
(2009) 10 GAU CK 0008
In the Gauhati High Court

Subhash Debnath

APPELLANT

Vs

Oil and Natural Gas Corporation Ltd.

RESPONDENT

Date of Decision : 20-10-2009

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 141, 16, 162
Manufacturing Resource Planning Rules — Rule 5

Citation : (2010) 2 GLR 477 : (2010) 1 GLT 93

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Judgement

U.B. Saha, J.—The petitioners, 14 in number, working as casual/contingent workers under the Tripura Assets of the Oil and Natural Gas Corporation Ltd. ("ONGC") filed the instant writ petition praying for issuance of a writ in the nature of mandamus directing the respondents to absorb them in regular Class-TV posts since they have been working in the said capacity from 1988 and 1989 and also for direction to the respondents not to fill up the regular vacant Class-IV posts without absorbing them.

2. Heard Mr. K.N. Bhattacharjee, learned senior Counsel, assisted by Mr. D. Sharma, learned Counsel for the petitioners and Mr. S. Deb learned senior Counsel, assisted by Mr. R. Dasgupta, learned Counsel for the respondents.

3. As proposed by and as agreed to by the learned Counsel of both sides, this writ petition was taken up for final disposal at the admission stage itself.

4. The facts, in a nutshell, required to be noted for disposal of the writ petition are as follows:

The petitioners are casual/contingent workers as stated supra and they are regulated by and under the standing orders of the ONGC. They have been performing technical jobs and, thus, have gained experience similar to that of regular workers by elapse of time. Considering the fact that the petitioners have been serving as contingent/casual workers under the respondents, most of them

being appointed in the year 1988, one being appointed in 1989, the Manager (HR), respondent No. 2 herein published a list of contingent workers on 21.5.2009 indicating their date of engagement, educational qualification and the nature of work they have been performing. Except for the purpose of their service condition and salary they have been performing the duties of such regular employees who have been receiving regular scale of pay. A statement showing the seniority of the contingent workers under the respondents was forwarded by the Chief Manager (IR) to the Manager (IR), ONGC by a letter dated 5.2.1998 (Annexure-2 to the writ petition) wherein among the 38 contingent workers, the names of the petitioners are also figured. On 25.9.1999 a meeting was held between the ONGC Din Majdoor Union of which the petitioners are members and the Director (Pers) and in that meeting the matter of regularization of the aforesaid 38 contingent workers was discussed. In that meeting the Director (Pers) informed that all the contingent workers have to increase their educational qualification in their respective area of works to be absorbed in the regular post, a contingent worker at least must be a matriculate, was observed that from the list submitted by the union only 8 contingent workers are having desired qualification. Hence, all the contingent workers were advised to join the classes and clear their Madhyamik examination at the earliest. The Director (Pers) further stated that the proposal of creation of posts had been received and was in the process. It was expected by the Director (Pers) that some posts for contingent workers might be created and as per MRPR-80 the authority might recruit the contingent workers. However, it was clarified that no educational qualification would be relaxed. After detailed discussion, the Director (Pers) informed that 20 numbers of posts for contingent workers would be created by 2000 and by 2001 almost all contingent workers were likely to be absorbed in regular posts. Thereafter, from 38 contingent/casual workers, 20 have been absorbed out of which only 8 have the desired qualification and rest 3 are similar to that the petitioners. Out of the unabsorbed 18 contingent workers including the petitioners, two are no more in the world and another two persons, namely, Sri Gopal Deb and Dilip Deb refused to join with the petitioners as they got assurance from the authority that they would be absorbed. Though the bio-datas of the petitioners were sent to the Headquarters for creation of 23 posts for regularization of the remaining contingent workers and the authority also sought for some information by Fax message dated 16.7.2002, but thereafter no communication was received by the Deputy Manager (P&A). Thereafter, the respondents by way of relaxation of educational qualification absorbed 12 casual/contingent workers who were similarly situated like the present petitioners in the regular vacancies. After that the petitioners made a representation to the E.D., Asset Manager, ONGC Ltd., Tripura Project, Agartala on 21.5.2009 praying for their regularization wherein it is stated that all of them are Class-VIII passed and with this qualification they have been sincerely working and gained experience for more than two decades and according to them the qualification of madhyamik pass as required to be absorbed in Class-IV posts is a mere formality In their representation they also referred some decisions of the Apex Court to justify

their claim. But till today their representation has not been disposed of by the authority and not only that the authority absorbing some other similarly situated casual/contingent workers in regular posts has deprived of the petitioners from their legitimate right which is violative of Article 14 of the Constitution and as such the whole exercise of the authority is discriminatory in nature. It is also contended in the writ petition that when the petitioners were expecting their absorption, they came to know that the respondents were going to fill up regular Class-IV vacant posts and for which, applications were invited by the Department vide circular dated 19.5.2009 (Annexure-5 to the writ petition) and in case the vacant regular posts are filled up without absorbing the petitioners then their right to life will be seriously affected as there shall be no means of livelihood for them and they will suffer irreparable loss and injury. Hence, this writ petition.

5. The respondents by way of filing affidavit-in-opposition denied all the allegations made by the petitioners in the writ petition. It is contended by the respondents that the petitioner have no light to be absorbed inasmuch as the engagement of the petitioners as contingent workers and subsequently having completed 240 days of works cannot and do not confer any right and/or interest upon any of them to be absorbed on regular basis as Class-IV staff of the respondent No. 1. The recruitment to the posts under the respondent No. 1 is regulated by and under the Recruitment and Promotion Policy, 1980 and the modified Recruitment and Promotion Rules, 1998. The petitioners are not entitled to be engaged/recruited under the said Rules inasmuch as none of them satisfies the eligibility criteria under the said Rules. It is also contended that the petitioners have relied upon the record of notes of meeting of ONGC Din Mazdoor Union with Director (Pers) held on 25.9.1999 at Agartala (Annexure-3 to the writ petition) wherein it was specifically mentioned ONGC, "However, it is clarified that no educational qualification shall be relaxed" and mere creation of additional posts did not give a go-bye to the eligibility criteria for recruitment to the posts ht under the respondent-ONGC. It is further contended in the affidavit-in-opposition that the respondent-ONGC is a public authority and as such any of its employment/engagement in whatsoever capacity is subject to the rigours under the provisions of Articles 14 and 16 of the Constitution of India. More so, the petitioners have never been engaged in the capacity of Class-IV status under she respondents and even the engagement of the petitioners as contingent workers do not give rise to any right to any of them, except those enumerated under the Standing Orders under the law. It is contended that the petitioners are also not entitled to any relief on the purported ground of negative discrimination. Article 14 and/or Article 16 of the Constitution postulates positive aspect and does not confer any right upon any one on negative discrimination.

6. Mr. Bhattacharjee learned senior Counsel while supporting the case of the petitioners would contend that by this writ petition the petitioners have only ventilated their grievances towards the discriminatory action of the authority. According to him, when other 12 similarly situated persons have been allowed to work after regularization of their services as Class-IV employee, the petitioners

cannot be denied their legitimate right to be considered for absorption. He also contended that it is not a case of regularization simpliciter, but a case of violation of Article 14 of the Constitution as the respondent-authorities have acted discriminately. He contended that in one hand, the respondents have relaxed educational qualification in respect of similarly situated 12 contingent/casual workers and in the other have denied the claim of the petitioners for their absorption on the ground of lack of qualification, which is not permissible under the law and in the instant case, the petitioners only wish that they should not be discriminated against vis-a-vis casual workers/contingent workers who have been absorbed even not having the educational qualification as required for the post since the petitioners are also similarly situated. In support of his aforesaid contention, Mr. Bhattacharjee relied on the decision of the Apex Court in *General Manager, Oil and Natural Gas Commission, Silchar v. Oil and Natural Gas Commission Contractual Workers Union* (2008) 12 SCC 275. He also relied on para 10 of the judgment of the Apex Court in *U.P. State Electricity Board v. Pooran Chandra Pandey and Ors.* (2007) 11 SCC 92 wherein the Apex Court noted, inter alia, "We are constrained to refer to the above decision and the principle contained therein because we find that often *Uma Devi's* case (supra) is being applied by court mechanically as if it were an euclidian formula without seeing the facts of a particular case. He also tried to distinguish the case of *Secretary, Sihor Nagar Palika Bureau Vs. Bhabhlubhai Virabhai and Co.*, with the aid of *Pooran Chandra Pandey* (supra). He again contended that there was no scope for the Apex Court to discuss on non-action as well as discriminatory action of the authority in the case of *Umadevi* (3) (supra). In the case of *Umadevi* (3) (supra) there arose no question for decision by the Apex Court in a situation when the authority has relaxed the qualification in case of some of the similarly situated persons and denied the said benefit to others without assigning any reason. According to him, the aforesaid question has been actually answered by the Apex Court in *General/Manager, Oil and Natural Gas Commission, Silchar* (supra).

7. Learned senior Counsel contended that before the discussion between the Director (Pers) and the Union of the petitioners, the petitioners might not have any legitimate expectation, but after the said discussion held on 25.9.1999 and promise made by the authority that the authority would create 20 number of posts for contingent workers and by 2000 they might be absorbed and that by 2001 almost all contingent workers were likely to be absorbed in regular posts, created a hope in the mind of the petitioners and such a hope forced the petitioners to file the representation dated 21.5.2009. His further contention was that a person may have a legitimate expectation of being treated in certain way by administrative authority even though he has no legal right as such an expectation arises either from a representation submitted by the petitioners or promise made by the authority and in the instant case, it is the admitted position that a promise was made by the authority that existing casual/contingent workers like the petitioners would be regularized within 2001.

8. Per contra, Mr. Deb, learned senior Counsel appearing for the respondent-ONGO while resisting the submission of Mr. Bhattacharjee would contend that mere continuance as a casual worker for a long time does not confer any right to an employee for regularization when the employee concerned is ineligible due to lack of educational qualification as required for the post. He also contended that the writ court has no power to direct the respondents to absorb and/or regularize any of its contingent/casual workers without having the required educational qualification as the power of relaxation of educational qualification is with the employer and not with the court. His further contention was that Annexure-3 to the writ petition also does not confer any right to the petitioners for absorption as it is specifically mentioned in the said Annexure that no educational qualification shall be relaxed, learned senior Counsel contended that the departmental circular dated 19.5.2009 (Annexure-5 to the writ petition) by which the authority invited applications for filling up certain posts has no relation with the claim of the petitioners as the posts mentioned therein are not Class-FV posts, rather all are Class-III posts as would be evident from Rule 5 of M.R.P. Regulations, 1980. He further contended that any post having scale of pay of Rs. 7,000 (open ended) is a Class-III post and Class-IV post has the scale of pay of Rs. 4300 (open ended). More so, none of the petitioners is eligible for any post advertised vide Annexure-5 to the writ petition. He contended that the petitioners were asking for regularization relying upon the decision of the Apex Court in the case of Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, and Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, as would be evident from Annexure-4 to the writ petition, but both the aforesaid judgments have been overruled by a Constitution Bench decision in Umadevi (3) (supra). In para 15 of Umadevi (3) (supra), the Apex Court while taking note of the case of R.N. Nanjundappa Vs. T. Thimmiah and Another, reiterated its earlier views, inter alia, that regularization would mean conferring the quality of permanence on the appointment. The Apex Court also took note of B.N. Nagarajan and Others Vs. State of Karnataka and Others, and noted "this Court clear by held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This Court emphasized that when rules framed under Article 309 of the Constitution are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the (sic) of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different

concept and cannot be equated when regularization." Placing reliance on the aforesaid decision, Mr. Deb contended that the petitioners are not entitled to any relief as sought for. He also referred para 54 of Umadevi (3) (supra) wherein their lordships observed. "It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

9. To reply to the plea of legitimate expectation, Mr. Deb relied upon paras 46 and 47 of Umadevi (3) (supra). For ready reference, the relevant portion of the aforesaid two paragraphs are quoted herein below-

46. ...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 regularized in the service though they had not been selected in terms of the rules for appointment....

47. ...Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the past....

10. Mr. Deb stated that the two casual/contingent workers, namely, Shri Shib Chakraborty and Manik Bhowmik have already been absorbed in Class-III posts as they are holders of B.Sc and B.A. degree respectively and, therefore, their cases cannot be equated with the petitioner.

11. Mr. Deb while answering to the law reports cited by Mr. Bhattacharjee, learned senior Counsel for the petitioners placed reliance on the decision of the Apex Court in Official Liquidator Vs. Dayanand and Others, wherein their lordships reiterated the ratio of Umadevi (3) (supra) and not only that their lordships also considered the case of Pooran Chandra Pandey (supra) and overruled the said decision, which would be evident from paras 75 and 76 of Dayanand (supra). He also relied upon the decision of the Apex Court in the case of State of Karnataka and Others Vs. Sri G.V. Chandrashekar, particularly para 30 of the judgment wherein the Apex Court after taking note of Dayanand (supra) held, thus-

30. The controversy, if any, in our opinion, has been given a quietus by a three-Judge Bench of this Court in Official Liquidator v. Dayanand, holding:

75. By virtue of Article 141 of the Constitution, the judgment or the Constitution Bench in State of Karnataka v. Umadevi (3) is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed by different two-Judge Benches for declining to entertain the claim of regularization of service made by ad hoc/

temporary/daily wage/casual employees or for reversing the orders of the High Court granting relief to such employees - Indian Drugs and Pharmaceuticals Ltd. v. Workmen, Gangadhar Pillai v. Siemens Ltd., Kendriya Vidyalaya Sangathan v. L.V. Subramanyeswara and Hindustan Aeronautics Ltd. v. Dan Bahadur Singh. However, in U.P SEB v. Pooran Chandra Pandey on which reliance has been placed by Shri Gupta, a two Judge Bench has attempted to dilute the Constitution Bench judgment by suggesting that the said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of the seven-Judge Bench in Maneka Gandhi v. Union of India.

12. While distinguishing the case of General Manager, ONGC, Silchar (supra), Mr. Deb contended that the said decision was rendered by the Apex Court before the judgment rendered in Dayanand (supra) and the decision in the earlier case has been given by a two-Judge Bench in which his lordship Justice H.S. Bedi was a party and the subsequent decision in Dayanand (supra) has been given by a three-Judge Bench wherein also his lordship Justice H.S. Bedi was a party and in Dayanand (supra) the decision in Pooran Chandra Pandey (supra) has been overruled. Therefore, the decision in General Manager, ONGC, Silchar (supra) cannot be treated as a good law. More so, in General, Manager, ONGC, Silchar (supra) the ratio that fell for consideration was the scope and ambit of the jurisdiction exercisable under judicial revise under Article 226 of the Constitution of India on the findings rendered by a tribunal in a proceeding under the industrial law in that case the issue was not regularization but was under contract labour regularization and the tribunal held the workers to be the employees of ONGC. So the issue was whether the writ court could interfere with the findings rendered by the tribunal except on the ground of perversity and the Apex Court rightly did not interfere with the decision of the tribunal while quashing the decision of the High Court. He also pointed out that the decision in Gujarat Agricultural University (supra) as relied upon by the petitioners has already, been overruled by the Apex Court.

13. While distinguishing the case of Dir. S.C.T.I. for Med. Sci. and Tech. and Another Vs. M. Pushkaran, Mr. Deb would contend that the fact of that case is totally different from the case in hand as the fact of that case was that pursuant to an advertisement, select list of five candidates was prepared and the name of Mr. Pushkaran appeared at serial No. 4. The said select list reported to be valid for a period of one year from 11.4.2005 to 10.4.2006 and two of the selectees were offered appointments on 13.4.2005 and 5.5.2005 while the third was offered appointment on 13.6.2005 which he declined. Despite that no appointment was issued in favour of Mr. Pushkaran and consequent thereupon he filed writ petition on 12.12.2005. In the meanwhile a policy decision was taken on 13.7.2005 and a meeting was held on 29.12.2005. The learned Single Judge dismissed the was petition while in the intra-court appeal the judgment was reversed. He placed reliance on the decision of the Apex Court in Shankarsan Dash Vs. Union of India, and R.S. Mittal Vs. Union of India (UOI), in support of

his contention that the superior court would not in exercise of its power of judicial review ordinarily direct issuance of a writ in absence of any pleading and proof of any male fide or arbitrariness on the part of the employer.

14. To set at naught the submission of Mr. Deb, Mr. Bhattacharjee, learned senior Counsel fairly submits that even if this Court does not take note of the case of Pooran Chandra Pandey (supra) as well as the case of General Manager, ONGC, Silchar (supra) then also the claim of the petitioners for regularization/absorption cannot be straightaway ruled out as the respondent authorities themselves made a promise at the time of discussion in the meeting held on 25.9.1999 between the Director (Pers) and the Union of the petitioners for creating 20 numbers of posts for contingent/casual workers and by 2000 they might be absorbed and that by 2001 almost all the contingent/casual workers including the petitioners were likely to be absorbed in regular posts and in view of that promise the respondent-authorities also absorbed 20 casual workers out of which in case of 12 casual workers, the authorities have relaxed the educational qualification up to Class-VIII which the petitioners have and due to that a hope was created in the mind of the remaining 18 contingent/casual workers including the petitioners whose bio-datas were sent to the headquarters by the appropriate authority of Tripura Assets of the respondent No. 1 and on that no decision has been taken by the authority and the result of which is the representation of the petitioners dated 21.5.2009 (Annexure-4 to the writ petition), which is still pending before the authority and non-absorption of the petitioners on relaxation of educational qualification is wholly a discriminatory action on the part of the respondent-authorities and this Court can remove such discrimination by way giving a direction to the respondent-authorities to regularize the services of the petitioners after considering their representation.

15. This Court has examined the argument advanced by the learned Counsel of both sides and also gone through the relevant records available before it as well as the law reports cited.

16. Admittedly, the petitioners along with others were engaged as casual/contingent workers. Some of their counter-part have been regularized in view of the decision arrived at in the meeting held on 25.9.1999 between the Director (Pers) and the Union of the petitioners, the petitioners are also similarly situated. But question arises whether a contingent/casual employee has a right to be regularized on the ground that the authority has regularized services of some such similarly situated persons after relaxation of their educational qualification.

17. There is no doubt that in view of the decision of the Apex Court in Pooran Chandra Pandey (supra), the petitioners have a case, but the problem is this that the case of Pooran Chandra Pandey (supra) subsequently came up before the Apex Court for consideration in the case of Dayanand (supra) wherein the Apex Court overruled the said decision as has been rightly contended by Mr. Deb, learned senior Counsel for the respondents, in Dayanand (supra), the Apex Court in para 92 observed as follows

92. in the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judge Bench in U.P. SEB v. Pooran Chandra Pandey should be read as obiter and the same should neither be treated as binding by the High Courts, tribunals and other judicial for as nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.

It also appears that the case of General Manager, ONGC, Silchar (supra) is wholly based on the decision of Pooran Ch. Pandey (supra) which is over-ruled by the Apex Court in its subsequent decision. Therefore, the decision in the case of General Manager, ONGC, Silchar (supra) though not over-ruled, cannot be treated as a precedent. More so, the questions field for consideration before the court were also different. In that case question was whether a writ court can interfere with the decision of a tribunal rendered in a proceeding under industrial law as rightly contended by Mr. Deb. Hence, reliance by Mr. Bhattacharjee on General Manager, ONGC, Silchar (supra) was misplaced as the decision of the said case was based on Pooran Ch. Pandey (supra).

18. The Apex Court in a subsequent case or G.V. Chandrashekar (supra) had also taken note of Dayanand (supra), which will be evident from para 30 of the said judgment as quoted earlier in this judgment. Therefore, in view of the subsequent decision of the Apex Court, this Court is not in a position to take the aid of Pooran Chandra Pandey (supra) as that would be violative of judicial discipline. But at the same time, it is the duty of the court to remove the discrimination done by the respondent-authorities between the justice seeker petitioners and their counter-parts while the respondent-authorities have not come with a plea that they have withdrawn their decision taken in the meeting held on 25.9.1999 between the Director (Pers) and the Union of the petitioners as reflected in Annexure-3 to the writ petition and not only that the respondents in their affidavit-in-opposition did not even deal with the contention of the petitioners regarding their representation (Annexure-4 to the writ petition), particularly whether the same has been disposed of or not except the plea that the petitioners are not entitled to any relief as sought for on the alleged ground of negative discrimination as Articles 14 and 16 of the Constitution postulate only positive discrimination and do not confer any right on negative discrimination.

19. From the record or notes of the meeting dated 25.9.1999 (Annexure-3 to the writ petition) it appears that the respondent-authorities took a decision for absorbing almost all the contingent/casual workers including the petitioners in regular posts by 2001. In the said decision it was also clarified that no relaxation would be made in respect of educational qualification though the same was subsequently relaxed in case of 12 similarly situated contingent/casual workers and in case of the petitioners, the authority was reluctant to do so. The relaxation of the educational qualification can only be done by the employer/authority, not by the court unless a case of clear discrimination is made out. Mere continuation for a long time as a casual/contingent worker does not ipso

facto create a right to the petitioners for regularization in service, but when some other similarly situated persons have been regularized ignoring the case of the petitioners, then obviously it can be said that it is a case of clear discrimination. In spite of that, question arises whether the said discrimination is positive or negative.

20. The Apex Court in various decisions including the decision in the case of State of Haryana and Others Vs. Navneet Verma, , Abdul Ghani Vs. State of U.P., Shri Kedar Nath Bahl Vs. The State of Punjab and Others, as well as in the case of State of Haryana Vs. Shri Des Raj Sangar and Another, held that the power to create or abolish a post is not related to the doctrine of pleasure rather is a matter of governmental policy. Every sovereign government has the power in the interest and necessity of the internal administration to create and/or abolish a post as per their own policy decision in the exigencies of circumstances and administrative necessity. As long as the decision of the government is taken in good faith the same cannot be set aside by the court. More so, it is also not open to the court to go beyond the wisdom of the decision and substitute its own opinion for that of the government on the point as to whether a post should or should not be abolished. In Uma Devi (supra) which is subsequently followed by a catena of decisions, the Apex Court laid down the law regarding the rules of the employees appointed on temporary, contractual, casual, daily wage or ad hoc basis wherein the Apex Court observed that Articles 14, 16 and 309 of the Constitution of India aim at ensuring public appointment should be given only in a fair and equal manner by providing opportunities, to those who are eligible and waiting for employment. When the rules framed under Article 309 is in force and/or government instructions/policies cover the field, no regularization of service is permissible in exercise of the executive power of the State government and even the court has also no power to give a direction to regularize the service of those employees who are appointed contrary to the provisions of the rules framed under Article 309 and/or Government instructions and/or policy as the same would close the door of opportunity to the thousands of unemployed youths who are waiting for employment following the procedures as prescribed by law.

21. Following the aforesaid case of Uma Devi (supra) the Apex Court in Surendra Prasad Tewari Vs. Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad and Others, reiterated its earlier views, inter alia, that equal opportunity is the basic feature of our constitution and public employment is repository of the said power. The observation of the Apex Court in paras 43 and 53 of the Uma Devi (supra) is quoted herein under:

43. Thug, 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 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. It is a 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 envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employee 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. The High Court acting under Article 226 of the Constitution, 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 the 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 payment 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 constitutional and statutory mandates.

53. One aspect needs to be clarified. There may be cases whose 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 regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the *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 regularization, if any already made but not sub-judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

22. In the case of *Yadu Nandan Garg Vs. State of Rajasthan and Others*, Apex Court noted, inter alia, that the wrong exemption under wrong action taken by the authorities will not clothe others to get the same benefit nor can Article 14 be pressed into service on the ground of invidious discrimination, in *Coromandel Fertilizers Ltd. Vs. Union of India (UOI) and Others*, in para 13 it was held by the Apex Court that wrong decision in favour of any party does not entitle any other party to claim the benefit on the basis of the wrong decision. In the instant case, one of the items was excluded from the schedule, by wrong decision, from its purview. It was contended that that authorities could not deny benefit to the appellant, since he stood on the same footing with the excluded company. Article 14, therefore, was pressed into service. This Court had held that even if the grievance of the appellant was well founded, it did not entitle the appellant to claim the benefit of the notification. A wrong decision in favour of any particular party does not entitle another party to claim the benefit on the basis of a wrong decision. Therefore, the claim for exemption on the anvil of Article 14 was rejected.

23. In the case of *Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others*, Apex Court also took note of the case of *Yadu Nandan Garg (supra)* and the case of *Coromandel Fertilizers Ltd. (supra)* and noted that Article 14 has no application or justification to legitimize an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case at persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously No.

24. In the case of *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, the Apex Court also discussed regarding the concept of equality before law as enshrined in Article 14 of the Constitution. While discussing the concept of equality the Apex Court noted that, there appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by, a citizen or court in a negative manner. To put in other words, if an illegality or irregularity has been

committed in favour of any individual or a group of individuals, the others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are sanctioned by law in their favour on principles of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.

25. Having regard to the submissions of the learned Counsel for the parties and on perusal of the relevant records as available, questions arise for decision as to whether a contingent/casual worker has a right to be regularized or absorbed in a vacant post for mere continuation in service for a long time and whether the respondent-employers are bound by their promise, if any, for regularization of those workers and whether a contingent/casual worker has a right to be regularized on the ground of discrimination, i.e., other similarly situated persons were regularized relaxing educational qualification denying the case of the petitioners. Before deciding the aforesaid questions, it would be proper for this Court to notice Annexure 3 to the writ petition by which the respondents made a promise, according to the petitioner. For better appreciation the same is reproduced hereinunder:

OIL & NATURAL GAS CORPORATION LTD. TRIPURA PROJECT: AGARTALA

The record notes of meeting of ONGC Din Majdur Union with Director (Pers) held on 25.9.2009 at Agartala

The following were present:

1. Sh. Jouhari Lal, Director (Pers) 1. Sh. Sibuj Chakraborty, President
2. Sh. P.K. Adak, R.D. CRBC 2. Sh. Gopal Dey, G.S. & Others
3. Dr. S.R. Das, DGM (E) 15 Members
4. Sh. B.S. Anil Kumar, DGM (D)
5. Sh. K.S. Negi, DGM(C)
6. Sh. S.K. Moitra, CE (P)

7. Sh. L.L. Hedau, CM (TR)

8. Sh. U.K. Das, CC (P&A)

Director (Pers) welcomed all office bearers of union and discussed the following point:

1. Regularisation of 38 contingent workers.

D(P) informed all contingent workers that they have to increase their education qualifications in their respective area of work. At least to absorb the contingent workers, we need at least matriculate and it is observed from the list submitted by union that only eight contingent workers are having desired qualification. Hence, a advised all contingent workers to join the classes and clear their Madhyamik examination at the earliest.

Director (Pers) further stated that the proposal of creation of post had been received and it is in the process. We may create some posts for contingent workers and as per MRPR-80 we may recruit the contingent workers. However, it is clarified that no educational qualification shall be relaxed.

After detailed discussion, D(P) informed that we may create 20 number of posts for contingent workers and by 2000, they may be absorbed. It is further stated that by 2001 almost all contingent workers are likely to absorbed in regular posts.

Meeting ended with vote of thanks to Chair.

L.L. Hedau CM(IR)

26. On perusal of Annexure 3 to the writ petition quoted hereinabove, it appears that the authority have specifically mentioned in their alleged promise that no educational qualification shall be relaxed though a decision has been taken for regularizing the services of the contingent/casual workers including the petitioners by 2001. It also appears from the record that an attempt was made for regularization of the services of 38 contingent/casual workers including the petitioners and out of 38 persons 22 contingent/casual workers have already been regularized by this time and but of which 12 persons have been regularized in exercise of the power of relaxation vested on the authority though they were not educationally qualified for the post as per Rules. As it is settled by this time that whether educational qualification could be relaxed or not is within the prerogative of the executive, not with the court, unless a clear case of discrimination is made out and the rule permits, this Court is unable to give any direction to the respondent-authority for filling up those posts by any particular person including the petitioners, relaxing their qualification. In the instant case though a case of discrimination is made out but said discrimination is a negative discrimination as the petitioners failed to established any right to appointment against the Class-IV posts and not only that in the instant case the petitioners did not challenge the appointment of their counterparts who were absorbed by the authority by way of relaxing their educational qualification even though it is

specifically mentioned in Annexure-3 to the writ petition that no educational qualification will be relaxed. Hence, this Court is also unable to see how the petitioners can be granted any relief as sought for, even when the petitioners have rendered their services on contingent/casual basis for a long time and when the services of other similarly situated persons were admittedly regularized by way of relaxing the educational qualification, after decision of the Apex Court in Uma Devi (3) (supra) which is subsequently approved by a catena of decisions as stated supra and also when the Apex Court mis-approved and deprecated the direction of various High Courts under Article 226 of the Constitution for regularization of the services of the contingent/casual employees who entered in service bypassing the prescribed procedure of public employment. In this case there is no indication whether the engagement of petitioners were after following the proper procedure for public employment or not.

27. In *State of Uttar Pradesh and Anr. v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti and Ors.* (2008) 12 SCC 675 while the Apex Court allowing the appeal filed by the respondents therein given liberty to the writ petitioner-employees to approach an appropriate court/tribunal in accordance with law and to raise all contentions available to them also noted the law relating to absorption and power of the court in paragraphs 44, 45 and 46 of the judgment, which are reproduced hereinbelow:

44. It is settled law that there can be no estoppels against a statute. If the field was occupied by statutory rules, the employees could get right only under those rules. The High Court was equally bound to consider those rules and to come to the conclusion whether under the statutory rules, the retrenched employees were entitled to absorption either in Government department or in any other public sector undertaking. Statement, assurance or even undertaking of any officer or a Counsel of the respondent-Corporation or of the Government pleader of the State is irrelevant. The High Court, in our view, ought to have considered the prayer of the Corporation and decided the question if it wanted to dispose of the matter on merits in spite of availability of alternative remedy to the employees.

45. Again, in our considered opinion, it was incumbent on the employees to show the right of absorption of retrenched employees in government departments or other public sector undertakings. The petitioners had prayed for a writ of mandamus which presupposes a legal right in favour of the applicant. Such right must be a subsisting right and enforceable in a court of law. There must be corresponding legal duty on the part of the respondent-Corporation or the Government which required the Corporation or the Government "to do that which a statute required it to do". No such right of absorption has been shown by the petitioners. Nor could any such corresponding duty of the respondents be shown to the High Court by the employees as noted above, the case of the Corporation was that the retrenched employees could be absorbed only in accordance with statutory rules framed under proviso to Article 30 of the Constitution. No such

direction of absorption of all employees, hence, could be issued by the High Court. The High Court failed to appreciate all these elegant considerations. Even the application by which the corporation sought to place on record statutory rule was rejected by the court and a writ of mandamus was issued.

46. It is well settled that a court of law can direct the Government or an instrumentality of State by mandamus to act in consonance with law and not in violation of statutory provisions. Unless a court records a finding that act of absorption of 11 employees of the Corporation either in government department or in any other public sector undertaking is in accordance with law, no writ can be issued. Therefore, even on that ground, the directions of the High Court deserve to be set aside.

The Apex Court again on a recent decision in the case of Raghavendra Rao Etc. Vs. State of Karnataka and Others Etc., also reiterated the principle laid down in Uma Devi (3) (supra) as well as the principle laid down in Dayanand (supra).

28. Considering the facts involved in this case it can be safely said that the decisions relied by Mr. Bhattacharjee are distinguishable due to the facts involved in those decisions, but as the matter of regularization of the petitioners are still under consideration of the authority and they have not taken any decision regarding the representation of the petitioners dated 21.5.2009 (Annexure 4 to the writ petition), this Court hope and trust that the respondent-authority would consider the representation of the petitioners, if not considered by this time keeping in mind the service of the similarly situated persons have already been regularized by the authority relaxing their educational qualification. The respondents are directed not to dis-engage the petitioners, as they have been working for a long time and regularization of their service is still under consideration, without following the procedure prescribed by law. There is no hesitation in the mind of this Court that the departmental circular dated 19.5.2009 (annexure 5 to the writ petition) whereby and whereunder applications were invited from amongst the interested departmental candidates has no application so far the petitioners are concerned, as by that circular the authority invited applications for Class III post, not for Class IV post against which the petitioners prayed for regularization.

29. With the above observation and direction the writ petition is disposed of. No order as to costs.