are of the opinion that the State of Punjab cannot be heard to say that the appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.

24. In our opinion, the initial appointment of the appellants can never be categorised as an irregular appointment. The initial appointment of the appellants is made in accordance with the statutory procedure contemplated under the Act. The decision to resort to such a procedure was taken at the highest level of the State by conscious choice as already noticed by us.

31. Therefore, we are of the opinion that the process of selection adopted in identifying the appellants herein cannot be said to be unreasonable or arbitrary in the sense that it was devised to eliminate other eligible candidates. It may be worthwhile to note that in Umadevi (3) case], this Court was dealing with appointments made without following any rational procedure in the lower rungs of various services of the Union and the States.

37. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi (3) Secretary, State of Karnataka and Others Vs. Umadevi and Others, judgment cannot become a licence for exploitation by the State and its instrumentalities."

125. On the facts of the matter, it can be said that in terms of G.O. No. F-3/3/104/87/IR of Ministry of Finance, Government of India, the respondent cannot dispense with the petitioner's services arbitrarily until the panel is exhausted. The evidence of management witness is illuminating about the policy the respondent ought to have adopted vis-?-vis the petitioner workmen. In terms of the ratio laid down in Umadevi (3), the petitioners have not been appointed illegally, but, at best, irregularly. The petitioners have been subjected to selection process by a duly constituted committee of high ranking officials of the respondent bank, rules of reservation have been followed and all the petitioners have been duly qualified. Given the fact that the petitioners are placed in the last grade service of the bank, it cannot be stated that any open recruitment three decades ago - that is when the bank started recruiting some of the petitioners - would have attracted talent and that thereby public interest has suffered. In any event, the recruitment was through due public "notification, with the observance of all the requisite safeguards required to be taken care of in the case of public employment.

126. In the above facts and circumstances, it is to be held that the Common Award, dated 17.05.2005, of the Industrial Tribunal has not addressed the issue independently, but has simply gone by the conclusions arrived at by the learned Division Bench of High Court of Orissa. In the light of distinction drawn above, the said judgment of the High Court of Orissa has no application to the facts on

hand.

127. Accordingly, all the batch of writ petitions is allowed, thereby, setting aside the common award dated 17.05.2005 passed in I.D. No. 222 of 2001 and batch by the learned Industrial Tribunal-cum-Labour Court, Hyderabad. Consequently, the respondent Bank is directed to reengage the petitioners in the positions which they had been occupying prior to the termination of their services and further consider their cases for regularisation, as and when substantive vacancies arise, if already such vacancies are not available. There shall be no order as to costs.

128. As a sequel, miscellaneous petitions, if any pending in these writ petitions, shall stand closed.