

(2015) 10 DEL CK 0178

In the Delhi High Court

Case No : LPA 654/2010

Krishan Gopal and Others

APPELLANT

Vs

ONGC and Others

RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226

Industrial Disputes Act, 1947 — Section 25N

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 10, 2(ra), 30

Citation : (2015) 234 DLT 596 : (2015) 153 DRJ 128 : (2015) 4 LLJ 487

Hon'ble Judges : Pradeep Nandrajog and Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Asha Jain Madan, Advocate, for the Appellant; Sanjay Jain, ASG instructed by Bhavan Dhami, Shreya Sinha and Shrusht Jain, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—The controversy involved in the present intra-court appeal relates to regularization of services of (fifteen) "contingent employees" engaged by Oil & Natural Gas Commission (hereinafter referred to as the "ONGC").

2. ONGC issued Standing Orders on July 15, 1962 concerning contingent employees employed in various units of ONGC, the relevant portion whereof reads as under:-

"1. Application and date of commencement: These orders shall come into force on 15.7.1962 and shall apply to all workmen called contingent employees employed in the various units of the Oil and Natural Gas Commission (hereinafter referred to as the Commission). They shall not apply to regular employee of the Commission to whom Fundamental and Supplementary Rules, Central Civil Services (Classification, Control and Appeal) Rules, Central Civil Services

(Temporary Services) Rules, Revised Leave Rules and Civil Service Regulations have been extended.

2. (i) Classification of Workmen: The contingent employee of the Commission shall hereafter be classified as:-

(a) Temporary; and

(b) Casual.

ii. A workman who has been on the rolls of the Commission and has put in not less than 180 days of attendance in any period of 12 consecutive months shall be temporary workman, provided that a temporary workman who has put in not less than 240 days and who possesses the minimum qualification prescribed by the Commission may be considered for conversion as regular employee.

iii. A workman who is neither temporary nor regular shall be considered as casual workman."

(Emphasis Supplied)

3. ONGC engaged large number of persons between the years 1984 to 1986 as contingent employees to render services as Helper, Security Guard, Storekeeper, Khalasi, Attendant, Mechanic, Operator, Gardener etc. (essentially Class III and IV posts) at Jwalamukhi Project undertaken by ONGC in the State of Himachal Pradesh.

4. In view of the fact that Jwalamukhi Project undertaken by ONGC was to end in the year 1993 a decision was taken by ONGC to disengage the said contingent employees. Faced with the threat of their services being disengaged, thirty-nine contingent employees filed a writ petition, being CWP No. 1516/1989 before High Court of Himachal Pradesh at Shimla; essentially seeking regularization of their services.

5. Vide order dated September 21, 1993 the High Court of Himachal Pradesh dismissed the said writ petition filed by the contingent employees, which order reads as under:-

"We need not go into the detailed facts of this case. Suffice it to say that the petitioners have not only claimed equal wages for equal work, but also regularization of their services by the respondents. The respondents have denied the case of the petitioner for regularization alleging that the petitioners belong to contingent staff of the respondents and their services were likely to end with the closure of the project. Therefore, for such a staff, regularization is not possible. As to equal wages for equal work, the plea of respondents is that the petitioners are not entitled to the same.

During the pendency of this writ petition, this Court directed the respondents to consider the case of the petitioners for equal wages for equal work in the light of numerous Apex Court's decisions recorded in this Court's order dated 6.1.1988.

Accordingly, the matter was considered and petitioners were paid equal to their counter-parts right from the date of this order. Thereafter, CMP 1541 of 1992 was moved, claiming revision in the wages. This application was decided on 18.11.1992 and the respondents were directed to pay the revised wages to the petitioners as well. As a matter of fact, these wages were paid from the date of the order and note dated 1.10.1991 as claimed.

In the application of the petitioners, we directed the respondents not only to retain the services of the petitioners but also directed that their service conditions will not be changed. This order is in existence till date.

We have heard the learned counsel for the parties.

Shri K.D. Sood, learned counsel for the petitioners vehemently contended that the respondents want to retrench their services, since they moved this Court, claiming certain reliefs. Therefore, it is punitive and the respondents should be directed not only to retain the services of the petitioners but also to regularize their services and pay them wages, equal to others who are regular. S/Sh. Chhabil Dass and I.S. Singhu, learned counsel for the respondents have explained to us the exact position about the engagement of the petitioners only on the basis of this Court order, since, otherwise there is no work available with the respondents to continue the service of the petitioners. It was also contended that information was sought from other regions also where the petitioners could be re-engaged, but it has been found that this cannot be done. Finally, it was submitted by the learned counsel for the respondents that it would make a list of the workers being retrenched by the respondents and if work is available, the same would be offered to the petitioners according to their seniority and qualifications/skill, as per the requirement of the respondents.

We made earnest efforts to find out whether the services of the petitioners could be retained either at the present place of posting or anywhere also, but we are fully satisfied with the explanation offered by the respondents that it is not possible to do so, since the project is being wound up and all efforts to locate hydrocarbon failed many times. It is also pointed out that on possibly be engaged in outside projects where locals are to be preferred. In these circumstances, it is not justifiable to compel the respondents to retain the services of the petitioners, especially when they have no work available to engage the petitioners. Paying them without doing any work would cause not only loss to the respondents but also to the nation ultimately.

Therefore, the petition is dismissed and all interim orders are vacated.

Before parting with the case, we may observe that the respondents would consider the case of the petitioners for re-engagement as and when some kind of work is available, as per the statement given above. We repeat here the assurance of the learned counsel for the respondents that if ever work is available with the respondents in northern region and the petitioners are qualified for the same, preference would be given to them according to their

seniority and job requirement. The respondents would decide the case of the petitioners for revised pay from 1.10.1991 to 17.11.1992 within a period of two months and same to the petitioners.

Shri K.D. Sood submits that the respondents be asked to give the petitioners experience certificate. Learned counsel for the respondents see no difficulty in doing this.

The writ petition is disposed of in the aforesaid terms, with no order as to costs.

A copy of this order be placed in Civil Writ Petition No. 891 of 1993, Ram Asra v. O.N.G.C. which also stands decided by this order.

(Emphasis Supplied)

6. In the year 1993 thirty-two contingent employees whose services were engaged by ONGC for its project in the State of Punjab filed a writ petition, being CWP No. 7673/1993 before the High Court of Punjab and Haryana at Chandigarh essentially seeking regularization of their services and the same was dismissed vide order dated September 27, 1993.

7. Aggrieved by the orders dated September 21, 1993 and September 27, 1993 passed by the High Courts of Himachal Pradesh and Punjab and Haryana respectively, declining prayer for regularization of services, the contingent employees filed Petitions for Special Leave to Appeal before the Supreme Court which were registered as SLP (C) Nos. 17359/1993 and 17360-61/1993, which were dismissed vide order(s) dated November 19, 1993.

8. Thereafter a few contingent employees, (including some employees who were parties in the writ petitions filed before the High Court of Himachal Pradesh and Punjab and Haryana) filed a writ petition before the Supreme Court which was registered as W.P.(C) No. D7385/2001 seeking regularization of their services which petition was dismissed as withdrawn vide order dated May 08, 2001. Being relevant, we note that order dated May 08, 2001 reads as under:-

"Mr. R.K. Jain, learned senior counsel appearing for the petitioners prays to withdraw the petition. Such prayer is granted. The writ petition is dismissed as withdrawn. This order will not preclude Mr. Jain's clients, however, to move afresh before the Delhi High Court."

(Emphasis Supplied)

9. In these circumstances, twenty-four contingent employees filed a writ petition under Article 226 of Constitution of India in this Court which was registered as W.P. (C) No. 6562/2001. The necessary details of twenty four contingent employees who filed W.P. (C) No. 6562/2001 would be as under:-

10. In a nutshell, the case pleaded by the said twenty-four contingent employees in the writ petition filed in this Court could be summarized:-

"(a) Petitioners have rendered more than fifteen years of (unblemished) service

in ONGC and thus are entitled for regularization of their services.

(b) Petitioners are entitled for regularization of their services in view of provisions clause 2(ii) of Standing Order dated July 15, 1962 dealing with contingent employees since the petitioners have put in more than 240 days of service in a period of twelve consecutive months and also possess minimum qualifications prescribed by ONGC for the jobs (class IV posts) performed by them.

(c) Petitioners are entitled for regularization of their services on account of permanent and perennial nature of jobs performed by them.

(d) ONGC did not disengage petitioners and continued with services of petitioners at its various projects at Jammu and Madhopur (Punjab) even after passing of orders dated September 21, 1993 and September 27, 1993 by the High Courts of Himachal Pradesh and Punjab and Haryana respectively.

(e) On May 29, 1989 a settlement was arrived between ONGC and 31 contingent employees (including some of the petitioners) to the effect that the services of eight contingent employees were regularized and "remaining twenty three contingent employees (including some of the petitioners) will be given preference at the time of recruitment for appointment for the post of class III and class IV provided they fulfill the requisite qualification and experience as laid down under R & P Regulations of ONGC and recruitment action will be initiated as and when vacancies arise and in an expeditious manner."

(f) ONGC regularized services of such contingent employees who had worked 240 days or more in a year in ONGC at Dehra Dun on October 13, 1989. Thus, ONGC had meted discriminatory treatment to petitioner i.e. contingent employees posted at Jwalamukhi, Jammu and Madhopur vis-?-vis the contingent employees who were posted at Dehra Dun.

(g) The statement made by ONGC before High Court of Himachal Pradesh that no work is available with ONGC to continue with the services of the petitioners was fallacious.

(h) The Central Government issued a notification on September 08, 1994 prohibiting employment of contract labour to perform the jobs in ONGC which were being performed by the petitioners which conclusively establishes that jobs performed by petitioners were of permanent and perennial nature."

11. Before proceeding further, we note that petitioners placed reliance upon (two) Office Notings dated May 27, 1998, Working Paper dated May 27, 1998 prepared by Head, Jammu Project, ONGC, Office Noting dated April 16, 1999 prepared by Head, Jammu Office, ONGC and an Office Note dated January 17, 2000 prepared by General Manager (E&S), ONGC and Working Paper dated August 11, 2000 prepared by Manager (IE), ONGC.

12. The relevant portion of the first Office Noting dated May 27, 1998 reads as

under:-

"Eight nos of contingent hands are employed at NRBC, Jammu pieces 1986 and working as attendant. Details of employment are as under:-

....

As the requirement is still persist, the above mentioned contingent hands are required for the daily jobs.

The approval of Chairman and Managing Director is required for the extension of above mentioned contingent hands."

13. The relevant portion of the second Office Noting dated May 27, 1998 reads as under:-

"Since 1986, Jammu Project has been utilizing services of 8 contingent hands for miscellaneous jobs in the office complex and in Transit Accommodation. Since then, there has been no change in exploratory/drilling activities at Jammu and such requirement will persist as long as Project Office is maintained at Jammu.

2. As per IX Plan (1997-2002), we propose to sequire around 440 GLK of seismic data and drilling of one location depending upon the leads. Keeping in view the exploration scenario, administrative approval of CMD for extension of services of 8 contingent hands for one year i.e. from 1.4.98 to 31.3.99 is solicited."

14. The relevant portion of the Working Paper dated July 24, 1998 prepared by Head, Jammu Project, ONGC reads as under:-

"CONCLUSION & RECOMMENDATIONS

i) There are total 76 contingent workers employed at Dehradun Head Office (including 41 contingent workers in question).

ii) As per the report of HRG (placed at Annexure-7) the present total strength as assessed by HRG for Class IV category at Hq. Dehradun is 407 against which the available regular employees are 252. As per this assessment the gap between requirement assessed and availability of regular employees is 155. The said gap is met at present by deploying 76 numbers of contingent workers including 41 contingent workers under review and through the contracts being awarded from time to time.

iii) As per the legal requirement of Section 25N of Industrial Disputes Act and more particularly of "Form of notice" for seeking permission for retrenchment of workmen, the reasons for retrenchment have to be stated in the "Form of notice". Accordingly, in the first instance, as per procedure, the persons sought to be retrenched are required to be declared by the Organization.

In view of the material record available, the Committee feels that in order to retrench as per the legal requirement, condition precedents for such retrenchment would be declaration of 41 contingent workers as surplus which

cannot be met in the instant case.

RECOMMENDATIONS

In view of the fact that there is requirement of 407 workers in the category of Class IV employees at Hqrs. Dehradun including the Institutes as per assessment of HRG and the available position of the work force against this number of 252 regular and 76 contingent, there still remains a gap of a further requirement of 79, which is met at the moment through job contract system. Accordingly, since the conditions precedent of resorting to retrenchment i.e. declaration of surplus, is not being met at this juncture, the retrenchment of the contingent employees under review may not be possible and therefore their services may not be dispensed with. Further the Committee recommends that these workers (41) be redeployed for gainful use of their services keeping in view the work assessment by HRG."

(Emphasis Supplied)

15. The relevant portion of the Office Noting dated April 16, 1999 prepared by Head, Jammu Office, ONGC reads as under:-

"The case pertaining to extension of the services of eight contingent hands working at Jammu from 1.4.1999 to 31.____.2000.

Earlier sanction which was accorded by Director (Personnel) recommendations of DGM (E)/Head Jammu Project"s expired on 31.2.1999.

There is no change in status of the set up and the same justification stands as on today.

....

b) As stated above, numerical analysis is not feasible for various reasons. The contingent bonus who were deployed about 12-13 years ago are being assigned jobs keeping in view their capabilities and to effect economy in expenditure on the interest of the Corporation. As detailed earlier, two contingent hand continue to work in the Guest House, where these contingents deployed for Guest House in shift wise to look after the guests earlier we had workers in Guest House through a contractor. Similarly, the was contract for operation of the Generator but was cancelled by deploying a contingent hand.

c) 3 (three) contingents, one each in P&A, TBG & F & A are deployed for distribution among the different section, and other miscellaneous office works arising off an _____. In addition, one more contingent is deployed in finance to handle the Diary - Dispatch of their section."

16. The relevant portion of the Office Order dated January 17, 2000 prepared by General Manager (E&S), ONGC reads as under:-

"Subject: Exploratory Drilling at Sundernagar (H.P.)

In the 179th Meeting of Executive Committee held on 6th January, 2000, it has been decided to undertake exploratory drilling in Sundernagar area of Himachal Pradesh by rig E-2000-8 for which land acquisition and civil works have to be undertaken as proposed in the agenda (a copy of minutes 179:09 enclosed).

....

It is requested that necessary action may kindly be taken by all concerned for the implementation of the decision."

17. The Working Paper dated August 11, 2000 prepared by the Manager (IE), ONGC reads as under:-

"WORKING PAPER

As desired, the case has been reviewed and following is submitted:-

(i) The case pertains to approval for continuance of 10 contingent workers in Madhopur stores for a period of 9 months w.e.f. 1.7.2000 to 31.3.2001. The approval for their continuation upto 30.6.2000 exists at N/P-51.

(ii) Consequent to start of work for drilling activities for Sunder Nagar location, the workload at Madhopur storeyard has increased. The storeyard is working as forward base rail head stores for Sundernagar.

(iii) The details of present utilization and assessment are given at N/S-64. The utilization details indicate increased utilization trend for material handling workload & vehicle utilization. The contingents are also being utilized for DG set maintenance & pump house operation which was earlier being done through contract. There are no such category regular personnel in Jammu who could be redeployed for these jobs.

(iv) Keeping above in view and the likely increase of activities in Jammu region, the continuance of contingent workers for a period of 9 months w.e.f. 1.7.2000 as proposed prepage may be agreed to."

18. Per contra, the stand taken by the respondents to the writ petition filed by the contingent workers in this Court could be summarized as under:-

"(a) The writ petition filed by the petitioners seeking relief of regularization of their services with ONGC deserves to be dismissed for the reason the earlier writ petition(s) filed by petitioners before the High Courts of Himachal Pradesh and Punjab and Haryana seeking same relief of regularization of their services and based on same cause of action were dismissed, more particularly when the order(s) of dismissal of earlier petitions had attained finality inasmuch as Special Leave to Appeal(s) filed by the petitioners assailing legality of said (dismissal) orders stood dismissed by the Supreme Court.

(b) Petitioners were employed by ONGC in connection with its works at Northern Region; the work of ONGC in Northern Region was mainly exploratory and thus temporary in nature and governed by Petroleum Exploration License (PEL)

granted to ONGC by the Government. The only establishments of ONGC in Northern Region are: - (i) establishment at Jammu and Kashmir; (ii) establishment at Himachal Pradesh; and (iii) store yard at Madhopur, Punjab. The PEL granted to ONGC in Jammu and Kashmir and Himachal Pradesh expired in the years 2002 and 2003 respectively and efforts were re-grant of same did not fructify. The store yard at Madhopur was also required to be wound up owing to works in Jammu and Kashmir and Himachal Pradesh coming to an end. In these circumstances, ONGC could not have considered regularization of services of petitioners due to non-availability of vacancy in northern region for availability of vacancy is sine qua non for conversion of contingent employee into a regular one under the Standing Orders dealing with contingent employees issued by ONGC.

(c) Petitioners being contingent employees cannot claim regularization of their services in view of the law laid down by the Constitution Bench of Supreme Court in the decision reported as Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

(d) The petitioners are not entitled for regularization of their services in view of clear prescription contained in Office Order dated July 16, 1991 issued by ONGC dealing with contingent employees that "no right shall accrue to contingent workers for any regular job in ONGC".

19. Before proceeding further, it would be apposite to note the following portion of Office Order dated July 16, 1991:-

"1. Appointment:

1.1 Appointment of contingent employees should be made on "term appointment" basis, i.e. from one specified date to another specified date. A specimen copy of the appointment letter is enclosed for information and guidance at Annexure "I".

In the appointment letter it should be specifically mentioned that appointment will stand terminated on the expiry of the period mentioned in the appointment letter. No extension, in any case, without the specific written approval of the competent authority. Any violation of the instructions by an officer will render him liable for disciplinary action.

1.5 For temporary & intermittent work:

Since the appointment of contingent workers is made for a work of temporary and intermittent nature, no right shall accrue to him for any regular job in ONGC. Management may, however, consider his regularization subject to availability of vacancies provided further that such contingent employee possess the prescribed qualifications, experience, age requirement and other requirements laid down in the ONGC R & P Regulations/orders as applicable from time through a valid selection process.

4. Regularization of services:

4.1 The service conditions of contingent employees, by and large, are governed by the provisions of Certified Standing Orders for contingent employees. Under Certified Standing Orders, the contingent employees have been classified as under:-

i) Casual - means those contingent employees who have put in attendance upto 179 days in 12 consecutive months.

ii) Temporary - means those contingent employees who have been on the rolls of the Commission and have put in not less than 180 days of attendance in any period of 12 consecutive months provided that a temporary workman who has put in not less than 240 days and possesses the minimum qualifications prescribed by the Commission, may be considered for conversion as a regular employee.

4.4 Such of the contingent employees can be absorbed against regular posts provided they fulfill the following criteria:-

i) they have completed 240 working days" service in the commission in the 12 consecutive months

ii) they are registered with the Employment Exchange;

iii) they are held against regular posts;

iv) they possess requisite qualifications and experience etc. laid down in the ONGC (R&P) Regulations;

v) no extra post will be created for absorption of the contingent workers and no relaxation in the qualification will be accorded;

vi) relaxation in the age limits upto 35 years for technical cadres and 30 years for non-technical cadres may be accorded."

(Emphasis Supplied)

20. During pendency of the writ petition, as directed by the learned Single Judge of this Court before whom the writ petition was listed, ONGC filed lists of contingent workers employed by it at Jammu and Madhopur as on January 01, 1987.

21. Being relevant, we note following portion of the list of contingent workers employed at Madhopur, filed by ONGC:-

"LIST OF CONTINGENT WORKERS AT MADHOPUR AS ON 01.01.1987

22. Being relevant, we note the following portion of list of contingent workers employed at Jammu, filed by ONGC. It reads as under:-

"LIST OF CONTINGENT WORKERS AT JAMMU AS ON 01.01.1987

23. On July 16, 2004 the petitioners filed an affidavit before the learned Single

Judge with respect to afore-noted (two) lists of contingent workers filed by ONGC, the relevant portion whereof reads as under:-

"1. That I am one of the Petitioners in the above case and I am well acquainted with the facts and circumstances of the case. I am authorized to file the present reply affidavit on behalf of other Petitioners also. I say that I have gone through the two lists of the contingent workers working at Madhopur and Jammu as on 1.1.87. I say that we are unable to judge the authenticity of the said lists at our end as the lists are actually maintained in the office of the respondent ONGC. Presuming the said lists to be correct I submit that those junior to the petitioners have already been regularized by the respondent ONGC. I submit that workers at serial numbers 2-3, 5-8, 10-17, 20, 22, 23, 26, 30 in the list pertaining to the contingent workers working at Jammu, have already been regularized by the respondent ONGC. Similarly the worker at serial number 10 in the list of contingent workers pertaining to Madhopur has also been regularized. A perusal of the said lists would indicate that the petitioner workers are senior to most of the said employees who have already been regularized. However the petitioners have been ignored and not regularized till date. As regards the jammu list I submit that the workers at Sl Nos. 1, 4, 15, 16, 19 and 25 are the petitioners in the case who are senior to the workers who have already been regularized. As regards the Madhopur list I submit that the workers at Sl Nos. 1, 4-7 and 9 are the petitioners in the case who are senior to the worker at serial No. 10 i.e. Jagir Chand who has already been regularized."

(Emphasis Supplied)

24. In the year 2006, ONGC filed an affidavit in response to the affidavit dated July 16, 2004 filed by the petitioners, the relevant portion whereof reads as under:-

"3. It is denied that the workers at serial Nos. 2-3, 5-8, 10-17, 20, 22, 23, 26, 30 in the list pertaining to contingent workers working at Jammu and sl . no. 10 in the list of Madhopur, have already been regularized by the respondent ONGC as alleged. It is submitted that the said workmen have not been regularized but had participated in the recruitment exercises carried out for various categories other than in Class IV. These workmen have participated and have been selected and recruited to the post of storekeeper (Grade III) or Assistant (Grade III).

4. As regards the Jammu list it is denied that these workers at sl.no. 1, 4, 15, 16, 19 and 25 have already been regularized as alleged. It is submitted that Shri Jagir Chand was also not regularized. It is further submitted that the said workers have not been regularized but recruited for vacancies advertised through Employment Exchange from time to time after participation in the selection process. It is further submitted that Shri Jagir Chand (Sl. No. 10) has been recruited as storekeeper (Grade III)."

(Emphasis Supplied)

25. During pendency of the writ petition, on July 01, 2004, ONGC transferred petitioners Nos. 4, 8, 9, 12, 13, 14, 17 and 18 from Jammu to Frontier Basin, Jammu.

26. To complete factual narratives, we note that on February 06, 2006 a decision was taken by ONGC to retrench sixteen petitioners; eleven of whom were deployed at Madhopur and five of whom were at Dehradun.

27. Immediately thereafter the petitioners filed an application before the learned Single Judge of this Court seeking stay on their (proposed) retrenchment. Significantly, the petitioners had filed copies of Working Papers dated June 10, 2005 and January 03, 2006 prepared by DCLA, ONGC respectively HR Department, ONGC to demonstrate that the petitioners deployed at Dehradun are being illegally retrenched on the alleged ground of they being surplus at Frontier Basin, Dehradun, inasmuch as ONGC has the requirement of contingent employees at Jhirna, a site in Frontier Basin, Dehradun.

28. The relevant extract of Working Paper dated June 10, 2005 of ONGC relied upon by the petitioners reads as under:-

"WORKING PAPER

This is with reference to the note of Incharge HR/ER on prepage seeking the advice on the course of action to be taken against the contingent workers of Frontier Basin.

Copy of various correspondence from various files placed opposite and the approval of Director (HR) approval 18.5.04 for redeployment by way of interim measure, the following facts are emerged:

1. The period of redeployment of surplus contingent workers at Dehradun who were idling at Jammu is not indicated in the file.

In this context, it is brought to the notice of Basin and others that the court case CWP No. 6562/01 Prem Nath v. ONGC pending before High Court Delhi filed by the contingent workers of Jammu wherein following directions were sought:

1. ONGC to regularize the service with consequential benefits.
2. Restraining respondents ONGC from terminating the services of workmen.
3. Payment of equal wages and other service benefits as are being given to other regular employees performing similar work.
4. Any other relief deemed fit by this Court.

The case is pending since Nov. 2001 (illegible)

Since the work and requirement of contingent workers at Jammu, it is becoming difficult to contest the case in court when there is decreasing requirement/no requirement by Frontier Basin of the above said contingent workers and they are

being carried forward/deployed and more so when Jammu Office has also been closed.

In the light of above facts and circumstances, an administrative decision/review is required to be taken regarding the continuation/redeployment of the contingent workers when the Jammu Office is already closed. Any delay in taking the decision will adversely affect the case which is coming up for hearing on 25th July, 2005. The course of action will be decided after administrative decision is taken by the Frontier Basin regarding the continuation/redeployment of the contingent workers keeping in view the fact that the Jammu Office is closed."

29. The relevant extract of the Working Paper dated January 03, 2006 prepared by HR Department, ONGC reads as under:-

"The new Drill site at Jhirna has been released. As per letter dt. 25.7.05 from HDS, Requirements of 21 unskilled labour per day is required. The categories requirements is as under:-

Mud labour - 04 Nos. per shift (8 hrs shift) X 3 = 12 Nos. (for loading/unloading mixing/filling of chemicals. Cleaning tanks, cutting removal etc.)

Drilling contingent - 0 (illegible) Nos. for three shifts (for mechanical & electrical maintenance, housekeeping, casting/tubular cleaning etc.)

Semi-skilled contingent - 01 No. per shift (8 hrs shift) x 3 = 03 Nos.

(for operation & maintenance on SA gen-set & water pump)

As such 21 man days (illegible hrs shift per day) will be required for drilling and geology, at present 18 No. of man days as 8 hrs. shift per day is operative....."

30. Vide order dated February 14, 2006 the Single Judge directed status quo with respect to employment of petitioners with ONGC.

31. Vide impugned judgment and order dated June 01, 2010 the learned Single Judge has dismissed the writ petition filed by the petitioners.

32. Briefly stated the reasons given by the learned Single Judge are as under:-

(a) Petitioners cannot be allowed to re-litigate their claim for regularization of services when such claim was rejected by High Courts of Himachal Pradesh and Punjab and Haryana in the earlier writ petitions filed by the petitioners, more so when the orders dismissing the earlier writ petitions filed by the petitioners was affirmed by the Supreme Court.

(b) The fact that the Central Government issued a notification dated September 08, 1994 prohibiting employment of contract labour to perform the jobs in ONGC as being performed by petitioners is of no avail to the petitioners for said notification ipso facto does not regularize the services of contract labour.

(c) Nothing turns upon the fact that ONGC continued to engage the petitioners

even after dismissal of earlier writ petitions filed by them before the High Courts of Himachal Pradesh and Punjab and Haryana.

(d) Mere grant of liberty by the Supreme Court to the petitioners to approach the High Court of Delhi did not entitle the petitioners to re-litigate their claim for regularization of services, because the Supreme Court had granted said liberty without going into the maintainability or otherwise of the writ petition.

(e) The working Paper dated July 24, 1998 relied upon by the petitioners does not appear to indicate that ONGC did not have work for the petitioners in the year 1998 and therefore it would be of no avail to the petitioners if the recommendations contained in said paper were accepted by the competent authority and additionally for the reason that it appeared that the same was not accepted by the competent authority.

(f) The relief of regularization of services cannot be granted to the petitioners in view of the dictum of law laid down by the Constitution Bench of the Supreme Court in Uma Devi's case (supra) because:- (i) courts have no power to grant the relief of regularization of services of persons engaged temporarily and on daily wages and without complying with the recruitment rules and regulations; and (ii) courts, out of considerations of sympathy or injustice or equity, cannot impose illegally appointed casual workmen on the organization through the backdoor of initial casual employment and in breach of recruitment rules and regulations of the organization, howsoever long workmen may have worked with the organization.

(g) The very nomenclature of the employment of the petitioners i.e. contingent employment shows that the employment of the petitioners was subject to the contingency. The petitioners only have a right to be considered for conversion as a regular employee under relevant Standing Orders, which conversion is subject to possibility of a post/vacancy. It was unequivocally held in the orders dismissing earlier writ petitions filed by the petitioners that there was no post or vacancy at that time on/in which the petitioners could be accommodated. Save and except Working Paper dated July 24, 1998, nothing has been shown by the petitioners in the present petition that there is any post/vacancy on/in which the petitioners can be absorbed. On the contrary, it is borne out of the counter affidavit filed by ONGC as also judgments relied upon by ONGC that work of ONGC in Northern Region has been dwindling; ONGC is overstaffed and resorting to voluntary retirement schemes. In such circumstances, the petitioners cannot be imposed upon ONGC when ONGC has no job or work for the petitioners.

(h) The argument advanced by the petitioners that bar of regularization of services of workmen contained in Umadevi's case (supra) does not apply in cases the courts finds the circumstances to be extraordinary or an unfair labour practice being followed by employer is not tenable.

(i) The reliance placed by the petitioners upon Standing Order dated June 15, 1962 to claim regularization of their services is wholly misplaced for the reason

said Standing Order was also in existence at the time when the earlier writ petition filed by the petitioners seeking same relief of regularization of their services were dismissed by High Court of Himachal Pradesh and Punjab and Haryana.

(j) Nothing turns upon settlement dated September 23, 1989 arrived between ONGC and some of the petitioners for the reason the petitioners have not been able to demonstrate that there has been any violation/contravention of any of the terms of said settlement by ONGC."

33. Aggrieved by the aforesaid decision some of the petitioners before the learned Single Judge have filed the present Letters Patent Appeal. (The details of the petitioners who have filed the present appeal have already been given by us in the table drawn by us in the foregoing paragraphs).

34. In the present appeal, the appellants (petitioners before the learned Single Judge) as also ONGC have reiterated their respective stands taken by them before the learned Single Judge.

35. From the aforesaid conspectus of facts, it is evident that following two questions arise for consideration in the present appeal:-

"I Whether the appellants were precluded from instituting the writ petition in question before of this Court owing to the fact that earlier writ petitions filed by them seeking same relief of regularization of services as claimed in the petition instituted in this Court were dismissed by High Courts of Himachal Pradesh and Punjab and Haryana, particularly when said dismissal orders had attained finality?

II Whether the appellants are entitled to relief of regularization of their services claimed by them?"

In Re: Question I

36. The legal position as to when a decision on an issue of law will be res-judicata in a subsequent proceeding between the same parties has been succinctly stated by the Supreme Court in the decision reported as Nand Kishore Vs. State of Punjab, in the following terms:-

"On another facet of res judicata, this Court in Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, had the occasion to observe as under: "A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue..... A decision on an issue of law will be res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceedings, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law."

(Emphasis Supplied)

37. From the aforesaid decision, it is clear that a decision on an issue of law will not operate as res-judicata in a subsequent proceeding between the same parties in following two situations:-

"(a) When the cause of action in subsequent proceeding is different from the cause of action in previous proceeding; and

(b) When the law has since the earlier decision has been altered by a competent authority."

38. The expressions "cause of action" is neither defined in the Constitution nor has it been defined in the Code of Civil Procedure. Mulla, in the commentary on the Code of Civil Procedure Vol.1 (15th Edition) at page 251 has stated: "A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words it is the bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded."

39. The classic definition of a cause of action was given by Brett, J. in the decision reported as (1873) LR A CP 107 *Cooke v. Gill* : "Cause of action has been held from the earliest time to mean every fact which is material to be proved to entitle the plaintiff to succeed - every fact which the defendant would have a right to traverse."

40. A different facet thereof, but in our opinion a guiding star, could be the opinion of Diplock LJ. in the decision reported as (1964) 2 All ER 929 *Letang v. Cooper* : "a cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person."

41. The words used by the two learned Judges may be different, but bring out that only those facts which are material to be proved are to be taken into account ignoring pleadings of unnecessary allegations or the addition of further instances with reference to better particulars. To put it differently, one may say that incidental facts, which may be explanatory of the material facts, have to be overlooked. The facts pleaded for purposes of cause of action must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein are not a part of a cause of action.

42. But the problem lies because the selection of the material facts to define the cause of action has to be made at the highest level of abstraction.

43. A right to sue accruing has not to be confused with the cause of action. The wrong alleged, when committed, infringing upon a right would give rise to a right to sue. The entire bundle of facts attracting the relevant law which need to be proved, upon being traversed by the opposite party, would be the bundle of facts constituting the cause of action.

44. As already noted hereinabove, in the year 1993 some of the appellants had filed writ petitions seeking relief of regularization of their services before the High Court of Himachal Pradesh and some before High Court of Punjab and Haryana. At that time i.e. in the year 1993, the appellants were facing imminent threat of retrenchment of their services as Jwalamukhi project undertaken by ONGC for which appellants were initially engaged came to an end constraining the appellants to file writ petitions before High Courts of Himachal Pradesh and Punjab and Haryana.

45. Vide judgment dated September 21, 1993 the High Court of Himachal Pradesh dismissed the petition filed by the appellants with the directions that "ONGC would consider the case of the appellants for re-engagement as and when some kind of work is available with ONGC in northern region and that preference would be given to appellants according to their seniority and job requirement". While so dismissing, High Court of Himachal Pradesh noted the stand of ONGC that ONGC is preparing a list of workers which are being retrenched and that no work is available with ONGC to continue with the services of the appellants.

46. Vide order dated September 27, 1993 the High Court of Punjab and Haryana also dismissed the petition filed by some of the appellants.

47. What happened thereafter is most significant.

48. The appellants, who were initially engaged for Jwalamukhi Project were not retrenched by ONGC even after Jwalamukhi Project coming to an end. On the contrary, ONGC continued to engage the appellants at its various locations viz. Jammu, Madhopur and Dehradun even after dismissal of their writ petitions by the High Courts of Himachal Pradesh and Punjab and Haryana. Most significantly, the aforesaid act of ONGC of continuing with the services of appellants even after dismissal of their writ petitions by High Courts of Himachal Pradesh and Punjab and Haryana falsified the stand taken by ONGC before High Court of Himachal Pradesh that it is in the process of retrenching with the services of appellants and that no work is available with ONGC to continue with the services of the appellants. Had that been the case, ONGC would have discontinued engaging the appellants immediately after dismissal of their writ petitions by High Courts of Himachal Pradesh and Punjab and Haryana.

49. In these circumstances, in the year 2001 (when the petition was filed by the appellants in this Court) a fresh cause of action accrued to the appellants when ONGC did not retrench the appellants and continued to engage them at its various locations even after lapse of about eight long years after dismissal of earlier writ petitions filed by appellants by High Courts of Himachal Pradesh and Punjab and Haryana. As a necessary corollary thereof, the appellants were not precluded from instituting (second) writ petition before this Court based on different cause of action vis-à-vis the first petition filed by them in view of the law laid down by the Supreme Court in Nand Kishore's case (supra). (We also

note here that even position of law relating to regularization of services of casual/contingent workmen has undergone a sea change after dismissal of the earlier writ petitions filed by the appellants before the High Courts of Himachal Pradesh and Punjab and Haryana, and the same would entitle the appellants to institute a second writ petition in view of law laid down by the Supreme Court in Nand Kishore's case (supra) but we shall be dwelling on this aspect of the matter in the later part of this judgment.)

In Re: Question II

50. The second question posed by us has to be answered with reference to decision of Supreme Court reported as Hari Nandan Prasad and Another Vs. Employer I/R to Management of FCI and Another,

51. In Hari Nandan's case (supra), taking note of the decision of the Constitution Bench of the Supreme Court reported as Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the Supreme Court held that what was perceived to be a conflict in the law declared by the Supreme Court in the decision reported as U.P. Power Corporation Ltd. and Another Vs. Bijli Mazdoor Sangh and Others, and the decision reported as Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmchari Sanghatana, , was an incorrect perception and that a Labour Court or an Industrial Tribunal could direct regularization upon proof that : "employer has indulged in unfair labour practice by not filling up permanent posts even when available and continuing to employ workers on temporary/daily-wage basis and taking the same work from them and making them do some purpose which was being performed by the regular workers but paying them much less wages." The observations of the Supreme Court in paragraphs 34 to 39 of the said decision need to be noted. They read as under:-

"34. A close scrutiny of the two cases, thus, would reveal that the law laid down in those cases is not contradictory to each other. In U.P. Power Corporation, this Court has recognized the powers of the Labour Court and at the same time emphasized that the Labour Court is to keep in mind that there should not be any direction of regularization if this offends the provisions of Art. 14 of the Constitution, on which judgment in Umadevi is primarily founded. On the other hand, in Bhonde case, the Court has recognized the principle that having regard to statutory powers conferred upon the Labour Court/Industrial Court to grant certain reliefs to the workmen, which includes the relief of giving the status of permanency to the contract employees, such statutory power does not get denuded by the judgment in Umadevi's case.

It is clear from the reading of this judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up the permanent post even when available and continuing to workers on temporary/daily wage basis and taking the same work from them and making them some purpose which were performed by the regular workers but paying them much

less wages. It is only when a particular practice is found to be unfair labour practice as enumerated in Schedule IV of MRTP and PULP Act and it necessitates giving direction under Section 30 of the said Act, that the Court would give such a direction.

35. We are conscious of the fact that the aforesaid judgment is rendered under MRTP and PULP Act and the specific provisions of that Act were considered to ascertain the powers conferred upon the Industrial Tribunal/Labour Court by the said Act. At the same time, it also hardly needs to be emphasized the powers of the industrial adjudicator under the Industrial Disputes Act are equally wide. The Act deals with industrial disputes, provides for conciliation, adjudication and settlements, and regulates the rights of the parties and the enforcement of the awards and settlements. Thus, by empowering the adjudicator authorities under the Act, to give reliefs such as a reinstatement of wrongfully dismissed or discharged workmen, which may not be permissible in common law or justified under the terms of the contract between the employer and such workmen, the legislature has attempted to frustrate the unfair labour practices and secure the policy of collective bargaining as a road to industrial peace.

36. In the language of Krishna Iyer, J. The Industrial Disputes Act is a benign measure, which seeks to pre-empt industrial tensions, provide for the mechanics of dispute resolutions and set up the necessary infrastructure, so that the energies of the partners in production may not be dissipated in counterproductive battles and the assurance of industrial justice may create a climate of goodwill." (Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , per Krishna Iyer, J.).

In order to achieve the aforesaid objectives, the Labour Courts/Industrial Tribunals are given wide powers not only to enforce the rights but even to create new rights, with the underlying objective to achieve social justice. Way back in the year 1950 i.e. immediately after the enactment of Industrial Disputes Act, in one of its first and celebrated judgment in the case of The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi, this aspect was highlighted by the Court observing as under:

"In settling the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."

37. At the same time, the aforesaid sweeping power conferred upon the Tribunal is not unbridled and is circumscribed by this Court in the case of The New Maneck Chowk Spinning and Weaving Co. Ltd., Ahmedabad and Others Vs. The

Textile Labour Association, Ahmedabad, in the following words:

"This, however, does not mean that an industrial court can do anything and everything when dealing with an industrial dispute. This power is conditioned by the subject matter with which it is dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to the matter as laid down by the legislature or by this Court."

38. It is, thus, this fine balancing which is required to be achieved while adjudicating a particular dispute, keeping in mind that the industrial disputes are settled by industrial adjudication on principle of fair play and justice.

39. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art. 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision.

40. The aforesaid examples are only illustrated. It would depend on the facts of each case as to whether order of regularization is necessitated to advance justice or it has to be denied if giving of such a direction infringes upon the employer's rights."

(Emphasis Supplied)

52. In the decision reported as ONGC Ltd. Vs. Petroleum Coal Labour Union and Others, wherein the Supreme Court was specifically dealing with regularization of services of some temporary workmen employed by ONGC, after examining the relevant facts and case law on the point, including Standing Orders issued by ONGC dealing with temporary workmen, the Supreme Court directed ONGC to regularize the services of temporary workmen. The relevant observations made by the Supreme Court are as under:-

"The Central Government in exercise of its powers under Section 10 of the Act referred the existing Industrial Dispute between the concerned workmen and the Corporation to the Tribunal which rightly adjudicated point (i) of the dispute (supra) on the basis of the facts, circumstances and evidence on record and passed an award dated 26.5.1999 directing the Corporation that the services of the concerned workmen should be regularised with effect from the date on which all of them completed 480 days, subsequent to their appointment by the memorandum of appointment. The contention urged on behalf of the Corporation that the Tribunal has no power to pass such an award compelling the Corporation to regularise the services of the concerned workmen is wholly untenable in law. Even if Page 22 we consider the same, the said contention is contrary to the legal principles laid down by this Court in the case of Hari Nandan Prasad & Anr. v. Employer I/R To Management of Food Corporation of India & Anr., wherein the decisions in U.P. Power Corporation v. Bijli Mazdoor Sangh & Ors. and Maharashtra Road Transport Corporation v. Casteribe Rajya Parivahan Karamchari Sanghathana and Uma Devi (all referred to supra) were discussed in detail. The relevant paragraphs are extracted hereunder:

....

It is clear from the above that the Court recognized the underlying message contained in Umadevi case to the effect that regularisation of a daily-wager, who has not been appointed after undergoing the proper selection procedure, etc. is impermissible as it was violative of Article 14 of the Constitution of India and this principle predicated on Article 14 would apply to the Industrial Tribunal as well inasmuch as there cannot be any direction to regularise the services of a workman in violation of Article 14 of the Constitution. As we would explain hereinafter, this would mean that the Industrial Court would not issue a direction for 23 regularising the services of a daily-wage worker in those cases where such regularisation would tantamount to infringing the provisions of Article 14 of the Constitution. But for that, it would not deter the Industrial Tribunals/Labour Courts from issuing such direction, which the industrial adjudicators otherwise possess, having Page 24 regard to the provisions of the Industrial Disputes Act specifically conferring such powers. This is recognized by the Court even in the aforesaid judgment.

.....

Detailed reasons are given in support of the conclusion stating that the MRTU and PULP Act provides for and empowers the Industrial/Labour Courts to decide about the unfair labour practice committed/being committed by any person and to declare a particular practice to be unfair labour practice if it so found and also to direct such person to cease and desist from unfair labour practice. The provisions contained in Section 30 of the MRTU and PULP Act giving such a power to the Industrial and Labour Courts vis-?-vis the ratio of Umadevi are explained by the Court in the following terms: (Maharashtra SRTC case, SCC pp. 573-74, paras 32-33 & 36)

.....

Further, it is very clear from the facts that all the concerned workmen have got the qualifications required for their regularisation, except one of them and have been employed by the Corporation even prior to 1985 in the posts through various irregular means. The Tribunal has got every power to adjudicate an industrial dispute and impose upon the employer new obligations to strike a balance and secure industrial peace and harmony between the employer and workmen and ultimately deliver social justice which is the constitutional mandate as held by the Constitution Bench of this Court in a catena of cases. This above said legal principle has been laid down succinctly by this Court in the case of *The Bharat Bank Ltd., Delhi v. The Employees of the Bharat Bank Ltd., Delhi & the Bharat Bank Employee's Union, Delhi*, the relevant paragraph of the said case is extracted hereunder:

Thus, the powers of an Industrial Tribunal/Labour Court to adjudicate the industrial dispute on the points of dispute referred to it by the appropriate government have been well established by the legal principles laid down by this Court in a catena of cases referred to supra. Therefore, the Tribunal has rightly passed an award directing the Corporation to regularise the services of the concerned workmen.

It is also contended on behalf of the Corporation that the right to be considered for regularisation by the Corporation as provided under Clause 2(ii) of the Certified Standing Orders of the Corporation does not mean right to regularisation and the discretion to regularise the workmen is with the Corporation as the same has to be exercised keeping in mind the interest of the organization by implementing the alleged "policy decision" of appointing the CISF personnel to the security posts. This contention urged on behalf of the Page 32 learned senior counsel for the Corporation cannot be accepted by us for the reason that even though due procedure was not followed by the Corporation for the appointment of the concerned workmen, this does not disentitle them of their right to seek regularisation of their services by the Corporation under the provisions of the Certified Standing Orders, after they have rendered more than 240 days of service in a calendar year from the date of the memorandum of appointment issued to each one of the concerned workmen in the year 1988. The alleged "policy decision" to appoint CISF personnel to the security post is on deputation basis and cannot be called appointment per se. Whereas, the concerned workmen have acquired their right to be regularised under the provision of Clause 2(ii) of the "Certified Standing Orders for Contingent Employees of the Oil and Natural Gas Commission", which states thus:

....

The above emphasised portion of Clause 2(ii) of the Certified Standing Orders states that a temporary workman who has put in not less than 240 days of attendance in any calendar period of 12 consecutive months, which is actually

contrary to the provision under Section 25B(2)a of the Act, which states that a workman shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than one hundred and ninety days in the case of a workman employed below ground in a mine and two hundred and forty days in any other case. In any case, it is clear that the concerned workmen have clearly completed more than 240 days of services subsequent to the memorandum of appointment issued by the Corporation in the year 1988 in a period of twelve calendar months, therefore, they are entitled for regularisation of their services into permanent posts of the Corporation as per the Act as well as the Certified Standing Orders of the Corporation.

.....

Further, it was contended by the learned senior counsel that the Certified Standing Orders of the Corporation do not apply to the concerned workmen to claim regularisation in their posts as regular employees as provided under Clause 2(ii) of the Page 49 Certified Standing Orders of the Corporation. The said contention is wholly untenable in law as the Standing Orders of the Corporation certainly apply to the concerned workmen as they have been rendering their services in the Corporation even prior to the year 1985, being appointed through contractors, the Cooperative Society and directly thereafter vide memorandum of appointment in the year 1988 by issuing appointment orders on different dates during that year on the condition that the Certified Standing Orders of the ONGC will not be applicable to them. Such a condition incorporated in the appointment orders issued to the concerned workmen is not valid in law and the same is void for the reason that they are workmen for the purpose of the Certified Standing Orders and therefore, the above said condition has to be ignored. When the concerned workmen were appointed by issuing the memorandum of appointment to work in the posts of the Corporation, providing them with monthly salaries, it cannot arbitrarily and unilaterally state that the Certified Standing Orders of the Corporation are not applicable to the concerned workmen. The concerned workmen cannot be denied their legitimate, statutory and fundamental right to be regularised in their posts as provided under Clause 2 (ii) of the Certified Standing Orders on the basis of the above said contention urged on their behalf and also because the Corporation did not follow the due procedure as provided under the Appointment and Recruitment Rules for appointment of the concerned workmen in the Corporation. The said contention urged by the learned senior counsel on behalf of the Corporation is an afterthought to justify their irregular act of appointing them as temporary workmen and continuing them as such for a number of years though they are entitled for regularisation under Clause 2(ii) of the Standing Orders of the Corporation, which action of it amounts to an unfair labour practice as defined under Section 2(ra) of the Act, read with the provisions of Sections 25T and 25U of the Act, which prohibits such employment in the Corporation. It would be unjust and unfair to deny them regularisation in

their posts for the error committed by the Corporation in the procedure to appoint them in the posts. Further, the Corporation cannot use the alleged "policy decision" as a veil to justify its action which included inaction on its part in not regularising the concerned workmen in their services under Clause 2(ii) of the Certified Standing Orders.

39. In light of the above said discussion and legal principles laid down by this Court in the cases referred to supra, we are of the considered view that the procedure of appointments adopted by the Corporation with respect to the concerned workmen initially appointed through contractors, subsequently through the Co-operative Society, and then vide memorandum of appointment issued to each one of the concerned workmen in the year 1988 and thereafter, continuing them in their services in the posts by the Corporation without following any procedure as contended by the learned senior counsel on behalf of the Corporation whose contention is untenable in law and their appointment can be said as irregular appointments but not as illegal as the same was not objected to by any other Authority of the Corporation at any point of time. But their appointment in their posts and continuing them in their services is definitely cannot be termed as illegal, at best it can be called irregular. Therefore, the Certified Standing Orders of the Corporation by all means apply to the concerned workmen. The legal contention urged on behalf of the Corporation that the statutory right claimed by the concerned workmen under Clause 2(ii) of the Certified Standing Orders of the Corporation for regularizing them in their posts as regular employees after rendering 240 days of service in a calendar is not an absolute right conferred upon them and their right is only to consider their claim. This plea of the learned senior counsel cannot again be accepted by us for the reason that the Corporation is bound by law to take its decision to regularise the services of the concerned workmen as regular employees as provided under Clause 2(ii) of the Certified Standing Orders after their completion of 240 days of service in a calendar year as they have acquired valid statutory right. This should have been positively considered by the Corporation and granted the status of regular employees of the Corporation for the reason that it cannot act arbitrarily and unreasonably deny the same especially it being a Corporate Body owned by the Central Government and an instrumentality of the State in terms of Article 12 of the Constitution and therefore, it is governed by Part III of the Constitution. The Corporation should exercise its power fairly and reasonably in accordance with law. This has not been done by the Corporation as per the law laid down by this Court in the case of *Olga Tellis & Ors. v. Bombay Municipal Corporation and Ors.* wherein it was held as under:

.....

....The said contention of the learned senior counsel on behalf of the Corporation is wholly untenable in law and the reliance placed on the aforesaid case is misplaced for the reason that it is an undisputed fact *13 Siemens Ltd. and Another Vs. Siemens Employees Union and Another*, that the workmen have

been appointed on term basis vide memorandum of appointment issued to each one of the concerned workmen in the year 1988 by the Corporation who continued their services for several years. Thereafter, they were denied their legitimate right to be regularised in the permanent posts of the Corporation. The said fact was duly noted by the High Court as per the contention urged on behalf of the Corporation and held on the basis of facts and evidence on record that the same attracts entry Item No. 10 of Schedule V of the Act, in employing the concerned workmen as temporary employees against permanent posts who have been doing perennial nature of work and continuing them as such for number of years. We affirm the same as it is a clear case of an unfair labour practice on the part of the Corporation as defined under Section 2(ra) of the Act, which is statutorily prohibited under Section 25T of the Act and the said action of the Corporation warrants penalty to be imposed upon it under Section 25U of the Act. In fact, the said finding of fact has been recorded by both the learned single Judge and the Division Bench of the High Court in the impugned judgment on the ground urged on behalf of the Corporation. Even if, this Court eschews the said finding and reason recorded in the impugned judgment accepting the hyper technical plea urged on behalf of the Corporation that there is no plea of unfair labour practice made in the claim statement, this Court in this appeal cannot interfere with the award of the Tribunal and the impugned judgment and order of the High Court for the other reasons assigned by them for granting relief to the concerned workmen. Even in the absence of plea of an act of unfair labour practice committed by the Corporation against the concerned workmen, the Labour Court/High Court have got the power to record the finding of fact on the basis of the record of the conciliation officer to ensure that there shall be effective adjudication of the industrial dispute to achieve industrial peace and harmony in the industry in the larger interest of public, which is the prime object and intendment of the Industrial Disputes Act. This principle of law has been well established in a catena of cases of this Court. In the instant case, the commission of an unfair labour practice in relation to the concerned workmen by the Corporation is ex-facie clear from the facts pleaded by both the parties and therefore, the courts have the power to adjudicate the same effectively to resolve the dispute between the parties even in the absence of plea with regard to such an aspect of the case."

(Emphasis Supplied)

53. A close perusal of the facts of the instant case shows that following unfair labour practices have been committed by ONGC with respect to the appellants:-

"(a) ONGC continued to engage the appellants for several years after Jwalamukhi project for which petitioners were initially engaged came to an end.

(b) The stand taken by ONGC before Himachal Pradesh High Court to deny relief of regularization of their services claimed by ONGC that ONGC is in the process of retrenching the appellants and no work is available with ONGC to continue with services of appellants was most fallacious inasmuch as ONGC continued to

engage the appellants even several years after the dismissal of earlier petitions filed by appellants by High Court of Himachal Pradesh. Further, sufficient work was available with ONGC to continue with the services of appellants is also evidenced from various Working Papers, office notings and office orders etc. relied upon by the appellants, particularly from the Working Paper dated July 24, 1998 noted by us in the foregoing paras.

(c) ONGC was tossing the appellants from its one location to another as per its requirement. (Initially the appellants were employed in connection with Jwalamukhi project and were later transferred to Jammu and Madhopur when Jwalamukhi project came to end. Subsequently in the year 2004 some of the appellants were transferred to Dehradun).

(d) The availability of permanent posts against which the appellants could be regularized stands admitted by ONGC in the affidavit filed by it in response to affidavit dated July 16, 2004 filed by appellants wherein it has been stated by ONGC that contingent employees who were junior to the appellants were permanently recruited in ONGC. The aforesaid act of ONGC of permanently recruiting juniors of appellants was patently illegal in view of Standing Orders issued by ONGC prescribing consideration of contingent employees who had put in more than 240 days of service in twelve consecutive months for regularization on occurrence of a vacancy and settlement dated September 23, 1989 arrived between some of the appellants and ONGC as per which ONGC was to give preference to appellants at the time of making recruitment to class III and IV posts in ONGC. (In ONGC's case (supra), it was categorically held by Supreme Court that Standing Orders issued by ONGC dealing with regularization of casual/contingent workers cannot be thrown to winds by ONGC).

(e) A conjunctive reading of Working Papers dated June 10, 2005 and January 03, 2006 noted herein above brings out that in the year 2004 ONGC transferred some of the appellants from Jammu to Frontier Basin, Dehradun and subsequently sought to retrench said appellants on the ground that they i.e. appellants are surplus at Dehradun. However, at the same time the work was available with ONGC at Jharna, a site in Frontier Basin at Dehradun."

54. In view of above unfair labour practices committed by ONGC, the appellants are entitled to regularization of their services in view of law laid down by Supreme Court in Hari Nandan and ONGC's cases (supra).

55. We therefore allow the appeal and set aside the impugned judgment and order dated June 01, 2010. We allow the writ petition filed by the appellant with a direction to ONGC to regularize the services of the appellant in terms of standing order dated July 15, 1962.

56. We leave the parties to bear their own costs all throughout.