

(2019) 06 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No. 35139-35214 Of 2017 (S-RES)

Preethi Bhandage And Ors

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 28-06-2019

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 323(4)
Secondary Education Service Commission Act, 1982 — Section 2(oo)(bb) , 33B(1)(i),
33B(1)(c), 33B(1)(a)(i)
Police Act, 1861 — Section 17
Karnataka Municipalities Accounting and Budgeting Rules, 2006 — Rule 1(3)
Karnataka Civil Services (General Recruitment) Rules, 1977 — Rule 15, 57A
Karnataka Municipalities (Recruitment Of Officers and Employees) Rules, 2010 — Rule
4(2), 6, 7, 11
Constitution Of India, 1950 — Article 12, 14, 16, 16(3), 162, 226, 235, 309, 310, 311,
312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323

Citation : (2019) 06 KAR CK 0043

Hon'ble Judges : P.B. Bajanthri, J

Bench : Single Bench

Advocate : M. S. Bhagwat, Sridhar N. Hegde, K. V. Narasimhan, I. G.
Gachinamath

Final Decision : Dismissed

Judgement

Sl.No,"Category

of posts", "Scale

of

Pay", Method of Recruitment, Minimum Qualification

(1),(2),(3),(4),(5)

8., Accountant, "4150-

7800", "Seventyfive percent by direct

recruitment and Twenty-five per cent by promotion from the cadre of First Division Assistant. If no suitable person is available for promotion by direct recruitment", "Direct Recruitment .- Must have passed Bachelors degree in Commerce (B.Com) with Accountancy and Commerce from an University recognized by the Government. For Promotion.- (1) Must have put in service of not less than five years in the cadre of First Division Assistant plus. (2) Must have passed B.Com with Accountancy and Commerce from an institution recognized by the Government. Sl. No.", "Category of posts and scale of the pay", "Number of posts", "Method of Recruitment, Minimum Qualification 9., "Accountant 8000-14800", "Seventy five percent by Direct Recruitment; and Twenty five percent by promotion from the cadre of First Division Assistant. If no suitable person is available for promotion, by Direct Recruitment.", "Direct Recruitment Must have passed Bachelors Degree in commerce (B.Com) with Accountancy and Commerce from an Institution recognized by the Government. For Promotion:- (1) Must have put in service of not less than three years in the cadre of First Division Assistant and, (2) Must have passed B.Com. With Accountancy and Commerce the Karnataka Municipalities are required to be filled up in accordance with the Rules, 2010, grievance of the petitioners is contrary to SECRETARY", "STATE OF KARNATAKA & ORS. vs UMADEVI & ORS.(3) reported in (2006) 4 SCC

of the Hon'ble Apex Court, documents and",,,,,

representation submitted by the petitioners have no substance. Petitioners contract appointment is for a period of one year or till selection and",,,,,

appointment is done through KPSC and for any reason permanency would not be made. Pursuant to the selection posts, KPSC has forwarded the list",,,,,

of selected Accountant and it is under process. Therefore, question of regularization of petitioners services is impermissible. On these counts",,,,,

grievance of the petitioners are rejected.,,,,,

12. Learned counsel for the petitioners submitted that petitioners case is squarely covered by the decision of this Court rendered P.RAJESH vs.,,,,,

KARNATAKA POWER TRANSMISSION CORPORATION LIMITED decided on 16.12.2015 in W.P.No.47587-47591/2012 & connected",,,,,

Matters. Second respondent has failed to appreciate that the petitioners selection and appointment to the post of Accounting Consultants on contract",,,,,

basis is after holding due procedure like issuing notification, written test and interview. Except the nature and appointment is contract, rest of the",,,,,

procedure have been followed as if recruitment is for direct recruitment.,,,,,

Respondents after extracting work from the petitioners for all these years, rejected their claim for regularization for the cited reasons are not in",,,,,

terms of the decision rendered by this Court in the case of P.RAJESH supra. Each of the contention of the petitioners has not been appreciated",,,,,

by the second respondent, while issuing endorsement. In support of petitioners case, petitioners have cited the following decisions:",,,,,

(1) SECRETARY vs STATE OF KARNATAKA AND OTHERS vs UMADEVI (3) AND OTHERS reported in (2006)4 SCC 1.,,,,,

(2) STATE OF GUJARAT AND OTHERS vs PWD EMPLOYEES UNION AND OTHERS reported in (2013)12 SCC 417.,,,,,

(3) NIHAL SINGH AND OTHERS vs STATE OF PUNJAB AND OTHERS reported in (2013) 14 SCC 65.,,,,,

(4) MALATHI DAS (RETIRED) AND OTHERS vs SURESH AND OTHERS reported in (2014) 13 SCC 249.,,,,,

(5) NARENDRA KUMAR TIWARI AND OTHERS vs STATE OF JHARKHAND AND OTHERS reported in (2018)8 SCC 238.,,,,,

(6) MALLIKARJUNA AND OTHERS vs STATE OF KARNATAKA AND OTHERS (Writ Petition No.15712-15828/2015 and connected matters",,,,,

(7) STATE OF PUNJAB AND OTHERS vs JAGJIT SINGH AND OTHERS reported in (2017)1 SCC 148,,,,

(8) SABHA SHANKAR DUBE vs DIVISIONAL FOREST OFFICER reported in 2018 SCC ONLINE SC 2440,,,,

13. Per contra, learned counsel for the respondents supported the endorsement issued by the second respondent and contended that petitioners are not",,,,

entitled for regularization. Since they were not appointed as Accountant but were appointed as Accounting Consultants. Second respondent has,,,,

elaborately considered the grievance of the petitioners with reference to Rules of recruitment governing the post of Accountant viz., Rules, 2010,",,,,

P.RAJESH's case supra, UMADEVI's(3) Judgment and documents and representations of the petitioners. Petitioners nature of appointment",,,,

is required to be taken into consideration for the purpose of regularization. Petitioners have failed to question the validity of the Clauses imposed in the,,,,

order of appointment that their appointment is contractual and purely on temporary basis at any rate appointment would not be made permanent.,,,,,

Having accepted the nature of appointment, they are estopped from contending that they are entitled for regularization. They have no legal or statutory",,,,

right to seek regularization in the post of Accountant unless and until, they have a statutory right read with statutory provision. If regularization is",,,,

permitted, in such an event it would be violative of Articles 14 and 16 of the Constitution and Rules, 2010. Hon'ble Supreme Court time and again",,,,

held that regularization of temporary employees would violate fundamental right of an eligible candidate to the post on permanent/regular basis. Cited,,,,

decisions on behalf of the petitioners have no assistance to the case in hand for the reasons in none of the decision UMA DEVI's(3) case supra,,,,

has been taken note of appropriately and appreciated various issues dealt therein. Constitution bench decision viz., UMA DEVI's (3) case supra",,,,

holds the field on the subject of Daily Wager, casual employees, ad hoc Employees and contract Employees. Therefore State as a model Employer",,,,

cannot over look the Constitutional provisions like Articles 14, 16 and 309 read with KCSR Act, 1978.",,,,

14. Heard learned counsel for the parties.,,,,,

15. 'Regularisation' means 'to make regular' and according to Blacks Law Dictionary the word 'regular' means 'Conformable to',,,,,

law. Steady or uniform in course, practice, or occurrence; not subject to unexplained or irrational variation." ,,,,

Usual, customary, normal or general. Gerald v. American Cas. CO. of Reading, Pa., D.C.N.C.,249E. Supp. 355, 357. Made according to rule, duly" ,,,,

authorized, formed after uniform type; built or arranged according to established plan, law, or principle. Antonym of "casual" or "occasional." ,,,,

Palle v. Industrial Commission, 79 Utah 47, 7 P.2d.284, 290." ,,,,

16. "Employment and Regularisation of service" " employment signifies fresh appointment to fill vacancies whereas the regularization in ,,,,

accordance with service regulation or in accordance with the statutory law. Honorable Supreme Court in the case of MANAGEMENT OF THE ,,,,

BARARA COOPERATIVE MARKETING-CUM-PROCESSING SOCIETY LTD. VS. PRATAP SINGH reported in 2019 (2) S. CPCar a7.4230 ,,,,

of the judgment reads as under: ,,,,

20. In our view, there lies a distinction between the expression "employment" and "regularization of the service". The expression 'employment' signifies" ,,,,

a fresh employment to fill the vacancies whereas the expression 'regularization of the service' signifies that the employee, who is already in service," ,,,,

his services are regularized as per service Regulations. ,,,,

17. Undisputed facts are that petitioners contractual appointment is for specified period to the post of Accounting Consultants and not to the post of ,,,,

Accountant. Even though advertisement, test and interview might have been held for the purpose of nature of contract appointment. But such" ,,,,

appointment is with a rider that at any reason permanency would not be made. In such event, contract appointee has no right and right has not" ,,,,

accrued in his/her favour for the regularization of his/her services in Accountant post. Ultimately, statutory Rules, 2004 read with Rules, 2010 are" ,,,,

required to be complied. In this regard, it is necessary to peruse the decision of the Apex Court rendered in K. ANBAZHAGAN AND ORS. VS." ,,,,

THE REGISTRAR GENERAL HIGH COURT OF MADRAS AND ORS. reported in 2018 (9) SCC 293 wherein para.14 reads as under: ,,,,

14. The learned Counsel appearing for the High Court supporting the judgment and the order contends that the Appellants were appointed on Fast ,,,,

Track Courts on contract basis. The Fast Track Courts cannot be said to have been created in pensionable establishment hence the writ petition of the ,,,,

Appellants has rightly been dismissed. It is further submitted that Appellant's claim for regularisation on post of Additional District Judge had been,,,,

rejected, which was upheld by the High Court vide its judgment dated 20.07.2012. The Appellants functioned purely on ad hoc basis and were not",,,,,

appointed under the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 1995 nor were absorbed in any regular vacancy hence they",,,,,

are not eligible for any retiral benefits, which are available to those who were appointed by due recruitment process under the above 1995 Rules.",,,,

Tenure of the Fast Track Courts was initially for only five years under the Eleventh Finance Commission and subsequently extended for another five,,,,

years. Government of Tamil Nadu had further extended the tenure of courts for a period of one year upto 31.03.2012. Thereafter vide Government,,,,

Order dated 26.08.2011, Government of Tamil Nadu had sanctioned retention of 49 Fast Track Courts in the cadre of District Judge functioning in the",,,,,

State of Tamil Nadu. The Appellants having accepted the purely temporary nature of the post to which they were appointed, they now cannot contend",,,,,

claiming all the benefits available to those, who have been appointed to a substantive post by a recruitment process.",,,,

(Emphasis Supplied),,,,,

18. In the case of YOGESH MAHAJAN VS. PROFESSOR R.C. DEKA, DIRECTOR, ALL INDIA INSTITUTE OF MEDICAL SCIENCES",,,,,

reported in 2018 (3) SCC 218 at para nos.6 and 8, it is held as under:",,,,

â??6. It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in",,,,,

agreement with the Central Administrative Tribunal and the High Court that the Petitioner was unable to show any statutory or other right to have his,,,,

contract extended beyond 30th June, 2010. At best, the Petitioner could claim that the concerned authorities should consider extending his contract.",,,,

We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of",,,,,

Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the,,,,

view taken by the concerned authorities and therefore reject this contention of the Petitioner.,,,,,

8. Insofar as the final submission of the Petitioner to the effect that some

persons were appointed as Technical Assistant (ENT) in May 2016 is,,,,
 concerned, we are of the view that the events of 2016 cannot relate back to the events of 2010 when a decision was taken by the All India Institute of",,,,,
 Medical Sciences not to extend the contract of the Petitioner. The situation appears to have changed over the last six years and the Petitioner cannot,,,,
 take any advantage of the changed situation. There is no material on record to indicate what caused the change in circumstances, and merely because",,,,,
 there was a change in circumstances, does not mean that the Petitioner is entitled to any benefit. On the other hand, it might have been more",,,,,
 appropriate for the Petitioner to have participated in the walk-in interview so that he could also be considered for appointment as Technical Assistant,,,,
 (ENT), but he chose not to do so.â??",,,,,

19. Petitioners were recruited through advertisement followed by written test and interview which was for limited purpose and that too on contract,,,,
 basis to the post Accounting Consultants and not Accountant which normally would not confer any right of regularization. Contract appointment is,,,,
 permissible under Rule 15 of the Karnataka Civil Services (General Recruitment) Rules, 1977 (for short Rules, 1977). Rule 15 is reproduced herein:",,,,

â??15. Provision for appointment of retired Government Servants and for appointment by contract.-,,,,

(1) Notwithstanding anything contained in these rules or in the rules of recruitment specially made in respect of any service or post, the Government",,,,,
 many, if it considers necessary for reasons to be recorded in writing, that it is in public interest so to do-",,,,

a) appoint to a service or post of any person who retired from the service of the Government, Central Government or any other State Government on",,,,,
 such terms and conditions and for Such period, as may be necessary, and after consultation with the commission where such consultation is",,,,
 necessary.,,,,,

b) Appoint to the following categories of posts any person who in its opinion is able to discharge duties of such post on Such terms and conditions as,,,,
 may be determined by agreement.-,,,,

i) posts of Heads of Departments which suitable officers are not available for appointment, according to the rules of recruitment applicable to the",,,,
 posts;,,,,

ii) posts requiring technical qualification.,,,,

iii) Posts in the personal establishment of a Minister , a Minister of a State or a Deputy Minister." ,,,,

iv) Posts in the personal establishment of a Chairperson of a Commission or a Committee constituted by the Government, where such Chairperson is a" ,,,,

non-official and has been given the status of a Deputy Minister;],,,,

v) Group C posts in the legal cell of the Karnataka Bhavan, New Delhi, when suitable persons are not available for appointment, according to the rules" ,,,,

of recruitment applicable to the posts;],,,,

vi) Posts of Personal Assistants, Second Division Assistants, Drivers and Group â??Dâ?? posts sanctioned in Revenue Department for assisting the" ,,,,

Members of Parliament and any other post which may be sanctioned in Revenue Department for the said purpose;],,,,

vii) Posts of First Division Assistants, Second Division Assistants and Stenographers sanctioned in Revenue Department for assisting the members of" ,,,,

the Karnataka State Legislative Assembly and Members of the Karnataka State Legislative Council;],,,,

Provided that notwithstanding anything to the contrary contained in any rule made under the provision to Article 309 of the Constitution of India or in," ,,,,

the agreement or the terms, conditions and period of appointment of any person under clause (a) or clause (b), the services of a person so appointed" ,,,,

shall be liable for termination at any time by a notice in writing either given by such person to the Government or by the Government to such person ,,,,

and the period of such notice shall be one month: ,,,,

Provided further that the services of any such person may be terminated forthwith and on such termination he shall be entitled to claim a sum ,,,,

equivalent to the amount of his pay plus allowances for the period of the notice at the same rate at which he was drawing them immediately before ,,,,

the termination of his services, or, as the case maybe, for the period by which such notice falls short of one month." ,,,,

(2) The total period of appointment of any person or the total period of appointment in any post under clause(b) of sub-rule (1) shall not exceed [5 ,,,, years]: ,,,,

[Provided that appointments to posts mentioned in sub-clause and sub-clause

(vi)] of clause (b) of sub-rule,,,,

(1) may be made for a period of co-terminus with the tenure of office of the Minister, the Minister of State [the Deputy Minister or the Member of" ,,,,

Parliament concerned.],,,,,

(3) Notwithstanding anything contained in clause (b) of sub-clause,,,,

(1) a person in the service of the Government shall not be eligible for appointment under the said clause.,,,,

20. The above statutory provision is restricted to contract appointment only and it is not followed by regularization. Therefore, contract appointees" ,,,,

condition is governed by Rule 15 of Rules, 1977 and there are no other provision. Hence, in the absence of any provision for regularization of" ,,,,

contract appointee, no vested right is available to the petitioners." ,,,,

21. Learned counsel for the petitioners vehemently relied on P.RAJESHâ??s case.,,,,

P.RAJESHâ??S case supra is distinguished with reference to Honâ??ble Supreme Court in the case ofR AJ BALAM PRASAD & ORS. vs.,,,,

STATE OF BIHAR & ORS. reported in (2018)12 SCC 50 wherein pages 16 to 23 reads as under:,,,,

16. This is what the Division Bench held for allowing the appeal and dismissing the Appellants' writ petition: (Vinay Kishore Case, SCC Online Pat" ,,,,

Para.12),,,,,

â??12. We have heard learned Counsel for the parties and find that the order passed by the learned Single Judge is not sustainable in law. The order,,,,

passed in SANT PRAKASH SRIVASTAVA vs STATE OF BIHAR dated th2 8of July, 2008 was not brought to the notice of the learned Single" ,,,,

Judge. It is further contended that even if the order dated 10.10.2006 was not set aside, the fact remains that such order of regularization could not" ,,,,

have been passed since the services of the Muharrir have come to an end in 1991 itself.,,,,

The permanent status could be conferred to those who were in service and not to those whose services had come to an end many years ago. Such,,,,

an order could not be made the basis of permanent status through the writ court. Such order dated 10.10.2006 is not enforceable in law. The,,,,

representation having been declined in the light of the circular dated 16.04.2008, we do not find that the writ Petitioners were entitled to any" ,,,,

direction to treat them as regular employeesâ??.,,,,

17. We agree with the reasoning of the Division Bench quoted supra.,,,,

18. In our opinion also, when the appointment of the Appellants (writ Petitioners) was made for a fixed period in exercise of the powers under Rule",,,,

57-A and the said appointment period having come to an end in the year 1991 after granting some extension, we fail to appreciate as to how the",,,,

Appellants could claim to remain in service after 1991.,,,,

19. One cannot dispute that the State has the power to appoint persons for a temporary period under the Act and Rules framed thereunder and once.,,,,

such power was exercised by the State, the status of such appointee continued to be that of temporary employee notwithstanding grant of some",,,,

extensions to them for some more period.,,,,

20. In other words, the grant of extension to work for some more period to the writ Petitioners could never result in conferring on them the status of a",,,,

permanent employee or/and nor could enable them to seek regularization in the services unless some Rule had recognized any such right in their.,,,,

favour.,,,,

21. That apart, when the period fixed in the appointment orders expired in the year 1991 then there was no scope for the Appellants to have claimed",,,,

continuity in service for want of any extension order in that behalf.,,,,

22. We have perused the Circular dated 16.04.2008 (Annexure P-7) issued by the State. This Circular only says that if any temporary persons are.,,,,

appointed for a particular project and if they are found to be of some utility, their services can be regularized as per Rules.",,,,

23. As mentioned above, so far as the cases of these Appellants are concerned, their representations were examined by the State but were rejected",,,,

finding no merit therein. One of the reasons for rejection of the representation was that the services of the Appellants had already come to an end in.,,,,

1991 and, therefore, no orders to regularize their services could now be passed after such a long lapse of time.",,,,

22. Contractual appointment is for a specified period and not entitled to regularization. Grant of extension of tenure based does not confer on status of.,,,,

employee nor can he/she seek regularization of his/her services in absence of any statutory Rule recognizing such right in his/her favour. On this issue.,,,,

Honâ??ble Supreme Court in the case of COMMITTEE OF MANAGEMENT, ARYA NAGAR INTER COLLEGE, ARYA NAGAR, KANPUR," ,,,,

THROUGH ITS MANAGER AND ANOTHER VS. SREE KUMAR TIWARY AND ANOTHER reported in 1997 (4) S C 6.C I n 3 8v8iew of the," ,,,,

respective contentions, the question that arises for consideration is; whether the respondent is entitled to the benefit of the Third Removal of" ,,,,

Difficulties Order as indicated hereinbefore? Section 33-B(1)(i) of U.P. Secondary Education Service Commission Act, 1982 postulates among others," ,,,,

regulation of a candidate who was appointed by promotion or by direct recruitment in the certificate of teaching grade before May 13, 1989 against a" ,,,,

short term vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties),,,,

(Second) Order, 1981 and such vacancy was subsequently converted into a substantive vacancy. It is seen that the regular incumbent retired from" ,,,,

service on June 30, 1988. Consequently, the temporary vacancy was deemed to have been converted into a substantive vacancy w.e.f. June 30, 1988." ,,,,

But the crucial question is : whether the respondent was continuously serving the institution under clause (c) of Section 33-B(1)? Admittedly, the" ,,,,

service of the respondent came to be terminated w.e.f June 30, 1988. Though he had obtained the stay order and continued to be in service, it was not" ,,,,

by virtue of his own right under an order of appointment, he continued in the office with permission of the management. In fact, in the" ,,,,

recommendation made before the Selection Committee, they have stated as under:" ,,,,

Ad hoc appointment of Shri Sri Kumar Tiwari was made on 1.8.1986 L.T. Grade and vide notice dated 30.5.88 his services were terminated. ON the" ,,,,

basis of the above order Shri Sri Kumar Tiwari obtained stay order No.13565 dated 29.7.1988 from Hon'ble High Court. Therefore appointment is," ,,,,

disputed.""" ,,,,

7. In fact, the regularisation order passed by the District Inspector of Schools also says that it was subject to the result in the writ petition. The appeal" ,,,,

being the continuation of the writ petition, the question arises: whether the respondent is entitled to claim the benefit of Section 33-B(1)(a)(i) of the" ,,,,

U.P. Secondary Education Services Commission Act, 1982. We have seen that his services came to be terminated on May 30-5-1988 and the" ,,,,

Amendment Act has no application. Hence, the Division Bench was right in giving direction that his regularisation will be subject to the further orders",,,,,

since the regularisation order itself means that it was subject to the result of the writ petition.,,,,,

8. The appeal is accordingly allowed, the writ petition stands dismissed, but in the circumstances, without costs. If there is provision for further",,,,,

appointment according to rules, the bar of age may be relaxed appropriately.",,,,,

23. Constitution Bench decision in the case of UMADEVI (3) supra has been taken into consideration in a recent decision in the case of UPENDRA,,,,,

SINGH V STATE OF BIHAR reported in AIR 2018 SC 1315,,,,,

8. Law pertaining to regularisation has now been authoritatively determined by a Constitution Bench judgment of this Court in Secretary, State of",,,,,

Karnataka and Ors. v. Umadevi and Ors., MANU/SC/1918/2006MANU/SC/1918/2006 : (2006) 4 SCC 1. On the application of law laid down in that",,,,,

case, it is clear that the question of regularisation of daily wager appointed contrary to law does not arise. This ratio of the judgment could not be",,,,,

disputed by the learned Counsel for the Appellant as well. That is why she continued to plead that the appointment of the Appellant was made after,,,,,

following due procedure and in accordance with law. However, that is not borne from the records. Pertinently, order dated August 13, 2003, vide",,,,,

which the Appellant was refused regularisation on the aforesaid ground was not even assailed by the Appellant at that time. It may be mentioned that,,,,,

in Uma Devi, the Court left a small window opened for those who were working on ad hoc/daily wage basis for more than ten years, to regularise",,,,,

them as a one-time measure. However, that was also subject to the condition that they should have been appointed in duly sanctioned post. Further,",,,,

while counting their ten years period, those cases were to be excluded where such persons continued to work under the cover of orders of the courts",,,,,

or the tribunal. The High Court has, in the impugned judgment, discussed these nuances and has also referred to the judgment in Uma Devi and held",,,,,

that the benefit of one-time measure suggested in that case could not be extended to the Appellant because of the following reasons:,,,,,

The Appellants clearly fall in the exception noticed in paragraph-53 of Umadevi (supra) as their claims were sub judice on the date the pronouncement,,,,,

of the Constitution Bench was made in view of pendency of C.W.J.C. No. 12235

of 2005 disposed subsequently on 29.08.2006. Such litigious,,,,

continuation in employment stands excluded from the directions of Umadevi.,,,,

The Appellants claim to have been regularized within the staffing pattern. In our opinion, it is not the crux of the matter. The crucial question is if their",,,,

initial appointment by the Managing Committee was in consonance with Article 14 of the Constitution of India by open advertisement and competitive,,,,

merit selection. On account of various interpretations by more than one Bench of M.L. Kesari (supra) reference was made to the Full Bench. We,,,,

have already noticed from the order refusing regularization dated 13.08.2003 that the appointment of the Appellants on daily wage was not in,,,,

consonance with the law.,,,,

The conclusion in Ram Sewak Yadav (supra) at paragraph 43 is as follows:,,,,

43 (A) Uma Devi (supra) prohibits regularization of daily wage, casual, ad-hoc, and temporary appointments, the period of service being irrelevant;" ,,,,

(B) An illegal appointment void ab initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under,,,,

any circumstances.,,,,

(C) Irregular appointments can be regularized if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned" ,,,,

post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the" ,,,,

candidate possessed the eligibility qualifications for a regular appointment to the post.,,,,

(D) The appointment must not have been an individual favour doled out to the appointee alone and he person must have continued in service for over,,,,

ten years without intervention of any court orders.,,,,

24. A person appointed on purely contractual basis by the State on the specific express condition that his services is for limited period and would not,,,,

have any right to be absorbed in the regular cadres, has no right to be absorbed permanently. Honâ??ble Supreme Court has opined that the High" ,,,,

Court/Tribunals cannot give directions to be absorbed in regular service inasmuch as their initial entry is not in accordance with statutory rules,,,,

governing the post.,,,,

25. Learned counsel for the petitioners vehemently contended that petitioners

were all appointed in the year 2007-08 and 2009 pursuant to the State,,,,

Government's policy to have one Accounting Consultants post in the respective Municipalities/Corporation for the purpose of introduction of,,,,

double entry accounting system and Deputy Commissioner of the respective districts were empowered to recruit Accounting Consultants. Thus,",,,,

Deputy Commissioner of various districts proceeded to recruit Accounting Consultants while inviting applications, holding tests and interview. Thus,",,,,

petitioners initial appointments was in accordance with law even though it is on contract basis. It was also pointed that each and every due procedure,,,,

for regular recruitment has been followed except that their appointment is on contract basis. In such an event, petitioners are entitled for regularization",,,,

of their services. State Government issued absorption of the employees appointed under the scheme of Swarna- Jayanti Shahari Rozgaar Yojana in,,,,

Urban Local Bodies under Rules, 2005. Petitioners are also similarly situated persons who are also entitled for regularization/absorption in the posts of",,,,

Accounting Consultants in the respective Municipalities. The endorsement issued by the second respondent that the petitioner's were not,,,,

appointed under Swarnajayanti Shahari Rozgaar Yojana, Rules and Regulations on KPTCL quoted in the Court order dated 16.01.2015 insofar as",,,,

KPTCL Employees Regularisation are different, post of Accountant in the Karnataka Municipalities are required to be filled up in accordance with the",,,,

Rules, 2004 read with 2010, grievance of the petitioners is contrary to Umadevi's(3) decision supra of the Apex Court, documents and",,,,

representation submitted by the petitioners have no substance. Petitioners contract appointment is for a period of one year or till selection and,,,,

appointment is done through KPSC. Specific condition was imposed in the order of appointment that for any reason permanency would not be made.

Pursuant to the selection posts, KPSC has forwarded the list of selected Accountant and it is under process. Therefore, question of regularization of"

petitioners services is impermissible. On these counts, grievance of the petitioners are liable to be rejected."

26. Constitution Bench decision of the Hon'ble Apex Court in the case of UMADEVI (3) supra, Court has elaborately dealt that daily wagers,"

casual employees and contract employees are not entitled to seek for regularization, only protection given is such of those persons who are working"

for the last 10 years with a rider that such of those employees are not working by virtue of Court order. Further, 4 conditions have been stipulated for",,,,

the purpose of one time regularization. Petitioners grievance cannot be appreciated in view of the Constitution Bench Judgment of the Supreme Court,,,,

cited supra read with the fact that they were appointed as Accounting Consultants and not against post of Accountant. That apart second respondent,,,,

has passed a reasoned endorsement covering each of the issues as to how the petitioners are not entitled for regularization to the post of Accountant.,,,,

In view of these facts and circumstances, petitioners have not made out a case so as to interfere with the endorsement vide",,,,

Annexures A to A75.,,,,

27. Second respondent issued endorsement to the petitioners wherein petitioners grievances has been rejected for these reasons:,,,,

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1. , , , . " , , , ,

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2. , 16.01.2015 ?" , , , ,

Ã? - , . " , , , ,

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3. sÃ?(s) 2010 Ã? Ã... , " , , , ,

sÃ? . , , , ,

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6.??? , , , ,

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7.,?,, ?Ã...," ,,,,

,sÃ?" ,,,,

, , ." ,,,,

28. Petitioners grievance for their regularisation is that their initial appointment on contract basis was after following due procedure like inviting ,,,,

applications, written tests and interview. Therefore, they are entitled for regularization. Rules 2004 and Rules, 2010 provide for regular recruitment to" ,,,,

the post of Accountant. Due to administrative or financial exigency, official respondents might have resorted to contract appointment. Such contract" ,,,,

appointees cannot be made permanent or regularized as it would violate Articles 14, 16 and 309 read with Rules, 2004 or 2010 and KCSR Act, 1978" ,,,,

for the reason that another contract appointee in yet any other organization as on that date, did not submit his application apparently for the reason that" ,,,,

he was already on contract appointment with some other organization. If the official respondents had notified that contract appointment is followed by ,,,,

regularization, in such an event, those contract employees who are working elsewhere would have opted for Accountant post in the official respondent" ,,,,

â?" Municipality/Corporation. But, Government authorized Deputy Commissioners to appoint Accounting Consultants. Therefore, such of those" ,,,,

persons who are already appointed on contract basis or temporary basis in different organizations of the State or any private organization where they ,,,,

were drawing higher pay than the contract appointment of Accounting Consultants, they are not in a position to leave such contract appointments and" ,,,,

join the contract appointment to the post of Accounting Consultants in the Municipality/Corporation like petitioners. So also eligible candidate for ,,,,

Accounting Consultants may not prefer for contract appointment and he may be keen for regular appointment in the interest of job security and to ,,,,

settle in his/her life. Thus, if the petitioners contract appointment is followed by regularization, in such an event, that would be violative of Articles 14" ,,,,

and 16 and so also misleading such of those contract appointees other than working in Municipality/Corporation like petitioners to the extent that ,,,,

contract appointment is followed by regularization. For public post, mode of recruitment should be in accordance with the Constitutional provision in" ,,,,

particularly, Articles 14 and 16 of the Constitution. Time and again, Supreme

Court after decision in UMADEVIâ??s (3) case and in subsequent" ,,,,

decisions have clearly held that public posts are required to be filled up after duly following the Constitutional provision read with relevant Rules of ,,,,

Recruitment. Therefore, petitioners grievance relating to regularization read with the cited decisions are hereby distinguished in view of the later" ,,,,

decisions. ,,,,

29. Learned counsel for the petitioners relied heavily on P.Rajeshâ??s case supra for regularization. P.Rajeshâ??s case is distinguishable with ,,,,

reference to the Honâ??ble Supreme Court in the case of RAJ BALAM PRASAD supra so also two Division Bench decisions of this Court ,,,,

disposed of on 13.07.2012 in Writ Petition Nos.15314-15378/2009 and connected matters in the case of SRI R MANJUNATH AND OTHERS vs ,,,,

THE STATE OF KARNATAKA AND ORS REP. ,,,,

BY ITS SECRETARY, DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS AND OTHERS decided in Writ Petition" ,,,,

Nos.41145-41158/2010 and connected matters (S-KAT) reported in ILR 2012 Kar.5678 in the case of G.RAVI AND ORS. vs STATE OF ,,,,

KARNATAKA reported in 2013 (2) AKR 772. Petitioners cited various decisions including UMADEVIâ??s(3) case supra (paras. 3 and 53). ,,,,

30. Contention of petitioners is that UMADEVIâ??s decision has no application to them, having regard to the factual aspect of the matter that one" ,,,,

time regularization which was permitted in the year 2006 but in the case on hand, it is to be noted that petitioners were appointed on contract basis" ,,,,

subsequent to the decision in UMADEVIâ??s (3) case. Moreover, UMADEVIâ??s case (3) at paras 15 to 17 and 53 which are against the" ,,,,

petitioners grievance. ,,,,

31. STATE OF GUJARAT & ORS v PWD EMPLOYEES UNION AND ORS (2013) 12 SCC 417 (paras. 22, 27 and 28) has no application to the" ,,,,

petitioners case in view of their nature of appointment and decision in UMADEVIâ??s (3) case that their cannot be a deviation in respect of filling ,,,,

up of public posts in the present case for regularization if permitted for petitioners, it would be violative of Articles 14 and 16 of the Constitution, so" ,,,,

also Rules, 2010." ,,,,

32. Similarly NIHAL SINGH AND OTHERS supra (PARA.23, 24 and 31), MALATI DAS (RETIRED)â??s case supra (para.13), NARENDRA" ,,,,

KUMAR TIWARI's case supra (para. 4,5,7 and 8), MALLIKARJUNA's case supra (2,6 and 8), STATE OF PUNJAB cited supra (para." , , , ,

57, 58, 60 and 61), SABAH SHANKAR DUBE cited supra (pars. 11 and 12). These decisions are contrary to UMA DEVI's (3) case read with" , , , ,

Articles 14, 16, 309. The last decision relates to entitlement of pay scale." , , , ,

33. Petitioners grievance relating to entitlement and extending the pay scale attached to the post of Accountant in the pay scales of Rs.16000 â?" , , , ,

Rs.29600 (8000-14800) would arise only as and when first prayer relating to regularization of services of the petitioners are permitted. Since the , , , ,

petitioners have not made out a case for regularization of their services with the second respondent, question of deciding the issue, Whether petitioners" , , , ,

are entitled for pay scale attached the post of Accountant may not arise. Moreover, petitioners nature of appointment is contract and on consolidated" , , , ,

pay. As long as condition of consolidated pay mentioned in the order of appointment is not challenged, petitioners are not entitled to pay- scale of the" , , , ,

post. That apart post held by the petitioners is Accountant Consultancy and not Accountant. , , , ,

34. In the case of NARENDRA KUMAR TIWARI AND OTHERS Vs. STATE OF JHARKHAND AND OTHERS reported in (2018) 8 SCC , , , ,

238, para No.7 of the judgment reads as under:" , , , ,

7. The purpose and intent of the decision in Umadevi (3) was therefore twofold, namely, to prevent irregular or illegal appointments in the future and" , , , ,

secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular" , , , ,

appointments for almost a decade after the decision in Umadevi , , , ,

(3) is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the" , , , ,

irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not , , , ,

giving them the benefits of regularisation and by placing the sword of Damocles over their head. , , , ,

This is precisely what Umadevi (3) and Kesari sought to avoid. , , , ,

35. In the case of BRIJ MOHAN LAL V. UNION OF INDIA reported in (2012) 6 SCC 502 Para. 172, 173, 174 and 175 reads as under:" , , , ,

172. The prayer for regularization of service and absorption of the petitioner

appointees against the vacancies appearing in the regular cadre has been,,,,,
made not only in cases involving the case of State of Orissa, but even in other
States. Absorption in service is not a right. Regularization also is not a",,,,,
statutory or a legal right enforceable by the persons appointed under different
rules to different posts. Regularization shall depend upon the facts and,,,,,
circumstances of a given case as well as the relevant Rules applicable to such
class of persons.,,,,,

173. As already noticed, on earlier occasions also, this Court has declined the
relief of regularization of the persons and workmen who had been",,,,,

appointed against a particular scheme or project. A Constitution Bench of this
Court has clearly stated the principle that in matters of public,,,,,

employment, absorption, regularization or permanent continuance of temporary,
contractual or casual daily wage or ad hoc employees appointed and",,,,,

continued for long in such public employment would be de hors the constitutional
scheme of public employment and would be improper. It would also,,,,,

not be proper to stay the regular recruitment process for the posts concerned.
[Refer to Uma Devi (3).],,,,,

174. It is not necessary for us to deliberate on this issue all over again in view of
the above discussion. Suffice it to notice that the petitioner appointees,,,,,

have no right to the posts in question as the posts themselves were temporary
and were bound to come to an end by efflux of time. With reference to,,,,,

the letters of their appointment and the Rules under which the same were
issued, it is clear that these petitioners cannot claim any indefeasible right",,,,,

either to regularization or absorption. It may also be noticed that under the
Orissa Superior Judicial Service and Judicial Service Rules, 2007, there is",,,,,

no provision for absorption or regularization of ad hoc Judges.,,,,,

175. The petitioners from the State of Andhra Pradesh have also prayed for
identical relief claiming that the advertisement dated 28-5-2004 issued for,,,,,

filling up the vacancies in the regular cadre should be quashed and not processed
any further and the petitioners instead should be absorbed against,,,,,

those vacancies. In view of the above discussion, we find no merit even in these
submissions." ,,,,,

36. In a recent decision of the Supreme Court UNION OF INDIA AND ORS. V.
CENTRAL ADMINISTRATIVE TRIBUNAL AND ORS.,,,,,

ETC.ETC. reported in Civil Appeal Nos.175-176 of 2019 @ SLP (C) Nos.

37798-37799 of 2013 on 08.01.2019 held under what circumstances and at,,,,
what point of time Regularization is permissible. In other words those employee
who have not completed 10 years of service as on the date of,,,,
deciding UMADEVI's (3) case viz., on 10.04.2016 are not entitled to
regularization. Whereas, in the present petitions petitioners were appointed",,,,,
to the post of Accountant Consultancy on 25.06.2007. Hence, claim for
regularization of the petitioners would be contrary to UMADEVI's (3)",,,,,
case supra.,,,,,

37. Regularisation of employees is required to be examined with reference to the
following issues:,,,,

(1) Union of India and State Government instrumentalities cannot make
appointment de hors the Constitutional Scheme of public employment.,,,,,

On this issue Hon'ble Supreme Court had an occasion to deal with the
following decisions:,,,,

(i) UMADEVI (3) cited supra (Para. 2 and 6),,,,,

(ii) Surinder Prasad Tiwari v. U.P Rajya Krishi Utpadan Mandi Parishad reported in
(2006) 7 SCC 684 (Paras. 38 and 61),,,,,

(iii) MEHERCHAND POLYTECHNIC vs ANU LAMBA reported in(2006)7SCC 161
(para.16).,,,,

(2) Equality of opportunity in public employment is the basic structure of
Constitution which the State has to honour while making recruitment.,,,,,

This issue has been examined by the Hon'ble Supreme Court in the following
cases:,,,,

(i) UMADEVI (3) (para.11),,,,,

(ii) RESERVE BANK OF INDIA vs GOPINATH SHARMA reported in (2006) 6 SCC
221.,,,,,

The Hon'ble Apex Court set-aside the directions of the High Court on
regularizing the services of a workman who was appointed on daily wages,,,,

and was not working on regular basis.,,,,,

(3) Mere allowing continuance, whether under Interim Order passed by various
Courts, Tribunals or otherwise, does not confer any right.",,,,,

This issue has been examined in UMADEVI's (3) case at paras. 43 and 45
respectively.,,,,,

(4) Scheme of Regularisation cannot prevail over Rules which are statutory in
nature.,,,,,

This point has been considered in the following decisions:,,,,

(i) UMADEVIâ??s case (Para.6),,,,,

(ii) PUNJAB WATER SUPPLY AND SEWAGE BOARD vs RANJODH SINGH reported in (2007) 2 SCC 491 (Para.19),,,,,

(5) Courts cannot frame or direct framing of Schemes for regularization of temporary employees as held by the Honâ??ble Apex Court in the case,,,,

of STATE OF KARNATAKA V. KGSD CANTEEN EMPLOYEESâ?? WELFARE ASSOCIATION reported in (2006) 1 SCC 567 (para.44),,,,,

(6) No directions for regularization, fixation of pay scale, continuance of service, promotion etc. shall be given by the Courts as these are functions of" ,,,,

the Executives.,,,,,

These issues were considered by the Apex Court in UNION OF INDIA V PUSHPA RANI reported in ((2008) 9 SCC 242) aPn.dU .JOSHI vs.,,,,,

ACCOUNTANT GENERAL reported in (2003) 2 SCC 632 (paras. 35 to 37 and 10 respectively),,,,,

(7) Scope of Judicial review is limited. This issue has been considered by the Honâ??ble Supreme Court in the following decisions:,,,,

(i) INDIAN DRUGS AND PHARMACEUTICALS LTD. v WORKMEN, INDIAN DRUGS AND PHARMACEUTICALS LTD. reported in" ,,,,

(2007) 1 SCC 408 (para.37),,,,,

(ii) STATE OF MANIPUR AND ANOTHER v KSH. MOIRANGNITHOU SINGH AND OTHERS reported in (2007) 10 SCC 544 (para.7),,,,,

(iii) UNION OF INDIA vs PUSHPARANI reported in (2008) 9 SCC 242 (para.7),,,,,

(8) Mere fact that there was selection even for temporary appointment is inconsequential.,,,,,

This issue has been decided by the Honâ??ble Supreme Court in the case of Dr. (Mrs.) Chanchal Goyal vs State Of Rajasthan reported in (2003) 3,,,,

SCC 485 wherein it was held that mandatory compliance cannot be part of recruitment Rules.,,,,,

Merely because there was selection for temporary appointment, the same by itself was not confer right on the employee to claim regularization. Thus," ,,,,

there is no scope for regularization.,,,,,

(9) Termination in accordance with terms and conditions of the appointment letter is to be adhered.,,,,,

This issue has been dealt by the Honâ??ble Apex Court in the following decisions:,,,,

(i) MUNICIPAL COUNCIL, SAMRALA vs SUKHWINDER KAUR reported in (2006) 6 SCC 516 (paras. 7 and 9)" ,,,,

7. The respondent, within a span of about 18 months, was appointed thrice and disengaged thrice. As noticed hereinbefore, she was appointed on a" ,,,,

contractual basis. The appointments were temporary ones. She was aware that her services could be terminated without notice. She accepted the ,,,,

terms and conditions of the said offers of appointments without any demur. ,,,,

9. Although, there was no fixed period of contract of employment between the employer and the workman concerned and thus, no question of its" ,,,,

renewal on its expiry, but there existed a stipulation in the contract that the Executive Officer has the power to dismiss her without issuing any notice." ,,,,

The question, which now arises for consideration, is whether Section 2(oo)(bb) of the Act is attracted to the facts and circumstances of this case." ,,,,

(ii) VIDYAVARDHAKA SANGHA V. Y.D. DESHPANDE reported in (2006) 12 SCC 482 ,,,,

(iii) STATE OF RAJASTHAN vs SAJEET SINGH reported in (2006) 8 CC 508 held continuance despite the expiry of contract period was held not ,,,,

to be sufficient to confer right of regularization. ,,,,

(iv) STATE OF PUNJAB vs SUPREET RAJPAL reported in (2007) 13 SCC 290 The Honâ??ble Apex Court set-aside the order of High Court for ,,,,

regularization dehorse the terms and conditions of appointment letter. ,,,,

(v) In Chanchal (Dr.) cited supra it was observed that unless the initial recruitment is regularized through the prescribed agency, there is no scope for" ,,,,

regularization. ,,,,

In the case on hand, it is clearly stated that initial order of appointment with the workman was required to make room once a candidate selected by the" ,,,,

Service Commission was available, non-joining of a candidate, would not enure to the benefit of a temporary employee on the ground that appointment" ,,,,

itself was subject to the condition of availability of duly selected candidate. ,,,,

(10) Regularisation is not the mode of recruitment: ,,,,

39. As Held by the Honâ??ble Supreme Court in National Fertilizers Ltd. v. Somvir Singh reported in (2006) 5 SCC 493 (Para.18), ,,,,

(11) Illegality having been committed in the past is no ground that it would be perpetuated:,,,,

Article 14 of the Constitution is a positive concept as held in the case of BIHAR PUBLIC SERVICE COMMISSION vs KAMINI reported in (2007),,,,

5 SCC 519 at (Para.10),,,,

(12) Principle of Equal pay for equal work cannot be invoked as held by the Hon'ble Supreme Court in the case of STATE OF KARNATAKA,,,,

V. KGSD CANTEEN EMPLOYEES WELFARE ASSOCIATION cited supra (para.48),,,,

(13) No legitimate expectation of a temporary employee or a contract employee, has been discussed by the Hon'ble Apex Court in the case of",,,,

UMADEVI's (3) case at para.47.

(14) Interim order to be declined:-,,,,

- In UMADEVI's (3) case Hon'ble Supreme Court deprecated the practice of the High Courts on staying regular selection and laid down,,,,

that the High Courts should not give interim directions since if employees ultimately are entitled to relief, the same could be extended while disposing"

the matter.

(15) Denuding of decisions running contrary to ratio laid down in UMADEVI's (3) case. Para.54 which is relevant reads as under:

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."

(i) In the case of U.P SEB v. POORAN CHANDRA PANDEY reported in (2007) 11 SCC, 92 herein Court has directed for regularizing as held in"

UMADEVI's,

(3) Judgment. It was considered in Three Judges Bench in OFFICIAL LIQUIDATOR vs DAYANAND reported in (2008) 10 SCC, 1 herein while"

heavily advocating judicial discipline, the Court held the observations made in POORAN CHANDRA PANDEY supra to be treated as obiter and not"

as a binding by the High Courts, Tribunals and other judicial forums."

40. Division Bench decision of the Punjab and Haryana High Court at Chandigarh in SHILPA JINDAL AND ORS. vs CENTRAL,

ADMINISTRATIVE TRIBUNAL, CHANDIGARH BENCH AND ORS. reported in

2016(3) SCT 486 (P&H) has held as under:" ,,, ,

14. For the purpose of seeking writ of mandamus, one has to establish the legal right. The petitioner does not have any legal right emanating from" ,,, ,

any statutory Rules/Regulation. In the absence of any provision for regularisation of contract employees, this Court has no power to give a direction to" ,,, ,

the respondents to consider the petitioner for regularisation either in the post of Lecturer or in the post of Assistant Professor (Associate Professor). ,,, ,

15. The Supreme Court has authoritatively ruled that the Tribunal and Courts cannot give directions to the department/Government Institution or, ,,, ,

Organizations to regularise services of an employee. Such a direction and implementation of the same would be violative of Articles 14 and 16 of the, ,,, ,

Constitution. When the petitioner was appointed on contract basis to the post of a Lecturer in the year 2003, the advertisement, as well as, " ,,, ,

appointment order made clear that selection and appointment was on contract basis. The contract appointment cannot be converted into regular, ,,, ,

appointment on the sole ground that the petitioner has continued for more than a decade. Had the respondents notified the selection and appointment, ,,, ,

to the post of Lecturer for 'regular recruitment', large scale candidates who were eligible and/or already working elsewhere on contract basis would" ,,, ,

be denied to compete for selection and appointment to the post of Lecturer/ Assistant Professor. In other words, each and every eligible candidate" ,,, ,

must know the nature of public appointment. This Court cannot give direction to regularise petitioner's services by way of writ of mandamus, since the" ,,, ,

petitioner has not pointed out under which statutory rules she has got right to seek regularisation. Unless right is vested in a person, Court cannot issue" ,,, ,

writ of mandamus to the respondents. Mandamus can be issued against a public authority only on its failure to perform mandatory legal duty. If there, ,,, ,

is no such failure, mandamus would not be issued. The Supreme Court In the case of Mani Subrat Jain v. State of Haryana MANU/SC/0540/1976 : " ,,, ,

(1977) 1 SCC 486 held as follows:-"9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for" ,,, ,

a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal, ,,, ,

grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty, ,,, ,

to do something or to abstain from doing something (See Halsbury's Laws of England 4th Ed. Vol. 1, paragraph 122;,,,,

State of Haryana v. Subash Chander Marwaha & Ors. (1) Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors. (2) and Ferris,,,,

Extraordinary Legal Remedies paragraph 198.""" ,,,,

In the case of Tirumala Tirupathi Devasthanams v. K. Jotheeswara Pillai (dead) by LRs and others MANU/SC/7616/2007 : (2007) 9 Supreme Court,,,,

Cases 461, it has been held that:-" ,,,,

9. The principles, on which a writ of mandamus can be issued, are well settled and we will refer to only one decision rendered in The Bihar" ,,,,

Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh MANU/SC/0060/1977 : AIR 1977 SC 21,4 where this Court observed as" ,,,,

under:- ,,,,

A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the" ,,,,

part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute ,,,,

and to keep subordinate tribunals and officers exercising public functions within the limits of their jurisdiction. It follows, therefore, that in order that" ,,,,

mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved" ,,,,

party has a legal right under the statute to enforce its performance.""" ,,,,

16. None of the decisions cited on behalf of the petitioner would assist the petitioner's case for seeking regularisation of her services In the absence of ,,,,

statutory provision. Moreover, factual aspects of the cited decisions are entirely different and are not related to regularisation of contract appointees." ,,,,

The petitioner relied upon decision in Dr. Gagan Inder Kaur's case (Supra) which is of the year 1995. In the said case the ad hoc appointment of the ,,,,

petitioners was held as regular. In Guneeta Chadha's case (Supra), which is of the year 2001, this Court held that ad hoc appointees are to be treated" ,,,,

as having been regularly appointed. In Lalit Kumar Verma's case (Supra), while referring to Umadevi's case, relief was refused to the employees. In" ,,,,

Smt. Shashi Tejpal's case (Supra), this Court In the year 2008, in the matter of grants-in-aid regular appointment against un-aided post, held that" ,,,,

regular appointment against un-aided post to be treated against aided. In

Sumangal Roy's case (Supra) decided in 2007 by this Court, ad hoc",,,,,

appointment to the post of Lecturer, made in the year 2001 was directed to be treated as regular and to grant consequential benefits. Since that",,,,,

direction was not implemented, once again they approached the Court. In the said case, there is no reference to Umadevi's case (Supra). In",,,,,

Maninder Singh's case (Supra), decided by this Court in 2009, with reference to Sumangal Roy's case (Supra) and there is no reference to",,,,,

Umadevi's case. In Nihai Singh's case (Supra) decided in the year 2013, having regard to the factual aspects of the case, Umadevi's case was",,,,,

distinguished and direction was given to regularise the services by creating posts. In Narendra Kumar Tripathi's case (Supra) issue involved was of",,,,,

counting of ad hoc service towards seniority.,,,,,

17. The respondent's counsel relied on Sadanandam's case (Supra) and S.L. Dutta's case (Supra), both relate to policy matters pertaining to",,,,,

recruitment. In Sukanti Mohapatra's case (Supra), the judgment pertains to inter se seniority between regular and irregular appointees, which is not",,,,,

relevant to the present case. The decision by Constitution Bench in Umadevi's case (Supra), of the year 2006, is relevant to the present case.",,,,,

18. The decision in Tutu Das (Dutta)'s case (Supra), relied upon by the respondent's counsel is relevant to the present case, wherein Supreme Court",,,,,

has referred to number of judgments including Umadevi's case (Supra), to hold that regularisation of daily wagers is not permissible. It is necessary to",,,,,

take note of paragraph 12 of the judgment, which reads as follows:-",,,,,

12. What was considered to be permissible at a given point of time keeping in view the decisions of this Court which had then been operating in the",,,,,

field, does no longer hold good. Indisputably the situation has completely changed in view of a large number of decisions rendered by this Court in last",,,,,

15 years or so. It was felt that no appointment should be made contrary to the statutory provisions governing recruitment or the rules framed in that",,,,,

behalf under a statute or the proviso appended to Article 309 of the Constitution of India."",,,,,

In Nanuram Yadav's case (Supra) though matter relates to ad hoc appointment and regularisation, the facts of the case are entirely different.",,,,,

Therefore, it is not a relevant to the present case. The decision in Mamata Mohanty's case (Supra) of the year 2011, is also not relevant, since the",,,,,

matter pertains to grant of UGC pay scales with reference to lack of qualification etc.,,,,

19. The Administration of the States has to be carried on through the agency of large number of persons employed in various services and posts under,,,,

the States. The services under the State Governments consist of civil services. There is relationship of master and servant between the States and its,,,,

servants but such relationship is not left to be regulated as a mere contractual relationship in view of the provisions contained in part III of the,,,,

Constitution (Fundamental rights) and part XIV (Articles 309 to 323). Their rights and obligations are all required to be determined by the provisions of,,,,

statutes and statutory rules which may be framed or altered by the competent authority unilaterally and are not to be determined by consent of both,,,,

the parties as in the case of contractual relationship. Matters relating to the services include the power to create or abolish the services or posts fixing,,,,

the strength of a cadre, prescription of powers and duties attached to the post and every matter relating to services including matters relating to",,,,

recruitment and conditions of service. It is competent for the legislature to provide for all matters relating to the services in exercise of its legislative,,,,

power. Rules framed under Article 309 have to be strictly confined to recruitment and conditions of services of persons mentioned therein. Under,,,,

Article 309 the power of legislature to regulate recruitment and conditions of service is wide and includes power to constitute a new cadre by merging,,,,

certain existing cadres. Subject to the law made by legislature the rule has the same efficacy as that of legislative enactment. This legislative power,,,,

carries with it the power to amend or alter the rules with retrospective effect. A rule made in exercise of the power under the proviso to Article 309,,,,

constitutes law within the meaning of Article 235. For the same reason such rule may be struck down only on such ground as may invalidate a,,,,

legislative measure, e.g., violation of Articles 14 and 16 and not because the Court considers it to be unreasonable.",,,,

20. In Umadevi's case (Supra) it was held that adherence to the rule of equality in Public Employment is a basic feature of our Constitution. Court,,,,

would certainly be disabled from passing an order upholding of Article 14 in ordering the overlooking of the need to comply with the requirements of,,,,

Article 14 read with Article 16 of the Constitution of India. The Court further rejected the prayer that ad hoc appointees working for long to be,,,,

considered for regularisation as such a course only encourages the State to flout its own rules of recruitment and would confer undue benefits on,,,,

some at the cost of many waiting to compete.,,,,

21. The next word, which is of utmost importance in deciding the issue in this case, is the meaning of the word 'regularisation'. The Constitution",,,,

Bench in Umadevi's case (Supra) has approved the judgments in (1) State of Mysore v. S.V. Narayanappa MANU/SC/0232/1966 : 1967 (1) SCR,,,,

128 (2) R.N. Nanjundappa v. T. Thimmiah & another MANU/SC/0680/1971 : (1972) 1 SCC 40 9 and (3) B.N. Nagarajan and others v. State of,,,,

Karnataka & others MANU/SC/0450/1979 : (1979) 3 SCR 93, 7 where this word has been explained. To understand the concept of regularisation, it",,,,

is necessary to look into these decisions.,,,,

22 . In R.N. Nanjundappa's case (Supra), the Hon'ble Supreme Court while considering the rules providing for methods of recruitment by promotion,",,,,

selection or competitive examination has held as under:-,,,,

26. regularisation cannot be said to be a form of appointment. Counsel on behalf of the respondent contended that regularisation would mean",,,,

conferring the quality of permanence on the appointment whereas Counsel on behalf of the State contended that regularisation did not mean,,,,

permanence but that it was a case of regularisation of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in,,,,

infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularised. Ratification or regularisation is possible",,,,

of an act, which is within the power and province of the authority, but there has been some non-compliance with procedure or manner, which does not",,,,

go to the root of the appointment. regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a,,,,

new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."",,,,

23.1n B.N. Nagarajan's case (Supra), the meaning of the word 'regular' and 'regularisation' has been further explained:-",,,,

Firstly, the words ""regular"" or ""regularisation"" do not connote permanence. They are terms calculated to condone any procedural irregularities and are",,,,

meant to cure only such defects as are attributable to the methodology followed in making the appointments. They cannot be construed so as to,,,,

convey an idea of the nature of tenure of the appointments. When rules framed under Article 309 of the Constitution of India are in force, no",,,,,

regularisation is permissible in exercise of the executive powers of the Government under Art. 162 thereof in contravention of the rules,

24. A three judge Bench of the Apex Court in A. Umarani v. Registrar of CO-Operath Societies and others MANU/SC/0571/2004 : (2004) 7 SCC,,,,

112 dealing With regularisation has held as under:,,,,

Regularisation, In our considered opinion, is not and cannot be the mode of recruitment by any ""State"" within the meaning of Article 12 of the",,,,,

Constitution of India or any body or authority governed by a statutory Act or the Rules framed thereunder. It is also now well settled that an,,,,

appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other",,,,,

essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.,,,,,

40. It is equally well settled that those who come by back door should go through that door.,,,,,

41. Regularisation furthermore cannot give permanence to an employee whose services are accused hoc in nature.,,,,,

45. No regularisation is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointment have",,,,,

been made in contravention of the statutory rules.""",,,,,

25. The Constitution Bench in Umadevi's case (Supra) dealing with regularisation has held as under:-,,,,

17. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in",,,,,

appropriate cases, would have only the right to regularise an appointment made after following the due procedure, even though a non-fundamental",,,,,

element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the",,,,,

court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf,",,,,

can be treated as permanent or can be directed to be treated as permanent.,,,,,

18. XXX XXX XXX,,,,

19. One aspect arises. Obviously, the State is also controlled by economic

considerations and financial implications of any public employment. The",,,,,
viability of the department or the instrumentality of the project is also of equal
concern for the State. The State works out the scheme taking into,,,,
consideration the Financial implications and the economic aspects. Can the court
impose on the State a financial burden of this nature by insisting on,,,,
regularisation or permanence in employment, when those employed temporarily
are not needed permanently or regularly? As an example, we can",,,,,
envisage a direction to give permanent employment to all those who are being
temporarily or casually employed in a public sector undertaking.,,,,,
The burden may become so heavy by such a direction that the undertaking itself
may collapse under its own weight. It Is not as if this had not,,,,
happened. So, the court ought not to impose a financial burden on the State by
such directions, as such directions may turn counter-productive """,,,,,

xxxxxxx,,,

26. Subsequently, the ratio of the Constitution Bench judgement has been
followed as reiterated for declining the claim of regularization of services",,,,,
made by the ad hoc/temporary daily wage/casual employment in (i) Indian
Drugs and Pharmaceuticals Ltd MANU/SC/4993/2006 : (2007) 1 scc 408;,,,,
(ii) Gangadhar Pillai v. Simens Ltd. MANU/SC/8652/2006 : (2007) 1 SCC 53;
3(iii) Kendriya Vidyalaya Sangthan v. L.V. Subramanyeshwara and,,,,
another reported Manu /SC/2322/2007 : (2007) 5 SCC 326; and (iv) Hindustan
Aeronautics Ltd. v. Dan Bahadur Singh and Others reported In,,,,
MANU/SC/7373/2007 : (2007) 6 SCC 207.,,,,,

27. The doubts raised In UP State Electricity Board v. Pooran Chandra Pandey
MANU/SC/8004/2007 : (2007) 11 SCC 9, 2on the applicability of",,,,,
Constitution Bench in Umadevi's case (Supra) in a case where regularisation is
sought for in pursuance of Article 14 of the Constitution or the conflict,,,,
with the judgment of the seven judges bench in Maneka Gandhi v. Union of India
MANU/SC/0133/1978 : (1978) 1 SCC 24, 8has also been set at rest",,,,,

In the case of Official Liquidator v. Dayanand and others MANU/SC/4591/2008 :
(2008) 10 SCC 1.,,,,,

28. From the above discussion, it is clear that the law regarding regularisation is
now well settled by the decision of the Constitution Bench of the",,,,,

Apex Court in Umadevi's case (Supra). The said judgment holds the field and is
binding.,,,,,

29. What could be deduced from the cited decision is as under:-,,,,

(i) Any public employment has to be in terms of the Constitutional scheme.,,,,

(ii) Adherence to the rule of equality in public employment is a basic feature of our Constitution.,,,,

(iii) Regular appointment must be the rule.,,,,

(iv) A regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be",,,,

filled up. (v) The appointment should be in terms of relevant rules and after a proper competition among the qualified persons.,,,,

Otherwise, such appointment would not confer any right on the appointee.",,,,

(vi) If a contractual appointment is made, the appointment comes to an end at the end of the contract. The Government or the instrumentality of the",,,,

State cannot confer any permanency of such employment either by way of regularisation or by way of absorption.,,,,

(vii) If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.",,,,

(viii) A temporary employee could not claim to be made permanent on the expiry of his term of appointment.,,,,

(ix) Merely because a temporary employee or a casual wage worker is continued for a time being beyond the term of his appointment, he would not",,,,

be entitled to be absorbed in regular service or made permanent, merely on the strength on such continuance, if the original appointment was not made",,,,

by following a due process of selection as envisaged by the relevant rules.,,,,

(X) Regularisation is not a mode of appointment.,,,,

(xi) The Government or the instrumentality of the State cannot regularise the appointment made contrary to the course of selection as envisaged by",,,,

the relevant rules governing the Posts.,,,,

(xii) The High Court acting under Article 226 of the Constitution of India should not issue directions for regularisation or permanent continuance unless",,,,

the recruitment itself was made regularly and in terms of the constitutional scheme.,,,,

(xiii) There should be no further by-passing of the constitutional requirement and regularization or making permanent those not duly appointed as per",,,,

the constitutional scheme.,,,,

30. The Constitutional principle is thus for providing equality of opportunity to all which mandatorily requires that each vacancy must be notified in,,,,

advance, meaning thereby that information of the recruitment must be disseminated in a reasonable manner in public domain ensuring maximum",,,,,

participation of all eligible candidates, thereby the right of equal opportunity and merit is effectuated.",,,,,

31. The petitioner though contended that she has been appointed on contract basis with due procedure, like advertisement and selection and in",,,,,

accordance with the Constitutional Scheme, but the nature of appointment is only for contract and it is for a limited period, that too with the condition",,,,,

that such appointment would be till regular recruitment is made through UPSC. Therefore, contention of the petitioner that due procedure has been",,,,,

followed while appointing her as a Lecturer/Assistant Professor, is distinguishable for the purpose of regularisation. In Umadevi's case (Supra), the",,,,,

Supreme Court has made clear that ""we also clarify that regularisation, if any already made, but not subjudice, need not be reopened based on this",,,,,

judgment, but there should be no further by-passing of the constitutional requirement and regularising or making permanent, those not duly appointed as",,,,,

per the constitutional scheme."""",,,,,

32. In Umadevi's case (Supra) there is an exception. General principles against regularisation like the employees who have worked for 10 years or,,,,

more against a sanctioned post without the benefit or protection of the interim order of any Court or Tribunal. Thus the employee should have been,,,,,

continued in service voluntarily and without break of more then 10 years and appointment of such employee should not be illegal even if irregular.,,,,

Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum,,,,,

qualifications, the appointments would be considered to be illegal. However, the employee while possessing the prescribed qualification and was",,,,,

working against sanctioned post but had been selected without undergoing the process of open competitive selection, such appointments are",,,,,

considered to be irregular. Umadevi's case (Supra) casts a duty upon the concerned Government or instrumentality to take necessary steps to,,,,,

regularise the services of those irregularly appointed employees who had served for more than 10 years without the benefit or protection of any,,,,,

interim orders of Courts or Tribunals as a one-time measure. The said direction was to be set in motion within 6 months from the date of its,

decision i.e. w.e.f. 10.4.2006. The true effect of the direction is that all employees who have worked for more than 10 years as on,

10. 4.2006, the date of decision in Umadevi's case (Supra) are entitled to be considered for regularisation, if otherwise they are eligible. Unfortunately,

petitioner's case does not fall within the principle laid down by the Supreme Court in the case of Umadevi's case (Supra). The conditions stipulated,

for regularisation would be prior to the date of disposal of Umadevi's case (supra) i.e. 10.4.2006. Consequently, it has no prospective application."

33. The equality clause enshrined in Article 16 requires that every appointment be made by an open advertisement as to enable all eligible persons to,

compete on merit. However, appointment of the petitioner on contract basis, it is crystal clear, was only for a limited period for 6 months, even though,

it was extended from time to time, one of the condition is that appointment is till the regular recruitment is made through UPSC. It is to be understood,

that a contractual appointment comes to an end at the end of the contract. It is also a term of the contract as well as the law regulating recruitment of,

persons on contract basis. Therefore, when such persons are to be recruited into service on permanent basis the law must again be followed i.e. all,

persons who are eligible be considered for appointment on permanent posts in accordance with the rules of recruitment and all of them should be,

given an opportunity by inviting applications indicating that selection and appointment to permanent/regular post/vacancy. That is the mandatory Policy,

of Articles 14 and 16 of the Constitution. If the regularisation of the petitioner is made, it is per se illegal and discriminatory as those eligible,

candidates, who had the requisite merit are denied the right to compete for the subject post. There is no intelligible differentia to treat the petitioner as,

a class by itself, so as to exclude other eligible candidates who possess requisite qualification and other eligibility criteria from being considered as,

Lecturer/Assistant Professor,

34. One of the petitioner's contention is that she has rendered service more than a decade on contract basis when she is over age for the recruitment,

In such eventuality, at the most the petitioner can seek for relaxation of age as approved by the Supreme Court in Umadevi's case (Supra)."

35. In view of the principles laid down by the Constitution Bench of the Supreme Court in Umadevi's case (Supra) and other subsequent judgments," ,,,,

the petitioner is held not entitled to seek for regularisation of her service either to the post of Lecturer or as Assistant Professor. Accordingly, we" ,,,,

decline to interfere with so far as denial of regularisation of the petitioner's services on the post of Lecturer/Assistant Professor is concerned. We also, ,,,,

uphold the AICTE (Pay Scales, Service Conditions and Qualifications for the Teachers and Academic Staff in Technical Institutions (Degree)" ,,,,

Regulations, 2010; Chandigarh College of Engineering and Technology, Chandigarh Administration, Professor, Associate Professor, Assistant" ,,,,

Professor, Assistant Professor in Applied Sciences and Senior Librarian (Group 'A' Post) Recruitment Rules, 2012 and advertisement dated" ,,,,

20.9.2013. ,,,,

41. The post of Accounting Consultants is not identified in Rules, 2004 and 2010, what has been identified is Accountant and appointing authority has" ,,,,

been identified as second respondent whereas petitioners have been selected and appointed by the delegation of the power to the Deputy, ,,,,

Commissioner by the Government. Therefore, their initial appointment on contract basis by the Deputy Commissioner cannot be ratified by the 1st" ,,,,

respondent or 2nd respondent to the extent of regularization of their services. If such regularization is permitted, it would amount to violation of" ,,,,

Articles 14 and 16 of the Constitution read with Rules, 2004 and 2010. Perusal of each of the endorsement even in the Special Rules 2002 and 2005" ,,,,

dealt by the Division Bench of this Court, which was also case of delegation of power to appoint on contract basis to the respective Deputy" ,,,,

Commissioner of the District even though appointing authority was Government/ Head of the Department. In the present case, appointing authority is" ,,,,

Head of The Department for Accountant post. It is evident that petitioners grievance has been considered at length even to the extent of violative of, ,,,,

Constitution Bench decision of the Honâ??ble Supreme Court in UMADEVIâ??s (3) case and Articles 14 and 16 of the Constitution and Rules," ,,,,

2010. Further, petitioners initial appointment is on contractual basis and it was purely temporary for a period of one year with a rider for any reason it" ,,,,

would not be made permanent. The right to regularization of a person on a purely contractual basis would depend on express or implied terms of the, ,,,,

contract appointment. Even though, for administrative exigency, period of contract has been renewed from 2007 to 2017, that apart, petitioners are" ,,,,

continuing by virtue of interim order to one of the Accounting Consultant post and not in the post of Accountant. Thus, petitioners have not made out a" ,,,,

case seeking for regularization and consequential benefits.,,,,

42. This Court had occasions to decide, â??Whether contract employees are entitled for regularization/ absorption or not? With reference to the" ,,,,

Special Rules, 2002 in fact, in the case decided, State Government has evolved a policy decision by framing Special Rules called â??Karnataka State" ,,,,

Civil Services (Absorption of Asst. Engineers and Junior Engineers appointed on contract basis and on ad-hoc basis in the water resource services.,,,,

(Special) Rules, 2002 and similarly, The Karnataka Civil Services (Absorption of persons appointed on contract basis against backlog vacancies in the" ,,,,

category of Assistant Engineers and Junior Engineers in the Departments of the Public works Engineering, Water Resources and Rural Development" ,,,,

and Panchayat Raj (Special) Rules 2005. Both the Special Rules were the subject matter before the State Administrative Tribunal wherein struck ,,,,

down the Special Rules, 2005 and upheld the validity of the Special Rules, 2002. Thereafter, the Tribunalâ??s orders were the subject matter before" ,,,,

this Court in W.P.Nos.41145-41158/2010 and Connected matters disposed of on 13.07.2012. This Court reversed the order of the Tribunal, while" ,,,,

striking down the Special Rule, 2002. Insofar as Special Rules, 2005, Tribunals order is affirmed. In other words, nullified the Special Rules in respect" ,,,,

of absorption and contract appointees. This Court in both the case of Special Rules, 2002 and 2005 elaborately and in depth considered various issues." ,,,,

In the case of Special Rules, 2002 it was considered exception to UMA DEVIâ??S case (3) in para 77 to 87 with reference to earlier decisions." ,,,,

Equality in para 97 and Discrimination in para 98. Subordinate legislation in para 101 to 105. Futile writs in para 109. Human problems in para 110 to ,,,,

113. In the case of Special Rules, 2005 it was considered the POST in para 66 to 69, Recruitment in para 70 to 74, Absorption in para 75 to 81," ,,,,

Absorption as a mode of recruitment in para 82-83, Regularisation in para 84 to 91, Regularisation as a mode of recruitment in para 92, Law which" ,,,,

holds the field today in para.93 to 130, Article 162 in para 131 to 133, Absorption Rules in Para.134 to 140, Resonable Classification in para.141," ,,,,

Equality in para 142, Discrimination in para 143 and 144, Challenge to subordinate legislation in para 145 to 148, Absorption of contract employees in" ,,,,

para 149, Regularisation of contract employees in para 150 to 157, Futile writ in para 158, discrimination among SC and ST in para 159, Abandonment" ,,,,

in para 160 and Human Problems in para 161 to 163. The relevant paragraph of the Order of this Court in W.P.Nos.41145-41158/2010 & connected ,,,,

matters (supra) as regards Special Rules, 2002 decision, operative portion of the order is reproduced herein;" ,,,,

â??All the writ petitions challenging the Karnataka State Civil Services (Absorption of Assistant Engineers and Junior Engineers appointed on ,,,,

contract basis and ad hoc basis in the Water Resources Services) (Special) Rules 2002 are allowed, setting aside the order passed by the Karnataka" ,,,,

Administrative Tribunal dated 9th April 2010 in Application No. 3005/2003 and other connected matters. ,,,,

1. The Karnataka State Civil Services (Absorption of Assistant Engineers and Junior Engineers appointed on contract basis and ad hoc basis in the ,,,,

Water Resources Services) (Special) Rules 2002, are contrary to Article 16(3) as well as Article 14 and 16 of the Constitution of India as void ab" ,,,,

initio, and accordingly it is struck down." ,,,,

2. The respondent shall initiate recruitment process to the posts which are absorbed under the impugned Absorption Rules forthwith and complete the ,,,,

same within a period of six months from today and the outer limit being one year from today. All the persons absorbed/appointed/ regularized under ,,,,

the impugned Rules are permitted to continue in service till the appointments are made in pursuance of the recruitment in terms of Karnataka Public ,,,,

Works (Irrigation Services (Recruitment of Assistant Engineers and Junior Engineers) (Special) Rules, 1998, within a period of one year, whichever is" ,,,,

earlier. ,,,,

3. The eligibility for applying as against these vacancies would be that all persons who possess the requisite educational qualification as well as age as ,,,,

on 11.2.1999, the day on which aforesaid special rules came into force. Only those persons who possess the requisite qualification as on 11.2.1999" ,,,,

shall be considered by filling up those vacancies which have been filled up under the impugned Absorption Rules. Parties to bear their own costsâ?? ,,,,

43. The relevant paragraph of the operative portion of the order in W.P.Nos.15314-15378/2009 and connected matters disposed of on 13.07.2012 in,,,,

respect of Special Rules, 2005 is reproduced here under:",,,,

â??All these writ petitions challenging the impugned order passed by the Karnataka Administrative Tribunal in application No. 6258/2003 and other,,,,

connected matters dated 25th day of May, 2009, are dismissed.",,,,

1) The order passed by the Karnataka Administrative Tribunal declaring that the Karnataka Civil Services (Absorption of persons appointed on,,,,

contract basis against backlog vacancies in the category of Assistant Engineers and Junior Engineers in the Department of Public Works Engineering,",,,,

Water Resources and Rural Development and Panchayat Raj) (Special) Rules, 2005 as being contrary to the provisions of Article 14 and 16 of the",,,,

Constitution of India and the several decisions of the Supreme Court and consequently striking down the said Rules is hereby affirmed.,,,,,

2) The respondents shall initiate recruitment process to the backlog vacancies under the provisions of the Karnataka State Civil Services (Unfilled,,,,

vacancies reserved for the persons belonging to the Scheduled Caste/ Scheduled Tribes) (Special Recruitment)] Rules 2001, i.e., Backlog Rules and",,,,

complete the same within a period of 6 months from today and the outer limit being one year from today.,,,,,

3) The eligibility for applying as against those backlog vacancies would be the qualification, educational and age prescribed in the Backlog Rules of",,,,

2001 as on the day the said Rules came into force i.e., 21st of November 2001.",,,,

Only those persons who possessed the requisite qualification as on 21st November 2001 shall be considered for filling up of those backlog vacancies.,,,,,

4) All the persons absorbed/appointed/regulari zed under the impugned Rules are permitted to be continued in service till the appointments are,,,,

made in pursuance of the Rules of 2001 as aforesaid or for a period of one year, which ever is earlier.",,,,

5) This recruitment to fill up the backlog vacancies shall apply only to the backlog vacancies which were existing on the day the Backlog Rules came,,,,

into force i.e., 21st of November, 2001.",,,,

6) Parties to bear their own costsâ??.,,,,

44. The Division Bench matters were taken-up before the Apex Court wherein decisions of the Division Bench have been affirmed.,,,,

45. State/Department directed henceforth, to consider and make regular APPOINTMENTS only in terms of Cadre Recruitment Rules, 2010, â??A",,,,

person appointed temporarily on ad hoc basis has no right to the post. A fortiori, casual or daily-rated workers or stop-gap appointees will also have",,,,

no such right â?" Merely because a person continues under interim orders of the court, such continuance to the post cannot confer any right to",,,,

continuance or regularisation. Successive extensions of temporary appointment does not give rise to legitimate expectation of regularization. State,,,,

Government should be a model Employer. For umpteen departments recruitment and appointment to each of the Public Post is required to comply,,,,

Constitutional scheme/ provision like Articles 14, 16, 309 read with KCSR Act, 1978 and respective rules of recruitment governing the post. In this",,,,

regard Chief Secretary of the State must issue appropriate direction to each of the selecting and appointing authority to adhere to the aforesaid,,,,

provisions, since errors are being committed even today, despite Constitution bench decision in the case of UMA DEVIâ??s (3) case supra rendered",,,,

in 2006.,,,,

46. Right to regularization of a person on a purely contractual basis would depend on express or implied terms of the contract as reported in STATE,,,,

OF ORISSA vs CHANDRA SEKHAR MISHRA reported in (2002)10 SCC 583. Para. 4 of the said judgment which is relevant reads as under:,,,,

â??4. In our opinion, there were two fundamental errors in that relief being granted to the respondent. Firstly, the services of the respondent were",,,,

terminated with effect from 31.1.1978 and the respondent did not approach the Tribunal within the period of limitation provided by the statute. On this,,,,

ground alone, the Tribunal should not have entertained the appeal. Secondly, the respondent was appointed on 1-2-1972 on contract basis for a period",,,,

of three years. This period of contract was extended up to 31-1-1978. When the respondent was only a contractual employee, there could be no",,,,

question of his being granted the relief of being directed to be appointed as a regular employeeâ??.",,,,

47. In view of decisions in Special Rules 2002 and 2005 and the fact that in RAJESHâ??S case all the issues dealt by the Division Bench of this,,,,

Court are not considered, so also in the case of NIHAL SINGH supra, both the decisions do not assist the petitioner's case. In NIHAL",,,,,

SINGH's case factual aspects are entirely different, in that case it was interpretation of Section 17 of the Police act in that State.",,,,

ORDER,,,,

47. Accordingly, the Writ Petitions stand dismissed. No order as to costs.",,,,

Copy of this judgment be communicated to the Chief Secretary, State of Karnataka through Registry of this Court for reference and communication to",,,,,

each of the Department of the State to avoid contract appointment for longer period. Further, resort for regular recruitment to each of the public post",,,,

in accordance with the Rules of recruitment governing the post and to comply with the Constitutional provisions read with Constitution Bench decision,,,,

in the case of UMADEVI (3) supra [PARA 53].,,,,