

(2019) 06 GAU CK 0077
In the Gauhati High Court
Case No : Writ Petition (C) No. 6520 Of 2015

Management Of North Eastern Regional Agricultural	APPELLANT
Vs	
Workmen Represented By The President And Anr	RESPONDENT

Date of Decision : 19-06-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 141, 226
Police Act, 1861 — Section 17
North Eastern Regional Agricultural Marketing Corporation Ltd Recruitment 2018 — Rule 1

Citation : (2019) 06 GAU CK 0077

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : P.K. Tiwari, B. Das, R.J. Das, J.S. Bhattacharjee, N. Baruah

Final Decision : Partly Allowed

Judgement

1) Heard Mr. P.K. Tiwari, the learned advocate assisted by Mr. B. Das and Mr. R.J. Das, the learned counsel for the petitioner. Also heard Mr. J.S. Bhattacharjee, the learned advocate for the respondent No.1. This Court by order dated 26.03.2019 had exempted the respondent No.2, being the Central Government Industrial Tribunal - cum- Labour Court from being represented in this writ petition.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner has challenged judgment and award dated 01.04.2015 passed by the learned Central Government Industrial Tribunal - cum- Labour Court, Assam, Guwahati in Reference Case No.23/2012 and 24/2012. By the said award, it was held that the action of the petitioner by not regularising the services of 25 casual/ contingent employees who are contesting the reference or not granting equal pay for equal works at par to the regular workers are not legal and justified and by further holding that the 25 casual/ contingent employees are entitled to regularization with financial benefits with effect from 23.04.2004, the date on which the Managing Director has accepted the recommendation of Mr. L. Rahman

Committee.

3) The summary of facts of the case is that the Ministry of Labour, Govt. of India had made a reference by order dated 04.07.2012 in respect of the dispute between the Management of NERAMAC i.e. North Eastern Regional Agricultural Marketing Corporation Limited (petitioner) and the NERAMAC Worker's Union (respondent No.1). The said reference was registered as Ref. Case No. 23/2012. A similar reference was again made by the Ministry of Labour, Govt. of India by order dated 12.07.2012 in respect of the dispute between the petitioner and respondent No.1, which was registered as Ref. Case No. 24/2012. By order dated 22.04.2013, both the aforesaid reference cases were amalgamated and the following amalgamated reference was taken up for adjudication by the Central Government Industrial Tribunal - cum- Labour Court, Assam, Guwahati (hereinafter referred to as "CGIT & LC" for short), viz.,

Whether the action of the Management of NERAMAC by not regularizing the services of 32 casual/ contingent workers or not granting equal pay for equal work at par to the regular employees instantly are legal and justified? What those groups of casual workers/ contingent workers are entitled to?

4) The case of the respondent No.1, as projected before the learned CGIT & LC inter alia was that altogether 32 casual employees were appointed in various zones as well as Head Office and at Fruit Juice Concentration Plant (FJCP), Nalkata on various dates from 1989 to 2001. 8 were engaged in the year 1989, 1 in the year 1992, 3 in the year 1994, 2 in 1995, 13 in 1996, 2 in 1997, 2 in 1998 and 1 in 1999. According to the Management, out of these 32 casual employees, 9 were Typist, 1 Electrician and 22 Manual Labourers. However, at present only 25 casual employees are engaged and 7 of the casual employees had left the Organization. It was also pleaded by the respondent No.1 that some of the workmen have completed 22 years of service and they are being provided with CPF, leave, gratuity and medical benefits at par with the regular employees of the Management but they are getting paltry amount of daily wages inspite of working on full time basis since 1988. In 1990, the respondent No.1 had placed its demand for regularisation of the casual employees but without any outcome. The respondent No.1 had raised the dispute relating to non-regularisation of the workmen before the Assistant Labour Commissioner, Silchar, who initiated the discussion with both the parties and tried to work out a conciliation. Subsequently, a tripartite meeting was held on 29.11.2011 amongst the Management, respondent No.1 and the Assistant Labour Commissioner, but no settlement could be arrived at. It was stated that Mr. L. Rahman Committee was constituted by the Management to ascertain the feasibility of the regularisation of the casual employees, and the said committee by its report dated 22.09.2003, had recommended the regularisation of the casual employees who had completed 4 years and above in phases as per seniority. According to the respondent No.1, the then Managing Director of the NERAMAC had considered the report of the Committee and accepted its recommendation in principle

subject to availability and requisite financial resources. The respondent No.1 had also placed reliance on the pages 61, 62 & 63 of the note-sheet of the Management, wherein the Management while referring to the recommendation of the Rahman Committee, expressed its disagreement in respect of the recommendation of the Committee that those casual employees who had completed 4 years and above may be regularised in phase manner and instead suggested that those, who had put in 10 years of service in NERAMAC, may be considered suitably for regularisation as per their seniority in 3 phases. However, it was stated that none of these suggestions were translated in action leading to initiation of the present proceeding.

5) The case of the petitioner, as projected before the learned CGIT & LC , inter alia, was that the Management of NERAMAC admitted the engagement of around 32 numbers of casual workmen and the break-up of theses workmen, their designations and respective date of their engagement as shown in the claim statement of the respondent No.1. However, it was pleaded by the petitioner that these casual workmen were engaged without any selection process on purely pick and choose basis due to administrative exigency and they were not engaged against any sanctioned post. It was pleaded that in most the cases, the circumstances which necessitated the engagement of these workmen ceased to exist long time ago but on purely humanitarian ground, their engagements were not terminated. It also was pleaded that as per the instruction of the Government of India, NERAMAC had to generate its own revenue for meeting the recurring expenditure but the Corporation was incurring loss from its inception and it was also referred to the BIFR during 1995-96 as its net worth was eroded because of continuous loss and as on the date of filing the written statement, it had accumulated loss of Rs.4.81 Crores. While referring to the recommendation of L. Rahman Committee, the pleaded case of the petitioner was that the Managing Director of the NERAMAC had accepted the recommendation of the Rahman Committee in principle subject to availability of financial resource and in view of the poor financial position of the Corporation, the regularisation of these casual workmen could not be possible and the Managing Director of NERAMAC himself put the matter on hold till the improvement in the financial condition of the Corporation. With regard to FJCP, Nalkata, it was pleaded by the petitioner that the nature of work there is only seasonal and it remains operational only for a few months in a year and for the rest of the period, the casual workmen at FJCP, Nalkata remain idle. It was denied by the petitioner that the continuous engagement of the casual workmen is essential for the smooth running of the Corporation.

6) The learned CGIT & LC had answered the reference by its judgment and award dated 01.04.2015 on terms and already indicated herein before. The Tribunal had recorded a finding that the engagement of the casual workers was irregular but not illegal.

7) Challenging the said award, the learned senior advocate for the petitioner has

made his oral submissions and he had also provided his written submission.

8) The learned senior advocate for the petitioner has submitted that in the claim petition, list of 25 workmen was given, but documentary evidence of only 14 workmen was tendered and, as such, no proof was tendered in respect of the remaining 11 workmen. It is further submitted that no documentary evidence was tendered to show that the workmen whose cause was being agitated (i) had regularly worked continuously for more than 10 years as on 10.04.2006, (ii) had the prescribed minimum qualification to be appointed to the concerned post; (iii) that they had been appointed by some recruitment process and not appointed on pick and choose basis, and (iv) that the posts were sanctioned and vacant on the date of appointment. It is submitted that a perusal of Exhibits No. 14 to 31 would reveal that the concerned persons were appointed whimsically and on pick and choose basis in non-existent posts.

9) By referring to the case of *Secretary, State of Karnataka Vs. Umadevi*, (2006) 4 SCC 1, also referred to as *Umadevi (3)*, which was explained in the case of *State of Karnataka Vs. M.L. Kesari*, (2010) 9 SCC 247, the learned senior counsel for the petitioner has submitted that before anyone can seek regularization, four factors must exist, viz., (i) existence of sanctioned posts, (ii) existing vacancies in sanctioned posts, (iii) persons appointed in vacancies against sanctioned posts are duly qualified persons, and (iv) appointment to such vacant post must have been made through open competitive selection process. It is also submitted that in the case of *Umadevi (3)*, it was provided that as a one-time measure, those workers who were irregularly appointed in vacancies against sanctioned posts and worked for 10 (ten) years without the benefit of interim order of the Court as on the date of judgment rendered in *Umadevi (3)*, i.e. 10.04.2006 could be considered by the authorities for regularization of service of such person. It is submitted that in the present case in hand, there is no material on record to show before this Court that any of the casual/ contingent employees of the petitioner, in respect of which reference was made were appointed by following open competitive selection process. Accordingly, it is also submitted that in the case of *Umadevi (3)*, it has been held that regularization is not a mode of appointment and moreover, contractual appointees cannot be regularized because it would amount to fraud on the Constitution of India, and would be hit by the principles of Article 14 and 16 of the Constitution of India. In support of his submissions, the learned senior advocate for the petitioner has placed reliance on the case of (i) *National Fertilizers Ltd. Vs. Somvir Singh*, (2006) 5 SCC 493, and (ii) *State of Orissa Vs. Mamta Mohanty*, (2011) 3 SCC 436.

10) Per contra, the learned advocate for the respondent No.1 has submitted that the submission by the learned senior advocate for the petitioner is based on the ratio laid down in the case of *Umadevi (3)*, which is not applicable because in this present case the Board of Directors of the petitioner had constituted L. Rahman Committee in respect of the matter of regularisation of the casual/ contingent workers of the petitioner and the said committee had submitted its report to the

petitioner on 22.09.2003 and that on 23.04.2004, the Managing Director of the petitioner had accepted the recommendation of the said Mr. L. Rahman Committee. Therefore, the issue of regularization of such workers was taken up by the petitioner much before 10.04.2006, the date on which the judgment was delivered by the Supreme Court of India in the case of Umadevi (3). It is, thus, submitted that as the Mr. L. Rahman Committee had recommended the regularization of casual/ contingent workers of the petitioner, the petitioner was required to follow the guidelines laid down in the case of Umadevi (3), and the petitioner ought to have completed the exercise of regularization of such workers.

11) It is also submitted that the respondents had proved various note sheets showing that the petitioner had taken a decision to regularize all their 32 casual/ contingent workers and, as such, the petitioner is stopped from denying the benefit of such decision in respect of the casual/ contingent workmen members of the respondent No.1.

12) It is further submitted that the Management Witness No.1, namely, K.C. Sasidhara Kurup (MW-1 for short) had admitted that 18 employees of petitioner were regularized from 1987 to 1996 and one Shyamal Chandra Dey was regularized in the year 2002. Hence, in light of such admission by MW-1, the benefit of regularisation cannot be denied to the 32 casual/ contingent workmen members of the respondent No.1. It is further stated that the MW-1 had admitted that the casual workmen of petitioner were availing medical leave, gratuity, annual increment, government holidays at par with regular employees. It is submitted that the said witness had also admitted that the remaining 22 casual employees were engaged as manual labour for doing various duties of Grade-IV employees like security, watch & ward and other ancillary works like that of attendants and peons and that the nature of those workers were at par with the regular employees. It is also submitted that in various applications for appointment, it contains reference to employment notice dated 23.01.1996 and in that context, it is submitted that the MW-1 had categorically admitted as follows - "... It is not a fact that no selection process under the Rule was followed for engaging them in the work of the Corporation. It is also not a fact that no selection process under the Rule was followed for engaging them in the work of the Corporation. ..." Accordingly, it is submitted that in light of such admission, this Court ought not to re-evaluate and re-appreciate the evidence to arrive at a contradictory finding and dilute the admission in this process.

13) It is submitted that in light of the admissions made by the MW-1, this Court in exercise of certiorari jurisdiction cannot re-examine and re-appreciate the evidence and give its own finding as if sitting in appeal over the learned CGIT&LC, and if such an exercise is made, it would have the effect of diluting such categorical admission. Moreover, while canvassing that the workmen represented by the respondent were entitled to "equal pay for equal work", the learned advocate for the respondent has cited the case of State of Punjab v. Jagjit Singh, (2017) 1 SCC 148.

14) It is seen that on the perusal of the pleadings the learned CGIT&LC had deemed it fit to formulate 4 questions for deciding the matter. The questions as framed by the learned CGIT&LC are as follows:-

- i. Whether the appointment of the workmen involved in this reference was illegal?
- ii. Whether the said workmen were appointed against the sanctioned posts?
- iii. That the workmen are discharging similar nature of works done by the regular employees of the Management?
- iv. Whether the financial position of the NERAMAC does not permit regularisation of the workmen raising the dispute?

15) In respect of the question No.(i), (ii) and (iii), as mentioned above, the learned CGIT&LC upon examining the evidence on record had held that the respondent No.1, i.e. the Union had been able to establish that the workmen were appointed by the petitioner as per the offer for appointment of the casual employees was made by the Management and the witnesses concerned have categorically mentioned that their selection test was held and appointment letters were also issued to them vide Exts.14 to Ext.27, Ext.29 and Ext.30. On the basis of Ext.6, admitted by the petitioner, it was held that the sanctioned strength of petitioner was 272 and altogether 42 regular employees were working and thus, there was 230 sanctioned posts lying vacant. Accordingly, it was held that the appointment of workmen involved were irregular. It was held that the said workmen were discharging similar duties which were performed by regular employees. It was also held that the workmen raising the dispute were working against sanctioned post. Accordingly, the questions No.1, 2 and 3 were answered in favour of the respondents and against the petitioner.

16) In respect of question No.4, referring to the balance sheet for the year 2005-06 to 2012-13 (Ext.7 to Ext.13), the learned CGIT&LC held that the petitioner had not been able to show the financial position of the petitioner for the period prior to 2005-06, during which the claim for regularisation was made by the respondent No.1. However, the learned CGIT&LC held that the said balance sheets were all prepared on same date i.e. 21.06.2013 and, as such, allegations that the balance sheets were prepared in connivance of the auditor with the Management, which caused CAG to raise many objections, could not be ruled out. It was also held that the respondent had established that the petitioner was established by the Central Government and the petitioner was provided with subsidy, which was proved by Management. On the basis of note-sheet (Ext.2), it was held that the Management had taken decision to regularise the casual workmen after taking into consideration the financial position of the petitioner. It was also held that the L. Rahman Committee Report was accepted by the Board of Directors of the Management and by its Managing Director in the month of April, 2004. It was also held that there was nothing on record to show that the petitioner was running at a loss, as such, the said plea was rejected. The learned CGIT&LC placed reliance on the case of Ajmer Vidyut Vitran Nigam &

Ors. Vs. Navin Kumar Saini, (2010) 15 SCC 17, wherein it was held that when service of other similarly placed workmen who were junior to the respondents were regularised as Junior Clerks and given regular pay- scale but cases of the respondents were not considered on the ground that they had already been appointed as LDC, it was held that the case of the respondents should also have been considered for regularisation. Accordingly, by holding that the claim of the respondents could not be ignored, the question No. (iv) was decided in the negative and against the petitioner.

17) The learned CGIT&LC had held that the action of the petitioner is non regularisation of the 25 casual/ contingent employees who are contesting the reference or not granting equal pay for equal works at par to the regular employees are not legal and justified. Accordingly, it was ordered that the said 25 casual/ contingent workers are entitled to regularisation with financial benefits with effect from 24.04.2004, the date on which the M.D. had accepted the recommendation of Mr. L. Rahman Committee. Thus, the reference was disposed of without any cost. The award was sent to the Ministry as per procedure.

18) On a perusal of the case record, it is seen that in the present case in hand, the respondent has not proved the manner in which vacancy was advertised for public participation in the selection process. The respondent had exhibited 18 exhibits against 14 numbers of appointment orders in respect of (i) Manas Bhowmik, (ii) Situ Chakraborty, (iii) Ms. Sima Debnath, (iv) Bikram Debnath, (v) Megha Mohan Tripura, (vi) Rabi Deb Barman, (vii) Dipti Ghosh, (viii) Babul Chandra Deb, (ix) Somesh Chandra, (x) Chandan Paul, (xi) Swapan Debnath, (xii) Ashish Acharjee, (xiii) Kanak Bala Deb, and (xiv) Paritosh Bhowmik. Thus, out of 25 persons for whom the reference case was being pursued, the appointment orders in respect of only 14 workmen were exhibited. Moreover, such appointment orders were issued by officers of the following rank, viz., (i) Manager Administration, I/C, FJCP, Nalkata, (ii) Zonal Manager, NERAMAC, Agartala, (iii) Deputy Production Manager, FJCP, Nalkata. However, the learned CGIT&LC has not given any finding whether the appointments were made by the competent "Appointing Authority" as defined under Clause 2(iii) of the Recruitment Rules of NERAMAC (Ext.5). It is also seen that as per the said Recruitment Rules (Ext.5), Section II, Rule 1(iv) provides that the said Rules do not apply to labourers/ work- charged employees in factory or other undertakings of the Corporations unless the Board otherwise decides. Under such circumstances, without ascertaining that which authority is the competent appointing authority, the finding recorded by the learned CGIT&LC in paragraph 10 of the impugned judgment that the appointment of the workmen involved in the reference was irregular is not found to be supported by any documentary evidence on record.

19) It is seen from para 2 of the impugned judgment passed by the learned CGIT&LC that 32 casual employees were appointed in NERAMAC out of which 7

employees had left and that 25 employees are still working in NERAMAC.

20) In order to appreciate the issue of regularisation of service, it would be relevant to quote paragraph 53 and 54 of the judgment rendered by the Supreme Court of India in the case of Umadevi (3):-

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

54] It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

21) It would also be relevant to extract herein below the relevant paragraphs No. 8 to 13 of the case of State of Karnataka Vs. M.L. Kesari (supra):-

"8] Umadevi (3) [(2006) 4 SCC 1] casts a duty upon the concerned Government or instrumentality, to take steps to regularise the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi (3) directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006).

9] The term 'one-time measure' has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi (3), each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working

against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

10] At the end of six months from the date of decision in Umadevi (3), cases of several daily-wage/ad hoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularisation process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision in Umadevi (3), will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six months' period mentioned in para 53 of Umadevi (3) has expired. The one-time exercise should consider all daily-wage/ad hoc/ those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi (3), but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi (3), the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of Umadevi (3), are so considered.

11] The object behind the said direction in para 53 of Umadevi (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3) was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/ instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi (3) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi (3) as a one-time measure.

12] These appeals have been pending for more than four years after the decision in Umadevi (3). The Appellant (Zila Panchayat, Gadag) has not considered the cases of respondents for regularisation within six months of the decision in

Umadevi (3) or thereafter.

13] The Division Bench of the High Court has directed that the cases of respondents should be considered in accordance with law. The only further direction that needs to be given, in view of Umadevi (3), is that the Zila Panchayat, Gadag should now undertake an exercise within six months, a general one-time regularisation exercise, to find out whether there are any daily wage/casual/ad-hoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfill the requirements mentioned in para 53 of Umadevi (3). If they fulfill them, their services have to be regularised. If such an exercise has already been undertaken by ignoring or omitting the cases of respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said one time exercise within three months. It is needless to say that if the respondents do not fulfill the requirements of para 53 of Umadevi (3), their services need not be regularised. If the employees who have completed ten years' service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularisation in suitable lower posts."

22) Following the decisions rendered in the case of Umadevi (3) (supra) and M.L. Kesari (supra), the Division Bench of this Court in the case of the State of Assam Vs. Upen Das, had held as follows:-

"18] The Supreme Court in Umadevi case, but for exception carved out in paragraph 53 of the decision, has issued a mandamus that henceforth, no regularization shall be made bypassing the constitutional requirement or making permanent, those not duly appointed as per the Constitutional scheme. And, after 10.4.2006, on which date, judgment of Umadevi was delivered, the State Government has not regularized the services of any Muster Roll/Work Charged worker or an employee of similar category whose appointment was either illegal or was not made on duly sanctioned vacant post. Also what is explained by the Supreme Court in the case of M.L. Kesari is that if, for some reason, the employees, who were entitled to the benefit of paragraph 53 of the decision in Umadevi were not considered, they will not lose their right to be considered for regularization merely because the one-time exercise was completed without considering their cases or because the six months period mentioned therein has expired. In paragraph 53 of the decision in Umadevi, it is held in unequivocal terms that only irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned vacant posts, who have worked for 10 years or more in duly sanctioned posts without cover of orders of the courts or of tribunals be considered for regularization as one-time measure within six months. According to the State Government, not one respondent was either appointed on a sanctioned vacant post or is working against a sanctioned vacant post. And, it is for these reasons, the State Government, despite having framed a policy to regularize the Muster Roll, Work Charged employees working prior to 1.4.1993, sought leave of this Court to implement the same in MC No.597/2012,

which was rightly declined by the Division Bench, vide order dated 27.3.2012. The learned Single Judge overlooked the fact that respondents were not appointed on duly sanctioned vacant posts and are also not working on duly sanctioned posts, while directing the State Government to consider their cases for regularization. The impugned order passed by the learned Single Judge is, therefore, not in tune with the decision of the Supreme Court in Umadevi case and hence, cannot be sustained. After Umadevi case, the State Government also cannot create posts to regularize the services of Muster Roll/Work Charged employees as none of them are working against sanctioned posts. And for filling up the sanctioned vacant posts or newly created posts, the State will have to adopt a normal procedure of recruitment by giving opportunity to all qualified and eligible persons to participate in the recruitment process.

19] It is true that the State Government took a Cabinet decision on 22.7.2005 to regularize the services of Muster Roll/Work Charged workers who were engaged prior to 1.4.1993 and pursuant to which, the State Government regularized the services of large number of such workers after creating posts. The respondents, therefore, also claim for the same benefit of Cabinet decision by invoking the theory of legitimate expectation and taking a plea that they cannot be subjected to discrimination with those similarly placed workers, whose services have been regularized. Even this issue submission has been answered in Umadevi case against the respondents. Its relevant paragraph 47 reads as under:-

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

20] In the above quoted paragraph 47 of the decision in Umadevi case, the Supreme Court has clearly held that when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for

selection. According to the Supreme Court, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. The Supreme Court has also held that the State cannot constitutionally make a promise to such employees for making their services permanent. And, as mentioned above, after Umadevi case, the State Government has not regularized any similarly situated workers notwithstanding the Cabinet decision and the statements made before the Court regarding regularization of their services. We, therefore, reject the respondents' plea of legitimate expectation and discrimination.

21] Lastly, the respondents have cited decisions of the Supreme Court in *Nihal Singh v. State of Punjab*, (2013) 14 SCC 65, *Malathi Das v. Suresh*, (2014) 13 SCC 249 and *Yashwant Arjun More v. State of Maharashtra*, (2014) 13 SCC 264 to convince us that even after Umadevi case, the Supreme Court has directed for regularization even by creating posts although the employees were not working on sanctioned posts. But these decisions are on different facts and the Supreme Court itself has held that the ratio decidendi of Umadevi case was not applicable to them. In the case of *Nihal Singh v. State of Punjab* (supra), Special Police Officers were appointed under Section 17 of the Police Act to meet the law and order problem. The appointments of Special Police Officers were made in accordance with the statutory procedure contemplated under the Act, but their services were not being regularized on the ground that there were no sanctioned posts. The Supreme Court held that since the initial appointments of such Special Police Officers was made legally under a statute, it cannot be categorized as irregular much less illegal appointment and therefore the principles laid down in Umadevi case were not applicable. It is in this fact situation the Supreme Court directed the State Government to absorb the Special Police Officers by creating necessary posts. Besides this, in *Nihal Singh* the Supreme Court was not dealing with the issue of regularization of Muster Roll/Work Charged employees like the respondents. In *Malathi Das v. Suresh* (supra) the Supreme Court in a Contempt Petition merely directed the authorities to comply with the order of the High Court to regularize the employees. The High Court order for regularization was admittedly passed and affirmed by the Supreme Court much prior to the decision of Umadevi. The decision of Umadevi was thus clearly not applicable in the case of *Malathi Das*. In *Yashwant Arjun More v. State of Maharashtra* (supra) also non salaried copyists were working in the Revenue and Forest Department of the Government of Maharashtra continuously for 10 or more years and they could not apply for regularization because neither the required examination was held by the Department nor the Staff Selection Board was constituted. The State Government therefore to overcome its lapse decided to absorb such non-salaried copyists on available vacant posts subject to their making applications and holding required educational qualifications. The Supreme Court took note of the fact that non-salaried copyists were victims of the lapse of State Government and held that the ratio of judgment in Umadevi cannot be invoked for denying them the benefit of decision of the State Government to absorb them through a

selection process. In the case at hand, there is no provision of holding examination of the respondents by any Selection Board for the purposes of their regularization and hence, the State Government cannot be blamed for any lapse. Hence, the decisions cited by the respondents do not help them.

22] It is, however, heartening to learn that the State Government has agreed not to terminate the Muster Roll, Work Charged and similarly placed employees working since last more than 10 years (not in sanctioned post) till their normal retirement, except on disciplinary ground or on ground of criminal offences. The State Government has also agreed to enlist such employees in Health and Accidental and Death Insurance Scheme, which will be prepared in consultation with the State Cabinet. We appreciate this positive stand of the State Government taken as welfare measures for the betterment and security of the employees, in question. We, accordingly, direct the State Government to implement the measures without further delay. Besides this, we, in the light of decision of the Supreme Court in *State of Punjab v. Jagjit Singh*, (2017) 1 SCC 148, also direct the State Government to pay minimum of the pay scale to Muster Roll workers, Work Charged workers and similarly placed employees working since last more than 10 years (not in sanctioned post) with effect from 1.8.2017.

23] For these reasons, we are of the view that in the fact situation of the case, Muster Roll workers, Work Charged workers and Casual workers are not entitled for regularization of their services with consequential benefits, such as, pension etc. We, accordingly, subject to our direction in paragraph 22 of the judgment, allow the appeal and set aside the impugned judgment and order dated 20.12.2013 passed by the learned Single Judge."

23) In the present case, it is the projected case of the respondent No.1 that the Management Witness No.1, namely, K.C. Sasidhara Kurup (MW-1 for short) had admitted that 18 employees of petitioner were regularized between 1987 to 1996 and one Shyamal Chandra Dey was regularized in the year 2002. Thus, the respondent No.1 had not agitated their grievance to be regularised within a reasonable time of the judgment rendered in the case of *Umadevi (3)* (supra) and *M.L. Kesari* (supra). In the present case the Reference was made by virtue of orders dated 04.07.2012 and 12.07.2012, which was registered as Ref. Case No. 23/2012 and Ref. Case No. 24/2012 respectively.

24) No doubt, it is a well settled position that admission by a party can be said to be best type of evidence. But in this case, when the evidence tendered by the respondent does not support the claim of the respondents that the 32 persons for whom the respondents have been agitating were validly appointed, the admission by MW-1 alone would not cure the deficiency in the evidence tendered by the respondents. The respondents having tendered evidence, must stand on its own legs and not on the weakness of the evidence of the petitioner. In order to claim regularisation, in the post *Umadevi (3)* scenario, it would be the burden of the persons claiming such regularisation to demonstrate that the essential

ingredients as elaborated in the said decision has been complied with or not. A mere statement by a witness like WW-1 and WW-2, or a party to the litigation to the effect that 14 workmen herein before named workers were appointed after written examination and interview is not a proof to establish that the selection process was through an open competitive selection process or that such workmen were selected in accordance with the eligibility criteria. Moreover, in this case, although evidence in respect of appointment of 14 workers was led, such evidence would not entitle the learned CGIT&LC to direct the petitioner to regularise the service of 25 workmen. Regularisation is no longer a matter of right if the appointments were not made in accordance with law as laid down in the case of Umadevi (3) (Supra) as explained in the case of M.L. Kesari (supra).

25) The learned counsel for the respondent is right in urging that in exercise of certiorari jurisdiction cannot re-examine and re-appreciate the evidence and give its own finding as if sitting in appeal over the CGIT&LC. However, in this regard, this Court is of the considered opinion that the limited purpose of scanning the evidence on record is to appreciate whether the decision rendered is rational or if the same is perverse or vitiated for non consideration of well established legal principles of law. Having seen that the respondent had some evidence in respect of 14 workmen and not even led evidence regarding valid appointment of remaining 11 workmen out of 25 workmen, the order directing regularisation is found to be not sustainable on facts and in law. Merely because the MW-1 had admitted that the 22 workmen were engaged as manual labourers for undertaking various duties of Grade-IV employees like security, watch and ward, and other ancillary works, such admission does not lead to conclusion that the appointment of the 25 casual/ contingent workmen was valid and by following due procedure of law relating to selection and appointment in Govt. of India undertaking.

26) In view of the discussions above, this Court is of the considered opinion that the finding by the learned CGIT&LC runs counter to the ratio laid down in the case of Umadevi (3) (supra) and M.L. Kesari (supra), because there no finding has been recorded by the learned CGIT&LC on the following factors, viz., (i) the existence of sanctioned posts, (ii) the then existing vacancies in sanctioned posts (iii) whether the appointment orders of the workmen involved was made by a competent "Appointing Authority" as described in Clause 2(iii) of the Recruitment Rules of NERAMAC and whether they were valid and made by competent authority; (iv) whether the appointment of the particular workmen covered by the reference was made pursuant to a competitive selection process; (v) whether each of the workmen had the minimum qualification to be appointed to the post where he/she had been appointed. Hence, the impugned order is found to be vitiated owing to non consideration of well established legal principles of law. A blanket direction to regularise workmen cannot be ordered for a mere asking and without the Court rendering a finding in respect of various factors, which is elaborately dealt with by the Supreme Court of India in the case of Umadevi (3) (supra) and M.L. Kesari (supra).

27) It is seen that the learned CGIT & LC had relied on the case of State Electricity Board Vs. Pooran Chandra Pandey and Others, (2007) 11 SCC 92. However, the learned senior advocate for the petitioner had rightly assisted this Court in submitting that the case of Pooran Chandra Pandey (supra) was specifically overruled by a Bench of three Judges of the Supreme Court of India in the case of Official Liquidator Vs. Dayanand & Ors., (2008) 10 SCC 1. For the said reason, with all respect, this Court is not inclined to follow the decision rendered by the Hon'ble High Court of Tripura in the case of Ajay Choudhury & ors. Vs. North East Regional Agricultural Marketing Corporation Ltd. (NERAMAC) & ors., WP(C) No. 168/2012, decided on 12.06.2017, which was cited by the learned advocate for the respondents.

28) In the absence of finding on the above 5 (five) factors, this Court is constrained to hold that the order impugned herein is not sustainable. However, as the case involves long period of service rendered by the workmen of NERAMAC, this Court is inclined to remand the matter for a fresh decision by the CGIT&LC i.e. Central Government Industrial Tribunal- cum- Labour Court.

29) In order to enable the respective parties to address the learned CGIT&LC on the said 5 (five) factors as indicated above, it is provided that it would be open for the parties to the said Ref. Case No. 23/2012 and Ref. Case No. 24/2012 to make suitable prayer before the said learned CGIT&LC to amend their pleadings and/or to lead further evidence in respect of the said five factors. If such prayer is made, the said learned CGIT&LC shall give a reasonable opportunity to both sides and decide the Ref. Case No. 23/2012 and Ref. Case No. 24/2012 afresh. It would be open for the said learned CGIT&LC to limit adjournment to both sides for expeditious disposal of the cases.

30) In the case of Jagjit Singh (supra), the Supreme Court of India had observed and held as follows:-

"56] We shall now deal with the claim of temporary employees before this Court.

57] There is no room for any doubt, that the principle of 'equal pay for equal work' has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 hereinabove. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

58] In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid

less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

59] We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-

"7. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of 'equal pay for equal work' constitutes a clear and unambiguous right and is vested in every employee - whether engaged on regular or temporary basis."

60] Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require

the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

61] In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post.

62] Disposed of in the above terms."

31) Therefore, in the light of decision of the Supreme Court in Jagjit Singh (supra), wherein it was directed the authorities to pay minimum of the pay scale to Muster Roll workers, Work Charged workers and similarly placed employees working since last more than 10 years (not in sanctioned post). Accordingly, this Court is not inclined to interfere with that part of the impugned judgment and award passed by the learned CGIT&LC wherein the direction was given to the petitioner to grant financial benefit of equal pay for equal works at par to the regular employees to the said 25 casual/ contingent workers. However, the said direction for equal pay for equal work would operate prospectively from the date of reference i.e. 04.07.2002, the date when reference was made by the Ministry of Labour, Govt. of India (Ref. Case No. 23/2012), and not w.e.f. 24.04.2004, the date on which the M.D. had accepted the recommendation of Mr. L. Rahman Committee. Needless to say that such benefit would be extended to those workmen who were assigned a post and has worked at par with regular workmen

and not to those workers who have continued to work as casual/ contingent workmen.

32) The reason for grating financial benefit of equal pay for equal work from the date of reference is that in the present case in hand, it has not been established that the Mr. L. Rahman Report had been accepted by the Board of Directors/ Management of the petitioner i.e. NEREMAC. Moreover, something mentioned in the note-sheet (Ext.2), is merely a note or in other words "an opinion of the person writing it", which does not attain finality unless a decision to that effect is taken and/or approved by the Board and duly communicated to the concerned party so as to confer a right upon such party. In the case of Bichittar Singh Vs. State of Punjab, AIR 1963 SC 395, the 5 Judge Constitution Bench of the Supreme Court of India had held as follows:-

"... Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned.."

ORDER

33) Thus, the writ petition is partly allowed. That part of the impugned judgment and award dated 01.04.2015, in Ref. Case No. 23/2012 and Ref. Case No. 24/2012, wherein direction has been given to regularise the service of 25 casual/ contingent employees is interfered with and is set aside. In that regard, the matter is remanded back to the CGIT & LC for a fresh decision in light of the discussions above.

34) In order to enable the respective parties to address the learned CGIT&LC on the said 5 (five) factors as indicated above, it is provided that it would be open for the parties to the said Ref. Case No. 23/2012 and Ref. Case No. 24/2012 to make suitable prayer before the said learned CGIT&LC to amend their pleadings and/or to lead further evidence in respect of the said five factors. If such prayer is made, the said learned CGIT&LC shall give a reasonable opportunity to both sides and decide the Ref. Case No. 23/2012 and Ref. Case No. 24/2012 afresh. It would be open for the said learned CGIT&LC to limit adjournment to both sides for expeditious disposal of the cases.

35) The petitioner is directed to comply with that part of the order passed by the learned CGIT & LC to grant financial benefit of "equal pay for equal work" to those casual/ contingent workmen who were working at par with the regular employees. However, the said direction for equal pay for equal work would operate prospectively from the date of reference i.e. 04.07.2002, the date when reference was made by the Ministry of Labour, Govt. of India (Ref. Case No. 23/2012). The entire process for granting financial benefit shall be concluded within a period of 4 (four) months from the date of receipt of certified copy of the order, failing which it would be open to the respondents to enforce that part of the award passed by the learned CGIT & LC, as modified herein, in accordance with law.

36) This writ petition stands partly allowed.

37) Let the LCR together with the copy of this judgment and order be sent to Central Government Industrial Tribunal- cum- Labour Court, who on receipt of the same would also transmit a copy to the competent authority in the Ministry of Labour, Govt. of India.