

(2001) 06 KAR CK 0052

In the Karnataka High Court

Case No : Writ Appeal Nos. 1592 to 1638 of 2000 connected with Writ Appeal Nos. 2641 to 2645, 1639, 2261 to 2356, 2618 to 2640 and 2038 to 2059 of 2000

State of Karnataka and Another

APPELLANT

Vs

H. Ganesh Rao and Others

RESPONDENT

Date of Decision : 01-06-2001

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2001) 4 KarLJ 466

Hon'ble Judges : P. V. Reddi, C.J.; S. R. Bannurmath, J

Judgement

P.V. Reddi, C.J.-This batch of writ appeals arise out of the writ petitions filed by the respondents herein who are working as Second Division Assistants and Typists in the Commercial Taxes Department of Karnataka State. They were initially appointed by the Deputy Commissioner (CT) of various places mostly during the years 1985 and 1986 on daily wages at Rs. 15/- per day. Their temporary appointments were subject to termination on appointment of regular candidates selected by Karnataka Public Service Commission. Some of the appointments were for duration of four months or so, which were later on extended from time to time. There was an interview and selection before such appointment orders were issued though the details and modalities of such selection are not available. The respondents were appointed against the existing vacancies of sanctioned posts. It transpires from the correspondence that the Commissioner of Commercial Taxes has been pleading for extension of services of these daily wage employees till the candidates selected by Service Commission were allotted. He also addressed letters to the Government to regularise services of similarly situated employees in implementation of the orders of this Court in certain other writ petitions. As the Government did not concede to the request of the petitioners for regularisation, they approached this Court under Article 226 of the Constitution seeking regularisation of their services and to extend the benefit of equal pay on par with the regular

employees in view of the judgment of this Court in *Umadevi v Secretary, Finance Department, State of Karnataka*, W.P. Nos. 3190 to 3207 of 1998, DD: 11-9-1998. By the judgment dated 29-7-1999, these writ petitions were disposed of by Raveendran, J., with the following directions:

"(a) The respondents shall consider the case of each of the petitioners and determine whether they have completed more than 10 years of continuous whole time service in the Commercial Tax Department. Wherever the petitioners have completed continuous whole time service of 10 years, the respondents shall consider their cases for regularisation, by applying *mutatis mutandis*, the Government order dated 6-8-1990 (except in terms requiring the initial entry on daily wage basis being prior 1-7-1984) as clarified by subsequent orders, in particular the Order No. PWD 36 PWC 92, dated 8-5-1992 and the Order No. DPAR 17 SCC 94, dated 20-10-1994.

(b) The respondents shall also extend the benefit of regular pay-scales (i.e., initially the minimum in the pay-scale applicable to equivalent regular posts) and allowances with effect from the date of regularisation.

(c) Both benefits as above shall be extended with effect from 11-9-1998. Compliance within six months from the date of receipt of a copy of this order.

(d) If the petitioners in *Umadevi's* case, *supra*, are given the benefit of regular pay-scales with effect from any earlier date as per the final orders of the Supreme Court, the petitioners will then be entitled to similar relief".

2. The learned Single Judge referred to the Government Order dated 6-8-1990 directing daily wage employees appointed on or before 1-7-1984 should be brought on to the monthly rated establishment. The said Government Order was issued in the wake of the decision of the Supreme Court in *Dharwad District P.W.D. Literate Daily Wages Employees' Association and Others v State of Karnataka and Others*, AIR 1990 SC 883, while holding that the Government Order dated 6-8-1990 has no application to the writ petitioners' cases, the learned Judge however held that on the principle of "equal pay for equal work" applied by the Supreme Court in various pronouncements and the long-standing continuous service that the petitioners have put in, their claim for regularisation deserves to be considered and they should also be extended the benefit of regular pay-scales.

3. Before we proceed further, we may refer to *Umadevi's* case, *supra*, which was a decision rendered by a Division Bench in the writ petitions filed by the daily wage employees of the same Department. In *Umadevi's* case, *supra*, this Court noticed that the petitioners, who were appointed as Typists/Second Division Clerks in Commercial Taxes Department during the years 1985-1987, completed 12 years of service by the date of filing of the writ petition. The learned Judges referred to the letter of the Commissioner of Commercial Taxes dated 31-10-1994, addressed to the Chief Secretary, wherein the Commissioner recommended for regularisation of services of the petitioners, since they were

working against the vacant posts available and were discharging same duties as that of the regularly appointed employees and have acquired sufficient experience. He also recommended for sanctioning the same pay as that of regular employees. The Division Bench referred to the decisions of the Supreme Court including the decision in *Ashwani Kumar and Others v State of Bihar and Others*, AIR 1997 SC 1628 and also the decisions in which principle of "equal pay for equal work" was applied and directed the respondent-authorities to consider the case of petitioners for regularisation on the basis of the principles laid down by the Supreme Court in *Ashwani Kumar's* case, *supra*. A direction was issued to pay the same salary and allowances as are paid to the regular employees of the same rank with effect from the date of their respective appointments. The Supreme Court granted special leave and stayed the operation of the said judgment insofar as it directed payment of salary and allowance from the date of appointment. Applying the ratio of the said decision in quite a number of writ petitions filed by the employees of the Commercial Tax Department, directions were given to regularise the services of those who had put in more than 10 years of service. Such orders passed by the learned Single Judges were confirmed in a series of writ appeals viz., W.A. Nos. 2235 to 2237, 4022 and 4088 of 2000 etc. Thus, it can almost be said that the issue is no more *res integra*. However, a recent decision of Division Bench of this Court in *State of Karnataka and Others v Karnataka Casual and Daily Rated Workers' Union, Hubli*, W.A. Nos. 120 and 128 to 329 of 1999, DD: 1-2-2001, has given scope to the respondents to resist the claims of the writ petitioners. As this judgment of Division Bench is the sheet-anchor of the appellants' contention, let us examine what was held therein and to what extent the ratio of that decision will apply to the present case. In that case, the order of the learned Single Judge directing consideration of the request of the writ petitioners, who were working as casual and daily rated employees of Zilla Parishats and other local bodies, for absorption and regularisation in accordance with the observations made by the Supreme Court in similar cases, was set aside. The decision in *Raghupathigowda's* case, W.A. Nos. 2765 to 2905 of 2000, was held to be *per incuriam* being opposed to the decisions of the Supreme Court and therefore not a binding precedent.

4. Let us get into more details of that case which, according to the appellants, denies relief of regularisation and pay-scales to daily rated employees recruited otherwise than through the media and procedure prescribed by rules and in defiance of ban on such recruitment. At the outset, we would like to make it clear that the Division Bench which decided W.A. No. 120 of 1999 etc., was not concerned with the daily wage employees of Commercial Tax Department, whose appointments, as will be elaborated later, stand on a different footing. Many of the observations made by the learned Judges in the said judgment have no application to the facts of the cases on hand.

5. In those cases dealt with by the Division Bench in Writ Appeal Nos. 120 and 128 to 329 of 1999, the respondent-Karnataka Casual and Daily Rated Workers' Union sought for quashing of Government Order dated 6-8-1990 by which the

Government ordered that appointments of all the casual and daily rated employees made after 1-7-1984 shall automatically stand cancelled. The writ petitioner also sought for a direction to State Government and Zilla Parishats to confer the status of "regular employees" to those daily rated employees recruited after 1-7-1984. The learned Judge disposed of the writ petitions with a direction, which has already been adverted to above. The Division Bench set aside even the limited directions given by the learned Single Judge, having taken the view that the daily wage employees recruited by Zilla Parishats and other local bodies have no right to seek regularisation and their appointments were illegal from the inception. The writ appeals filed by the State were allowed. The learned Judges inter alia have taken into account the following factors while denying the relief:

(1) Nowhere it was stated in the writ petition that the employees concerned were appointed against existing sanctioned vacancies by a Competent Authority by following the procedure laid down for recruitment.

(2) The statutory provisions and the Service Rules did not authorise the employment on daily wage/casual basis.

(3) Under the Karnataka Panchayat Raj Act, Zilla Panchayat or Zilla Parishats had no power to appoint its staff. It was only the State Government which can post the staff to work under such bodies.

(4) Between 3-7-1984 and 18-8-1990, the State had been repeatedly issuing circulars banning recruitment on daily wage basis. In the later circulars issued in 1990 a stern warning was given with a threat to take disciplinary action against those who employed persons on daily wages. Despite the ban imposed and warnings issued by the Government in various circulars, the officials concerned defied the ban and made illegal appointments of casual/daily rated employees.

6. The Division Bench noticed the shift in the approach of the Supreme Court during 1990s by referring to the decisions in *State of Punjab and Others v Surinder Kumar and Others*, AIR 1992 SC 1593, *Jammu and Kashmir Public Service Commission v Dr. Narinder Mohan and Others*, AIR 1994 SC 1808, *State of Haryana and Others v Piara Singh and Others*, AIR 1992 SC 2130, *Dr. M.A. Haque v Union of India*, (1993)2 SCC 213, *State of Himachal Pradesh v Suresh Kumar Verma and Another*, AIR 1996 SC 1565, *Dr. Surinder Singh Jamwal and Another v State of Jammu and Kashmir and Others*, AIR 1996 SC 2775 and *Ashwani Kumar's case*, supra. The learned Judges highlighted the observations of the Supreme Court in some of the above cases that the power available to the Supreme Court under Article 142 is not available to the High Court and, therefore, directions cannot be given to regularise the services of ad hoc and daily wage employees, without regard to the Recruitment Rules. Inter alia, the following conclusions were reached by the learned Judges in the penultimate paragraph vide paragraph 51:

"(b) the appointment secured by such daily wage employees subsequent to

1-7-1984 are totally illegal having been obtained in blatant disregard of the statutory recruitment rules, regulations and specific directions of the State Government under its warning circulars dated 3-7-1984, 29-1-1990, 9-8-1990 and 8-8-1990;

(c) conceding to the request made by the respondent-employees Union for wholesale regularisation would amount to directing the State Government and other statutory bodies to act in disobedience to the law and would only result in encouragement of backdoor entries, corruption, nepotism, favouritism and unhealthy practices. Unwarranted and misplaced judicial sympathy cannot have place in a polity governed by rule of law".

7. As the three Judge Bench decision of the Supreme Court in Ashwani Kumar's case, supra, has been relied upon by both the Counsels and also by the Division Bench in the writ appeals referred to supra, let us see what the Supreme Court laid down in that case. The Supreme Court noticed that an official, who was of the rank of Deputy Director of Health Department and who was made the Chairman of the Selection Committee constituted for the purpose of recruiting 2,250 Class-III and Class-IV employees to fill up the posts created to implement the scheme for eradication of Tuberculosis, appointed about 6,000 persons without even written orders. The said official directed many of them to be adjusted by transfer by DMOs concerned. He shuffled the payment of salaries by turns. Under pressure of agitations, orders were issued regularising the services of daily rated Class-III and Class-IV employees so appointed. When their salaries were not paid they moved the High Court under Article 226. On the directions of the High Court, an Enquiry Committee was constituted to find out whether the appointments were valid and salaries could be paid to such employees. The Committee, after examining the records and after interviewing the employees, found that the Chairman of the Selection Committee did not issue any order of appointment on daily wage basis after following due procedure. The appointments made by him were found to be in violation of the instructions issued by the Government. It was found that not even the qualifications or the previous service particulars were verified, but orders were issued allotting them to various districts and the DMOs were required to verify the credentials and then appoint them temporarily. The report of the Vigilance Department revealed that the concerned authority had violated the rules of appointment in collusion with other officers. The action taken by the Government in cancelling appointments on the basis of the report of the Committee was upheld by the High Court. The unsuccessful writ petitioners filed appeals in the Supreme Court. The Supreme Court noted that the initial appointment on daily wage basis was illegal, made in utter disregard of the procedure and rules and the confirmation of 6,000 employees against 2,250 sanctioned posts was wholly unauthorised. It was held that no right would accrue to the incumbent on the strength of an imaginary or non-existing vacancy. Despite the clear instructions that posts have to be filled up following the prescribed procedure, neither the initial appointments nor confirmation was done by following the prescribed procedure. On the contrary

"all efforts were made to by-pass the recruitment procedure....., both at the initial stage as well as at the stage of confirmation of these illegal entrants". The decision in *Jacob M. Puthuparambil and Others v Kerala Water Authority and Others*, AIR 1990 SC 2228, was distinguished on the ground that there were no vacancies at all on which the appointments could be regularised and there was no occasion to undertake such an exercise when the initial entrance of the appellants to the service was found to be illegal and vitiated. At paragraph 13, their Lordships of the Supreme Court pointed out two contingencies in which the regularisation in Government service could be directed. It was observed:

"Firstly, if on any available clear vacancies which are of a long duration appointments are made on an ad hoc basis or daily wage basis by a Competent Authority and are continued from time to time and if it is found that the concerned incumbents have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularise them so that the concerned employees can give their best by being assured security of tenure. But this would require one pre-condition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularisation may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by Competent Authority and the irregular initial appointment may be regularised and security of tenure may be made available to the concerned incumbent. But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment. In any case, backdoor entries for filling up such vacancies have got to be strictly avoided. However, there would never arise any occasion for regularising the appointment of an employee whose initial entry itself is tainted and is in total breach of the requisite procedure of recruitment and especially when there is no vacancy on which such an initial entry of the candidate could even be effected. Such an entry of an employee would remain tainted from the very beginning and no question of regularising such an illegal entrant would ever survive for consideration, however competent the recruiting agency may be. The appellants fall in this latter class of cases. They had no case for regularisation and whatever purported regularisation was effected in their favour remained an exercise in futility".

Earlier, while discussing the question whether the confirmation of the appellant was justified, it was laid down:

"So far as the question of confirmation of these employees whose entry itself was illegal and void, is concerned, it is to be noted that the question of confirmation or regularisation of an irregularly appointed candidate would arise if the concerned candidate is appointed in an irregular manner on an ad hoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration".

Again, at paragraph 17, it was stressed: "the initial entry of the employees is itself unauthorised being not against sanctioned vacancies nor was Dr. Mullick entrusted with the power of creating vacancies or posts under the TB Eradication Programme. Consequently, the termination of the services of all these appointees cannot be found fault with".

8. However, on humanitarian grounds and on the basis of the available information that more than 2,250 sanctioned posts are available and some more will be created in the near future, the Supreme Court directed that while filling up the posts according to the procedure, an opportunity should be given to the "6,000 unfortunate creatures of Dr. Mullick" to compete for the posts in the future recruitment. Directions were then given by the Supreme Court as to the manner in which such opportunity should be given, the extent of weightage to be given for their service and experience and as regards the relaxation of age limit. In the event of selection and the appointment of appellants certain further directions were given for reckoning of service and seniority.

9. The case of the respondent-employees herein does not stand on the same footing as that of the daily wage recruits who were before the Supreme Court and the Division Bench of this Court in the aforementioned two cases. The first and foremost aspect to be noted is that the appointments of respondents on daily wage basis was against existing vacancies and these vacancies do exist till today, despite appointment of candidates allotted by Public Service Commission on regular basis from time to time. Secondly, it transpires from the correspondence that such appointments were made with the full knowledge and even sanction of the Government and such appointments were continued from time to time under the orders issued by the Government. It is also not in dispute that a test was conducted to the Typists for judging their suitability before appointing them on daily wages. Some of the candidates were also sponsored by Employment Exchange. It is nobody's case that the appointments were tainted by corrupt or extraneous considerations but, as the correspondence between Commissioner of Commercial Taxes and the Government would reveal that it was directed by sheer administrative exigencies. These are the facts, which make a world of difference insofar as the applicability of the Supreme Court's decision in Ashwani Kumar's case, *supra* and the Division Bench decision in Writ Appeal No. 120 of 1999 etc., referred to above. The fact however remains that the respondents were selected and appointed temporarily on daily wages to the

sanctioned posts without due publicity and without subjecting them to the rigour of selection that would have been adopted in the case of normal selection by PSC. Nevertheless, the respondents' plea for regularisation can be brought within the first contingency pointed out by the Supreme Court in Ashwani Kumar's case at paragraph 13 (quoted supra).

10. The background in which the appointments were made and allowed to be continued, can be culled out from the correspondence that ensued between the Commissioner (CT) and the Government. It is pertinent to refer to it in brief because it has vital bearing on the issue under consideration. The D.O. letter dated 4-2-1987 addressed to the Financial Commissioner and Secretary to Government, Finance Department which has been produced on the directives of the Court, is quite revealing:

"Government in their letter No. FD 232 CSE 84, dated 9-10-1984 accorded permission to this department as a special case to fill upto 50% of the posts i.e., 12 Second Division Clerks on daily wages till 31-3-1985 or till the Public Service Commission candidates join regularly whichever is earlier. Accordingly, this Department had appointed Second Division Clerks on daily wages during the years 1984 and 1985 and this arrangement was continued by the Government, from time to time, once in six months. The present term of extension has expired on 30-9-1986. The Karnataka Public Service Commission in their letter No. E(3) 1665/85/86, dated 18-11-1985 had sent a list of 78 candidates against indent for appointment to the post of Second Division Clerks. Out of these 78 candidates only 61 candidates have produced certificates, etc., and these 61 candidates were appointed. Even after appointing these 61 candidates and continuing the existing 121 Second Division Clerks on daily wages, there arose more vacancies in this Department. The vacancy position in this cadre further deteriorated after effecting the promotion of Second Division Clerks to the cadre of First Division Clerks.

As the number of vacant posts of Second Division Clerks was quite numerous and in some of the offices, all the sanctioned posts of Second Division Clerks were left vacant and as keeping these posts vacant in various offices of this Department would be detrimental to the Government revenue, it was felt desirable to fill up these posts on daily wages to assist the Assessing Officers to achieve the targets of collections fixed to their offices under various acts administered by this Department.

In view of this situation, I had discussed the vacancy position in the cadre of Second Division Clerks with you on 6-12-1985 and you were good enough to agree with my proposal to appoint Second Division Clerks on daily wages against the vacant posts. Accordingly, I had issued instructions to all the Deputy Commissioners of Commercial Taxes of this Department to fill up all the vacant posts of Second Division Clerks by appointing candidates on daily wages subject to the condition that their services should be dispensed with soon after the appointment of candidates selected by the Karnataka Public Service Commission.

The Deputy Commissioners of Commercial Taxes have accordingly appointed Second Division Clerks on daily wages against the vacant posts.

The statement showing the details of appointment of Second Division Clerks working in this Department on daily wages as on this date is sent herewith as called for. As shown in the statement only 107 Second Division Clerks on daily wages were appointed within the sanctioned limit upto the period ended on 31-12-1985 and from 1-1-1986 to 31-12-1986, 129 Second Division Clerks were further appointed on daily wages. Thus, as at the end of December 1986 as many as 236 Second Division Clerks on daily wages are found working in various offices of this Department and not 300 Second Division Clerks as approximately mentioned in this office letter of even number dated 26-9-1986. It is pertinent to point out here that 266 posts of Second Division Clerks are vacant and against which 236 Second Division Clerks are working on daily wages".

In the circumstances stated above, I request you to obtain sanction of Government regarding-

"1. Continuation of services of 121 Second Division Clerks on daily wages from 1-10-1986 to 31-3-1987 or till the candidates to be selected by the Karnataka Public Service Commission join for duty, whichever is earlier.

2. Accord ex post facto permission for the appointments made in respect of other 115 Second Division Clerks on daily wages from 1-1-1986 to this date and for permission to continue their services from the date of their appointment as indicated in the list till 31-3-1987 or till the candidates to be selected by the Karnataka Public Service Commission join for duty, whichever is earlier".

11. The sanction orders issued by the Government (Finance Department) between 1984 and 1987 have been placed before us. It is presumed that similar orders were passed subsequently too. Reference may also be made to the letter No. EST.2D.CR. 58/99-2000, dated 28-1-2000 addressed by the Commissioner (CT) to Principal Secretary to the Government, Finance Department wherein the factual position is summarised as follows:

"With reference to the above subject, the following facts in respect of about 356 employees who were appointed to the vacant sanctioned posts of Second Division Assistants, Typists and Stenographers in the Department of Commercial Taxes after 1-7-1984, i.e., in 1985, is hereby brought to the notice of the Government.

As no regular direct recruitments were made to the posts of Second Division Assistants, Typists and Stenographers which were falling vacant in the Department from time to time by the Karnataka Public Service Commission or the Recruitment Authority, with a view to achieve the prescribed tax collection target and for the smooth functioning of the administration of the Department and with the permission of the Government, the employees were temporarily appointed to about 356 such posts during 1984-85 and 1986. The said

employees are continuously performing duties in the vacant posts.....".

Thereafter, the Commissioner referred to the series of cases filed by the employees in the Administrative Tribunal and the High Court, and the appeal filed by the State against the judgment in Umadevi's case, *supra*. It is mentioned in the said letter that in pursuance of the interim order of the Supreme Court, the Government by its order dated 7-7-1999, extended with effect from 11-11-1998 scales of pay and other allowances attached to the posts in which the 18 employees were performing the duties. Reference has already been made to another letter dated 31-10-1994 adverted to by the learned Judges in Umadevi's case, *supra*. That letter of the Commissioner covered also the Typists working on daily wages.

12. Thus, it is clear from the said correspondence that the services of the respondents and other similarly situated daily wage employees working as Second Division Clerks and Typists in CT Department were being extended from time to time with the full knowledge and approval of the Government though they were appointed after the ban imposed by the circular dated 3-7-1984. It is also crystal-clear that they were working against clear vacancies relatable to sanctioned posts. Moreover, even after the absorption of the regularly selected candidates allotted by Karnataka Public Service Commission, the need to displace them never arose because there were enough vacancies left even after absorbing such candidates. It is also clear from the material on record that the recruitment on daily wage basis which was initially meant to be a stop-gap arrangement, was resorted to in administrative exigencies and it did something good for the Department. But the only hitch is that the respondents were not appointed in conformity with the Recruitment Rules through the media of Public Service Commission. It is also doubtful whether any publicity was given inviting applications before going through the process of recruitment by various appointing authorities of Commercial Taxes Department. Across the Bar, the learned Advocate-General stated that no such publicity was given, but the candidates who filed their applications on their own were called for interview and the most suitable amongst them were selected. Of course, it is not the case of the appellants that any of them lacked qualifications for entry into service.

13. In this factual scenario, the question is whether direction could legitimately be given to regularise the services of the respondent-employees whose initial entry as daily wage employees, though not unauthorised, bear the stigma of not being subjected to the process of selection which would otherwise be applicable to regular selections. We have already noticed that the dicta laid down in Ashwani Kumar's case, *supra*, give scope for directing regularisation of the services of ad hoc or daily wage employees appointed by the Competent Authority and continued for considerable length of time, if their services are otherwise required by the employer, subject to the pre-condition that the initial entry is against the sanctioned vacancy and also subject to the condition that

rules and regulations governing the entry are followed for appointment of ad hoc or daily wage basis. No rules or regulations governing such appointments were brought to our notice. Hence, the first contingency adverted to by their Lordships (vide page 14, para 7, supra) comes into play in the instant case. That apart, the initial entry cannot be said to be illegal as the Government gave sanction for engagement in Commercial Tax Department, despite the ban on recruitment of such employees. It cannot also be said that the action taken by the Competent Authorities to induct such employees in administrative interest is in "blatant disregard" of all the rules and procedures for recruitment. Therefore, on facts of these cases which we have referred to in detail, regularisation/absorption into regular service is not impermissible as per the dicta laid down in Ashwani Kumar's case, supra. However, we would like to seek light from some other three Judge Bench decisions of the Supreme Court. A few of them have been referred to in Ashwani Kumar's case, supra.

14. We would now like to refer to the oft-quoted decision in Piara Singh's case, supra. In that case, certain orders were issued by the Governments of Haryana and Punjab regularising the services of ad hoc employees on completion of certain minimum period of service viz., two years or so subject to fulfillment of certain conditions. Such of those ad hoc/temporary employees whose services could not be regularised for non-fulfillment of one or the other conditions prescribed in the relevant Government Orders filed the writ petitions in the High Court of Punjab and Haryana seeking regularisation. The High Court granted the prayer. Thereupon, the States of Punjab and Haryana questioned the judgment of the High Court. The Supreme Court held that the conditions prescribed are quite reasonable and the action taken by the Government in regularising the services on fulfillment of the prescribed conditions were "quite generous" and left no room for any legitimate grievance. The order of the High Court was therefore set aside. The following are the pertinent observations made by their Lordships (vide paragraph 25):

"Before parting with this case, we think it appropriate to say a few words concerning the issue of regularisation of ad hoc/temporary employees in Government service.

The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employees by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected

employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for application and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above process.

If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

(emphasis supplied)

The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent without observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service as the case may be.

So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated 6-4-1990 referred to hereinbefore) both in relation to work-charged employees as well as casual labour".

15. The Supreme Court while pointing out that the aforementioned observations/guidelines are not exhaustive, concluded thus:

"Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing

so, it should bear in mind the observations made herein".

The Supreme Court did not go to the extent of holding that the ad hoc or temporary employees whose employment was necessitated on account of the exigencies of administration will be ineligible for regularisation only for the reason that they were appointed without following the normal recruitment procedure. However, the Supreme Court did indicate that even in such cases, candidates should be drawn from the Employment Exchange or some other method consistent with the requirement of Article 16 should be followed. A notice calling for applications should be published and such applications should be considered. At the same time the Supreme Court did not indicate the consequences of not following such procedure while initiating the process of recruitment of ad hoc/daily wage employees. On the other hand, the need to regularise the services of ad hoc employees or casual labour who were continued for a fairly long spell of service has been stressed by the Supreme Court with the only rider that they must be eligible and qualified according to rules, that the service record is satisfactory and the appointment is not opposed to reservation policy. It is not the case of the appellant that any of these disqualifying factors apply to the cases of the respondents. The orders issued by the Government of Haryana from time to time regularising the services of work-charged employees and casual labour has been commended by the Supreme Court. The Apex Court indicated that the proper course would be to frame a scheme for regularisation consistent with the observations made therein.

Following the decision in Piara Singh's case, supra, in a recent case viz., Hindustan Machine Tools v M. Rangareddy, (2000) 7 SCC 741, the Supreme Court held:

"Tested on the touchstone of the principles laid down in the decisions noted above and keeping in mind the mandate of the Constitution under Articles 38(1), 39(e) and 43, we are of the considered view that the directions issued by the High Court to frame a scheme for regularisation of services of the writ petitioners does not warrant interference. However, considering the submissions made by the learned Counsel for the appellants that the Company is under financial constraints and has decided to reduce its workforce, we would like to clarify that while framing the scheme it would be open to the appellant-Company to assess the requirement of the regular workforce in its different units..... and fix the strength of workforce so that the workers concerned are able to get the benefit of regular service within a reasonable time".

The writ petitioners in that case were the casual labourers working on daily wages for long periods discharging the same duties as regular employees of the company.

16. In our view, the decision in Piara Singh's case, supra, fortifies the respondents' stand for the reasons already discussed. It may be that the respondents bear stigma of being backdoor entrants because most of them have

not come through the Employment Exchange and there is no evidence of due publicity before engaging them on, temporary and daily wage basis. Though the Supreme Court laid down the procedure to be followed in such cases of ad hoc or temporary employment consistent with Article 16 of the Constitution, the Supreme Court did not go further and said that failure to follow such procedure would disentitle the employees to claim regularisation by virtue of their long-standing service. The underlined observations, vide para 14, supra, give a contra-indication. It is a well-known fact that in vast majority of cases, recruitment of ad hoc/daily wage employees is made without giving due publicity and without a transparent selection procedure. If that could be put against the employees concerned, there could hardly be any case in which regularisation could be directed by framing a scheme or otherwise. A balanced and pragmatic outlook consistent with justice and fairness is what is required in such situations. It would have been a different matter if a procedure had been prescribed for recruitment even on daily wage or ad hoc basis and the appointments were made in breach of such procedure, as it had happened in Ashwani Kumar's case, supra. But that is not the case here.

17. Nearer home, there is a decision of three Judge Bench of the Supreme Court in Dharwad District P.W.D. Literate Daily Wages Employees Association's case, supra. In that case, writ petitions were filed by the Employees' Union and by others in public interest seeking directions to confirm the daily rated and monthly rated employees as regular Government servants and for payment of salary at the scale applicable to the appropriate categories of Government servants and for other service benefits. The Supreme Court noticed that the workers who were employed as monthly rated Gangmen and Sowdies were working for 16 to 20 years continuously, Earlier, a direction was given to the Government to pay salary to such workmen at the rates equivalent to the minimum pay in the pay scales of the regularly employed Gangmen or Sowdies, but without any increment, with effect from 1-7-1988. The Government was directed to frame a rational scheme for absorbing as many casual workers and monthly rated Gangmen and Sowdies as possible in regular cadres. The Government of Karnataka then filed a draft scheme, whereupon the matter came up for further consideration of the Supreme Court. On the principle of equal pay for equal work, this is what the Supreme Court said:

"We have referred to several precedents -all rendered within the current decade - to emphasise upon the feature that equal pay for equal work and providing security for service by regularising casual employment within a reasonable period have been unanimously accepted by this Court as a constitutional goal to our socialistic polity. Article 141 of the Constitution provides how the decisions of this Court are to be treated and we do not think there is any need to remind the instrumentalities of the State be it of the Centre or the State, or the public sector that the Constitution-makers wanted them to be bound by what this Court said by way of interpreting the law".

18. After adverting to the scheme framed, the Supreme Court gave certain directions to give final shape to the scheme. The first was to treat the casual/daily rated employees appointed on or before 1-7-1984 as monthly rated establishment employees at the fixed pay of Rs. 780/- per month with effect from 1-1-1990. An annual increment of Rs. 15/- was allowed till their services were regularised. On regularisation, they were directed to be placed in the minimum of the time scale of pay applicable to the lowest in Groups-D, C and B cadres and other benefits available to such regular Government servants. Further, direction was given to regularise 18,600 of such employees with effect from 1-1-1990 and the remaining batch with effect from 31-12-1990 on the basis of seniority and suitability, if they have completed 10 years of service as on 31-12-1989. The balance employees were directed to be absorbed/regularised in a phased manner on the same principle on or before 31st December, 1997.

19. Then, at para 24, it was observed:

"We are alive to the position that the scheme which we have finalised is not the ideal one but as we have already stated, it is the obligation of the Court to individualise justice to suit a given situation in a set of facts that are placed before it..... Therefore, unduly burdening the State for implementing the constitutional obligation forthwith would create problems which the State may not be able to stand. We have, therefore, made our directions with judicious restraint with a hope and trust that both parties would appreciate and understand the situation".

20. It is to be noted that neither the scheme submitted by the State Government nor the modified scheme envisaged the normal Recruitment Rules being applied before absorption into Group-B, C or D services. It is apparent from the discussion in the judgment, especially at paragraph 23, that the regularisation was directed keeping in view the constitutional philosophy underlying the Directives in Part-IV and the concept of equality vis-a-vis employment.

21. The contention of the learned Government Advocate that by implication the Supreme Court must be deemed to have denied the benefit of regularisation for the daily wage employees appointed after 1-7-1984 cannot be upheld. The Supreme Court was only dealing with a particular scheme in relation to the casual/daily rated employees of P.W.D. The fact that relief was granted to certain employees who fulfilled the criteria in the light of the scheme does not mean that all other employees should be denied regularisation, irrespective of the facts and circumstances of the case. The Supreme Court made it clear that the scheme which they were approving may not be an ideal one and the justice has to be "individualised", keeping in view the fact situation and practical considerations.

22. We shall now analyse the decisions especially of three Judge Benches, which fall on the other side of dividing line, that is to say, the cases in which the relief of regularisation was denied.

23. In this category, we have the decision in Surinder Kumar's case, supra. The

following order passed by the High Court was set aside by the Supreme Court:

"On the facts and circumstances of the case, we are of the opinion that the just and fair order should be that the petitioners who have been appointed on part-time basis should be continued until the Government makes regular appointments on the recommendations of the Public Service Commission. Meanwhile the petitioners will get their salary for the period of the vacation".

The respondent in that case was appointed as a part-time lecturer on the specific condition that he could be relieved at any time without notice and that the payment would be made at the specified rate on hourly basis. The Supreme Court while finding fault with the High Court in allowing the writ petition by a cryptic order and without considering any points of distinction between regular lecturers and part-time lecturers, observed as follows:

"It is also not suggested that the respondents accepted the terms set out in Annexures-P/1 and P/2 under mistake. We, therefore, do not find any reason as to why the specific terms on which the appointments were made could not be enforced. We have gone through the special leave petition, the respondents' counter-affidavit and the other affidavits filed by the parties, and do not find any relevant material or tenable plea in support of the claim in the writ petition filed in the High Court".

Repelling the contention of the respondent's Counsel that the Supreme Court had issued directions for absorption of temporary or ad hoc Government servants on permanent basis in several cases, the Supreme Court made the following pertinent observations:

"A decision is available as a precedent only if it decides a question of law. The respondents are, therefore, not entitled to rely upon an order of this Court which directs a temporary employee to be regularised in his service without assigning reasons. It has to be presumed that for special grounds which must have been available to the temporary employees in those cases, they were entitled to the relief granted. Merely because grounds are not mentioned in a judgment of this Court, it cannot be understood to have been passed without an adequate legal basis therefor. On the question of the requirement to assign reasons for an order, a distinction has to be kept in mind between a Court whose judgment is not subject to further appeal and other Courts. One of the main reasons for disclosing and discussing the grounds in support of a judgment is to enable a higher Court to examine the same in case of a challenge. It is, of course, desirable to assign reasons for every order or judgment, but the requirement is not imperative in the case of this Court. It is, therefore, futile to suggest that if this Court has issued an order which apparently seems to be similar to the impugned order, the High Court can also do so. There is still another reason why the High Court cannot be equated with this Court. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it",

which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by the judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge".

This decision highlights two aspects: Firstly, the judgments of the Supreme Court in which ad hoc directions were given for regularisation of temporary or daily wage employees do not have precedential value, if it contained no reasons; secondly, the power of the High Court in this regard cannot be equated to the power of Supreme Court inasmuch as the Supreme Court is a final Court whose judgments are not amenable to further appeal. Further, the power of the Supreme Court under Article 142 enables certain orders to be passed for doing complete justice whereas such power is not possessed by the High Court. These observations made by the Supreme Court throw serious doubts on the precedential value of many of the decisions of the Supreme Court wherein directions of ad hoc nature were given on facts of each case as regards regularisation of services of ad hoc daily wage employees. However, the facts of that case have no parallel to the facts of the cases on hand. In that case, the part-time lecturer, after having accepted the appointment on the terms stipulated in the order, filed a writ petition within a year after his appointment seeking regularisation. Obviously, he had neither legal nor equitable claim for regularisation.

24. Next, we advert to another three Judge Bench decision in Suresh Kumar Verma's case, *supra*. The Assistant Development Officers employed on daily wages filed the writ petitions in the High Court of Himachal Pradesh seeking a direction to re-engage them in any other work or appoint them against existing vacancies. The High Court granted the relief. The Supreme Court allowed the appeal filed by the State and set aside the judgment of the High Court. Certain observations of far-reaching consequence have been made while rejecting the claim of the employees who were engaged in a project work. The following observations are noteworthy:

"It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per Recruitment Rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the rules.

Mr. Mahabir Singh, learned Counsel for the respondents contended that there was an admission in the counter-affidavit filed in the High Court that there were vacancies and that, therefore, the respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise be eligible are entitled to apply for when recruitment is made and seek

consideration of their claims on merit according to the rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition".

Ultimately, the appeal was disposed of with a direction that if the respondents apply for regular appointment, their case should be considered according to rules after relaxing the age limit.

25. More or less the same observations were made by a two Judge Bench of the Supreme Court in Jammu and Kashmir Public Service Commission's case, *supra*. The same learned Judge, Ramaswamy, J., spoke for the Bench in that case wherein the ad hoc appointees sought for a direction to regularise their services by reason of their long-standing service in different disciplines of medical education. The Supreme Court, after adverting to the argument of the respondent's Counsel that the ad hoc appointments though not strictly made according to rules should be regularised in view of their long service and experience, observed thus at paragraph 10 of the judgment:

"The next question is whether the direction given by the High Court to regularise the services of the respondents is valid in law. It is true that the ad hoc appointees have been continuing from 1986 onwards but their appointments are de hors the Rules. Rules prescribe only two modes of recruitment, namely, direct recruitment or promotion by selection. As regards the Lecturers are concerned, it is only by direct recruitment. The mode of recruitment suggested by the High Court, namely, regularisation by placing the service record of the respondents before the PSC and consideration thereof and PSC's recommendation in that behalf is only a hybrid procedure not contemplated by the rules. Moreover, when the rules prescribe direct recruitment, every eligible candidate is entitled to be considered and recruitment by open advertisement which is one of the well-accepted modes of recruitment. Inviting applications for recruitment to fill in notified vacancies is consistent with the right to apply for by qualified and eligible persons and consideration of their claim to an office or post under the State is a guaranteed right given under Articles 14 and 16 of the Constitution. The direction, therefore, issued by the Division Bench is in negation of Articles 14 and 16 and in violation to the statutory rules. The PSC cannot be directed to devise a third mode of selection, as directed by the High Court, nor be mandated to disobey the Constitution and the law".

26. The Supreme Court further stressed that the power similar to the one available to the Supreme Court under Article 142 cannot be exercised by the High Court so as to give directions to regularise the services of ad hoc Medical Doctors. It was observed that the decision in *Dr. A.K. Jain and Others v Union of India and Others*, (1988)1 SCR 335, is not an authority under Article 141 as the direction was given therein on the peculiar facts in the light of Article 142 of the

Constitution. Referring to the observations made in Piara Singh's case, *supra*, the Supreme Court explained them in the following words:

"It is to be remembered that in that case, the appointments are only to Class-III or Class-IV posts and the selection made was by subordinate Selection Committee. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of ad hoc appointment, if the ad hoc appointee continued for long period, the rules of recruitment should be relaxed and the appointment by regularisation be made. Thus considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned Single Judge is right in directing the State Government to notify the vacancies to the PSC and the PSC should advertise and make recruitment of the candidates in accordance with the rules".

27. With great respect, we find it difficult to appreciate the point of distinction made by the Supreme Court in the process of distinguishing Piara Singh's case, *supra*. The ratio of the decision in Piara Singh's case, *supra* or the weight of dicta laid down therein does not depend on the class of posts to which appointments are to be made or the status of selection body. We can only say that the Supreme Court trode a new path in Dr. Narinder Mohan's case, *supra*, and the same was reiterated in the three Judge Bench decision in Suresh Kumar Verma's case, *supra*. The Supreme Court having set aside the directions issued by the Division Bench of the High Court, directed the State Government to notify the vacancies to the Public Service Commission which should complete the process of selection as early as possible. It was then directed that till the regularly selected candidates were appointed, the ad hoc doctors (respondents) shall be continued. Liberty was given to them to participate in the selection process and for this purpose, direction was given to relax the age limit. It was then ordered that if the respondents were not selected, the ad hoc appointment shall stand terminated with the appointment of the selected candidate.

28. There are a few more cases closely following the trend of the decision in Dr. Narinder Mohan's case, *supra*. In *State of Uttar Pradesh v Uttar Pradesh Madhyamik Shiksha Parishad Shramik Sangh*, 1995 AIR SCW 4734, the direction of the High Court to give equal pay to the daily wage employees in Class-IV service working since 15 years on par with regular Class-IV employees and also to regularise their services by creating appropriate posts, was set aside by the Supreme Court. Instead, a direction was given to consider the issue of regularisation according to rules and rules of reservation in vogue, on the basis of length of service and performance of work, as and when regular posts are created or posts fall vacant. The Supreme Court observed that the creation of posts is a matter of executive policy and unless the posts are created there could be no question of regularisation and payment of equal wages.

29. Reference may then be made to the decision in *Hindustan Ship-yard Limited v Dr. P. Sambasiva Rao*, AIR 1996 SC 3230, rendered by the Bench consisting of Agrawal and Nanavati, JJ. Purportedly following the decision in Piara Singh's

case, *supra*, the High Court gave directions to regularise the services of the doctors working on daily remuneration basis or honorarium for a long time. The Supreme Court set aside the judgment of the High Court. The following pertinent observations are made at paragraph 10 of the judgment:

"In view of the rules prescribed by the appellant-Corporation, regularisation of the respondent-Medical Officers on the post of Medical Officer can be made only after they are considered and found suitable for such appointment by a duly constituted Selection Committee. As a result of the direction for regularisation given by the High Court, the requirement in the rules regarding selection by a Selection Committee for the purpose of regular appointment on the post of Medical Officer has been dispensed with. This, in our opinion, was impermissible".

Ultimately, the Supreme Court directed the appellant-Corporation to constitute a Selection Committee in accordance with the rules for considering the matter of regularisation of the respondent-Medical Officers. The Selection Committee was required to consider the claims of the respondents by applying the criteria laid down for the appointment of Medical Officers on regular basis. The Selection Committee was further directed to take into account the record of performance of the respondents while they were working on ad hoc basis. Direction to relax the age limit was also given. The decision in the case of Dr. M.A. Haque, *supra*, was cited with approval. In Dr. M.A. Haque's case, *supra*, the Supreme Court deprecated the practice of bypassing the Public Service Commission, thereby throwing the doors open for back-door recruitment. The same direction, as was given in the case of Hindustan Shipyard Limited, *supra*, was given in this case as well.

30. A conspectus of various decisions of the Supreme Court would reveal divergent approaches and apparently irreconcilable views. In all these cases, the Court set aside the directions for the wholesale regularisation and instead gave an opportunity to the employees working on ad hoc/daily wage basis to participate in regular selection and have themselves qualified for appointment to the extent the vacancies are available. In some cases involving casual workmen, directions were given to frame a scheme for regularisation.

31. The decisions starting from Dr. Narinder Mohan's case, *supra*, including the three Judge Bench decisions in the cases of Surinder Kumar and Suresh Kumar Verma, *supra*, seem to lay down that in exercise of judicial review power under Article 226, the Court should not give directions for regularisation merely on the ground that the ad hoc or daily wage employees have put in considerable length of satisfactory service. The ratio of these decisions spell out that regularisation cannot be ordered *de hors* the Recruitment Rules framed under Article 309 especially where the process of selection is entrusted to a constitutional body like the Public Service Commission. Sweeping directions to regularise without regard to the selection and recruitment procedure prescribed by the rules were not approved by the Supreme Court. Piara Singh's case and Ashwani Kumar's case, *supra*, seem to tread a middle path and set a leeway for regularisation, if the

employees concerned were appointed on daily wage/ad hoc basis against sanctioned posts and their appointment was not totally obnoxious to the rules governing the recruitment. The procedural irregularities in the matter of recruitment can be overlooked to certain extent and regularisation could be ordered if other conditions such as long-standing service, fulfillment of qualifications for entry are satisfied. Both in Piara Singh's case and Ashwani Kumar's case, *supra*, induction of employees through back-door, that is to say, without due publicity and transparent process of selection was frowned upon. But, that by itself has not been regarded as a disqualifying factor for regularisation unless of course, those requirements are spelt out in the procedure prescribed for the ad hoc/daily wage recruitment. A holistic view has to be taken by balancing various relevant considerations. That was the approach in the two cases of Piara Singh and Ashwani Kumar, *supra*.

32. We have already adverted to in paragraphs 9 to 12 the peculiar facts and circumstances of this case including the background in which the respondents came to be recruited as Second Division Assistants and Typists on daily wage basis. We have noted the fact that they have been working continuously for about 15 years against vacancies relatable to sanctioned posts, which remained unfilled throughout. Despite the general ban on such recruitment, the Government having regard to the administrative exigencies as highlighted by Commissioner of Commercial Taxes accorded sanction for their engagement and continuance in service for limited periods from time to time. There never arose an occasion to displace the respondents for the purpose of accommodating the candidates selected by Public Service Commission because the Public Service Commission allottees always fell short of the existing vacancies. The respondents have become age barred by now to seek employment elsewhere. In view of the recommendations made by the Commissioner (CT) and the ever existing deficit of regular selected candidates, the respondents would have entertained a legitimate hope that they will not face retrenchment. In these circumstances, as already discussed, there is no bar to apply the ratio laid down in Ashwani Kumar's case, *supra*, which is the latest three Judge Bench decision on the subject. That is what has been done by the Division Bench in Umadevi's case, *supra* and the learned Single Judges in similar cases filed by the employees of the Commercial Taxes. The decisions of the learned Single Judges in such cases, as already noted, were confirmed by the Division Bench in more than one case. Of course, the correctness of the decision in Umadevi's case, *supra*, is to be decided by the Supreme Court in the pending appeal. The implications of the decisions in the cases of Dr. Narinder Mohan, Suresh Kumar Verma, Hindustan Shipyard Limited, Dr. M.A. Haque etc., *supra*, may have to be considered by their Lordships of the Supreme Court in that appeal. The state of law laid down by the Supreme Court can at best said to be in a fluid state. Whether in cases in which the appointment to the post is to be made on the basis of selection through Public Service Commission, regularisation of the ad hoc daily wage employees having long-standing service could be ordered without subjecting them to further

selection is to be decided by the Supreme Court in an appropriate case -may be in the appeal against judgment in Umadevi's case, supra. In this situation, we are not inclined to deviate from the consistent view taken by this Court in relation to similarly situated temporary employees of the Commercial Taxes Department, starting from Umadevi's case, supra. Insofar as the latest decision of the Division Bench of this Court in Writ Appeal No. 120 of 1999 is concerned, we have already noticed the vast difference in facts. We do not think that the said judgment dealing with the cases of daily wage employees of the local bodies would come in the way of granting relief to the respondents herein, following the earlier decisions. The directions given by the learned Single Judge, in our view, are just and reasonable and do not warrant interference.

33. What remains now for consideration is the direction given by the learned Single Judge to extend the benefit of regular pay-scales with allowances with effect from 11-9-1998 i.e., the date on which the Division Bench pronounced the judgment in Umadevi's case, supra, extending similar benefit to similarly situated employees. Whatever dispute there could be on the issue of regularisation, we have no doubt that on the application of doctrine of "equal pay for equal work", the respondents who have filled up the void in the Commercial Tax Department by working against the posts of Second Division Assistants and Typists are entitled to get the pay-scale and allowances on par with regular employees, as directed by the learned Single Judge. The decision in Dharwad District P.W.D. Literate Daily Wages Employees case, referred to supra, is a direct authority on this aspect. Various earlier decisions of the Supreme Court have been referred to in extenso in that case. No doubt, in some cases for e.g., *State of Haryana v Jasmer Singh*, 1997(1) Supreme 137 and *Ghaziabad Development Authority v Vikram Chaudhary*, (1995)5 SCC 210, such a relief was denied. That was mainly for the reason that in the absence of regular/sanctioned posts available for appointment, the scale of pay admissible to regular employees cannot be given. But that is not the situation in the instant case where the respondents have been throughout working against the vacancies remaining in the sanctioned posts. It is not the case of the appellants that in order to accommodate the candidates selected by Public Service Commission, the respondents will have to make way or that no posts will be available for confirmation of the respondents after appointing the candidates, if any, allotted by the Public Service Commission. As far as the case of *Jasmer Singh*, supra, is concerned, some of the features such as lack of qualification which are highlighted in the said decision are absent in the present case. We are, therefore, of the view that the said decisions have no direct application to the present case, apart from the fact we are bound by larger Bench decisions of the Supreme Court.

In the result, we confirm the directions given by the learned Single Judge and dismiss the writ appeals without costs.