

(2013) 10 AHC CK 0165

In the Allahabad High Court

Case No : Original Application No. 1672 of 2012 and Others

Sri Ram Chandra and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Citation : (2013) 4 LLJ 713 : (2014) 2 LLN 337

Hon'ble Judges : S.S. Tiwari, J; Jayati Chandra, J

Bench : Division Bench

Advocate : Bhagirathi Tiwari and Dharmendra Tiwari, for the Appellant; Satish Chaturvedi and Rajnish Kumar Rai, for the Respondent

Judgement

S.S. Tiwari, J.—All the above Original Applications, having common facts and relief(s), are being disposed of by a common Order. The applicants in all the above OAs except O.A. No. 1714 of 2012 have also moved Misc. Applications under Rule 4(5)(a) of C.A.T. (Procedure) Rules, 1987 for permission to pursue the O.A. jointly. In the interest of justice, these Misc. Applications filed in respective OAs are allowed, as prayed and, the applicants are permitted to pursue their case jointly.

2. With the consent of parties counsel, O.A. No. 1672 of 2012 has been made leading case for the sake of convenience.

3. In O.A. No. 1672 of 2012, O.A. No. 1688 of 2012, O.A. 1776 of 2012, O.A. No. 10 of 2013 and O.A. No. 188 of 2013, following relief(s) have been prayed by the applicants:

1. To consider for issuing orders or directions, in the nature of certiorari quashing the impugned orders of advertisement (A-1).

2. To consider for issuing orders or directions, in the nature of mandamus commanding the respondents for considering to implement the orders of GOI for regularization of casual labourers (A-2) and to withdraw the impugned

notification for direct recruitment for MTS (A-1).

3. To consider for issuing orders or directions, in the nature of mandamus commanding the respondents that applicants may be allowed to be engaged in rotation giving preference over juniors against the existing vacancies and also to be regularized/appointed as one time measure by implementing the scheme of Government of India on the post of Group D staff as per existing rules for recruitment to Group D staff in IA & AD.

4. To consider any other relief which the Hon''ble Tribunal may deem fit in the facts and circumstances of the case.

5. To award the cost of the application throughout.

4. In O.A. No. 1708 of 2012, O.A. No. 1714 of 2012 and O.A. No. 1729 of 2012, following relief(s) have been claimed by the applicants:

1. To consider for issuing orders or directions, in the nature of certiorari quashing the impugned orders of advertisement (A-1).

2. To consider for issuing orders or directions, in the nature of mandamus commanding the respondents for considering to implement the orders of GOI for regularization of casual labourers (A-2) and to withdraw the impugned notification for direct recruitment for MTS (A-1).

3. To consider for issuing orders or directions, in the nature of mandamus commanding the respondents that applicants may be allowed to be engaged in rotation giving preference over juniors against the existing vacancies and also to be regularized/appointed as one time measure by implementing the scheme of Government of India on the post of Group D staff as per existing rules for recruitment to Group D staff in IA & AD.

4. To consider for issuing orders or directions, in the nature of mandamus commanding the respondents that applicant may be called for interview and considered for appointment on priority giving preference of experience.

5. To consider any other relief which the Hon''ble Tribunal may deem fit in the facts and circumstances of the case.

6. To award the cost of the application throughout.

5. The facts, in common, in all the above OAs may be mentioned as follows:

The applicants duly registered in the Office of Employment Exchange, Allahabad have been initially engaged as Casual Labourers in different years for emergent and occasional work and later on remained engaged for official work to be performed by regular Group D staff from 1994 to 2009. The engagement of casual labourers including that of the applicants was made against the existing vacancies of Group D staff and also for performing the official work as being done by similarly placed Group D staff under the respondents. The applicants were engaged by regular notification/publicity/names sponsored from the Employment

Exchange, after inviting applications and after proper interview as per the scheme for appointment/recruitment of casual workers and persons on daily wages issued through Department of Personnel & Training (for short DOP & T) Office Memorandum No. 49014/2/86-Estt. (C) dated 07.6.1988 issued by the Government of India. As per the recruitment rules of 1988 for Group D appointments in Indian Audit and Accounts Department (for short IA & AD), applicants and other casual labourers must be given priority and preference over the outsiders but, by not following the norms, the respondents kept the vacancies of Group D post remained vacant which have been accumulated from past several years. The vacancies numbering 204 including 91 posts in the Office of PAG (G & SSA) U.P., Allahabad advertised for Multi Tasking Staff (for short MTS) relate to Group D vacancy, available and remained unfilled up to 2010-11. The respondent No. 1 through O.M. No. DOP & T 49019/1/2006 Estt. (C) dated 11.12.2006 and Ministry of Finance through Circulars dated 07.9.2007 and 13.9.2007 directed the Field Officers and all departments under Union of India to regularize the casual labourers as one time measure in pursuance to the judgment passed in Uma Devis case, who have been engaged for the last more than 10 years back. Despite the specific directions, the respondents No. 2 and 3 have not complied with the said directions. The respondent No. 3 sent a list of 250 casual labourers to respondent No. 2 for consideration of regularization as per O.M. dated 11.12.2006 in the year 2010-11, as desired by respondent No. 2. The names of applicants found place in that list but, the vacant post of Group D/ casual labourers was not utilized for the purpose of regularization by the respondents. Other departments under the Union of India have already regularized the casual labourers in pursuance to the decisions of Hon'ble Apex Court and in compliance to the orders of Government of India. The applicants have also been discriminated even in the matter of regular engagement as casual labourers after 2011 whereas juniors to them are being regularly engaged violating the principles of natural justice and seniority.

6. The respondent No. 3 on 10.11.2012 advertised the Notification, impugned in the O.A., for direct recruitment of 91 posts of MTS reported to be vacant in the Office of PAG (G & SSA) U.P., Allahabad which is arbitrary, irregular and illegal. It is also against the rules as there is no rule framed by the Government of India for recruitment of MTS posts. The existing working Group D employees have to be promoted to Group C post as per the recommendation of 6th Central Pay Commission reports. Thus, all 91 posts, shown as MTS posts, are irregular as the same belong to Group D posts, and the same have not been abolished so far. There is not any gazette notification for sanction of any MTS, which is a Group C post and, as such, the impugned advertisement is ab-initio and prima facie irregular and illegal. In this advertisement, the reservation policy of Government of India regarding reservation of posts for SC/ST i.e. 22.5% in all the recruitment has not been followed. There is 01 post of SC and 0 post of ST against 91 posts advertised for the Office of respondent No. 3. Hence, the said advertisement is null and void as there are only 02 posts for SC and 01 post of ST out of 204

vacancies of MTS. The duties enumerated in advertisement are covered in Group D staff. Similarly para-3(b)(viii) of the said advertisement, notified as per orders of CAG, the casual labourers who have been earlier engaged at least for 200 days in any two years in the concerned office of IA & AD to which vacancy relates, will also be eligible for age relaxation to the extent of period of their engagement as casual labourers subject to production of certificate to that effect from the concerned office. This condition is arbitrary and irregular. All the casual labourers, who are in casual labour register, should be given age relaxation as per the scheme of engagement and regularization of casual labourers issued by respondent No. 1. The casual labourers have not been engaged as per the seniority list and roster systems rather pick and choose method has been adopted. There is no preference clause in the advertisement for casual labourers. Similarly, the educational qualifications notified in the said advertisement regarding minimum qualification of High School for eligibility to appear in the said examination is also against the recruitment rules for Group D in IA & AD which stipulates that fifth class passed is the minimum qualification for engagement of casual labourers and also for Group D post. There is no mention of the Rule under which minimum qualification as High School has been fixed violating the existing rule i.e. 5th class passed and 8th class passed for the aforesaid post. Similarly, the inclusion of the condition in the aforesaid advertisement that the candidate who has not passed the High School will have to pass the High School within two years from the date of selection and if they do not pass the High School, their appointments will be cancelled, is wrong. This condition is also arbitrary, irregular and illegal and also against the recruitment rules framed by the Government of India. The condition of only online registration of the applications in the advertisement is also arbitrary and illegal as online registration should not be expected from the casual labourers who have been engaged for several years and do not possess the technical qualification. The action of respondents is in violation of Articles 14, 15, 16, 21, 39(d), 41, 42, 43, 45 and 311(2) of the Constitution of India. The respondents overlooked the fact that no advertisement for direct recruitment of any post including MTS can be made without proper Service Rules, Recruitment Rules, and sanction of posts and also before regularisation of existing casual labourers on the roll. The applicants have legitimate right and are entitled for continuation/engagement as casual labourers and also for consideration of regular appointment against existing vacancies of Group D as per recruitment rules against which the applicants got initial engagement. The applicants sent a representation dated 20.11.2012 to the respondents against the impugned order but the same has been refused for delivery which shows that the respondents are predetermined to proceed with the irregular process of appointments, hence the above OAs have been filed by the applicants mainly on the grounds that the impugned order has enumerated the works (serial No. 1 to 19), which relate to Group D posts but, notified as MTS whereas the MTS are meant for Group C for which no recruitment rules have been framed so far. The condition of age relaxation for recruitment of casual workers and minimum working days of 200 days in two

years as an essential condition to appear in the aforesaid examination is also arbitrary and irregular because all the casual labourers on roll should have been given age relaxation and permission to appear in said examination. Similarly, minimum educational qualification prescribed in the said advertisement for recruitment is also against the recruitment rules for Group Din IA & AD according to which 5th class pass is the minimum qualification. Similarly passing of High School examination within two years after recruitment is also an arbitrary condition in the advertisement. Online registration is also not warranted because there is every chance of mistake on behalf of the casual labourers as they are not well conversant with the technical system of online registration and they may be deprived of call letter for interview. All the casual labourers who have completed 10 years or more should have been regularised under the existing rules before the notification of aforesaid advertisement. The aforesaid advertisement notified by the respondents is in violation of Articles 14 and 16 of the Constitution of India, in particular. As per orders/policy dated 7.6.1988 and 11.12.2006, issued by respondent No. 1 for engagement and regularisation of casual labourers, the applicants have got legitimate right and legitimate expectation and are entitled for continuation/engagement as casual labourers.

7. The respondents have filed the Counter Reply denying the allegations made in the OAs by the applicants, and submitted that the directions of Hon''ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, is regarding regularisation of services of irregular appointments (not illegal appointments) who are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked in duly sanctioned posts. It is not for regularisation of casual labourers who are engaged for works of casual/intermittent in nature. The casual workers are engaged as and when necessity to do the work of casual/intermittent/contingent nature arises and such casual engagement terminates as soon as the same is discontinued on accomplishment of the work. They are not appointed against any sanctioned post. In the present case, the applicants were engaged as casual/daily rated workers and not appointed against the sanctioned posts. Their engagements are more in the nature of illegal appointments and would fall under the category of persons engaged on daily wages (who were so engaged without following due process). However, they can be allowed to compete in the regular process of selection waiving the age relaxation and giving some weight-age for their having been engaged for work in the department for a significant period of time. The advertisement dated 10.11.2012 is for recruitment to the post of MTS and not for Group D posts. The department is doing open recruitment with provisions for age relaxation and weight-age to persons (prescribed as per norms) who had worked in the department for varying period. It is also contended that the orders of Government of India are not suo moto applicable in respect of IA & AD unless such orders are in consonance with Article 148(5) of the Constitution of India. The CAG of India will take a clue from such orders and if deemed necessary issue its own orders which are applicable within the IA & AD.

8. The sixth Central Pay Commission recommended that all Group D posts in the Government of India will stand upgraded to Group C of Pay Band-I with grade pay of Rs. 1800/-. In future there will be no further recruitment in Group D and multi skilling, with one employee performing the jobs hitherto performed by different Group D employees with a common designation for these posts. Erstwhile Group D posts have been upgraded and merged to pay band I with grade pay of Rs. 1800/- in IA & AD and has been re-designated as MTS in view of the guidelines issued by the 6th Central Pay Commission, and the Indian Audit and Accounts Department Multi Tasking Staff Recruitment Rules, 2011 has been framed. The applicants in their OAs have challenged the recruitment of MTS cadre being as casual labour and seeks their right as casual labourers as well as regularisation against Group D vacancies. Therefore, the relief claimed by the applicants to stay the recruitment process initiated against the regular vacancies of MTS cadre issued by the DOP & T, Government of India dated 30.4.2010 is not maintainable. The respondents have followed the instructions issued by the DOP & T as well as recommendations of 6th Central Pay Commission as accepted by the Government of India for direct recruitment to the post of MTS cadre and accordingly age relaxation has been granted to the different categories i.e. five years age relaxation to SC/ST category, three years to OBC category and ten years to Physically Handicapped category, as mentioned in para-3 of the advertisement. Similarly in the said advertisement relaxation in the minimum required educational qualification is relaxed to Class 8th passed to the casual labourers who had worked or been engaged in IA & AD subject to other conditions as mentioned in the advertisement, whereas for candidates from open market the educational qualification is 10th class passed. The respondents are following the policy decision framed by the Govt. of India with regard to MTS cadre fixing age limit for direct recruitment between 18 to 25 years of age. The CAG of India has formulated a well thought over policy for recruitment to the post of MTS cadre in pursuance to model recruitment rules framed by the Department of Personnel & Training vide circular dated 30.4.2010, and in pursuance of the aforesaid recruitment policy to the MTS cadre, all the offices of IA & AD have adopted the same and in 18 offices of different States recruitment has already been completed without any hindrance. In compliance of the Hon'ble Apex Court verdict in State of Karnataka and Others v. Uma Devi (supra) and DOP & T circular issued thereafter, casual labourers working in the Office during the years 1980-2009 have also been considered for recruitment and they are given age relaxation as well as some weight-age in the recruitment of MTS. Further by direct recruitment of those casual labourers who fulfill the eligibility condition, mentioned in the advertisement, following the constitutional scheme of public employment by giving equal opportunity to all as envisaged under Articles 14 and 16 of the Constitution of India as well as casual labourers who are working in the office, a criteria for consideration is fixed as 200 days in any two years, for age relaxation to the casual labourers, is a scheme under DOP & T directions and cannot be said to be arbitrary as in earlier DOP & T Casual Labourers (Grant of Temporary Status and Regularization) scheme w.e.f.

1.9.1993 has fixed 240 days engagement in a year, a criteria for grant of temporary status to the casual labourers. It is further submitted that the vacancies as per roster are vacant, and are considered for recruitment and these vacancies are not created afresh. Therefore, applicants claim for not following reservation policy is totally misconceived. In the advertisement, reservation provisions have been made following the post based reservation policy of Government of India vide Office Memorandum No. 36012/2/96/Estt. (Res) dated 2.7.1997 of DOP & T reservation quantum of SCs/STs in cases of direct recruitment to Group C and D fixed by DOP & T vide Office Memorandum No. 36017/1/2004/Estt. (Res) dated 5.7.2005 for U.P. region is 21 and 1 respectively.

9. The casual labourers have no legal right to claim regularisation without going through the due process of public employment as envisaged by Constitutional scheme of Public Employment. Casual labourers are engaged in the Office of PAG strictly in accordance with the seniority list and roster policy from amongst labourers who are available at the time of requirement and are interested as well as are suitable to do the work.

10. It is further clarified that the advertisement is not meant only for a few. It is an open competition for all who are eligible as per the advertisement. It is further submitted that according to recommendations of 6th Central Pay Commission, there will be multi skilling with one employee performing job hitherto performed by different group D employees that is why common designation of MTS has been given to such multi skilling employee. It is further clarified that the details of number of days of engagement of the casual labourers have been displayed on Office Notice Board and objections were invited regarding discrepancies, if any. The applicants have sufficient opportunity to submit objection if, there was any. It cannot be said that pick and choose method has been adopted, in this regard, by the respondents. For having transparency in engagement of casual labourers, a seniority list of casual labourers is being maintained in descending order of the total number of days for which casual labourers have been engaged. The OAs are devoid of merit and against the constitutional provisions hence, they deserve to be dismissed.

11. The applicants have filed the Rejoinder Reply to the Counter Reply filed by the respondents mainly reiterating the earlier stands taken in the O.A. submitting further that the contention of respondents that the O.M., in question, is not binding on the respondents is fully and totally against the provisions of Constitution of India. It is also submitted that the respondents never initiated one time measure to regularize the casual labourers from 2006-2012 in the light of decision of Hon''ble Supreme Court. The respondents have also not implemented the scheme of regularization as per O.M., dated 7.6.1988 to fill the vacant posts and have also not implemented the Scheme of Grant of Temporary Status. The applicants are still in roll/casual labour register and gross discrimination has been done in engaging the casual labours through out the year on the basis of pick and choose. It is also contended that the process of

recruitment to the post of MTS for Group C post is to be conducted by the SSC and not by the respondents. Hence, advertisement is against the rules. The respondents have misinterpreted the provisions of Article 148(5) of the Constitution of India. The respondents must have filled up the vacancies of Group D in the light of rules and decisions of Hon'ble Apex Court before making any advertisement for any fresh vacancy against MTS (Group C). The applicants have challenged the irregular notification and non-implementation of orders of Government of India. It is settled law that if there is no rule for engagement and regularization of casual labours, the orders of Government of India (respondent No. 1) is binding for compliance. The vacancies of different years should be filled as per relevant rules applicable to respective years. It is further alleged that the notification for MTS (Group C) is unwarranted till compliance of DOP & T O.M. dated 11.12.2006 regarding regularization of casual labourers as one time measure is made. It is also contended that the casual labourers have not only legitimate expectations but have legal right of regular engagement till absorption as per seniority to be reckoned from the year of initial engagement, regular employment to be filled against the vacancies of Group D. The implementation of O.M. dated 11.12.2006 is mandatory before any recruitment by the respondents.

12. The applicants have placed reliance on documentary evidence also. For sake of convenience, we will mention the documents, filed by the parties in support of their contentions in each O.A.

(i) In O.A. No. 1672 of 2012 the applicants have filed documentary evidence ranging from annexure A-1 to annexure A-8 including Photostat copy of advertisement published in Employment News between 10th to 16.11.2012, Office Memorandum issued by the Govt. of India on 11.12.2006, copy of registration dated 22.8.1997 of applicant-Ram Chandra in the Employment Exchange, copy of High School mark sheet, copy of High School examination certificate, another copy of registration in Employment Exchange dated 6.2.2009, Office Memorandum issued by the Government of India dated 7.6.1988, list of casual labourers in Format-II issued by the Office of PAG (Civil Audit), U.P. Allahabad, copy of regularisation of casual labourers in Group D post in C.D.A. (Pension) along with list of such employees, and a Photostat copy of Chapter VIII relating to Group D staff regarding their appointment and regularisation and copy of representation given by the applicant No. 1- Ram Chandra to the Office of PAG, U.P. Allahabad on 20.11.2012. On the other hand, the respondents have also placed reliance on documentary evidence and they have filed annexure R-1 to annexure R-4 including Circular No. 42 issued from the Office of CAG, New Delhi dated 23.11.2012 regarding future recruitment of MTS cadre by SSC, Gazette notification of India relating to General Statutory Rules and bylaws issued by the Finance Ministry, copy of Office Memorandum issued by the Government of India dated 30.4.2010, the advertisement notification meant for recruitment of MTS and the Photostat copy of O.M. regarding Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993.

(ii) In O.A. No. 1688 of 2012, the applicants have placed reliance on documentary evidence, which is annexure A-1 to annexure A-7 including Photostat copy of notification of advertisement, copy of O.M. dated 11.12.2006 issued by the Government of India, copy of mark sheet of Junior High School passed by the applicant Rajendra Kumar, T.C. of Rajendra Kumar, registration certificates of Rajendra Kumar in the Employment Exchange dated 12.9.1993 and 11.6.2012, copy of application of Rajendra Kumar for engagement as casual labour in the office of respondents, copy of Order of PAG dated 21.7.1994 and 1.11.1993, Photostat copy of O.M. dated 7.6.1988, Photostat copy of Format-II list for house keeping etc. and Photostat copy of the confidential speed post letter issued from the Office of CGDA and copy of letter along with the list of casual labourers issued for regularisation in the Office of CDA (Pension), and copy of rules relating to Group D staff. On the other hand, the respondents have placed reliance on documentary evidence and filed annexure R-1 to annexure R-2 including Gazette notification issued by the Finance Ministry dated 13.8.2011 regarding recruitment of Multi Tasking Staff Recruitment Rules, 2011. The applicants have further filed some documentary evidence along with the Rejoinder Reply which is annexure RA-1 to annexure RA-4.

(iii) In O.A. No. 1776 of 2012 the applicants have filed documentary evidence which is annexure A-1 to annexure A-7 including the advertisement notification regarding the recruitment in question, O.M. dated 11.12.2006 issued by the Government of India. The applicants have also filed Photostat copy of mark sheet of applicant-Raju, along with copy of caste certificate, High School certificate in support of his contention. Applicant-Santosh Kumar has filed copy of experience certificate issued by the respondents office dated 19.11.2012, copy of registration number in the respondents office along with a copy of letter sent by the applicant-Santosh Kumar to the Office of PAG when his name did not figure in the list of sort listed candidates. The applicant Onkar Nath has filed a copy of certificate of experience issued by the respondents office along with copy of his registration in the office of respondents. Applicant Prem Chandra has also filed copy of certificate of experience issued by the respondents office on 10.11.2012 and 19.11.2012 along with a copy of information issued from the office of respondents regarding the working days and not included working days. Applicant-Ranjit Nandi has filed a copy of certificate of experience issued by the respondents on 23.11.2012 and copy of his registration in the office of respondents dated 16.11.2012. Applicant-Ram Nagina Pandey has filed a copy of certificate of annexures issued by the respondents on 22.11.2012 along with copy of registration in the respondents office dated 15.11.2012. Applicant-Rajesh Kumar Pandey has filed a copy of experience certificate issued by the respondents on 19.11.2012 along with copy of registration certificate in the respondents office on 21.11.2012. Applicant-Shyam Prakash has filed copy of certificate issued by the respondents office dated 22.11.2012. Applicant-Raj Kumar Singh has filed copy of experience certificate dated 22.11.2012 along with copy of registration certificate in the office of respondents dated 20.11.2012.

Applicant Rajeev Kant has filed copy of certificate of experience dated 19.11.2012 issued by respondents. Applicant-Jitendra Sonkar has filed a copy of certificate of experience dated 22.11.2012 and copy of registration in the Employment Exchange dated 01.4.1999. Applicant-Shyam Jee has filed a copy of registration in the office of respondents dated 23.11.2012 along with copy of experience certificate issued by the respondents office dated 10.11.2012, 20.11.2012 and 22.11.2012. Applicant-Jwala Prasad Tiwari has filed copy of experience certificate dated 19.11.2012. Applicant-Ram Naresh Patel has also filed copy of certificate of experience dated 10.11.2012 along with certificate of registration in the respondents office dated 24.11.2012. Applicant Pradeep Kumar has filed three character certificates issued by some officials of the respondents office. The applicants have also filed copy of O.M. dated 7.6.1988 and copy of list of casual labourers, a copy of list of casual labourers who worked in the month of July, 1994 has also been filed. Lastly, a copy of rules relating to recruitment of Group D staff has also been filed. The respondents have also filed documentary evidence in support of their contention which is annexure R-1 to annexure R-2.

The applicants of this O.A. have also filed certain documents in support of their contention along with Rejoinder Reply which is annexure R-1 to annexure R-4 mainly relating to internal correspondence between the officers of respondents regarding allotment of budget for payment to the casual labourers who have worked from time-to-time.

(iv) In O.A. No. 10 of 2013, the applicants have filed documentary evidence which is annexure A-1 to annexure A-6 including the advertisement notification, copy of O.M. dated 11.12.2006. Applicant-Balak Ram has filed Photostat copy of registration with the respondents office dated 22.11.2012, copy of experience certificate issued by the respondents office dated 10.11.2012. Similarly, applicant-Dinesh Kumar Bhartiya has filed Photostat copy of his experience certificate dated 10.11.2012 issued by the respondents office and registration certificate dated 29.11.2012 issued by the respondents office. Applicant-Vijay Singh has filed copy of experience certificate issued by the office of respondents dated 19.11.2012. Applicant-Hari Ranjan Saxena has also filed copy of registration certificate in the office of respondents dated 26.11.2012, copy of O.M. dated 7.6.1988 aforementioned, copy of regularisation letter in the office of CDA (Pension) dated 22.1.2009 and copy of recruitment rules of Group D staff. On the other hand, the respondents have placed reliance and filed documentary evidence which is annexure CA-1 to annexure CA-3 on record.

The applicants of this O.A. have also filed certain documentary evidence along with the Rejoinder Reply which is annexure RA-1 to annexure RA-4 mainly relating to internal correspondence in the office of respondents regarding allotment of budget for payment to casual labourers who have worked in different periods.

(v) In O.A. No. 188 of 2013, the applicants have filed documentary evidence

which is annexure A-1 to annexure A-7 including the Hindi version of advertisement notification and the copy of O.M. dated 11.12.2006. Applicant-Nar Singh Dayal has filed a copy of certificate of experience issued by the respondents office on 22.11.2012, copy of registration of the applicant in the office of respondents dated 20.11.2012. Applicant Jag Narain has filed a copy of certificate of experience dated 19.11.2012. Applicant Rajeev Kumar Mishra has filed a copy of registration in the Employment Exchange dated 3.3.1994. The applicants have also filed copy of O.M. dated 7.6.1988 and list of casual labourers inviting objection, if any, against the details published by the respondents. They have also filed copy of order of regularisation of casual labourers in the Office of CDA (Pension), and the recruitment rules relating to Group D staff. On the other hand, the respondents have filed documentary evidence in support of their contention, which is annexure R-1 to annexure R-2.

The applicants of this O.A. have further filed some documentary evidence along with their Rejoinder Reply, which is annexure RA-1 to annexure RA-5.

(vi) In O.A. No. 1708 of 2012, the applicants have filed documentary evidence which is annexure A-1 to annexure A-7 including copy of advertisement notification, copy of O.M. dated 11.12.2006, copy of O.M. dated 7.6.1988, copy of seniority list of casual labourers as on 1.1.2004, copy of regularisation of casual labourers in Group D post in the Office of CDA (Pension), and copy of recruitment rules of Group D staff. Applicant - Vinod Kumar Sharma has filed a copy of letter sent by him to the respondents office dated 7.12.2012 regarding non-inclusion of his name in the sort listed candidates. He has also filed a copy of registration certificate in the office of respondents dated 27.11.2012 along with copy of certificate of experience issued by the respondents office dated 26.11.2012 along with a copy of certificate issued by some official of the respondents office dated 6.1.1986. Applicant-Apresh Ghosh has filed a copy of registration certificate issued by the office of respondents dated 23.11.2012 along with copy of certificate of experience issued by the respondents office dated 21.11.2012. Applicant-Ziaul Hasan has filed a copy of letter sent by him to DAG (Admn.) to consider the period of 1988 to 1996 for being eligible to appear in the MTS recruitment examination. He has also filed a copy of certificate of experience issued by the respondents office on 21.11.2012 along with certificate of registration in the respondents office dated 22.11.2012. Applicant-Dinesh Chandra Pandey has filed a copy of letter addressed to the respondents official regarding non-inclusion of his name in the list of sort listed candidates. He has also filed a copy of registration in the office of respondents dated 23.11.2012 along with a copy of certificate of experience dated 23.11.2012 issued by the respondents office. Similarly, applicant-Vinod Kumar Jaiswal has also filed a copy of letter addressed to the respondents regarding absence of his name in the sort listed candidates list. He has also filed a copy of certificate of experience issued by the respondents on 27.11.2012 along with copy of registration of his name in the respondents office dated 27.11.2012. The respondents have placed reliance, in support of their contention, on documentary evidence which is annexure R-1

to annexure R-2.

The applicants of this O.A. have also filed some documentary evidence in support of their contention along with Rejoinder Reply which is annexure RA-1 to annexure RA-4 mainly relating to internal correspondence between the officials of respondents regarding grant of budget for payment to the casual labourers.

(vii) In O.A. No. 1714 of 2012, the applicant has filed documentary evidence which is annexure A-1 to annexure A-7 including the copy of advertisement notification, copy of O.M. dated 11.12.2006, copy of O.M. dated 7.6.1988, copy of list issued in Format-II list for house keeping etc issued by the respondents office, copy of letter regarding regularisation of casual labourers in the Office of CDA (Pension) on Group D post, copy of recruitment rules of Group D staff. Applicant-Shyam Babu Dwivedi has filed a copy of experience certificate issued by the respondents on 22.11.2012 and corrected certificate dated 29.11.2012 along with registration certificate issued by the respondents office dated 24.11.2012 along with letter addressed to the Deputy Accountant General (Admn.) dated 6.12.2012 for not including his name in the list of sort-listed candidates. On the other hand, the respondents have placed reliance on documentary evidence, which is annexure R-1 to annexure R-2.

The applicant of this O.A. has further filed some documentary evidence in the form of Photostat copies which is annexure RA-1 to annexure RA-4, mainly relating to the internal correspondence between the officials of respondents regarding allocation of budget for payment to casual workers worked in different periods.

(viii) In O.A. No. 1729 of 2012, the applicant has filed documentary evidence which is annexure A-1 to annexure A-8 including the copy of advertisement notification, copy of O.M. dated 11.12.2006, copy of O.M. dated 07.6.1988, copy of letter regarding regularisation of casual labourers in the Office of CDA (Pension) on Group D post, copy of recruitment rules of Group D staff. Applicant-Satai Ram has filed a copy of experience certificate issued by the respondents on 19.11.2012 along with registration certificate issued by the respondents office dated 22.11.2012 along with letter addressed to the respondents authority dated 13.12.2012 for including his 15 years service period for concession to appear in MTS examination. On the other hand, the respondents have placed reliance on documentary evidence, which is annexure R-1 to annexure R-2 in support of their contention.

The applicant of this O.A. has further filed some documentary evidence in the form of Photostat copies which is annexure RA-1 to annexure RA-4, mainly relating to internal correspondence between the official respondents regarding allocation of budget for payment to casual workers.

13. We have heard the learned counsel for the parties and perused the papers on record.

14. After perusal of rival contentions made by the parties counsel in their OAs and CRs, broadly speaking, following three issues are framed for disposal of the Original Application:

(i) Whether the applicants are entitled to be regularised in view of Office Memorandums dated 7.6.1988 and 11.12.2006, and observations made by the Hon''ble Supreme Court in the case of Secretary, State of Karnataka and Others v. Uma Devi (supra)?

(ii) Whether the advertisement dated 10.11.2012 published by the respondents for recruitment of MTS (Group C post) is liable to be quashed in view of the grounds mentioned by the applicants in their Original Applications?

(iii) Whether there is any justification for fixing cut-off date of 31.12.2009 for granting age relaxation and experience to the casual labourers?

15. As regard issue No. (i), learned counsel for the applicants has laid much emphasis on the point that in Office Memorandum dated 7.6.1988 and Office Memorandum dated 11.12.2006, specific guidelines were issued for regularisation of casual labourers and subsequently in the judgment of Constitutional Bench in the case of State of Karnataka and Others v. Uma Devi (supra), the Hon''ble Supreme Court has also directed the concerned employers to take one time measure scheme for regularisation of casual labourers. On the strength of above three points, learned counsel for the applicants has submitted that the applicants have made out their case for regularisation but the respondents have not taken one time measure to regularise the casual labourers in compliance of the judgment rendered in State of Karnataka and Others v. Uma Devi (supra) case nor they have adopted any measure to regularise the casual labourers in view of earlier Office Memorandums, mentioned above. In order to appreciate the submissions made by learned counsel for the applicants regarding their claim for regularisation in view of O.M. dated 7.6.1988, it is worth to mention the relevant portions of O.M. dated 7.6.1988. O.M. dated 7.6.1988 was issued in view of the observations made by the Hon''ble Apex Court in Writ Petition filed by Shri Surinder Singh and Others against the Union of India. The relevant paragraph of the aforesaid O.M. i.e. para No. 1 reads as under: This O.M. generally lays down the guidelines in the matter of recruitment of casual labourers on daily wage basis;

Persons on daily wages should not be recruited for work of regular nature;

(ii) Recruitment of daily wagers may be made only for work which is casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular post cannot be created.

Apparently, the above guidelines which relate to the recruitment of casual labourers show that their engagement/recruitment itself has to be made for a work which is of casual or seasonal or of intermittent nature and, which is not of full time for which a regular post cannot be created. The other guidelines of this

O.M. relate to regularisation of casual workers who have been assigned the work of permanent nature done by regular employees of the department.

16. The other Office Memorandum dated 11.12.2006, on which much emphasis has been laid down by the applicants counsel, reads as under:

1. The undersigned is directed to say that the instructions for engagement of casual workers enunciated in this Departments O.M. No. 49014/2/86 Estt. (C) dated 7.6.1988 as amplified from time-to-time, inter alia provided that casual workers and persons on daily wages should not be recruited for work of regular nature. They could be engaged only for work of casual or seasonal or intermittent nature, or for work which is not of full time nature for which regular post can not be created. Attention is also invited to this Departments O.M. No. 28036/1/2001-Estt. (D) dated 23.7.2001 wherein it was provided that no appointment shall be made on ad hoc basis by direct recruitment from open market.

2. A Constitution bench of the Supreme Court in Civil Appeal No. 3595-3612/1999 etc. in the case of Secretary, State of Karnataka and Others v. Uma Devi and Others (supra) has reiterated that any public appointment has to be in terms of the Constitutional scheme. However, the Supreme Court in para 44 of the aforesaid judgment dated 10.4.2006 has directed that the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure the services of such irregularly appointed, who are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned posts but not under cover of orders of Courts or tribunals. The Apex Court has clarified that if such appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularised.

3. Accordingly the copy of the above judgment is forwarded into all Ministries/Departments for implementation of the aforesaid direction of the Supreme Court.

A perusal of the above O.M. shows that it was issued after the judgment passed in the case of State of Karnataka and Others v. Uma Devi (supra), directing all the concerned Ministries/departments emphasizing that the Union of India, State Governments and their instrumentalities should take steps to regularize as one time measure the services of such irregular appointees who are duly qualified persons in terms of statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned posts but not under cover of Orders of Courts/Tribunals. If such appointment of casual labourers itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularised.

17. Learned counsel for the applicants has submitted that in the case of present applicants observations of Supreme Court made in para-53 of the above judgment are applicable. He has drawn our attention towards para-53 of the judgment in the case of State of Karnataka and Others v. Uma Devi (surpa),

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

Learned counsel for the applicants has also placed reliance on the observations made by Supreme Court in the case of State of Karnataka and Others Vs. M.L. Kesari and Others, , wherein the Hon''ble Supreme Court while dealing with the matter of regularisation, observed as follows:

It is evident from the above that there is an exception to the general principles against regularization enunciated in State of Karnataka and Others v. Uma Devi (supra), if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any Court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The 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 will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

Observations of the Hon''ble Supreme Court in the aforesaid case shows that the casual labourers may be regularised if they fulfill certain conditions and those conditions have been elaborated in the aforesaid judgment. The fine distinction

between irregular and illegal appointment has also been made in the above case by the Hon''ble Supreme Court.

18. It is a cardinal principle of law that onus always lies on the person to prove the fact alleged by him/her. In the present cases, the applicants have come for regularization. Naturally they have to prove that they have fulfilled all the necessary conditions and possess necessary qualifications for being regularized. We have mentioned in detail the documentary evidence, filed by the applicants, in Original Applications under consideration before us. It is worth to mention that none of the applicants have filed any documentary evidence to prove that they were engaged/appointed as casual labourer against any advertisement made by the respondents duly communicated to the Employment Exchange against any sanctioned vacant post and they were engaged/selected from the list of competitors according to prevailing rules for public employment as per Constitutional scheme. Some of the applicants have filed their experience certificate, and some of the applicants have filed their High School or 8th class passed certificate and some have filed their registration certificate in the respondents department. Unless, it is proved on record that the applicants fulfilled the required eligibility conditions laid down in the case of State of Karnataka and Others v. Uma Devi (supra), they cannot get the benefit of directions given in the case of State of Karnataka and Others v. Uma Devi (supra) for one time regularisation though they might have continued as casual labourer since long.

19. It has been specifically contended by the respondents counsel that none of the applicants fulfilled the conditions laid down in the above O.M. or in the case of State of Karnataka and Others v. Uma Devi (supra) and none of them are entitled to get its benefit. Learned counsel for the respondents has drawn our attention towards the observations made by the Hon''ble Apex Court in para-43 of the aforesaid judgment, which reads as follows:

Thus it is clear that adherence to the rule of equality in public employment is a basic feature of our constitution and since the rule of law is the core of our constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be

entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as litigious employment in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

Learned counsel for the applicants has also placed reliance on the observation made by the Hon'ble Supreme Court in the case of *Satya Prakash and Others v. State of Bihar and Others*, decided on 16.3.2010 and published in Criminal Law Journal. In that case, appellants who had worked for more than 10 years on daily rated basis in Bihar Intermediate Education Council, approached the Hon'ble High Court of Patna for regularization of their services and a learned Single Judge of the Patna High Court directed the Council to consider their request for regularization treating them as a separate class after relaxing their age. Since no positive direction was given to the Council for regularization of their services, an Appeal was preferred before the Division Bench of the Hon'ble Patna High Court. The Division Bench held that merely because they had worked as daily waged employees with the Council would not confer any right for regularization as no public employment was permissible de hors the recruitment rules. The Appeal was dismissed in limine and then the appellants approached the Hon'ble Supreme Court. The Hon'ble Supreme Court observed as follows:

We are of the view that the appellants are not entitled to get the benefit of regularization of their services since they were never appointed in any sanctioned posts. Appellants were only engaged on daily wages in the Bihar Intermediate Education Council. In *State of Karnataka and Others v. Uma Devi (supra)*, this Court held that the Courts are not expected to issue any direction for absorption/regularization or permanent continuance of temporary contractual, casual, daily-wage or ad hoc employees.

Learned counsel for the applicants has also placed reliance on the case of Harjinder Singh Vs. Punjab State Warehousing Corporation, and Union of India (UOI) and Another Vs. Kartick Chandra Mondal and Another, . We have respectfully gone through the above cases. The facts and circumstances of the above cases are quite different and applicants do not get any help from these cases. Reliance has also been placed by the applicants counsel on the case of Union of India (UOI) and Others Vs. Vartak Labour Union, . After going through this case, we are unable to understand as to how this case (for the observations made therein) helps the applicants. In this case, Border Road Regulations para-503 was under challenge in which members of Board Road Organization had approached the Hon''ble High Court. The Division Bench of the Hon''ble High Court has passed an Order for regularization of the members of respondents union relying on inter departmental communication taking it as a scheme of regularisation. It was held that the departmental communication and noting in departmental files do not have the sanction of law creating a legally enforceable right. In the result, the respondents union claiming for regularization of its members merely because they have been working for Border Road Organization for a considerable period of time, cannot be granted. The impugned direction, by the High Court, held not sustainable and liable to be set aside. Reliance has also been placed by the applicants counsel on the case of Nihal Singh and Others v. State of Punjab and Others in Civil Appeal No. 6315 of 2013 arising out of SLP (Civil) No. 12448 of 2009. In this case, considering the large scale disturbance in the State of Punjab in 1980s, State of Punjab resorted to recruitment u/s 17 of the Police Act, 1861, which enabled the State Police Officers (not below the rank of Inspector) to appoint Special Police Officers. The appellants in this case were ex. Servicemen registered with the Employment Exchange. They were recruited as Special Police Officers u/s 17 of the Police Act, 1861 and were assigned the special constable numbers. They were entitled to all privileges under Police Act 1861 and were kept under the administrative control of the Police Officer of certain rank in the matter of discipline etc. They did not get any relief of regularisation from the High Court, ultimately they approached the Hon''ble Supreme Court where it was observed, as follows: In our opinion, the initial appointment of the appellants can never be categorized as an irregular appointment. The initial appointment of the appellants is made in accordance with the statutory procedure contemplated under the Act. The decision to resort to such a procedure was taken at the highest level of the State by conscious choice as already noticed by us.

Such a procedure making recruitments through the employment exchanges was held to be consistent with the requirement of Articles 14 and 16 of the Constitution by this Court in Union of India (UOI) and Others Vs. N. Hargopal and Others, .

The abovementioned process clearly indicates it is not a case where persons like the applicants were arbitrarily chosen to the exclusion of other eligible candidates. It required all able bodied persons to be considered by the SSP who

was charged with the responsibility of selecting suitable candidates. Such a process of selection is sanctioned by law u/s 17 of the Act.

In these peculiar circumstances, the Hon"ble Supreme Court directed the State of Punjab to regularize the services of appellants by creating necessary posts within a period of three months as their appointment was neither illegal nor against the prevailing rules for appointment of Police Officers.

20. A perusal of the above mentioned facts apparently shows that in the aforesaid case, the appointment of Special Police Officers was not illegal nor irregular rather it was made under the prevailing statutory rules and candidates were chosen from amongst several candidates. The facts of this case accordingly are different from the present case under consideration before us. The applicants do not get any benefit of this case law also. Reliance has also been placed by learned counsel for the applicants on the case of Nagendra Chandra Vs. State of Jharkhand and Others, . In this case, Bihar Police Manual-Rule 663 was under consideration before the Hon"ble Supreme Court in which Constables were appointed without proper advertisement of vacancies. Ultimately their services were terminated, it was challenged and the case went to the Hon"ble Supreme Court in which it was observed that the appointment in violation of recruitment rules would be violative of Articles 14 and 16 of the Constitution of India, thus, would be null and void. The continuation in service for a long period cannot be a ground for allowing further continuance. However, if the appointment found not illegal but, irregular, the appointee put in 10 years or more service shall be allowed to continue and can be regularized. The rules required advertisement of vacancies through Employment Exchange and their notification in newspaper instead the authorities displayed them on notice board. Such a course, the Hon"ble Court held not only in infraction of service rules but also violative of those articles, thus, rendered the appointment of appellants as illegal. Their termination was held justified and appellants were dismissed. It is apparent from perusal of these facts that the applicants do not get any help from this case also.

21. Learned counsel for the respondents has drawn our attention towards the case of Municipal Corporation, Jabalpur Vs. Om Prakash Dubey, in which the Hon"ble Supreme Court has again emphasized the guidelines/directions given in the case of State of Karnataka and Others v. Uma Devi (supra), defining the distinction between irregular appointment and illegal appointment as follows: The distinction between irregular appointment and illegal appointment is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, a part of the which is State within the meaning of Article 12 of the Constitution, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules has been made, the appointment may be irregular in the sense that some provisions of the rules might not have been strictly adhered to.

The respondents counsel has also drawn our attention towards the observations

made by the Hon''ble Supreme Court in the case of National Fertilizers Ltd. and Others Vs. Somvir Singh, , where the Hon''ble Supreme Court has observed as follows: The respondents herein were appointed only on application made by them. Admittedly, no advertisement was issued in a newspaper nor was the employment exchange informed as regards existence of vacancies. It is now trite law that State within the meaning of Article 12 of the Constitution is bound to comply with the constitutional requirements as adumbrated in Articles 14 and 16 thereof. When the Recruitment Rules are made, the employer would be bound to comply with the same. Any appointment in violation of such Rules would render them as nullities. It is also well settled that no recruitment should be permitted to be made through back door.

The observations made by the Hon''ble Supreme Court in the case of Official Liquidator Vs. Dayanand and Others, , the Hon''ble Apex Court has shown its deep concern over the mode and manner of irregular appointments by the employer against the provisions contained in the recruitment rules and observed as follows: The judgments of 1980s and early 1990s in regard to regularization of ad hoc/temporary/daily-wage/casual employees are representative of an era when the Supreme Court enthusiastically endeavoured to expand the meaning of the equality clause enshrined in the Constitution and ordained that employees appointed on temporary/ad hoc/daily-wage basis should be treated on a par with regular employees in the matter of payment of salaries and allowances and that their services be regularized. In several cases, the schemes framed by the Governments and public employer for regularization of temporary/ad hoc/daily-wage/casual employees irrespective of the source and mode of their appointment/engagement were also approved. In some cases, the Courts also directed the State and its instrumentalities/agencies to frame schemes for regularization of the services of such employees. These judgments and orders encouraged the political set up and bureaucracy to violate the soul of Articles 14 and 16 as also the provisions contained in the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 with impunity and the spoils system which prevailed in the United States of America in the sixteenth and seventeenth centuries got a firm foothold in this country. Thousands of persons were employed/engaged throughout the length and breadth of the country by backdoor methods. Those who could pull strings in the power corridors at the higher and lower levels managed to get the cake of public employment by trampling over the rights of other eligible and more meritorious persons registered with the employment exchange. A huge illegal employment market developed in different parts of the country and rampant corruption afflicted the whole system.

It is clear from the above discussions that as regards the present cases before us, none of the applicants have proved that they fulfilled the conditions laid down either by the aforesaid office memorandum or the guidelines laid down by the Hon''ble Supreme Court in the Constitutional Bench case of State of Karnataka and Others v. Uma Devi (supra). The applicants have miserably failed to discharge the onus lying on them to prove their case. Simply because some of

the applicants worked as casual labourer for a petty long time in the office of respondents, no legal right accrues to them for being regularized. The only exception laid down in the case of *State of Karnataka and Others v. Uma Devi* (supra) for regularization of casual labourer/daily-wager or ad hoc employees is in para-53 of the judgment and that too is applicable when they fulfill the conditions laid down in that judgment. It could not be proved by the applicants on record that any vacancy was advertised through Employment Exchange against which the applicants were duly selected as casual labourer according to the prevailing rules meant for appointment according to the Constitutional scheme.

22. In the light of above observations and discussions, we conclude that the applicants are not entitled for regularization. Accordingly issue No. 01 is decided against them.

23. As regards issue No. (ii), learned counsel for the applicants has submitted that the impugned advertisement is arbitrary, illegal and liable to be quashed mainly on the grounds that it has not been advertised in accordance with any MTS Recruitment Service Rules. Similarly the condition of minimum educational qualification of High School pass in the impugned advertisement is also illegal as it is against the recruitment rules for Group D in IA & AD which stipulates 5th class passed as the minimum educational qualification for engagement of casual labourers and also for Group D posts. The impugned advertisement is also liable to be quashed on the ground that it stipulates that the candidates who have not passed High School will have to pass the High School within two years of recruitment and if they do not pass the High School, their appointments shall be cancelled. The applicants have further sought quashing of impugned advertisement on the ground that online registration is to be made within 20 days of impugned advertisement notification without any facility of sending application through post or by hand. There is every possibility of mistake in the completion of form, resulting in not sending call letters for the interview. Senior casual labourers should have been given preference over the junior casual labourers. It is also submitted that this action of the respondents is in violation of articles 14, 15, 16, 21, 39(d), 41, 42, 43, 45 and 311 of the Constitution of India. No advertisement for direct recruitment to any post including MTS could be made without proper service rules, recruitment rules, and sanction of posts and before implementing regularization of existing casual labourers on the roll. As per orders/policy dated 7.6.1988 and 11.12.2006 issued by respondent No. 1 for engagement and regularization of casual labourers, the applicants have got legitimate expectation for continuance/engagement as casual labourers. Through this advertisement, the respondents will have an unfettered power to favour a few and discard the casual labourers who have been working since long.

24. It is also submitted that the notification for any vacancy falling vacant after August, 2011 in MTS (group C) will fall within the jurisdiction of Staff Selection Commission as per the Circular No. 42 dated 23.11.2012 issued by CAG of India

hence, the respondents are not competent to hold the impugned examination of MTS (Group C).

25. Learned counsel for the respondents has refuted the arguments advanced by learned counsel for the applicants submitting that the present cases relate to the persons who were engaged as casual daily rated workers, not appointed against any sanctioned posts. They are more in the nature of illegal appointments. Their cases would fall under the category of persons mentioned in para-44 (in some reports para-53) of *State of Karnataka and Others v. Uma Devi* (supra) case wherein the Hon'ble Apex Court has observed that the persons engaged on daily wages (who were so engaged without due process) can be allowed to compete in the regular process of selection waiving the age relaxation and giving some weight age for their having been engaged for work in the department for significant period of time. In this regard, in the advertisement dated 10.11.2012 the department has made the provisions for open recruitment with provisions for age relaxation and weight-age to persons (prescribed as per norms) who had worked in the department for varying periods. After the recommendations of 6th Central Pay Commission, all Group D posts in the Government departments have been upgraded to Group C with Pay Band-I and grade pay of Rs. 1800/- and it has been decided that there will be no further recruitment in Group D posts and, they have been re-designated as Multi Tasking Staff (MTS). Indian Audit and Accounts Department Multi Tasking Staff Recruitment Rules, 2011 have already been framed, copy of which has already been filed on record as annexure R-1. Following the instructions issued by the DOP & T as well as 6th Central Pay Commissions recommendations as accepted by the Government of India for direct recruitment to the post of MTS cadre, five years age relaxation to SC/ST category, three years age relaxation to OBC category, 10 years age relaxation to physically handicapped category has been granted. It has been detailed in para-3 of the advertisement. Similarly relaxation in the minimum required educational qualification is also given to class 8 passed to the casual labourers who have worked or engaged in IA & AD subject to other conditions as mentioned in the advertisement and in Item No. 3b(viii), while for open candidates the minimum educational qualification is 10th class passed. The respondents have taken care of providing relaxation in respect of age and educational qualification to the casual labourers engaged with the respondents office.

26. As regards the contention of applicants that the advertisement is in violation of Articles 14 and 16 etc. of the Constitution of India, it has been submitted by learned counsel for the respondents that it is not in violation of any Articles of Constitution of India, rather the engagement of casual labourers itself has been in violation of article 14 and 16 of the Constitution of India as it was made without following the rules and regulations made for public employment, as enshrined in the Constitution.

27. As it is apparent from the aforementioned discussions that the applicants could not show any documentary evidence on record that their engagement/

appointment was in accordance with the rules prevailing at that time, it cannot be said that any provision of the Constitution of India has been violated. Our attention has been drawn by respondents counsel towards the observations made by the Hon"ble Supreme Court in the case of Principal, Mehar Chand Polytechnic, Jalandhar City and Another Vs. Anu Lumba and Others, wherein it has been observed, as under: In the present case, the respondents did not have legal right to be absorbed in service. They were appointed purely on temporary basis. It has not been shown by them that prior to their appointments, the requirements of the provisions of Articles 14 and 16 of the Constitution had been complied with. Admittedly, there did not exist any sanctioned post. Prior to the appointments, neither any appointment was issued enabling the eligible candidates to file applications therefore nor were the vacancies notified to the employment exchange. The project undertaken by the Union of India although continued for some time was initially intended to be a time-bound one. It was not meant for generating employment. It was meant for providing technical education to the agriculturists. Thus, in the absence of any legal right in the respondents, the High Court could not have issued a writ of or in the nature of mandamus. Hence, the part of the High Courts judgment whereby and where under the appellants had been directed to create posts and regularize the services of the respondents, is set aside.

28. Learned counsel for the applicants has tried to challenge the impugned advertisement on the ground that the recruitment of MTS (Group C) cannot be made by the respondents as per the Circular No. 42 issued from the Office of CAG dated 23.11.2012 and it has to be done by the Staff Selection Commission. A perusal of records shows that the impugned advertisement was issued on 10.11.2012 whereas this Circular has been issued from the Office of CAG on 23.11.2012. In this circular, it is specifically mentioned that the future recruitment in the MTS cadre, if required, has to be made through Staff Selection Commission. Apparently, this circular does not affect adversely the present advertisement as it was issued prior to this Circular. So, this contention of the applicants counsel also has got no force.

29. It is true that there is no evidence on record from the side of respondents that any effort was made by the respondents to consider the case of regularization of casual labourers in pursuance of Office Memorandum dated 11.12.2006 and in the light of judgment of State of Karnataka and Others v. Uma Devi (supra). The contention of learned counsel for the respondents is that the orders of Government of India are not suo moto applicable in respect of IA & AD department unless such orders are in consonance with article 148(5) of the Constitution. The Comptroller and Auditor General of India taking a clue from such orders and if deemed necessary issue its own orders which are applicable within the IA & AD. It is also worth to mention here that the applicants also did not take recourse to any legal remedy for compliance of the guidelines mentioned in the aforesaid O.M. after 2006 till filing of the present cases. If they were aggrieved by the aforesaid non-compliance, they could have taken recourse

of available legal remedy before the appropriate forum to get the same implemented. It is a settled view of law that a person sleeping over his right cannot avail the remedy at any time on his choice. Moreover, it is contended by the respondents counsel that after recommendation of 6th Central Pay Commission, Group D posts have already been upgraded in MTS cadre with Pay Band-I of Rs. 1800/- hence, there was no question of considering the regularisation of casual labourers in Group D post. It is also submitted by the respondents counsel that the advertisement dated 10.11.2012 is for the recruitment to the post of MTS and not for Group D posts.

30. As regards educational qualification for the persons to appear in the MTS examination i.e. High School or ITI equivalent as it is a policy decision already taken by the CAG and on the basis of it, examination of MTS (Group C post) has already been conducted earlier in 18 States of the country. Moreover, a provision has been made in the advertisement itself that the casual labourers who pass the MTS examination will be given two years period to clear their High School examination and they will also be given training for the work assigned to them. Thus, there is nothing arbitrary or irregular in the advertisement in this regard.

31. As regards the online registration, the contention of the applicants is not justified because all the applicants, who intended to appear in the examination of MTS as per qualification, have filled up their forms online through Cyber Cafe. Only apprehension of the applicants that there must be mistake in the form is not based on any sound reasoning, hence this argument carries no force.

32. Learned counsel for the applicants has argued that the reservation policy of the Government has not been followed in the impugned advertisement as regards the SC and ST candidates and, therefore, it is liable to be quashed. The respondents counsel has submitted in this regard that in the advertisement, in question, the provisions of reservation have been made following the post based reservation policy. It is further submitted that the reservation quantum for ST/SC in the case of direct recruitment to Group C and Group D fixed for U.P. region is 21% and 01% respectively. For example in the Office of Principal Accountant General (G & SSA) U.P., Allahabad, sanctioned strength of MTS is 181 hence, there are 38 posts for SC and 01 post for ST. It is further clarified that as on 01.6.2012 there were 37 S.C. candidates and 01 S.T. candidate posted on SC/ST place. Thus, only 01 post for SC is vacant, which is shown in the advertisement against which recruitment is being made. Similarly all cadre controlling offices participated in the recruitment process have worked out their respective vacancies category wise and some of these vacancies have been notified by the Office of PAG (G & SSA) which is organizing the recruitment process, Photostat copy of this circular issued by the DOP & T dated 5.7.2005 pertaining to revision of quantum of reservation for SC/ST and OBC in case of direct recruitment to Group C and D posts has been filed by the respondents on record, which is annexure CA-3. After hearing the learned counsel for the parties on this point and after perusal of annexure CA-3, we come to the conclusion that no deviation

appears to have been made by the respondents in the reservation policy of Government of India in this advertisement. Accordingly, this contention of the applicants counsel has also got no force.

33. It is further contended by learned counsel for the applicants that the applicants since they have worked for a long time with the respondents, they have got a legitimate expectation from the respondents and by notification of the present advertisement, their legitimate expectation is not going to be fulfilled. Hence, the impugned advertisement is bad and liable to be quashed. Learned counsel for the respondents has refuted this argument also, submitting that the applicants are casual labourers/daily wagers who were not appointed against any vacant post nor the policy of Government regarding recruitment in public employment has been followed nor any assurance was given to them by the respondents that they will be regularized or made permanent later on. No question of legitimate expectation arises. In this regard, our attention has been drawn towards para-46 of the judgment passed in the case of *State of Karnataka and Others v. Uma Devi (supra)*, where the Hon'ble Supreme Court has expressed the view on the point of legitimate expectation, after considering the various earlier cases in this regard. Para-46 of the judgment reads as follows: 46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in *The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc.*, *State of Haryana and others Vs. Piara Singh and others etc. etc.*, *Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others*, and *Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others*, and the like, have given rise to an expectation in them that their services would also be regularised. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until they have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. [See Lord Diplock in *Council for Civil Services Union v. Minister of Civil Services, National Buildings Construction Corpn. v. S. Raghunathan and Chanchal Goyal (Dr.) v. State of Rajasthan*.] There is no case that any assurance was given by the Government or the department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment

any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after Dharwad decision. Though there is a case that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularised in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the Court had directed regularisation of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

In the light of above observations when we consider the present cases before us, we find that there is nothing on record either in the pleadings of Original Applications or in the form of documentary evidence, filed by the applicants, that any kind of assurance was given to the applicants that they will be regularised or they will be made permanent hence, no question of legitimate expectation arises and accordingly this contention of the applicants counsel has also got no force.

34. Learned counsel for the respondents has contended that the applicants very well knew the fact that they were being appointed as casual labourers for some time only. Their period of contract came to an end when the work, for which they were engaged, was finished. They knew the nature of their job and now since some of them have continued for a long period though intermittently, they cannot say that they have got any legal right for regularization. Our attention has been drawn towards the observations made by the Hon"ble Supreme Court in the case of *State of Karnataka and Others v. Uma Devi* (supra) towards para-45 of the judgment in which the Hon"ble Apex Court has observed as follows: While directing that appointments, temporary or casual, be regularised or made permanent, the Courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the Courts were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the Court to grant any relief to that employee. Similarly, in the

case of State of Karnataka and Others v. Uma Devi (supra), the Hon''ble Supreme Court, quoting the observations made in the case of Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, made the following observations:

We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably failed to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.

35. In view of the above discussions, issue No. 2 is also decided against the applicants.

36. As regards issue No. (iii), learned counsel for the applicants has challenged para-3(B)(viii) of the impugned advertisement, which has been notified by the Comptroller and Auditor General of India with regard to giving age relaxation and experience certificate to the casual labourers working with the respondents for eligibility to appear in the said examination/interview, in which it is said that the casual workers who have been earlier engaged at least for 200 days in any two years in concerned offices of Indian Audit and Accounts Department, to which vacancies relate, will also be eligible for age relaxation to the extent of period of their engagement as casual labourers subject to production of certificate to that effect from the concerned office. According to the applicants, this condition is arbitrary and discriminatory as all the casual labourers who are on roll of the respondents in the Labour Register should have been given age relaxation as per scheme of engagement and regularization. The applicants counsel has further submitted that there is no rationality behind fixing the cut-off date as 31.12.2009 as MTS examination/interview is being conducted in the year 2012. In reply, learned counsel for the respondents has contended that the casual daily rated workers were not appointed against the sanctioned post, however, who are found eligible for appearing in the examination of MTS (Group C post) have been allowed to appear in the examination and weight-age for their experience as well as age relaxation has also been granted to them. The department is doing open recruitment with provisions of age relaxation and weight-age to persons as per prescribed norms who had worked in the department for varying periods. It is further contended by the respondents counsel that after the sixth Central Pay Commission report and prior to framing of the Rules by the DOP & T (framed rules on 30.4.2010) and notified by the CAG of India (notifying rules on 13.8.2011), in some of the States/Offices functioning under the control of CAG, recruitment took place and the CAG took a decision in December, 2009 much prior to the model rule framed by the DOP & T to undertake direct recruitment of MTS in all the offices of IA & AD. In those recruitments, as recruitments were taken prior to 30.4.2010 or 13.8.2011, the experience of daily wagers who had worked up to 31.12.2009 was taken into consideration. In the present recruitment also same policy has been adopted, as notified by the CAG, in

granting age relaxation to the casual workers and weight-age to the experience gained by them. Accordingly, the relaxation in age and experience is available only to those casual labourers who had worked for 200 days in any two years prior to 31.12.2009. It is a policy decision taken by the CAG of India and it cannot be challenged by the applicants.

37. After hearing the submissions made by learned counsel for the parties, it appears that the applicants have not challenged the fixation of 200 days in any two years. There is only some doubt as to whether these two years are to be in continuation with each other or not. In the absence of any specific averment or statement or denial, two years can be taken to be any two years even if there is gap of years in between. However, it is understood that the age relaxation would be of equal number of years for the person who has been engaged. As per submissions of applicants counsel fixing of 31.12.2009, as a cut-off date, is a biased and discriminatory action of the respondents towards the casual labourers as it prejudices those persons who have been working till 2012 but they will not be given the benefit of age relaxation for the period between the years 2009 to 2012. The sole ground of fixing 31.12.2009 as cut off date for granting age relaxation is that this was the cut off date in earlier recruitment exercised in 18 states/offices where the recruitment had taken place. This logic of the respondents does not carry much weight as a natural question arises as to why exercise of recruitment of MTS was not undertaken in the State of U.P. simultaneously with the other states. While the respondents are not affected by any personal adverse consequence of a delayed recruitment but the casual labourers who would have been eligible in 2009 with age relaxation would not be eligible in the year 2012 as they would not get the benefit of additional three years even if they were being regularly engaged because they would be three years older. Had the recruitment taken place three years earlier, at least some of them had got a chance of being considered for a more stable job with better emoluments. Similarly placed persons in other states had, therefore, enjoyed the benefit of regularization which is now being denied to their contemporary (in age) in this State. Thus, it appears that there is no rationality behind fixing the cut off date in the present recruitment of casual labourers for granting age relaxation as 31.12.2009. One aspect also is worth to mention here that in the impugned advertisement, there is no mention of the above cut-off date in the column of age relaxation to the casual labourers. In the instruction No. 9 under the heading HOW TO FILL THE APPLICATION FORM the following has been mentioned: If worked as a casual labourer/engaged through outsourcing in the participating offices of IA & AD: Candidates who have been, earlier engaged at least for two years (not beyond 31.12.2009) in the concerned offices of Indian Audit & Accounts Department in Uttar Pradesh.

No justification appears to be there for mentioning this rider in the column HOW TO FILL THE APPLICATION FORM. The policy of the CAG for fixing cut-off date as 31.12.2009 might be well and good and justified for the recruitments conducted in the year 2010 but it cannot be justified for the recruitment which is going to

be conducted three years later in 2012. Learned counsel for the respondents, in support of his contention has placed reliance on the following case laws:

- (i) Shankar K. Mandal and Others Vs. State of Bihar and Others,
- (ii) Dr. M.V. Nair Vs. Union of India (UOI) and Others,
- (iii) Jasbir Rani and Others Vs. State of Punjab and Another, ;
- (iv) The State of Bihar Vs. Rai Bahadur Hurdut Roy Moti Lall Jute Mills and Another, ;
- (v) The State of Andhra Pradesh and Another Vs. K. Jayaraman and Others, ;
- (vi) Govt. of T.N. and Another Vs. S. Arumugham and Others, ;
- (vii) State of Bihar and others Vs. Ramjee Prasad and others, ;
- (viii) Union of India and Another Vs. Sudhir Kumar Jaiswal, ;
- (ix) Dr. V.P. Malik and others Vs. Union of India, ;
- (x) Dr. Ami Lal Bhat Vs. State of Rajasthan and others, ;
- (xi) Union of India Vs. Shivbachan Rai, (2001) 9 SCC 356, ;
- (xii) State of Orissa and Others Vs. Bhikari Charan Khuntia and Others etc., ;
- (xiii) Basic Education Board, U.P. Vs. Upendra Rai and Others, ;
- (xiv) National Council for Teacher Education and Others Vs. Shri Shyam Shiksha Prashikshan Sansthan and Others etc. etc.,

Though the learned counsel for the respondents has placed reliance on the aforementioned cases, decided by the Hon''ble Supreme Court in this regard, but the facts and circumstances of all these cases are different. However, one thing which has been repeatedly observed by the Hon''ble Supreme Court is that normally no interference should be caused by the Court in shifting the cut off date fixed by the Government or the Institution unless that is arbitrary, unreasonable and irrational.

38. In the case of Shankar K. Mandal v. State of Bihar (supra) the Hon''ble Supreme Court has laid down the principles as to under what circumstances what could be the cut off date which is mentioned as follows:

What happens when a cut off date is fixed for fulfilling the prescribed qualification relating to age by a candidate for appointment and the effect of any non-prescription has been considered by the Supreme Court in several cases. The principles culled out from the decisions of the Supreme Court are as follows:

- (1) The cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules.

(2) If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications.

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority.

Similarly in the case of *Dr. M.V. Nair v. Union of India and Others* (supra), the Hon'ble Supreme Court observed that it is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date.

39. A perusal of the impugned advertisement shows that the last date of online registration of application form has been mentioned as 20th date from the date of publishing of advertisement and this advertisement has been published in the *Employment News* of 10th to 16.11.2012. In view of specific date mentioned for the last date of receipt of applications is 20th date from the date of publishing the notification i.e. almost 30.11.2012. If this date has been mentioned as a last date for candidates from open market, why other date of three years back is fixed for the casual workers engaged earlier is difficult to understand. As already discussed above, this policy decision for the State of U.P. is unreasonable, unjust, arbitrary and discriminatory and it cannot be sustained. Accordingly, issue No. (iii) is decided against the respondents.

40. In view of the above discussions, instruction No. 9 of the heading HOW TO FILL UP THE APPLICATION FORM, which limits the cut-off date as 31.12.2009 is modified to the extent that it will not be effective and the cut-off date in place of 31.12.2009 would be 30.11.2012 and the additional years of working so put in by the casual labourers worked in IA & AD will be counted towards awarding the age relaxation for the purpose of sort listing and consequently respondents are directed to issue interview letters to such of the applicants, who are otherwise eligible in terms of the advertisement dated 10.11.2012. The interview may be held within a period of 30 days from the date of receipt of a certified copy of this Order. The result of such interview will be clubbed with the result of interview held earlier from 14.12.2012 onwards and one combined result will be declared. However, it is made clear that this relief will be available only to those who have agitated their grievance before this Tribunal. In view of the above facts and circumstances and discussions made above, the Original Application Nos. 1672 of 2012, 1688 of 2012, 1776 of 2012, 10 of 2013, 188 of 2013, 1708 of 2012, 1714 of 2012 and 1729 of 2012 are partly allowed. No order as to costs. The interim order granted in any of the above OAs, if any, stands vacated.