
(2005) 02 GAU CK 0047
In the Gauhati High Court
Case No : WP (C) No. 452 of 2003

Pritish Ranjan Roy and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 142, 16, 162

Citation : (2006) 2 GLR 294 : (2005) 1 GLT 237

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : C.S. Sinha and D.C. Saha, for the Appellant; U.B. Saha and T.D. Majumder, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Mr. C. S. Sinha, the learned Counsel appearing on behalf of the petitioners and Mr. U.B. Saha, the learned, Sr. Government Advocate assisted by Mr. T.D. Majumder, the learned Counsel appearing on behalf of the respondents.

2. In this writ petition prayer has been made for directing the respondent to regularize the services of the petitioners to the post/grade commensurate to their educational qualification since the date of their initial joining to the service as Contingent Workers along with consequential service benefits by obtaining financial concurrence of the State Government and also for issuance of writ of certiorari quashing the appointment of 500 Lower Division Clerks/Panchayat Secretaries as illegal and arbitrary along with the prayer for declaring the Memorandum No. F.10(16)-Fin(G)/99 dated 22.3.2001 as unjustified and unreasonable. The facts necessary for adjudication of the present writ petition are that some of the petitioners being High School Pass, some being holding Senior Secondary Certificate and some being Graduate were deployed in the Panchayat Department as Contingent Workers (in Group-C category) in between October and November 1990 as indicated in para 2 of the writ petition. Initially

they along with 1666 persons were engaged at the rate of Rs. 24 per day however, subsequently they were deployed in different Departments of the State Government at the enhance rate of Rs. 65 per day from 1.1.2003 and for such purpose even budgetary allocations were made from 1994-95 to 2003-2-4. On 20.3.1992 the Director of Panchayats, Government of Tripura issued Memorandum No. F. 1(5-152)-Estt/PR/87/9645-12,333 specifying functions/duties of the Contingent/Daily Rated Workers at the Gaon Panchayat Level accordingly, the services of the petitioners were to be utilized in different sphere including maintaining and running the Panchayat Libraries, wherever, existing and in addition to their engagement in office work and subsequently by another Notification dated 11.10.1994 many functions of Rural Development, Food Department, Social Welfare & Social Welfare Department, I.F.C. & P.H.C. Department, Revenue Department, Animal Resources Development Department, Industries Department and Forest Department were entrusted to the Panchayat Department and as a result, these Contingent Workers of the Panchayat Department were deployed in these Departments. However, more than five hundred appointments of Lower Division Clerks/Panchayat Secretaries/Bengali Typists-cum-L.D. Clerk were made on fixed pay basis in July 2003 ignoring the claims of the petitioners despite their continuous deployment for about 14 years. According to the petitioners 26 similarly situated Contingent Workers deployed prior to the year 1990 were given regular appointments to the posts of Panchayat Secretaries with regular pay scale of Rs. 930-24, vide order dated 20.10.1992 without obtaining concurrence even taking of Finance Department. On enquiry, it has been reveals that in reference to Memorandum No. F.10(16)-Fin(G)/99 dated 22.3.2001 the question of regularisation of Daily Rated Workers/Contingent Workers (Group-D and Group-C) came up for consideration by the State Government where 10% of the total vacancies of Group-C and Group-D posts arising in a particular year for direct recruitment were to be filled up from amongst the existing Daily Rated Workers/Contingent Workers, like the petitioners. According to the petitioners, the Memorandum dated 22.3.2001 is unreasonable and unjustified as the same has imposed arbitrary restrictions specifying only 10% of the vacancies for a particular year for direct recruitment and by limiting such percentage of recruitment.

4. The counter affidavit has been filed. It has been submitted by Mr. U.B. Saha, the learned Sr. Government Advocate for the respondents that the petitioners were engaged in the Panchayat Department illegally during 1990 along with large number of Contingent Workers without any approval of the Finance Department, Government of Tripura, without any vacancy or posts without calling names from employment exchange, without advertising or publishing to the public and both, without constituting selection committee to conduct selection, interview or to follow reservation policy and all these deployment was from backdoor in defiance of even norms of general recruitment, however, in contingency to cop up the work at the prevailing time. In reference to the assertions made in the counter affidavit these illegally appointed petitioners along with others were to be

disengaged for financial constraints of State Government, however, they are continuing at the courtesy of the State Government. The wages, as prescribed by the State Government from time to time are also being paid to the petitioners also keeping in view the problem of large number of contingent workers" even a scheme of regularisation dated 22.3.2001 was promulgated and many of the similarly situated contingent workers or daily rated workers engaged in the year 1990 were given regular status after being declared successful in the recruitment, however, it is not known whether the petitioners availed of the opportunities or not ?

5. The scheme of regularisation is extracted here as below : -

"Government of Tripura Department of Finance

No. F.10(16)Fin(G)/99

Agartala, March 22, 2001

MEMORANDUM

Subject : - Introduction of special scheme for regularisation of Daily Rated Workers, Contingent Workers, etc.

The question of regularisation of Daily Rate/Contingent, etc. Workers (both Gr-D & C) has been under consideration of the Government for sometime. Keeping this in view and after considering all the aspects, the Governor of Tripura is pleased to order that henceforth 10 percent of the total vacancies of Gr.-C or Gr-D posts, as the case may be, arising in a particular year for direct recruitment may be filled up from amongst the existing eligible Daily Rated Workers/Contingent Workers etc. of the following categories, who were engaged against the post created as well as continued upto date with the concurrence of the Finance Department.

(a) Monthly Rated Contingent Workers (Gr-C& Gr-D)

(b) Daily Rated Contingent Workers (Gr-C & Gr-D)

(c) Contract Gr-D

(d) Folk Artist.

2. Such Daily Rated Contingent Workers may become eligible after putting in at least 5 years of continuous and satisfactory service for consideration of their absorption in regular service.

3. While regularizing them the existing provision of SC/ST reservation shall be applicable.

4. This scheme of regularisation shall come into force with immediate effect.

Sd/-N.C. Sen Joint Secretary Government of Tripura

To

All Departments/Heads of Departments/Special Secretary (Hone) Copy to:

The Accountant General Tripura."

6. The eligible Daily rated Workers/Contingent Workers etc. engaged against created posts with concurrence of the Finance Department were to be considered for regularisation. The policy so framed by the State Government are made in public interest and any exception to the recognized policy of the Government would invite caotic situation in the administration. Equity does not demand any deviation from the norms set out in the policy of the State. Therefore, the petitioners' case would only be considered for regularisation in the light of the policy of the Government. Remaining as contingent workers for long years do not confer upon the petitioners any right of consideration in violation of the policy of the Government. According to the petitioners it is the irregularities which could be regularized and not the illegalities and the petitioners initially illegally deployed as contingent /daily worker as such have no right to the post or could legally claim for regularisation in absence of the post and any rule framed for the purpose and thus may be disengaged. The petitioners never performed duties and responsibilities of regular employees. The case of the petitioners are not comparable to the case of regular employees of the Department. Doctrine of "equal pay for equal work" has no manner of application in the case in hand as according to the respondents none of the rights what to say any fundamental rights of petitioners are hit by the provisions of Articles 14, 16 and 21 of the Constitution.

7. The main contention of the learned Counsel for the petitioners, is that when the petitioner had been engaged for such a long period and had been working satisfactorily then the respondents must be regularized even after creating sufficient number of vacancies or posts if need and that they could not be thrown on roads, In support, he has placed reliance upon Central Welfare Board and Others Vs. Anjali Bepari (Ms) and Others, Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, Gujarat Agricultural University v. Rathod Labhu Bechar and Ors.. To strengthen the cause while placing reliance on the judgment of the Supreme Court in State of Haryana and others Vs. Piara Singh and others etc. etc., , Khagesh Kumar and others Vs. Inspector General of Registration and others, and State of U.P. and Ors. v. Putti Lal (1998) 1 UPLBEC 313, Learned Counsel for the petitioners has submitted that as in view of the observations made by the Supreme Court in Khagesh Kumar (supra) the writ petitioners there were entitled to be considered for regularisation under the provisions of the U.P. Regularisation of Ad-hoc Appointments (On Posts outside the Purview of the Public Service Commission) Rules, 1979 as amended upto date like this in present case petitioners may be directed for regularisation and equal pay for equal work especially in.

8. It. has been contended on behalf of the petitioner that there is an element of

public interest created by the Government in matters of appointment on daily wages for or in connection with the affairs of the State and consequently the daily rated employees get an element of public interest in the performance of their duties. The element of public interest being so pronounced, it cannot be repudiated, set of rules to be framed in consonance with the imperatives of Articles 14, 16, 38, 39, 41 and 43 of the Constitution and compatible with the reservation policy of the State in the matters governing appointment on daily wages for or in connection with the affairs of the State. The appointments of daily rated employees might be referable to contingent establishment but payments of wages would nonetheless be by the payment charged in the public fund and the State or its authority cannot be allowed to have a Carte blanche of lending out favour or bestowing benevolence on a chosen few on extraneous consideration and at the expenses of public exchequer. The daily rated employees engaged in Government Departments, do acquire in the course of time, a status and certain rights and privileges lending justification to interference by the court in order to protect such rights and privilege and the provisions contained in Articles 38, 39, 41 and 43 of the Constitution. A constitutional duty/ obligation is cast upon this Court to ensure that the laudable objectives sought to be achieved by the constitutional provisions afore-stated are not overreached by those duty it is to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice - social, economic and political - informs all the institutions of the National Life, to strive to minimize the inequality in income and endeavor to eliminate inequalities in status, facilities and opportunities amongst individuals; to direct its policy towards securing equal pay for equal work, health and strength of workers, and, within the limits of its economic capacity to make effective provisions for securing the right to work. The court can take judicial notice of the fact that the practice of appointment of daily rated employees that is in vogue in Government Departments, cannot be abandoned except on pains of imperiling the public interest. The daily rated employees if allowed to continue for "a considerable length of time, acquire a status and regard being had to directive principles of state policy, enshrined in Part IV of the Constitution, the courts very often intervene in the matter with a view to doing justice to such employees and granting them full-fledged status of a Government servant. It goes without saying that the daily rated/ casual employees constitute themselves a Class of Government servants. In *Chief Conservator of Forest v. Jagannath Maruti Kon Bhare* AIR 1996 SC 967, the Supreme Court affirmed the decision of the Industrial Court holding that employment of casual/temporary basis for several years (5 to 6 years in that case) amounts to unfair labour practice.

9. The daily wagers may be regularized, provided vacancies, posts are existing and to consonance to rules, regulations, scheme or Government Order for the purpose compatible with the constitutional provisions particularly those embodied in Articles 14, 16, 38, 39, 41 and 43 of the Constitution with particular reference to the doctrine of Social Justice which the Supreme Court has expatiated upon in

Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], , as under:

Social justice, equality and dignity of persons are cornerstone of social democracy Social justice is a dynamic device to mitigate the suffering of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live their lives with dignity of person.... Social security, just and humane conditions of work and leisure of workman are part of his meaningful right to life and to achieve self-express or of his personality and to enjoy the life with dignity.

10. The learned Counsel for the petitioners in support of the aforementioned contentions has referred the decision of Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, ; Sushil Kumar Yadunath Jha Vs. Union of India (UOI) and Others, ; Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, and Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, as well as the decision of A.K. Jain v. Union of India 2 SLJ 203 SC (Sic) and Rajbinder v. State of Punjab and Ors. 2 SLJ 521 SC(Sic).

11. The references were made on behalf of the petitioner on Daily rated Casual Labour through Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, ; Bhagwati Prasad v. Delhi State Mineral Development Corporation 1990 (1) SC 361; Bharat Petroleum Management v. Bharat Petroleum Co. Ltd. 1990 (2) SCC 256 , Dharendra Chamoli and Another Vs. State of U.P.,

12. In view of three Judges" Bench decision of the Supreme Court in (1990) 1 SCC 351, Bhagwati Prasad v. Delhi State Mineral Development Corporation the learned Counsel for the petitioner has submitted that the writ petitioners were having relevant educational qualification and were serving for long period with artificial breaks in service, could be considered for regularisation in phases in accordance with seniority.

13. In Rathor Labhu Bechar (supra) the Supreme Court has observed that daily rated laborers engaged dehors the rules-as plumbers, carpenters, sweepers, pump operators, helpers and masons by fully State-aided University were allowed to continue as such for a long period, therefore, non-regularizing the services of such daily wagers by University was held as an unfair labour practice and the daily rated laborers were indicated to be considered for absorption against existing vacant posts in accordance with the rules and if necessary by relaxing qualification and creating necessary number of posts.

14. In (2000) 7 SCC 74 , Hindustan Machines Tools and Ors. v. M. Rangareddy and Ors., the Supreme Court following the decisions of Piara Singh (supra); Raj Narain Prasad and Others Vs. State of U.P. and Others, and Niadar and Anr. v. Delhi Administration and Anr., (1992) 4 SCC 112 , where the casual labourers deployed (3 to 10 years) in such multi-unit public sector undertaking of Central

Government claiming regularization while undertaking was facing great financial difficulties, the direction of the High Court to prepare an absorption scheme to such undertaking in the light of the provisions of Articles 38(1), 39(e) and 43 of Constitution was not interfered with, however, the liberty was granted to such undertaking, while framing the scheme, to assess the requirement of regular work force and necessity to alleviate the suffering of such workers and then to fix the strength of force to enable the workers to get the benefit of regularization within a reasonable time and only those who were fulfilling the conditions of eligibility with relaxation of age in prevailing rules, were directed to be considered for regularization.

Following submissions were also made for and on behalf of the respondents.

15. Unfortunately, however, in none of the aforementioned cases, the Supreme Court considered its earlier binding precedents on the question of manner of regularization, that is. *State of Mysore and Another Vs. S.V. Narayanappa*, : *State of Mysore and Another Vs. S.V. Narayanappa*, and *R.N. Nanjundappa Vs. T. Thimmiah and Another*, . The aforementioned judgments of the Supreme Court were followed by a three Judges Bench of the Supreme Court in *B.N. Nagarajan and Others Vs. State of Karnataka and Others*,

16. In *R.N. Nainjudappa (supra)*, the Supreme Court held that if an appointment is made in infraction of the rules or if it is in violation of the provisions of the Constitution, such appointments being illegal, the same cannot be regularized. It was further held that ratification or regularization 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. It held "Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be in introduce a new head appointment in defiance of rules or it may have the effect of setting of naught the rules". The Supreme Court in that case negatived the contention that regularisation in employment is possible by taking recourse of Article 162 of the Constitution of India. The Supreme Court held that Article 162 does not confer power to regularize nor does it confer power on the Government to make rules for recruitment or conditions of service.

17. In *B.N. Nagarajan and Others Vs. State of Karnataka and Others*, , it was held:

It was argued that the regularisation of the promotion gave it the colour of permanence and the appointments of the promotes as Assistant Engineers must, therefore, be deemed to have been made substantively right from the 1st November, 1956. The argument, however, is unacceptable to us for two reasons. Firstly the words "regular" or "regularisation" do not connote permanence. They are terms calculated to condone any procedural irregularities and are meant to care 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 Lenore of the appointment.

18. Articles 16 of the Constitution of India provides that all citizens of India are entitled to get equal opportunity for the purpose of obtaining employment in State Service.

19. In order to fulfill such a condition, it is necessary to consider the case of all citizens who are eligible to be appointed. For that purpose, it is not only necessary to call for the names from the Employment Exchange, but the same is some cases also required due advertisement of posts in Newspapers by notifying the vacancies and the requisite qualifications therefore so that all eligible candidates may apply for their appointment in the said posts.

20. Right to work is not a fundamental right but a right to be considered for appointment is as enshrined under Articles 14 and 16 of the Constitution of India.

21. In Delhi Development Horticulture Employees" Union Vs. Delhi Administration, Delhi and others, , it was observed : -

We may take note of the pernicious consequences to which the direction of regularisation of workmen on the only ground that they have put in works for 240 or more days, has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in Employment Exchange, it has become a common practice to ignore the Employment Exchange and the person registered in the Employment Exchange, and to employ and get employed directly those who are either not registered or are lower in the long waiting list in the employment register. The Court can take judicial notice of the fact that such employment is sought and given directly for various illegal consideration including money. The employment is given for temporary periods with technical breaks to circumvent the relevant rules, and it continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularized. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchange for years. Not all those who gain such back door entry in the employment are in need of the particular jobs. Though entry in the employment are in need of the particular jobs. Though already employed elsewhere. They join the job for better and secured prospects. That is why most of the cases which come to the Courts are of employment in Government Departments, Public Undertaking or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect to indiscriminate regularisations has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that those who are employed on such works are required to be continued for 240 more days have to be absorbed as regular employee although the works are time bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests

thus jeopardized on both Courts.

22. In *Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others*, , the Supreme Court again held : -

Ad-hoc appointments, a convenient way of entry usually from backdoor, at times even in disregard of rules and regulations, are comparatively recent innovation to the service jurisprudence. They are individual problems to begin with, become a family problem in Court of Law. It is unjust and unfair to those who are lesser fortunate in society with little or no approach even though better qualified more meritorious and well deserving. The infection is widespread in Government or semi-Government departments or State financed institutions. It arises either because the appointing authority resorts to it deliberately as a favour or to accommodate someone or for any extraneous reason ignoring the regular procedure provided for recruitment as a pretext under emergency measure or to avoid loss of work etc. or the Rules or circulars issued by the department itself empower the authority to do so as a stop-gap arrangement. The former is an abuse of power. It is unpardonable. Even if it is found to have been resorted to as a genuine emergency measure the Courts should be reluctant to grant indulgence. Latter gives rise to equalities which have bothered Courts every now and then.

23. In *State of Punjab and others Vs. Surinder Kumar and others*, , it has been held:

There is still another reason why the High Court cannot be equated with this Court. The Constitution has, by article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it", which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by the judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge.

24. In *Sandeep Kumar and others Vs. State of Uttar Pradesh and others*, , the Supreme Court held : -

From the facts placed before us, it appears that the scheme under which the petitioners are working is of a very specific nature. There is no permanent need for the work and since it is a project for a particular purpose, it will not be possible to direct that the petitioner may be regularized in service.

25. The Supreme Court again reiterated aforementioned view in *Karnataka State Private College Stop-gap Lectures* (supra).

26. The Supreme Court in *J.K. Public Service Commission, etc. v. D. Narinder Mohan and Ors. etc.* 1993(4) SCC 597, it was held : -

Existence of Statutory Rules is not a condition precedent to appoint a eligible and

fit person to a post. The executive power is coextensive with legislative power of the State and under Article 162, the State can create civil posts and fill them up according to executive instructions consistent with Articles 14 and 16 of the Constitution. It is settled law that once statutory rules have been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but would only supplement the law.

27. In *State of Haryana and others Vs. Piara Singh and others etc. etc.*, the question regarding regularisation of ad-hoc appointees came up for consideration before the Supreme Court. It was held that normal rule would be regular appointment through the prescribed agency but exigency of administration may sometime call for an ad-hoc and/or temporary appointment to be made. Such ad-hoc or temporary appointee, the Supreme Court held, if allowed to continue for a fairly long span, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and service record and appointment does not run counter to the reservation policy of the State. Direction given by the High Court in that case for regularisation of every ad-hoc or temporary employee who had been continued for one year was held to be totally "untenable" and "unsustainable". In the case of *Piara Singh (supra)* the Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad-hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad-hoc or temporary appointment by regularly selected employees, as early as possible. The temporary employees also would get liberty to complete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad-hoc or temporary employee. Ad-hoc or temporary employee should not be replaced by another ad-hoc or temporary employee, he must be replaced by only regularly selected employee. The ad-hoc appointment should not be a device to circumvent the rule of reservation.

28. In *V. Sreenivasa Reddy and others Vs. Govt. of Andhra Pradesh and others*, the Supreme Court indicated as below:

"It is now well settled law that the appointment/promotion must be in accordance with the Rules, direct recruit takes his seniority from the date on which he starts discharging the duty of the post borne on the cadre while a temporary appointee appointed dehors the rules or on ad-hoc basis or to a fortuitous vacancy gets seniority from the date of regular appointment.

In *A.K. Bhatnagar v. Union of India (1991) 1 SCC 54*, Supreme Court deprecated the practice of the Government giving a go-by to the statutory rules or regulations, framed under proviso to Article 309 of the Constitution while making large scale departures, and indicated that by acting in a manner contrary to the rules does create problem and dislocation.

29. In the Dharwad District (supra), it was observed by the Supreme Court that it would be unfair on the part of the State to keep an employee on daily wages for indefinite period and such a treatment is violative of equality clause of Articles 14 and 16 of the Constitution.

30. In 1999 (82) FLR 76, Channey Lal and Ors. v. Director, Malaria Research Centre, New Delhi and Anr., where the petitioners deployed on daily wages were orally asked not to come to they were entitled to the protection of Article 311 of the Constitution, High Court, Allahabad following the decision of Himanshu Kumar Vidyarthi v. State of Bihar 1997 (76) FIR 237, has held that the daily wagers working as a workman deployed in a project does not hold civil post under the State and have no right to the post, these daily wagers can not be said to work on temporary or permanent basis and are not entitled to the protection of provisions of Article 311 of the Constitution, and since the daily wagers have no right to the post as such the concept of retrenchment can not be extended to such daily wage employee and disengagement of such daily wagger can not be said to be arbitrary in view of Himanshu Kumar Vidyarthi (supra). The disengagement of deployment of daily wagger, who is engaged for a day, is not a termination of service. Since the daily wage labour is engaged only on the basis of a contract lasting for a day and each engagement is a fresh, non-engagement or disengagement is not held to be arbitrary. In view of Pushpd Agarwal v. Regional Inspectress of Girls Schools, Meerut 1995 (70) FIR 20, the principle of retrenchment as provided under Central Industrial Disputes Act and Rules framed thereunder is also attracted in respect of a workman governed under the U.P. Industrial Disputes Act and the Rules framed thereunder.

31. In State of Assam and Others Vs. Shri Kanak Chandra Dutta, the Supreme Court (Constitution Bench) has also held that casual labourer is not holder of civil post.

32. The High (DB) Allahabad in 1992 ACJ 1366, Zakir Hussain v. Engineer-in-Chief, Irrigation Department; UP, Lucknow, has held that daily wagger has no right to the post and there must be regular or permanent post and funds must be available for payment of salary and the daily wagers are to be qualified for appointment to the post and by virtue of only haying worked for three years they can not claim regularisation as a matter of right and the regularisation cannot be made as a thumb of rule, and this Court relegated the matter for adjudication and avail the alternative remedy for claiming the relief in reference to Section 25-F of the Industrial Disputes Act.

33. In State of U.P. Vs. Labour Court, Haldwani and another, it was held that the engagement of daily wagger in adjudication and avail the alternative remedy for claiming the relief in reference to Section 25-F of the Industrial Disputes Act.

34. In State of U.P. Vs. Labour Court, Haldwani and another, it was held that the engagement of daily wagger in the Irrigation Department comes to an end every evening. Refusal to employ him from a particular day, his disengagement was not

under the provision of Section 25-F of Industrial Disputes Act. It was observed in Para 6 of the above case as below:

Employment to Government service in the Irrigation Department is regulated by statutory rules. Presently, the respondent No. 2 was not employed in accordance with the rules. For engaging a person casually on day to day basis the statutory rules are not required to be followed under which the posts have to be advertised and only the best from the market have to be picked up keeping in view reservation provided from certain classes. Thus, every eligible person has an opportunity to participate in the recruitment process. This is not so in the case of daily wager in whose case even regularisation regarding age, medical fitness, character roll etc. are not observed. Therefore, daily and casual workers who are engaged in disregard of all rules cannot be allowed to enter Government service through the back door and the Labour Court cannot be allowed to be used as a legal means for such back door entry. The anomalous situation that the impugned award creates can be seen from the fact that till before his alleged retrenchment the respondent No. 2 was on engagement from day today. The impugned award makes him a permanent employee with the necessary consequence that he would have to be paid salary for all the 365 days as regular employee and the other benefits of regular employment can also not be denied to him. Thus, the award put him, in as much better position that he was before the alleged retrenchment. Such a result is not conceived.

35. Non-renewal of contractual employment and dispensation of engagement at any stage without any reason in terms of appointment does not amount to retrenchment u/s 2(00) of Industrial Disputes Act as held by the Supreme Court in *Escorts Limited v. Presiding Officer*, (1997) 11 SCC 521 M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, *M. Venugopal v. Divisional Manager, LIC*. Later on it was considered and followed when similar view was taken by the Supreme Court in *State of Rajasthan and others Vs. Rameshwar Lal Gahlot*, where termination of appointment after expiry of specified period held valid and not attracting Section 25-F of Industrial Disputes Act, 1947 unless the termination was found to be malafide or in colourable exercise of powers. Similar view was also taken by the Supreme Court in *Executive Engineer v. Madhukar Purshottam Kolharkar*, (2000) 2 LLJ 1410SC

36. The daily wagers have no right to the post in view of *Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others*, and 1993(1) AWC 172 , *Bipin Bihari Srivastava v. District Judge, Basti*, because appointment of daily wagers are made by not complying or observing the procedural formalities in consonance to any rules, regulations or by observing the procedures prescribed for the recruitment. The engagement of daily wager commences in the morning and comes to an end in the evening of every day. There is a contractual deployment for every day. It is upto the employer to allow to continue the employment or disengage the daily wager at any time in absence of work. The daily wager has

no right or protection under Article 311 of the Constitution of India, State of Assam and Others Vs. Shri Kanak Chandra Dutta, ; Jagdev v. State of U.P. and 1999 (82) FLR 76 (Paras 8 and 10), Channey Lal v. Director Malaria Research Centre, New Delhi.

37. The daily wagers engaged without any written appointment order could be terminated without any written order also in view of Magarsen Vs. State of U.P. and Others,

38. The daily wagers/muster roll employees cannot be regularized unless the posts are in existence or the vacancies are available. To entertain the claim for regularisation means to provide appointment to a post after regularizing the service of an employee. The position of daily wager is entirely different inasmuch the daily wager holds no post in view of AIR 2003 SCW 3382 , Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., , Madhyamik Shiksha Parishad v. Anil Kumar Mishra (Paras 4 and 6); 1996 (9) SCC 34 , State of U.P. v. U.P. Madhyamik Shiksha Parishad Shramik Sangh and Ors. (Para 3 and 4); as well as State of Orissa v. Dipti Malapatr

39. The daily wagers are deployed on temporary assignment only and not on sanctioned post and completion of 240 days work by daily wager can not attribute status of a casual workman under Industrial Disputes Act and as such does not create a right to regularisation in view of Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc.,

40. In Ashwani Kumar and Others Vs. State of Bihar and Others, it was observed by the Supreme Court that if initial entry is itself unauthorized and not against any sanctioned vacancy, the question of regularizing the incumbent on such a non-existent vacancy does not arise and even if such purported regularisation or confirmation is given, it would be an exercise in futility.

41. In State of Orissa and others Vs. Smt. Sukanti Mohapatra and others, the Supreme Court held that services of the candidates appointed irregularly in total disregard of the rules, cannot be regularized in exercise of such powers under the departmental rules.

42. Similarly in case of Dr. Narinder Mohan (supra), the Supreme Court reiterated that having made the rules, the executive cannot fall back upon its general power under Article 162 to regularize the ad-hoc appointments under the rules.

43. In Dr. Surinder Singh Jamwal and another Vs. State of Jammu and Kashmir and others, the Supreme Court has held that the ad-hoc appointments made dehors the rules without following proper procedure of recruitment, would not confer any right or regularisation merely on the basis of the length of the service.

44. In P. Ravindran and Others Vs. Union Territory of Pondicherry and Others, the Supreme Court held that regularisation of ad-hoc appointees by passing the process of recruitment through open competition to be held by the Public Service

Commission, is not permissible.

45. In Santosh Kumar Verma and others Vs. State of Bihar and others, the Supreme Court held that the post temporarily filled in contravention of law, cannot be regularized.

46. In case of Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, the Supreme Court has gone to the extent of saying that a good deal of illegal appointment market has developed resulting in a new source of corruption and frustration of those who are waiting registered in the Employment Exchange for the years.

47. In Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra and others, the Supreme Court has held that the post was one, which was to be filled up through Public Service Commissioner, therefore, the claim of regularisation was not worth accepting.

48. In State of U.P. and Others Vs. Ajay Kumar, it has been held by the Supreme Court that there must exist a post and there must be Statutory Rules or administrative instructions for appointment to the post and the High Court was in error in directing regularisation of service of the respondents.

49. In Union of India (UOI) Vs. Uma Maheswari and Others, the Supreme Court has held that the claim of regularisation by a daily wager is not sustainable if no regular work or regularisation scheme in operation.

50. The Supreme Court in 2003 (3) SLJ 147 ALL Surendra Kumar Sharma v. Vikas Adhikari and Anr., where the services of the petitioner engaged for a short duration under a scheme known as Rural Employment Programme were terminated, the Supreme Court has held that "when the scheme itself was over and it was known to him that his requirement was only during the currency of the scheme, then no relief could be granted". The Supreme Court while deciding the aforesaid Surendra Kumar Sharma's case (supra) had the occasion to deal with the following rulings of the Supreme Court on the subject: -

S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka,

51. Rajendra and Others Vs. State of Rajasthan and Others, where the termination of the employment had been caused by abolition of posts consequent upon the schemes having been abolished for non-availability of funds.

52. In (1998) 3 SCC 354 Jaipal and Ors. v. State of Haryana, where also the employees of the project of adult and non-formal education, a temporary project, which was a time bound project to last till 1990, were held not entitled for regularizing of their services.

53. The High Court of Allahabad in (2001) 2 UPLBEC 1554 Chandra Prakash Gupta v. Additional District Magistrate (Project), Hamirpur and Anr., has observed that when the writ petitioner initially appointed as a typist on daily wages in integrated rural development programme had served 34 months with short

breaks on the strength of the interim order of this Court, was not said to be holder of appointment letter by virtue of interim order of the Court and the deployment of such daily wager could be terminated as his initial deployment was made without following the procedure and was by way of back-door entry. In Chandra Prakash Gupta (supra), this Court has observed as below : -

6. The question of regularisation of daily wages employees has been subject matter of judicial scrutiny for a long time. In a developing country various schemes are implemented. These schemes are supported by limited financial allocation. The employees appointed on daily wages in such schemes are fully aware of its temporary nature, and also the nature and terms of their appointment. In Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, the Supreme Court considered the rights of the daily rated casual labour and directed for submission of a scheme to extend permanent status of the workmen. State of Haryana and others Vs. Piara Singh and others etc. etc., was a case of ad-hoc temporary. Government employees and consider the validity of the orders of regularisation made by State of Haryana, in which Supreme Court held that eligible and qualified continue in service satisfactorily for a long periods raises presumption of need of regular posts. Later on there has been a marked changed in law relating to regularisation of daily rated employees. In Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others, it was held that in the absence of availability of posts for regular appointment, regularisation cannot be directed and that the daily rated employees should be given minimum wages under the Statute, if any, or the prevailing wages in the locality. In, State of Himachal Pradesh, through the Secretary, Agriculture to the Govt. of Himachal Pradesh Vs. Nodha Ram and others, it has been held that where a project is completed and closed due to non-availability of funds, the employees have to go along with its closure. No vested right is created in temporary employments. Directions cannot be given to regularize their services in the absence of any existing vacancies, nor can directions be given to the State to create posts in a non-existing establishment. In this case Supreme Court found that the directions, issued by Court for regularisation were illegal warranting interference.

54. In State of Himachal Pradesh, through the Secretary, Agriculture to the Govt. of Himachal Pradesh Vs. Nodha Ram and others, the Supreme Court has held as under : -

It is seen that when the project is completed and closed due to nonavailability of funds, the employees have to go along with its closure. The High Court was not right in giving the direction to regularize them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularize their services in the absence of any existing vacancies nor can directions be given to the State to create posts in a non-existent establishment. The Court would adopt pragmatic approach in giving directions. The directions would amount to creating of posts and continuing them despite

non-availability of the work. We are of the considered view that the directions issued by the High Court are absolutely illegal warranting our interference. The order of the High Court is, therefore, set aside.

55. In *Ashwani Kumar v. State of Bihar* AIR 1997 SC 1627, the Supreme Court held that the question of confirmation or regularisation of an irregularly appointed candidate could arise if the candidate concerned is appointed in an irregular manner or on an ad-hoc basis against a possible vacancy which is already sanctioned but if initial entry is itself unauthorized and is not against any sanctioned vacancy, the question of regularizing the incumbent on such non-existent vacancy could never survive for consideration and even if such purported regularisation or confirmation is given, it would be exercise in futility. The Supreme Court held that regularisation of such appointment would amount to decorating a still-born baby.

56. In *State of U.P. v. Ajay Kumar* (1997) 1 SCC 88, it has been held that there must exist a post and either administrative instructions or statutory rules must also be in operation to appoint a person to the post. Daily wage appointment, it was further held, would obviously be in relation to the contingent establishment in which there cannot exist any "post and it continues so long as the work exists.

57. The issue of regularisation has been considered by the Supreme Court from time and again and the law has been laid down in very clear terms in the cases, i.e., *State of Haryana and Ors. v. Piara Singh and Ors.* (supra); *Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others*, , *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, ; *Dr A.K. Jain and Others Vs. Union of India (UOI) and Others*, ; *E. Ramakrishnan and Others Vs. State of Kerala and Others*, and *Ashwani Kumar and Others Vs. State of Bihar and Others*, ; and the ratio of all those judgments can be summarized to the extent that the question as to whether the services of certain employees appointed on ad-hoc basis should be regularized relates to the conditions of service. The power to prescribe the conditions of service can be exercised either by making Rules under the proviso to Article 309 of the Constitution of India or any analogous provision and in the absence of such Rules, under the instructions issued in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights and statutory provisions. Rules and other instructions, if any, governing the conditions of service. The main concern of the Court in such matters is to ensure the Rules of Law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the Directive Principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad-hoc status for long. A perusal of

the authorities would show that appointments are as a rule to be made in accordance with statutory rules, giving equal opportunity to all the aspirants to apply for the posts and following the prevalent policy of reservation in favour of Scheduled Castes/Scheduled Tribes and Other Backward Classes. Whenever the employees are appointed on ad-hoc basis to meet an emergent situation, every effort should be made to replace them by the employees appointed on regular basis in accordance with the relevant rules as expeditiously as possible. Where the appointment on ad-hoc basis has continued for a long and the State has made rules for regularisation, regularisation has to be considered in accordance with the rules. Where, however, no rules are operative, it is open to the employees to show that they have been dealt with arbitrarily and their work position has been exploited by keeping them on ad-hoc for one spell of time. However, it is a question of fact whether in the given situation, they were treated arbitrarily. In, *Khagesh Kumar and others Vs. Inspector General of Registration and others*, , The Supreme Court did not issue direction for regularisation of those employees, who had been appointed on ad-hoc basis or on daily wages after the cut-off date, i.e., 1.10.1986 as was mandatorily required by the provisions of U.P. Regularisation of Ad-hoc Appointment (On posts outside the Purview of the Public Service Commission) Rules, 1979 and those who were not eligible under the said Rules were not given regularisation. The same view has been taken by the Supreme Court in *Inspector General of Registration and Anr. v. Awadhesh Kumar and Ors* 1966(9) SCC 217. Moreover, the above referred cases further laid down that for the purpose of regularisation, various prerequisite conditions are to be fulfilled, i.e., the temporary/ad-hoc/ appointment of the employee should be in consonance with the statutory rules, it should not be a back door entry. The service record of the petitioner should be satisfactory; the employee should be eligible and/ or qualified for the post at the time of his initial appointment. There must be a sanctioned post against which the employee seeks regularisation and on the said sanctioned post, there must be a vacancy. Moreover, regularisation is to be made according to seniority of the temporary/ad-hoc employees. The regularisation should not be in contravention to the State policy regarding reservation in favour of Scheduled Castes/Scheduled tribes and Other Backward Classes and other categories for which state has enacted any Act or framed rules or issued any Government Order, etc.

58. Similar view has been taken in 1996 VIII AD 680 (SC) and *State of Uttar Pradesh v. U.P. Madhyam Parishad Kshramik Sangh* AIR 1966 SC 708 . In the case of *State of H.P., through The Secretary (Rural Development) to the Govt. of Himanchal Pradesh, Shimla Vs. Ashwani Kumar and Others*, , the Supreme Court has held that if an employment is under a particular Scheme of the employee is being paid out of the funds of a Scheme, in case the Scheme comes to closure or the funds are not available, the Court has no right to issue direction to regularize the service of such an employee or to continue him on some other project, for the reason that "no vested right is created in a temporary employment".

59. If the workmen appointed without following any procedure prescribed under

the Act or the Rules by such authority, who had no competence to appoint them, and their appointment was not in accordance with law the provisions of the Act, 1947 are attracted for the reason that provisions of Section 25-J of the Act have over-riding effect on other laws because the Legislature, in its wisdom, thought that the rights and liabilities arising out of the law and retrenchment should be uniform throughout wherever the Act was in force and every State should have its own law in consonance with the Central Law. This view stand fortified by the judgment of the Supreme Court in *P. Virudhachalam and Others Vs. Management of Lotus Mills and Another*, , *Krishna District Co-operative Marketing Society Limited, Vijayawada Vs. N.V. Purnachandra Rao and Others*, and *Vikramaditya Pandey v. Industrial Tribunal and Anr.* AIR 2001 SCW 310.

60. In *Prabhu Dayal Jat v. Alwar Sakhari Bhumi Vikas Bank* 1991 L1C 944, the Court considered the case of an employee, whose services stood terminated on the ground that he had been appointed without any authorization of law. This Court held that even in that case the provisions of the Act were attracted.

61. On the contrary, in *Sita Ram Mali Vs. State of Rajasthan and Another*, Rajasthan High Court held as under : -

Making appointment on daily wages without the availability of the post and without following the provisions of Articles 14 and 16 suffers from patent illegality. Apparently for the reasons which are only extraneous, the Officers of the Department have given appointments on daily wages to few favoured. Those who have waited in queue at the Employment Exchange have been altogether ignored. In fact, while the length of the queue continuously increase, the back door entrants got the entry in service as daily wages employee and got the order of appointment on salary in the regular pay scale and ultimately the order of regularisation of the service.

The Court deprecated the practice of making appointments on daily wages and held that even the appointment on daily wages without advertising the vacancy or calling the names from Employment

Exchange violates the provisions of Articles 14 and 16 of the Constitution and, hence it is violative of the fundamental rights of other eligible persons and, thus, the relief of regularisation cannot be claimed.

62. The question of appointment dehors the Rule has been considered by the Supreme Court from time and again and the Court held that such appointments are unenforceable and inexecutable. It is settled legal proposition that any appointment made dehors the Rules violates the Public Policy enshrined in the rules and, thus, being void, cannot be enforced. (Vide *Smt. Ravinder Sharma and Another Vs. State of Punjab and Others*, ; *Harpal Kaur Chahah (Smt) v. Director, Punjab Instructions State of M.P. and Others Vs. Shyama Pardhi etc. etc.*, ; AIR 1998 91 (SC); *M.P. Electricity Board Vs. S.S. Modh and Others*, ; *Bhagwan Singh and Another Vs. State of Punjab and Others*, and *Chancellor v. Shankar Rao and Ors.*, (1999) 6 SCC 255

63. Appointment dehors the Rules violates the mandate of the provisions of Articles 14 and 16 of the Constitution as held by the Supreme Court in *Delhi Development Horticulture Employees' Union v. Delhi Administration* (supra) and *Piara Singh* (supra). In *Delhi Transport Corporation v. D.T. C Mazdoor Congress and Ors.* (supra), the Supreme Court recognized the public employment as public property and held that all persons similarly situated have a right to share in it though its enjoyment is subject to the recruitment rules which must be in consonance with the Scheme of the Constitution of India.

64. In *Dr M.A. Haque and Others Vs. Union of India (UOI) and Others*, , the Supreme Court observed as under : -

We cannot lose sight of the fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and by passing of the Public Service Commissions are permitted, it will open a back-door for illegal recruitment without limit. In fact this Court has, of late, been witnessing a constant violation of the recruitment to the services through the Public Service Commission. It appears that since this Court has in some cases permitted regularisation of the irregularly recruited employees, some Governments and authorities have been increasingly resorted to irregular recruitments. The result had been that the recruitment rules and the Public Service Commissions have been kept in cold storage and candidate dictated by various considerations are being recruited as a matter of course.

65. Deprecating the practice of making appointment dehors the Rules by the State or other State instrumentalities in *Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra and others*, the Court rejected the claim of the petitioner therein for regularization on the ground of long continuous service observing as under : -

Nor the claim of the appellant, that she having worked as Lecturer without break for 9 years" on the date the advertisement was issued, she should be deemed to have regularized appears to be well founded. Eligibility and continuous working for howsoever long period should not be permitted to overreach the law. Requirement of rules of section cannot be substituted by humane considerations. Law must take its course.

66. The Supreme Court in *State of U.P. and others Vs. U.P. State Law Officers Association and others*, , has observed as under : -

This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of the appointment is equally arbitrary. Those who come by the backdoor have to go by the same door. The fact that they are made by public bodies cannot best them with additional sanctity. Every appointment made to a public office, howsoever made, is not. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.

67. Even if, there are no Statutory Rules or Bye-laws of the society providing a mode of appointment, the Executive Instructions/Policy adopted by the respondent-Society must be there providing for a mode of appointment. Even if no such Executive Instructions/Policy/ Guidelines/Circular, etc., is in existence then a fair procedure for appointment has to be adopted in consonance with the provisions of Articles 14 and 16 of the Constitution (Vide Nagpur Improvement Trust v. Yadaorao Jagannath Kumbhare (1998) 8 SCC 99.

68. In Ramesh Kumar Sharma and Anr. v. Rajasthan, Civil Services Appellate Tribunal and Ors. 2000 AIR SCW 4206, the Supreme Court held that "expression "Service Rules" cannot be given a restrictive meaning in the absence of the definition of the said terms and, therefore, it would include within its sweep, the necessary Government Order providing the method recruitment,"

69. A Constitutional Bench of the Supreme Court in B.R. Kapoor v. State of Tamil Nadu AIR2001SC3435 (Jayalalitha case), observed that it is the duty of the Court to examine whether the incumbent possesses qualification for appointment and the manner in which the appointment came to be made or the procedure adopted was fair, just and reasonable and if not, appointment should be struck down.

70. The Supreme Court (Constitution Bench) in Ajit Singh (II) v. State of Punjab and Ors. (1997) 7 SCC 209 , has held that Articles 14 and 16 (1) are basic features of the Constitution. The same view has been reiterated in Ashok Kumar Gupta and Another Vs. State of U.P. and Others, and Indira Sawhney Vs. Union of India and Others, Thus, strict adherence is required thereto.

71. In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, and A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another, the Supreme Court held that every State action, in order to survive, must not be susceptible to vice the arbitrariness which is a crus of Article 14 of the Constitution and the very basis of the Rule of Law.

72. Invalidity of an appointment may arise not only from want of qualification, but also from the violation of such legal conditions or procedure for appointment as mandatory and as a result of which the appointment becomes void. (Vide M. Pentiah and Others Vs. Muddala Veeramallappa and Others, , The University of Mysore and Another Vs. C.D. Govinda Rao and Another, and P.L. Lakhanpal Vs. A.N. Ray and Others,

73. The Supreme Court in The Factory Manager, Cimmco Wagon Factory Vs. Virendra Kumar Sharma and Another, , while deciding the similar case, has observed as under : -

Assuming that the respondent was asked to work in a factory in anticipation of securing appointment, that too by an officer who was not competent to give appointment, that did not make the respondent a workman or regular employee of the appellant company.

74. The High Court of Allahabad in (2003) 2 ESC 1007, *State of U.P. v. Presiding Officer, Labour Court, Meerut*, has held that the appointment should be made at initial stage in accordance with rules. Incumbent must possess the requisite qualification for the post on the date of appointment and if appointment had been made on temporary ad-hoc workman basis, the workman should not be permitted to continue for long rather the vacancies should be filled up on permanent basis in accordance with law only if the statutory provision or executive instruction provides for regularisation after completing a particular period only then regularisation is permissible. In special circumstances. Court may give direction to consider the case for regularisation provided continuation on ad-hoc basis is so long that it amounts to arbitrariness and provisions of Article 14 are attracted. There must be sanctioned post against which regularisation is sought. At the same time policy of the State enforcing the reservation for particular classes like SC, ST, OBC etc. and further for women handicapped and ex-servicemen cannot be ignored.

75. Following *Morinda Co-op. Sugar Mills Ltd. Vs. Ram Krishan and others etc.*, the Supreme Court in *Anil Bapurao Kanase v. Krishna Sahakari Sakhar Karkhana Ltd. And Anr.* (1997) 10 SCC 5999 observed that the termination/disengagement of seasonal worker deployed in Chemistry section of sugar factory when the work was over could not be treated as retrenchment within the meaning of Section 2(oo) of Industrial Disputes Act irrespective of the claim that such employee had rendered more than 180 days" service, in such situation Section 25 F of said "Act" was not attracted.

76. While referring decision of *Mool Raj Upadhyaya Vs. State of H.P. and Others*, *Himachal Pradesh Housing Board Vs. Om Pal and others*, *H.P. Housing Board v. Om Pal and Ors.*, had held that the Administrative Tribunal without holding termination of retrenched daily wage workers as invalid and holding them to be continuing in service, could not direct their regularisation and payment of enhanced wages to them.

77. After considering its own judgment in, *Piara Singh (supra)* and decision in *Satyanarayan Sharma and others Vs. National Mineral Development Corporation Ltd. and others*, , the Supreme Court has observed in *Municipal Corporation, Bilaspur and Another Vs. Veer Singh Rajput and Others*, , *Municipal Corporation, Bilaspur and Anr. v. Veer Singh Rajpur and Ors.*, that the direction of High Court to regularize the service of casual labourer was unwarranted, being contrary to the administrative directions, instructions, circulars and orders of Government when the Municipal Corporation found that the Administrator had made deployment of daily rated/muster roll/casual labour irregularly and on extra-political consideration and municipal corporation intended to reduce the establishment expenditure and the Government had prohibited to fill up the vacant posts and creation of new posts including regularisation, however, the Supreme Court acknowledged the liberty for the municipal corporation, in case, it was making further appointment of casual or daily rated workers and to consider

the said retrenched persons, on daily wages in preference by waiving age bar if necessary, provided they were otherwise qualified and eligible to the post.

78. The Supreme Court in (1998) 9 SCC 709 *State of Punjab and Ors. v. Sardara Singh*, held that the High Court could not direct regularisation of daily wager, however, a direction could be given to the State Government to frame scheme of regularisation and if the scheme is already framed, a direction may be given to the State for considering the matter of regularisation in accordance with the scheme.

79. Following its own decision in *M.M.R. Khan and others etc. Vs. Union of India and others, etc.*, and *Employers in relation to the Management of Reserve Bank of India Vs. Their Workmen*, and in reference to decision of *Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others*, the Supreme Court in *Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others*, has held that relation of workmen of statutory canteen managed by contractor with the establishment maintaining such canteen are question of fact on the basis of material on record and such persons were said to be workmen of the establishment for the purpose of Factory Act only and not ipso facto workmen of the establishment for the other purposes, like, recruitment, seniority, promotion, retirement benefits etc., however, on their claim direction of High Court granting relief of regularisation was held to be justifiable in the light of provisions of Articles 14 and 16 of the Constitution in that undertaking was not as a matter of statutory right, of the workmen but to eradicate unfair labour practice and to undo social injustice and as a measure of labour welfare and imposition of certain conditions as to eligibility for the benefit of the relief.

80. The Supreme Court in *Executive Engineer (State of Karnataka) Vs. K. Somasetty and others*, relying on its earlier decisions in *Union of India (UOI) Vs. Jai Narain Singh*, has held that State while discharging public welfare function can not be said to be an industry and the decision of the Labour Court made in reference to Section 10 of Industrial Disputes Act, 1947 reinstating the daily wagers discharged from the project was said to have been no right to the post and the reinstatement of such daily wagers was held unjustifiable.

81. The Supreme Court in *Haryana State F.C.C.W. Store Ltd. and Another Vs. Ram Niwas and Another*, while following its earlier decisions in *Uptron India Limited Vs. Shammi Bhan and Another*, and *Harmohinder Singh Vs. Kharga Canteen, Ambala Cantt.*, has observed that disengagement of workers deployed on a particular project in terms of contract of service when the work and procurement and supply of wheat in the said project was over, then the deployment of such daily wager as Watchman/Chaukidar on contractual basis, could not be said to be retrenchment within the meaning of Sections 2(00)(bb) and 25-F of Industrial Disputes Act.

82. Following its own decision in (2002) 9 SCC 693 *Sufal Jha v. Union of India*, the Supreme Court in another decision of *Ircon International Ltd. Vs. Daya*

Shankar and Another, has observed that the work-charge employee appointed on a particular Railway Ballast Project as a Khalasi for the duration of continuation of project could not automatically continue in deployment thereafter when the project is over and the work-charge employee became surplus and was retrenched after being paid compensation under Industrial Disputes Act and the direction of High Court to consider such retrenched employee as permanent employee was said to be erroneous, however, in peculiar facts and circumstances the said retrenched employee could be considered in accordance with the seniority against the vacancy arising in future.

83. The Supreme Court in *APSRTC, Cuddapah v. K. Bajjanna*, (2002) 9 SCC 739 observed that the workman under the same employer at the time of reinstatement at the direction of the Labour Court are to be treated harmoniously in respect of payment of back-wages and the burden shall be on workman to show that he was not gainfully deployed during the period of non-employment.

84. The Supreme Court further in *AIR 2002 SC 2343 Employer in Relation to the Management of G.C. of BCCL v. Workmen represented by Bihar Colliery Kamgar Union*, has observed that disability of workman/employee being underage at the time of appointment does not stand subsequently removed and regularisation based on such appointment could not be upheld, more so, when there was specific provision barring underage persons from working in mines.

85. The Supreme Court relying on its earlier decisions of *Gammon India Ltd. v. Union of India* (1947) 1 SCC 596 ; *B.H.E.L. Workers Association, Hardwar and Others Vs. Union of India and Others*, *Mathura Refinery Mazdoor Sangh through its Secretary Vs. Indian Oil Corporation Ltd., Mathura Refinery Project, Mathura and Another*, , and *Dena Nath and others Vs. National Fertilisers Ltd. and others*, , in *R.K. Panda and Others Vs. Steel Authority of India and Others*, has indicated that regularisation of contract labour engaged at Rourkela Plant of Steel Authority of India on the ground that they continued for long periods (10 to 20 years) through contractor shall involve question of fact, therefore, normally assessment of period could be determined by the Labour Court and Industrial Tribunal on evidence and not by the High Court or Supreme Court in writ jurisdiction or under Article 136 of the Constitution respectively, however, on the basis of the interim orders of Supreme Court many contract labourer had continued in employment for several years, were directed to be considered for absorption or for voluntary retirement by the management under a guideline.

86. The Supreme Court in *Union of India and Others Vs. Dharma Pal and Others*, directed for enforcement of a scheme for regularisation in absence of any existing rules of casual/daily wagers/ work-charge employees engaged in construction/execution of maintenance work under Chandigarh Administration, whereas, the Supreme Court way back in *V.B. Rao Vs. Steel Authority of India Ltd.*, had indicated that reinstatement of an employee can not be insisted upon where the employer had lost confidence in the employee owing to his

involvement in criminal cases in connection with appropriation of certain funds, however, the High Court was said not to be incorrect in substituting reinstatement by compensation to cover both backwages and entitlement for loss of future services.

87. S.M. Nilakkar (*supra*) in special facts and circumstances when the burden of deployment was on the employer to show that the deployment of workman in Government project or scheme was under a stipulated contractual manner and the workman/employee was the Section 2(00) of Industrial Disputes Act and the termination was said to be retrenchment.

88. Following *Union of India (UOI) and Others Vs. K.V. Baby and Another*, ; *Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another*, and *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*, the Supreme Court in (2001) 3 SCC 36 *India Banks Association v. Workmen of Syndicate Bank and Ors.*, has held that commission agents/deposit collectors of banks though not regular employees nonetheless were having relationship of master and servant between the bank and such workmen, could be deployed on commission basis and not entitled to absorption as regular workmen and not entitled to pay scale, allowances and service conditions of regular bank employees.

89. In *State of Haryana and Another Vs. Tilak Raj and Others*, the Supreme Court pointed out that the principle of equal pay for equal work is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organizations or even in the same organization. In *State of Haryana v. Tilak Raj* (*supra*), the Supreme Court observed that a scale of pay is attached to a definite post and in case of a daily wager, he holds no post, hence he cannot be compared with the regular and permanent staff for any or all purposes including a claim for equal pay for equal allowances. Equal pay for equal work is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming-identical pay scale and the other group of employees who have already earned such pay scales.

90. To enforce his submissions, the learned Counsel for the petitioners placed credence on a decision in the *Dharwad District P.W.D. Literate Daily Wage Employees' Association and Ors. v. State of Karnataka and Anr.* 1990(2) SLR 43 and *State of U.P. v. Putti Lal* (2002) 2 UPLBEC 1595 . In, *Putti Lal's* case, the Supreme Court has directed to consider the case of regularisation according to the relevant prevailing rules and for payment of minimum of the pay scale as applicable to their counterpart in the Government until services of such daily wage employees are regularized. The other decisions relied upon by the learned Counsel are *Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others*, ; *Jayanta Biswas v. University of Calcutta and Ors.* (2001) 1 UPLBEC 74 and *Daily Rated Casual Labour Employees' under P and T Department through Daily Rated Casual Labour Employed under P and T Department Vs. Union of*

India (UOI) and Others, , to hammer home the submissions aforestated.

91. In (2003) 2 UPLEBEC 1755 Orissa University of Agriculture and Technology and Anr. v. Manoj K. Mohanty, the Supreme Court relying on the decisions in Jasmer Singh (supra), M.R. Ganesh Babu (supra) and Pradip Kumar Dey (supra) has held that the writ petitioner employed in the University on temporary basis as a typist continued for more than five years with an artificial break while working as Junior Assistant was not entitled for regularization by applying principle of equal pay for equal work.

92. The Supreme Court in the case of State of M.P. and Anr. v. Dharambir (1988) 6 SCC 165 has held that ad-hoc appointment which continuing for about a decade were said to be continued as ad-hoc and their nature of appointment does not change with long passage of time and there cannot be a substitute for the educational qualifications prescribed for statutory recruitment rules for making appointment.

93. In case of Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan, it has been observed by the Supreme Court that unless initial recruitment is regularized through a prescribed agency, writ petitioners therein cannot be granted regularisation, as they were petitioners appointed for a specified period (six months) or till the availability of the candidate selected by the Public Service Commission, as such were not given any right to hold the post till the joining of the selected candidate and mere continuance of the writ petitioners in service by virtue of successive extension, then in reference to the service rules applicable prohibiting the writ petitioners appointment beyond one year period without the concurrence of the Commission could not have been waived and the legitimate expectations could not said to be applicable in case of termination of such writ petitioners.

94. The Supreme Court in the case of Pankaj Gupta and Ors., etc. v. State of Jammu and Kashmir and Ors. in AIR 2004 SCW 5334 has observed that the writ petitioners having been appointed illegally without following the procedure prescribed by law, were not entitled to be continued in service, however, were allowed to participate in the regular appointments.

95. It has also been held by the Supreme Court in the case of A. Umarani v. Registrar, Co-operative Societies and Ors. in AIR (2004) SCW 4462 that appointment made without notifying if vacancies to Employment Exchange and in violation to the mandatory provisions of "Act" and Rules ignoring minimum qualifications cannot be taken for regularisation despite the issuance of Government order giving directions for regularisation. In A. Umarani (supra) the Supreme Court held that once the employees are employed for the purpose of the scheme, they do not acquire any vested a right to continue after the project is over.

96. In AIR 2004 SCW 6569 in the case of Mahendra L. Jain and Ors. v. Indore Development Authority and Ors. it has been held that the writ petitioners

deployed as Sub-Engineers initially as Sub-Engineer by Development Authority without intimating to the Employment Exchange about existing vacancies or without advertising the post or without following rules applicable and the appointment was thus void ab initio. Such writ petitioners held not to be regularized as irregularity could be considered for absorption and not the illegality. According to Madhya Pradesh Industrial Employment (Standing Orders) Act regularisation cannot be claimed as a matter of right as the Constitutional Scheme which the country has adopted does not contemplate any backdoor appointment.

97. In *Hindustan Shipyard Ltd. and Others Vs. Dr. P. Sambasiva Rao and Dr. S. Prasada Rao*, a of the Supreme Court has observed the process of regularisation involves regular appointment which can be done only in accordance with the prescribed procedure.

98. In *Suresh Chandra Vs. Vice Chairman, Ghaziabad Development Authority*, the High Court of Allahabad after following large number of cases of Hon''ble Supreme Court and High Court has observed that daily wager/contingent worker cannot be regularized in absence of vacancy in contravention to the rule. Also in case of 2004 ESC 2098 (All) (*Chunkoo Singh v. State of U.P. and Ors.*) the High Court (Allahabad) has held that in case of regularisation of daily wager/Muster roll employees in the post deployed as daily wages in the construction division of P.W.D., Allahabad despite having completed 240 days in calendar year and having served for several years their contractual deployment was not continued or extended as they have no right to work or to the post as the deployment of daily wager commenced in the morning and came to end in the evening and non-renewal of contractual deployment does not amount to retrenchment or fatal or illegal and there was no violation of principles of natural justice and fair play and even no show cause notice was required to them at the time of non-deployment. Such daily wagers were not to be given any opportunity of hearing in view of the fact that their engagement was purely of a daily wager depending on the availability of the work and fund and when the work was completed and fund was not available a their disengagement cannot be said to be illegal and as such the writ petitioners were not entitled to get any relief of regularisation.

99. The question, therefore, which arises for consideration is as to whether the petitioners could make valid claim for regularisation of their services. The answer thereto must be rendered in negative. Regularisation cannot be claimed as a matter of right. An illegal appointment cannot be legalized by taking recourse to regularisation. What can be regularized is an irregularity and not an illegality. The Constitutional Scheme which the country has adopted does not contemplate any backdoor appointment. The petitioners were deployed initially not against any created vacancies or posts without notifying or intimating employment exchange or advertisement, without conducting Selection by Constituting Committee or interview and without observing norms of reservation. A State before offering public service to a person must comply with the constitutional

requirements of Articles 14 and 16 of the Constitution along with reservation policy. All actions of the State must conform to the constitutional requirements. The Contingent Workers are not holder of civil post and in absence of post or vacancy or a statutory provision or rule or specific Scheme they would not be entitled to regularisation or to be paid equal salary to that of regular employees of the State. No material has been brought for and on behalf of the petitioners where by the Scheme dated 22.3.2001 could be said to be unreasonable as the same is for the benefit of contingent workers themselves and any regular recruitment cannot be held to be illegal unless it is shown to be contrary to the relevant provisions of Act or Rule or in derogation to spirit of Article 14 and 16 of the Constitution.

100. In view of the above observation, writ petition is being dismissed. However, keeping in view the peculiar facts and circumstances and considering the long experience and services rendered by the petitioners, the State Government may sympathetically think of not disengaging the petitioners and they could be considered for giving them regular status in the light of the Scheme dated 22.3.2001 or any subsequent norms or rule framed by the State Government under its policy measure.