

(2013) 03 AHC CK 0089

In the Allahabad High Court

Case No : Special Appeal No's. 374, 387, 399, 419, 420, 421, 422, 423, 424, 425, 437, 438 and 439 of 2011, Special Appeal (D) No's. 677, 678, 679, 680, 681, 682, 683, 684, 645, 582, 685, 686, 687 of 2011 and 43, 327, 326 of 2012

U.P. State Warehousing Corporation

APPELLANT

Vs

Sunil Kumar Srivastava and Another

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Companies Act, 1956 — Section 226
Constitution of India, 1950 — Article 12, 16(4B), 162, 166, 335
Forest (Conservation) Act, 1980 — Section 5
Land Acquisition Act, 1894 — Section 3
Uttar Pradesh Industrial Disputes Act, 1947 — Section 11, 18, 2(1), 2(k), 2(z)

Citation : (2013) 3 ADJ 745 : (2013) 5 ALJ 161 : (2013) 1 UPLBEC 816

Hon'ble Judges : Vishnu Chandra Gupta, J;Devi Prasad Singh, J

Bench : Division Bench

Advocate : Upendra Nath Misra and Rakesh K. Chaudhary, for the Appellant; M.P. Singh, Pankaj Srivastava, R.K. Yadav, S.K. Tripathi and V.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Devi Prasad Singh, J.—Special Appeals under Chapter VIII Rule 5 of the Rules of the Court are preferred against the judgment and order dated 18.4.2011, passed by Hon"ble Single Judge of this Court in Writ Petition No. 2630(S/S) of 2009 preferred by U.P. State Warehousing Corporation (In short, Corporation) whereby Hon"ble Single Judge has held that the matter could not have been referred by the Corporation to the State Government for approval of the decision taken by the Board of Directors with regard to regularisation of employees.

Since in all these special appeal, common question of facts and law is involved, they are taken together and are being decided by the present judgment.

Factual matrix of the controversy is discussed hereinafter.

The respondent petitioners are the employees of the Corporation working in different districts of the State of U.P. on the posts like Technical Assistant, Accountant, Group "C" and Group "D" posts. Through the impugned advertisement assailed before Hon"ble Single Judge, the Corporation took a decision to fill up the vacancies of these categories in view of fact that the State Government disapproved the Board's decision to regularise the services.

2. According to the learned Senior counsel Mr. J.N. Mathur, appearing for the appellants, there are 784 sanctioned posts, out of which 27 posts are of Auditors, 1981 posts of Class-III category and 540 posts belong to Class IV category. 332 vacancies have already been filled up leaving 452 vacant posts. The total 1941 daily wagers are working in the corporation whose future is secured by the impugned judgment of Hon"ble Single Judge.

3. By the impugned advertisement, the respondents have advertised 146 vacancies of these categories out of which 83 persons have been selected. 146 posts contains 8 posts of Auditor, 55 of Assistant Accountant/Auditor and 83 posts belong to Class-IV category. The writ petitions were filed before the selection was held by the appellant. By an interim order dated 7.9.2009, the selection was stayed by this Court.

4. It is not disputed that the petitioners are working against substantive vacancies as daily wager or on contract basis since more than decade and are doing their duties to maintain godown, keep the food grains in safe custody, transport the food grains to railway stations and involved in uploading and downloading of goods. It is further asserted that the corporation is running in profit because of sweat and labour put in by the respondent petitioners and their associates. Further it has been stated by the respondents that the Board of Directors has extended all benefits which is available to regular employees which includes weekly holidays, national holidays and salary paid to them is enhanced, at the interval of every six months. The salary is paid on monthly basis through cheque. Mere artificial break of two or three days at the interval of 89 days to some of the employees does not make a case to treat their services in discontinuation. It is further stated that the respondent petitioners and their associates are transferred from one place to other in the State of U.P. to serve the corporation.

Hon"ble Single Judge noted that the respondent petitioners and their associates were appointed by the appointing authority prescribed under the Regulations and statutory provisions. It is further asserted that the impugned advertisement is without approval of the Board of Directors. With regard to vacancies and advertisement, Hon"ble Single Judge has observed as under:

As on 1st of April, 2010 against the total sanctioned strength i.e. 2140, the total 1491 employees are working and 649 posts are still vacant. For the post of Technical Assistant, 19 posts are sanctioned, against which 17 persons are working and two posts are vacant. In class IV employees total sanctioned posts

are 540, against which 340 employees are working and 200 posts are vacant. For the post of typist, total sanctioned posts are 15, out of which 13 employees are working, two posts are still vacant. For the Junior Office Assistant, total sanctioned strength is 198, out of which 139 employees are working and 59 posts are vacant.

....

The sanctioned posts of Peons and Chowkidars in the Corporation are 504, against which 451 persons are working. Thus, only 89 posts are vacant. However, strength of working casual laborers is 935 in number. Similarly, sanctioned posts of Junior Clerks are 198, 50% of which is to be filled up from direct recruitment and 50% from promotion, against which only 64 posts are vacant. However, the casual clerks are working 449 in number.

5. Though the appellant refuted the finding recorded by the Hon"ble Single Judge but it has not been disputed that the respondent petitioners are working against regular vacancies. Hon"ble Single Judge took note of the fact that right from 1994-95, the corporation is running in profit and there is no financial dearth in case the respondent petitioners are regularised and paid regular salary.

6. It is not disputed that the Board of Directors from time to time took decision to regularise the services of the respondent petitioners. It is further not disputed that the Government has not framed any policy or issued circular restraining the appellant corporation to regularise the services of daily wagers or persons appointed on ad hoc or temporary basis" rather the Government itself by its Regularisation Rules took decision to regularise the services of its employees appointed before the cut off date vide Regularisation Rules, 1998 and Regularisation Rules, 2001 Group C and D posts.

7. The resolution of the Board of Management relevant for adjudication of the present controversy are:

Resolution dated 30.3.1999:

By resolution No. 5, the Board noted that the corporation requires additional employees to discharge its obligation and resolved to engage 59 Technical Assistants on minimum pay-scale and conferred power on Regional Managers to make appointment of daily wagers for the period of six months. The Managing Director was conferred power to regulate the selection process. Relevant portion of the resolution dated 30.3.1999 is reproduced as under:

8. It has not been disputed that the appointment of daily wage labour and accountants were done in pursuance to the aforesaid resolution of the Board of Directors. The appointments were done between 1999-2001 and since last 11 years, the respondents are continuing in service without interference of Courts. The appointments were done by respective Regional Managers in pursuance to power conferred by the Board of Directors (supra). The persons appointed on contract basis were issued appointment letters for the period of six months and

renewed after few days and continuing till date where as the casual labours engaged between 1999 to 2001 are still continuing in service without serving a written order.

9. It has also not been disputed during the course of argument that Warehousing Corporation is a State within the meaning of Article 12 of the Constitution and is an industry as defined u/s 2(k) of the U.P. Industrial Disputes Act. The services are protected by Section 6-N of the U.P. Industrial Disputes Act dealing with matters with regard to retrenchment.

10. Special appeal No. 327 of 2012 has been filed against the judgment and order passed in the writ petition preferred by the respondents with regard to post of Technical Assistant. It is alleged that 55 vacancies of Technical Clerk/Technical Assistant are advertised, out of which only 25 have been placed under general category and 30 has been placed under reserved category. It has been submitted by the learned counsel for the petitioners Dr. Sheelendra Kumar that the reservation could not have been increased more than 50% in view of settled proposition of law.

11. Resolution dated 9.7.2007

By Resolution No. 3, the Board resolved that the corporation is short of employees on account of retirement of its regular employees. Accordingly, it took a decision to be benefited by experience of employees working on daily wage or contract basis in business interest. It was further resolved to regularise their services and requested the Government to grant necessary approval. Resolution No. 3 is reproduced as under:

12. Apart from the resolution of the Board of Directors from time to time, the Managing Director of the corporation has also requested for regularisation of the services of the employees working on different posts on contract or daily wage basis since several years in business interest. One of such letter is dated 14.6.2006.

STATUTORY PROVISIONS

13. U.P. Warehousing Corporation has been established in pursuance to the Central Act, namely, the Warehousing Corporations Act, 1962 (In short, Act). The Act empowers the State Government to establish its own warehousing corporations to fulfil the requirement and to notify commodity. In view of definition contained in Sections 2(k) and 2(1) of the Act, every Warehousing Corporation shall be deemed to be established under the Act.

Under Section 6 of the Act, the Board of Directors is the highest supervisory body which discharge its obligation with the assistance of the Executive Committee.

Chapter III of the Act deals with the State Warehousing Corporations. u/s 18 of the Act, the State Government may by notification in Official Gazette with the

approval of the Central Warehousing Corporation, establish a Warehousing Corporation for the State. A State Warehousing Corporation shall be a body corporate having perpetual succession and a common seal. For convenience, Section 18 of the Act is reproduced as under:

18. State Warehousing Corporations.

(1) The State Government may, by notification in the Official Gazette and with the approval of the Central Warehousing Corporation, establish a Warehousing Corporation for the State under such name as may be specified in the notification.

(2) A State Warehousing Corporation established under sub-section (1) shall be a body corporate by the name notified under that sub-section, having perpetual succession and a common seal, with power to acquire, hold and dispose of property and to contract, and may, by the said name, sue and be sued.

(3) The head-office of a State Warehousing Corporation shall be at such place within the State as may be notified in the Official Gazette.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), it shall not be necessary for the State Government to establish a Corporation under sub-section (1) where, under clause (g) of sub-section (2) of Section 43, a Corporation is deemed to be established for that State under this Act.

Under Section 20 of the Act, it has been provided that the general superintendence and management of the affairs of a State Warehousing Corporation shall vest in the Board of Directors. The Board of Directors shall act on business principles having regard to public interest and shall be guided by such instructions on questions of policy as may be given to them by the State Government or the Central Warehousing Corporation. Sub-section (5) further provides that in case any doubt arises as to whether a question is or is not a question of policy, or, if the State Government and the Central Warehousing Corporation give conflicting instructions, the matter shall be referred to the Central Government whose decision thereon shall be final. For convenience, Section 20 of the Act is reproduced as under:

20.(1) The general superintendence and management of the affairs of a State Warehousing Corporation shall vest in a board of directors which shall consist of the following: namely:

(a) five directors mentioned by the Central Warehousing Corporation, of whom one shall be nominated in consultation with the State Bank and one at least shall be a non-official;

(b) five directors nominated by the State Government; and

(c) a managing director, appointed by the State Government in consultation with the directors referred to in clauses (a) and (b) and with the previous approval of the Central Warehousing Corporation.

(2) The Chairman of the board of directors shall be appointed by the State Government from among the directors of the State Warehousing Corporation with the previous approval of the Central Warehousing Corporation.

(3) The managing director shall-

(a) exercise such powers and perform such duties as the board of directors or the State Warehousing Corporation may entrust or delegate to him; and

(b) receive such salary and allowances as the State Warehousing Corporation may; in consultation with the Central Warehousing Corporation, and with the previous approval of the State Government, fix.

(4) The board of directors shall act on business principles having regard to public interest and shall be guided by such instructions on questions of policy as may be given to them by the State Government or the Central Warehousing Corporation.

(5) If any doubt arises as to whether a question is or is not a question of policy, or, if the State Government and the Central Warehousing Corporation give conflicting instructions, the matter shall be referred to the Central Government whose decision thereon shall be final.

(6) The directors of a State Warehousing Corporation, other than the managing director, shall be entitled to receive by way of remuneration such sums as may be prescribed: Provided that no official director shall be entitled to receive any remuneration other than any allowances admissible to him under the rules regulating his conditions of service.

(7) The term of office of, and the manner of filling casual vacancies among directors shall be such as may be prescribed.

Section 22 of the Act further provides that with the previous approval of the Central Warehousing Corporation, the State Government may remove the Managing Director after providing reasonable opportunity. u/s 23 of the Act, the State Warehousing Corporation has been empowered to make appointments of employees and other officers in efficient performance of its function. For convenience, Section 23 of the Act is reproduced as under:

23. (1) A State Warehousing Corporation may appoint such officers and other employees as it considers necessary for the efficient performance of its functions.

(2) Every person employed by a State Warehousing Corporation under this Act shall be subject in such conditions of service and shall be entitled to such remuneration as may be determined by regulations made by the Corporation under this Act.

Thus the corporation (Board) may take decision for efficient performance of its function (business) for appointment of employees.

Section 42 of the Act further empowers the Warehousing Corporation to make

regulations not inconsistent with the Act and rules for all matters for which the provision is necessary or expedient for the purposes of giving effect to the provisions of the Act which includes condition of service, remuneration etc.

14. The U.P. State Warehousing Corporation has framed its Staff Regulations in pursuance to power conferred by Section 42 of the Act (supra). Clause (e) of Regulation 2 defines the word, "employee" which includes the employees who are whole time or part time service of the corporation but it does not include employees appointed on contract basis since their service conditions shall be governed by contractual assignment. For convenience Regulation 2(e) is reproduced as under:

2(e) "Employee" means a person in the whole time or part time service of the corporation but does not include a person employed on daily wages or a person employed on contract in so far as he is governed by the terms of the contract.

Under Regulation 5, the appointing authority has been dealt with. For convenience, it is reproduced as under:

5. Appointing Authority:--Appointments to posts in class II in the scale of Rs. 625-1240 and above shall be made by the Managing Director and appointments to the posts in class II and III below the pay-scale of Rs. 625-1240 shall be made by the Deputy Managing Director. Appointment to the posts other than that of Managing Director, shall be made by the Executive Committee. The appointment of Managing Director shall be made in accordance with the provisions of Section 20(i)(c) of the Warehousing Corporations Act, 1962 (53 of 1962).

Regulation 11 empowers the appointing authority to remove the services of the employees giving one month notice appointed on temporary basis. For convenience, Regulation 11 is reproduced as under:

11. Termination of service:

(1) The services of an employee of any class who is temporary may be terminated by the appointing authority at any time by giving him one month's notice or pay in lieu thereof.

(2) The services of a permanent employee of the corporation can be terminated by the appointing authority only after apprising the employee of the reasons there for, asking him to furnish any explanation that he may like to offer and after considering the explanation and giving him a final notice to show-cause against the proposed termination.

The absence of any provision in regulation with regard to daily wagers does not stop the Board of Directors to amend regulations or formulate Scheme for daily wagers in business interest.

INTERPRETATION

15. Hon"ble Single Judge, by the impugned judgment held that the Board of Directors being the highest administrative and supervisory body is conferred power to take a decision and the matter could not have been referred to the State Government with regard to approval for regularisation. It is held that once a decision is taken for regularisation of the services by the Board, then that should be implemented in letter and spirit. The Government lacks jurisdiction to approve or disapprove the decision of the Board of Directors.

16. Mr. J.N. Mathur, learned Senior Advocate appearing for the appellant corporation submits that the Board of Directors has rightly referred the matter to the State Government which is the competent authority to approve or disapprove its decision. Submission of the learned Senior counsel is that the decision of the Board of Directors could not have been implemented in regularisation of services without approval of the State Government and once the State Government disapproves, the corporation cannot regularise the services. The learned counsel for the corporation as well as the State of U.P. are impressed upon from the word, "policy" used in sub-section (4) of Section 20 of the Act (supra).

17. Virtually, policy decision means a conscious decision taken by the Government for the management of public affairs. The policy decision shall be a decision taken by the Government for management of public affairs. The policy decision shall be a decision "in rem" and not "in personam".

The aforesaid proposition seems to be fortified by sub-section (5) of Section 20 (supra) which provides that in the event of difference between the State Government and the Central Warehousing Corporation with regard to a policy, the matter shall be referred to the Central Government. Sub-section (4) and Sub-section (5) of Section 5 should be read conjointly and not in isolation.

18. Emphasis given by the learned counsel for the corporation and the State Government to Sub-section (4) without taking note of Sub-section (5) does not seem to be sustainable. It is well-settled proposition of law that while interpreting the statutory provision, a meaning should be given to word by word, line by line and section by section and the Act (statute) as a whole vide *Grasim Industries Ltd. Vs. Collector of Customs, Bombay*, ; *Easland Combines, Coimbatore Vs. The Collector of Central Excise, Coimbatore*, ; *A.N. Roy, Commissioner of Police and Another Vs. Suresh Sham Singh, and Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others*, .

19. In case sub-section (4) of Section 5 is read conjointly, with sub-section (5) then at the face of record, the word, "policy" should be interpreted as a general order or direction passed by the State Government taking a policy decision with regard to particular matter in public interest. Sub-section (4) and (5) does not permit the State Government to interfere with day to day functioning of the corporation.

20. In view of sub-section (2) of Section 18, the corporation is a body corporate incorporate under the Act. Section 18 gives statutory status to the Warehousing

Corporation with the element of autonomy vide Shri Ambica Mills Ltd. No. 1 Vs. The Textile Labour Association, Ahmedabad, .

21. Their Lordships of Hon"ble Supreme Court while considering the essential elements in the legal concept of corporation in a case in Jarnail Singh Vs. State of Punjab, , held as under:

...the essential elements in the legal concept of a corporation are (sic)(1) a continuous identity, i.e. the Original member or members or his or their successors are one, (2) the persons to be incorporated, (3) the name by which the persons are incorporated, (4) a place, and (5) words sufficient in law to show incorporation.

22. A corporation is a legal person just as much as an individual. A corporation aggregate can express its will by deed under a common seal.

23. In a case in Devi Dayal Marwah Vs. The State of Andhra Pradesh, , while considering the difference between the corporation and the Department of the Government, it has been held that the distinguishing feature will be whether the undertaking functions as a responsible independent organisation and not as a part of any department of the State. Other test would be to see whether it is not issued with capacity to contract obligations and are being sued or be sued.

24. Admittedly, under the Act, the corporation possess autonomy with regard to business subject to rider contained in Section 20 (supra). Section 11 of the Act empowers the Central Warehousing Corporation to acquire property and do all needful to run its business. Section 24 of the Act empowers the State Warehousing Corporation also to acquire property. For convenience, Section 24 is reproduced as under:

24. Subject to the provisions of this Act, a State Warehousing Corporation may-

(a) acquire and build godowns and warehouses at such places within the State as it may, with the previous approval of the central Warehousing Corporation, determine;

(b) run warehouses in the State for the storage of agricultural produce, seeds, manures, fertilizers, agricultural implements and notified commodities;

(e) arrange facilities for the transport of agricultural produce, seeds, manures, fertilizers, agricultural implements and notified commodities to and from warehouse;

(d) act as an agent of the Central Warehousing Corporation or of the Government for the purposes of the purchase, sale, storage and distribution of agricultural produce, seeds, manures, fertilizers, agricultural implements and notified commodities; and

(e) carry out such other functions as may be prescribed.

25. Sections 26 and 27 further empower the State Warehousing Corporation to

take a decision with regard to financial aspect. For convenience, Sections 26 and 27 are reproduced as under:

26. (1) Every Warehousing Corporation shall prepare before the commencement of each year a statement of programme of its activities during the forthcoming year as well as a financial estimate in respect thereof.

(2) A statement prepared under sub-section (1) shall, not later than three months before the commencement of each year, be submitted for approval--

(a) in the case of the Central Warehousing Corporation, to the Central Government;

(b) in the case of a State Warehousing Corporation, to the Central Warehousing Corporation and the State Government.

(3) The statement and the financial estimate of a Warehousing Corporation referred to in sub-section (1) may, with the approval of the Central Government in the case of the Central Warehousing Corporation, or with the approval of the Central Warehousing Corporation and the State Government in the case of a State Warehousing Corporation, be revised by the Warehousing Corporation.

27(A) A Warehousing Corporation may, in consultation with the Reserve Bank and with the previous approval of the appropriate Government, issue and sell bonds and debentures carrying interest for the purpose of raising funds: Provided that the total amount of bonds and debentures issued and outstanding and of the other borrowings of the Corporation shall not at any time exceed ten times the amount of the paid-up share capital and the reserve fund of the Corporation.

(2) A Warehousing Corporation may, for the purpose of carrying out its functions under this Act, borrow money--

(i) from the Reserve Bank, or

(ii) from the State Bank, for such periods for which, and upon any of the securities against which, it is authorised to advance and lend moneys, under the provisions of 1 [the State Bank of India Act, 1955 (23 of 1955), or]

(iii) from any nationalised bank, or

(iv) from such insurance company, investment trust or other financial institution as may be approved by the Central Government in this behalf.]

(3) Subject to the proviso to subsection (1), the Central Warehousing Corporation may borrow money from the Central Government and a State Warehousing Corporation may borrow money from the State Government and the Central Warehousing Corporation on such securities and on such terms and conditions as may be agreed upon between the borrowing corporation and the lender, in each case.

(4) The bonds and debentures of a Warehousing Corporation may be guaranteed

by the appropriate Government as to the repayment of principal and the payment of interest at such rate as may be fixed by the appropriate Government on the recommendation of the board of directors of the Corporation at the time the bonds or debentures are issued.

26. Sections 30 and 31 further provides to establish a reserve fund out of its annual net profit and maintain proper account. For convenience Sections 30 and 31 are reproduced as under:

30(1) Every Warehousing Corporation shall establish a reserve fund out of its annual net profits.

(2) After making provision for bad and doubtful debts, depreciation on assets and all other matters which are usually provided for by companies registered and incorporated under the Companies Act, 1956 (1 of 1956), a Warehousing Corporation may, out of its net annual profits, declare a dividend: Provided that for so long as the reserve fund is less than the paid-up share capital of the Central Warehousing Corporation and until there has been repaid to the Central Government such sum, if any, as that Government may have paid under a guarantee given in pursuance of sub-section (1) of Section 5 or sub-section (4) of Section 27, the rate of such dividend, in the case of the Central Warehousing Corporation, shall not exceed the rate guaranteed by the Central Government under sub-section (1) of Section 5.

31. (1) Every Warehousing Corporation shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the profit and loss account and the balance sheet in such form as may be prescribed: Provided that, in the case of the Central Warehousing Corporation, the accounts relating to the Warehousing Fund and the General Fund shall be maintained separately.

(2) The accounts of a Warehousing Corporation shall be audited by an auditor duly qualified to act as an auditor of companies u/s 226 of the Companies Act, 1956 (1 of 1956).

(3) The said auditor shall be appointed by the appropriate Government on the advice of the Comptroller and Auditor-General of India.

(4) The auditor shall be supplied with a copy of the annual balance sheet and the profit and loss account of the Warehousing Corporation and it shall be his duty to examine them together with the accounts and vouchers relating thereto, and he shall have a list delivered to him of all books kept by the Corporation and shall at all reasonable times have access to the books, accounts and other documents of the Corporation and may require from any officer of the Corporation such information and explanations as the auditor may think necessary for the performance of his duties as auditor.

(5) The auditor shall make a report to the share-holders on the accounts examined by him and on the annual balance sheet and the profit and loss

account and in every such report, he shall state whether in his opinion the accounts give a true and fair view--

(a) in the case of the balance sheet, of the state of the Corporation's affairs at the end of its financial year, and

(b) in the case of the profit and loss account, of the profit or loss for its financial year, and in case he has called for any explanation or information from the officers, whether it has been given and whether it is satisfactory.

(6) The appropriate Government may, after consultation with the Comptroller and Auditor-General of India at any time issue directions to the auditor requiring him to report to the appropriate Government upon the adequacy of measures taken by a Warehousing Corporation for the protection of its share-holders and creditors or upon the sufficiency of his procedure in auditing the accounts of the Corporation and may enlarge or extend the scope of the audit or direct that a different procedure in audit may be adopted or direct that any other examination may be made by the auditor if in the opinion of the appropriate Government public interest so requires.

(7) A Warehousing Corporation shall send a copy of every report of the auditor to the Comptroller and Auditor-General of India and to the Central Government at least one month before it is placed before the shareholders.

(8) Notwithstanding anything hereinbefore contained in this section, the Comptroller and Auditor-General of India may, either of his own motion or on a request received in this behalf from the appropriate Government, undertake in respect of a Warehousing Corporation such audit and at such time as he may consider necessary: Provided that where the Central Government is required to make any payment on account of the guarantee given by it under sub-section (1) of Section 5, such audit shall be undertaken by the Comptroller and Auditor-General of India or any person authorised by him in this behalf.

(9) The Comptroller and Auditor-General of India and any person authorised by him in connection with the audit of the accounts of a Warehousing Corporation shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of Government accounts and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office of the Corporation.

(10). The annual accounts of a Warehousing Corporation together with the audit report thereon shall be placed before the annual general meeting of the Corporation within six months of the close of the financial year.

(11) Every audit report under this section shall be forwarded to the appropriate Government within a month of its being placed before the annual general meeting and that Government shall as soon thereafter as may be cause the same to be laid before both Houses of Parliament or the Legislature of the State,

as the case may be.

31A. 1 [Returns and reports. A Warehousing Corporation shall furnish to the appropriate Government such returns, statistics, accounts and other information with respect to its property or activities as that Government may, from time to time, require.]

27. Keeping in view the definition of corporation and statutory provisions (supra), there appears to be no room of doubt that the appellant corporation possess autonomy and its business is regulated in pursuance to statutory power conferred by the Act and Regulations framed thereunder. It also possess autonomy to make appointment and deal with the service conditions of its employees (Section 23). The decision with regard to commercial matters or with regard to services of employees may not be subject-matter for approval or disapproval for the State Government. Of course, in case the Government takes a policy decision and circulate the same subject to rider contained in sub-section (5) of Section 20, the corporation shall be abide by such policy decision. The corporation owes its origin and birth to the Act and not established in compliance of certain orders or decision taken by the State Government through its Cabinet. The corporation has right to discharge its statutory obligations through its authorities created under the Act. The State Government lacks jurisdiction to interfere with the individual decision taken by the corporation through its Board of Directors to manage its affairs or its day to day working in business interest.

28. Mr. S.K. Kalia, learned Senior Counsel rightly invited attention to a case in State of U.P. Vs. Neeraj Awasthi and Others, , whereby their Lordships of Hon''ble Supreme Court held that the State Government cannot make appointment in a corporation in contravention of the statutory provisions. Power of appointment, creation of posts or regularisation of ad hoc appointees vests in the Board of the corporation and the Board has to take a decision within the boundary of Act and Regulations framed thereunder. In Neeraj Awasthi's case (supra), their Lordships of Hon''ble Supreme Court while considering a case with regard to U.P. Krishi Utpadan Mandi Parishad and a statutory corporation held that the Government has been conferred power to issue directions with regard to question of policy but it cannot interfere with day to day functioning of the Board. The policy decision must relate to activities of the Board. The observation made by Hon''ble Supreme Court in paras 40 and 41 are reproduced as under:

40. The State in exercise of its power conferred upon it could issue directions. The power of the State Government is confined to issue directions on question of policy. It cannot, however, interfere in the day to day functioning's of the Board. Such policy decision, however, must be in relation to the activities of the Board under the Act and not de''hors the same."

41. Such a decision on the part of the State Government must be taken in terms of the constitutional scheme, i.e. upon compliance of the requirement of Article 162 read with Article 166 of the Constitution of India. In the instant case, the

directions were purported to have been issued by an officer of the State. Such directions were not shown to have been issued pursuant to any decision taken by a competent authority in terms of the Rules of Executive Business of the State framed under Article 166 of the Constitution of India.

29. Their Lordships further clarified the position with regard to power of the State Government as well as power of the Board in para 43 which is reproduced as under:

43. However, it is not correct that the power of the State to issue directions must be confined to the matters enumerated in sub-section (1) of Section 26-L of the Act. Section 26-L is subject to the provisions of the Act. The functions of the Board enumerated in Section 26-L of the Act are, therefore, not exhaustive. Appointment of servants and officers are also one of the functions of the Board. The Board also has right to supervise and control the activities of the officers and Market Committees. In that view of the matter, if a policy decision is taken by the Board in regard to the appointment or terms and conditions of the servants, in the event, regulations made in this behalf do not contain any provisions, such policy decision must conform to the directions of the State issued in that behalf, if any. The Board further is empowered to do such other things as are specified in clause (x) of Section 26-L of the Act.

30. From the case of Neeraj Awasthi, it is evident that Hon"ble Supreme Court upheld the right of the statutory corporation to discharge its obligation through the Board of Directors. It is further evident that the Board has right to take a decision with regard to appointment, terms and conditions of its employees or frame regulations but while doing so, the Board is abide by the policy decision taken by the State Government.

31. In Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , their Lordships held that the Board of the Corporation has been given ample power to carry out business on its own. Certain sovereign function with regard to framing of rules and regulations has been conferred on the Board under the statutory provisions. Virtually, the sovereign power of the State has been delegated to the Board and is an authority under Article 12 of the Constitution of India. To quote relevant portion, to quote

10. The Board is an authority invested by statute with certain sovereign powers of the State. It has the power of promoting coordinated development, generation, supply and distribution of electricity and for that purpose to make, alter, amend and carry out schemes under Ch. V of the Electricity (Supply) Act, 1948, to engage in certain incidental undertakings; to organise and carry out power and hydraulic surveys; to conduct investigation for the improvement of the methods of transmission; to close down generating stations; to compulsorily purchase generating stations, undertakings, mains and transmission lines; to place wires, poles, brackets, appliances, apparatus, etc; to fix grid tariff; to issue directions for securing the maximum economy and efficiency in the operation of

electricity undertakings; to make rules and regulations for carrying out the purposes of the Act; and to issue directions under certain provisions of the Act and to enforce compliance with those directions. The Board is also invested by statute with extensive powers of control over electricity undertakings. The power to make rules and regulations and to administer the Act is in substance the sovereign power of the State delegated to the Board. The Board is, in my judgment, "other authority" within the meaning of Article 12 of the Constitution.

32. In *The Managing Director, Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, , where the employees were dismissed by U.P. State Warehousing Corporation in breach of rules of natural justice, Hon"ble Supreme Court held it to be illegal and directed to pay full wages. Hon"ble Mr. Justice O. Chinnappa Reddy while reiterating the finding of Hon"ble Mr. Justice R.S. Sarkaria ruled that the State Corporations are biggest employer in the country to meet out the socio economic goal enshrined in the Constitution but they are also to abide by equality clause and constitutional spirit.

33. In a case in *State of Punjab and Others Vs. Raja Ram and Others*, , while reiterating to preserve and protect the autonomy of the Corporation, their Lordships held, to quote:

The Corporation, on the other hand, is an autonomous body capable of acquiring, holding and disposing of property and having the power to contract. It may also sue or be sued by its own name and the Government does not figure in any litigation to which it is a party. It is true that its original share capital" is provided by the Central Government (Section 5 of the F.C. Act) and that 11 out of 12 members of its Board of Directors are appointed by that Government (Section 7 of the F.C. Act) but then these factors may at the most lead to the conclusion (about which we express no final opinion) that the Corporation is an agency or instrumentality of the Central Government.

Hon"ble Supreme Court further while concluding the judgment observed as under:

Even the conclusion, however, that the Corporation is an agency or instrumentality of the Central Government does not lead to the further inference that the Corporation is a Government department. The reason is that the F.C. Act has given the Corporation an individuality apart from that of the Government. In any case the Corporation cannot be divested of its character as a "Company" within the meaning of the definition in Clause (e) of Section 3 of the L.A. Act, for it completely fulfils the requirements of that clause, as held by us above.

Thus, in view of the judgment in *Raja Ram* (supra), the corporation cannot be treated as apart of the Government department which may result into interference by the Government in its routine functioning.

34. In *Chittoor Zilla Vyavasayadarula Sangham Vs. A.P. State Electricity Board and Others*, , their Lordships of Hon"ble Supreme Court while considering the

periphery of statutory body and the State Government held that the direction issued to the State Governments is to guide the Board in discharge of its function which will subserve in performing statutory obligations but even the policy direction of the Government cannot travel beyond the statutory limits (para 20).

35. In a case in *Centre for Public Interest Litigation Vs. Union of India (UOI) and Another*, , their Lordships held that when the statutory provisions provide for vesting of the property of the undertaking of the Government on a Government company, the Corporation as well as the Government have to abide by the statutory provisions even if the Government takes a decision with regard to disinvestment by adopting a particular method, without repealing or amending the law is not permissible.

36. In *Prahlad Sharma Vs. State of U.P. and Others*, , it has been reiterated by Hon"ble Supreme Court that the corporation shall abide by their own rules and regulations and not by any foreign provisions.

37. Mr. J.N. Mathur, learned Senior Counsel, assisted by Mr. R.K. Chaudhary vehemently relied upon a case in *Food Corporation of India and Others Vs. Bhanu Lodh and Others*, , to substantiate his argument that the corporation has referred the matter seeking approval of the State Government on account of wide implication and treating it as a policy matter.

38. The case of *Bhanu Lodh* (supra) seems to deal with different facts and circumstances. In *Bhanu Lodh* (supra), there was existing directive/policy decision of the Government not to create or upgrade post of any level except where the situation is completely unavoidable. The policy decision of the Government was not to fill up existing vacancies by fresh recruitment. Hence, Hon"ble Supreme Court ruled that merely because the vacancies were notified, the State is not obliged to fill up all the vacancies in terms of policy.

39. On the other hand, in the present case, there is no policy decision of the Government regulating the mode of appointment or preventing the Board to take a decision to regularise the services of its employees.

40. Otherwise also, Section 23 of the Act (supra) confers power on the Board of Directors to make appointment keeping in view its business interest. The provision contained in Section 23 of the Act is quite clear and unambiguous and empowers the State Warehousing corporation to appoint such officers and other employees as it considers necessary for efficient performance of its functions.

41. The statutory provision (supra) does not provide to seek approval of the State Government while taking a decision with regard to selection, appointment or regularisation. It is for the corporation to take a decision keeping in view its business and public interest in the matter of recruitment in accordance with law. Of course, the corporation has to frame regulations or a scheme while proceeding to take a decision for regularisation of service. Thus, the case relied upon by the learned counsel for the petitioner does not seem to be applicable under the facts

and circumstances of the present case.

42. Keeping in view the aforesaid judgments right from Rajasthan Electricity Board, Jaipur v. Mohan Lal and others (supra) including the case of Neeraj Awasthi (supra), it has been consistent view of Hon"ble Supreme Court that while establishing corporation under the statutory provisions, the sovereign power of the State is delegated to respective Boards and the Board has been conferred power to discharge its statutory obligations to run its business. The Government has been conferred power to play down policy decisions which means the decision, order or circular in Rem and not in personam. Any other interpretation shall be subversive to autonomy and statutory function of the Board/Corporation and shall create mal-administration and corrupt the system because of day to day interference by the Government on one or other grounds.

43. In the present case, admittedly, no policy decision has been framed by the State Government regulating the service conditions of the employees of the appellant corporation or other corporations. When the Board took a decision to regularise the services and there exists no guideline or policy decision of the State Government which could have been taken into account, the decision of Board may not subject to approval of Government. There is neither any service rules nor any regulation which may come into way of the Board to take a decision or frame scheme for regularisation of services.

44. It is well-settled proposition of law that a thing should be done in the manner provided by the Act or statute vide AIR 1936 253 (Privy Council); Deep Chand Vs. The State of Rajasthan, , Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others, ; State of Uttar Pradesh Vs. Singhara Singh and Others, ; The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , (Para 34) Chandra Kishore Jha Vs. Mahavir Prasad and Others, ; Delhi Administration Vs. Gurdip Singh Uban and Others, ; Dhananjaya Reddy etc. Vs. State of Karnataka, , Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, ; Prabha Shankar Dubey Vs. State of Madhya Pradesh, and Ram Phal Kundu Vs. Kamal Sharma, , Taylor v. Taylor, (1876) 1 Ch. D. 426; Nika Ram Vs. State of Himachal Pradesh, ; Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, ; Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others, ; State of Bihar and Another Vs. J.A.C. Saldanha and Others, , A.K. Roy and Another Vs. State of Punjab and Others, ; State of Mizoram Vs. Biakchhawna, .

45. Since the Act or regulation or policy decision of the State Government does not confer power or contain a provision that the resolution of the Board with regard to service condition of employees or alike matters should be referred to the State Government for approval, reference of resolution with regard to services of the petitioners seems to be exceeding of jurisdiction. An independent decision should have been taken by the Board in accordance to law with regard to services of the respondent petitioners in business interest without sending it to the State Government for its approval. The Board is competent to regulate the

service conditions of its employees under the Act.

APPOINTMENT AND RETRENCHMENT OR TERMINATION OF SERVICE

46. Section 23 of the Act (supra) empowers the corporation to make recruitment of its officers and employees in accordance with regulations. Thus, the power is vested with the Board of Directors of the corporation to take decision for appointment in pursuance to power conferred by Section 23 of the Act and frame Scheme or regulations.

47. The Board of Directors, admittedly, vide its resolution dated 30.3.1999, had resolved to engage casual labours and Group C employees on contract basis. The appointments were done by the Regional Officers in pursuance to resolution of the Board of Directors (supra). The respondent petitioners were appointed between 1999 and 2001 on contract basis initially for six months as well as casual labours and since almost 11 years, they are continuing. Since the appointments were done in pursuance to resolution of the Board of Directors and the action of the Board has not been impugned by the Board or anyone so far, the nature of appointment may not be questioned on the ground of jurisdiction.

48. Attention of this Court has not been invited by the appellants' counsel to any resolution of the Board whereby a decision has been taken for termination or retrenchment of the employees engaged in pursuance to the resolution of the Board dated 30.3.1999 (supra). Accordingly, there appears to be no reason at lower level to terminate the services of the respondent employees that too without taking recourse of Section 6-N of U.P. Industrial Disputes Act and more so when the consistent decision of the Board and authorities shows that their services are required to manage the affairs of the corporation.

49. Apart from above, it is not disputed that the appellant corporation is an industry as defined u/s 2(k) of the U.P. Industrial Disputes Act, 1947. The respondents seem to be workman keeping in view the definition given in Section 2(z) of the U.P. Industrial Disputes Act, 1947. Being workman, no action could have been taken by the appellants to dispense the services without following the procedure provided by Section 6N of the U.P. Industrial Disputes Act which is *pari materia* to Section 25F of the Industrial Disputes Act, 1947(Central).

However, we are not recording any finding on the right available to the respondents as workmen and leave it open for the appellant to take a decision in accordance with law.

RESERVATION

50. Writ Petition No. 2630(S/S) of 2009 was filed before Hon"ble Single Judge on the ground that while publishing the impugned advertisement, reservation has been made to the extent of more than 50 per cent. During the course of argument, it has been admitted that 55 vacancies of Technical Assistant, Group C post has been advertised, out of which only 25 have been earmarked for general category. Reservation has been provided to 30 vacancies.

51. Reservation of more than 50% has been prohibited by law by catena of judgments of Hon''ble Apex Court and this Court in *M. Nagaraj and Others Vs. Union of India (UOI) and Others*, ; *Dharam Pal Singh Chauhan and another v. State of U.P. and others*, (2008)26 LCD 1691; *Dr. Vishwajeet Singh and Others Vs. State of U.P. and Others*, ; *Heera Lal Vs. State Of U.P. and Others*, .

52. In *Dharam Pal Singh Chauhan* (supra), the Division Bench has considered almost all the cases and summed up the finding with regard to reservation, roster etc as under:

(1) In the event of conflict between the quota of reservation and roster, the former shall prevail over the later, as held by Hon''ble Supreme Court in the case of *R.S. Garg* (supra). While applying quota for reservation and roster, the State have to confine the outer limit of reservation provided by 1994 Act for SC, ST and OBC category.

(2) The extent of reservation provided by sub-section 1 of Section 3 of 1994 Act, is mandatory. In the matter of promotion or recruitment reservation cannot exceed the outer limit of 21%, 2% and 27% for SC, ST and OBC.

(3) Under the garb of sub-section (5) while applying roster or sub-section (7) of Section 3 of 1994 Act, the State cannot travel beyond the outer limit of reservation provided by subsection (1) of Section 3 of 1994 Act. Meaning thereby, even while applying roster for SC, ST or OBC, the outer limit of 21%, 2% or 27% should be adhered to.

(4) The outer limit of 50% provided by Article 16(4B) of the Constitution or by Hon''ble Supreme Court right from *M.R. Balaji*'s case (supra) till date, includes the reservation for all the categories or classes of employees. In case reservation is provided only for one category like in the present case, 21% to SC category, then it does not mean that State has right to enhance reservation upto 50% suo moto exceeding the statutory quota provided by the Act and statute. 50% rider is the outer limit permissible for all categories and in case under the Act or statutes lesser percentage of reservation has been provided to any class, then that will be the outer limit for the respective classes as in the present case, reservation for SC is 21% and it cannot be enhanced to 50%.

(5) While exercising power for purpose of reservation keeping in view the law laid down by the Hon''ble Supreme Court in *M. Nagaraj*'s case (supra) to find out the backwardness or inadequacy of representation keeping in view the necessity and efficiency provided by Article 335 of the Constitution, the Government cannot travel beyond the outer limit of quota provided under sub-section (1) of Section 3 of 1994 Act for SC, ST and OBC i.e., 21%, 2% and 27% respectively in the matter of promotion.

(6) Any reservation made exceeding the outer limit provided under the 1994 Act or the statutes, shall be deemed to be excessive reservation and the reservation so made, may be struck down by the Court as it would amount to derogation of

constitutional requirement as held in M. Nagraj's case. (supra).

In view of above, there appears to be substantial illegality on the part of the appellants while inviting applications through the impugned advertisement. Reservation has been done beyond 50% for the post of Technical Office Assistant, i.e. 30 posts. Hence, it suffers from substantial illegality.

53. The impugned advertisement being contrary to settled proposition of law suffers from the vice of arbitrariness and has rightly been set aside by the learned Single Judge.

REGULARISATION

54. Much emphasis has been given by the appellants' counsel on certain judgments which deals with regularisation. In *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, a Constitution Bench of Hon'ble Supreme Court held that in absence of rules or regulations, the services of employees cannot be regularised. Those who are appointed dehors the rules or without advertisement have to leave the post in the same way. Mere continuance for sufficiently long period or beyond the term of appointment ordinarily shall not create any right and the Courts ordinarily should not interfere with regular recruitment.

However, in *Umadevi* (supra) itself, their Lordships of Hon'ble Supreme Court while considering the doctrine of legitimate expectation ruled and laid down the condition under which it can be invoked. For convenience, relevant portion is reproduced as under:

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in *Dharwad*, *Piara Singh*, *Jacob*, and *Gujarat Agricultural University* and the like, have given rise to an expectation in them that their services would also be regularised. The doctrine can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn (See *Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service*, 1985 Appeal Cases 374, *National Buildings Construction Corporation v. S. Raghunathan* and *Dr. Chanchal Goyal v. State of Rajasthan*). There is no case that any assurance was given by the Government or the concerned department while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the

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

47 When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. 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 post.

55. From a plain reading of the aforesaid portion of judgment of Uma Devi (supra), it appears that the principle of legitimate expectation may be applied in case some assurance is given to daily wagers by the competent authority. In the present case, engagement was done in pursuance to resolution of the Board of Directors (supra) and the Board itself on the basis of the report submitted by various authorities took a decision to regularise services and referred its decision to the State Government for approval. Whether regularisation is to be done or not and the proposed rules or regulations are to be framed or not is a matter which should be considered by the Board and not by the Government keeping in view the provisions contained in Sect. 23 of the Act, more so when no general guideline or policy decision is in existence. It is for the Board to exercise power conferred by Section 42 of the Act to frame new regulation or amend the existing one or chalk out a Scheme for regularisation.

56. In *Umadevi* (supra), their Lordships of Hon''ble Supreme Court further permitted the Union of India and the State Government to take one time decision for regularisation of services, against sanctioned posts in case certain irregular appointment has been done of duly qualified persons. For convenience, para 53 of the judgment is reproduced as under:

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

57. Appointments of the respondent petitioners cannot be held to be illegal or beyond the power conferred by the Act. The appointments were done in pursuance to the resolution of the Board of Directors (supra). Why the Board of Directors took a decision to meet out the requirement by the respondent daily wagger and others is a matter on which no finding may be recorded by this Court but the fact remains that the Board of Directors is the highest authority and it could have taken a decision u/s 23 of the Act (supra) to appoint officers and other employees of the corporation to secure its business interest. Being appointed in pursuance to the resolution of the Board, the respondent petitioners may not be held to be persons appointed on unfounded grounds and substantially illegal.

58. While differentiating between illegality and irregularity, Hon''ble Supreme Court held that the appointment which is made throwing all constitutional obligations and statutory rules to the winds would render the same illegal whereas irregularities, pre-supposes substantial compliance of the rules vide *State of U.P. and Others Vs. Desh Raj*, ; *State of Mysore and Another Vs. S.V. Narayanappa*, . *R.N. Nanjundappa Vs. T. Thimmiah and Another*, ; *B.N. Nagarajan and Others Vs. State of Karnataka and Others*, .

59. In the light of the proposition of law, the present controversy should be looked into keeping in view the resolution of the Board of Directors dated 30.3.1999 (supra). The Board of Directors took a decision to engage the respondents to meet out the exigency of service on its own in business interest in absence of any rules or regulations, hence engagement cannot be termed to be illegal but only irregular.

60. The appointment of the respondent petitioners may be held to be irregular appointment but not illegal. Accordingly, in view of Uma Devi (supra), the Board has got ample power to take one time decision for regularisation of service of daily wagers and the persons appointed on contract basis who are continuing in service since more than a decade.

61. It may be noted that the respondent petitioners were appointed before pronouncement of judgment of Uma Devi (supra) by Hon''ble Supreme Court. They were engaged between 1999 and 2001, hence for them, a one time decision may be taken by the Board by framing a Scheme or regulation rule to absorb their services instead of seeking approval from the State Government. Needless to say that the Regulations Rules may be framed only in accordance with the provisions contained in the Act.

62. We should not overlook the mammoth unemployment which the country is facing and appointment of the respondents is not outcome of individual unlawful act of the officers but the highest body of the appellant corporation (Board) has exercised its statutory power to secure its business interest. Appointment in Government job is done to secure public interest but appointment by the appellant corporation is to secure also the business interest. The difference in nature of appointment may not be overlooked. Unlike the Government, the Corporation has to struck a balance between its business interest vis-?-vis public interest. The livelihood of almost 2000 employees may not be subjected to arbitrary decisions.

FINDING

In view of above, the impugned judgment and order passed by Hon''ble Single Judge requires no interference on merit but it requires some modification in terms of the finding recorded hereinafter:

(I) Policy decision means a decision in Rem, not in Personam.

(II) Sub-section (4) of Section 20 may not be read in isolation but it should be read conjointly alongwith sub-section (5) of Section 20 of the Act which provides that in the event of conflict with regard to the question of policy between the Central and State Warehousing Corporation, the matter shall be referred to the Central Government whose decision shall be final. A conjoint reading of sub-section (4) and sub-section (5) of Section 20 reveals that the policy decision should be pre-existing policy regulating an issue. In absence of any pre-existing policy decision, that too keeping in view Section 23 of the Act, the Board of

Directors is empowered to take decision with regard to recruitment and appointment of its officers and staff, regulate service conditions.

Whether the Government has got right to regulate the service conditions of the Corporation by taking a policy decision under the teeth of Section 23 of the Act is a question, which we leave open in case raised in appropriate case.

(III) Statutory corporations are autonomous bodies to some extent and the Government lacks jurisdiction to interfere in their day to day functioning. Statutory corporations are juristic personality and they may sue and may be sued. Being legal entity, they have right to discharge their obligations in accordance with statutory provisions. The Government lacks jurisdiction to interfere in their day to day functioning.-

(IV) u/s 23 of the Act, the appellant U.P. Warehousing Corporation has got right to make appointment of officers and employees. A decision to fill up the vacancies in accordance with rules is to be taken by the Corporation itself and the Government has not been conferred power under the Act to interfere in the matter.

Of course, the Corporation while taking a decision to make recruitment of officers and employees has to abide by law. Instead of sending the matter to the State Government for seeking approval for regularisation, the Board of Directors should have taken a decision on its own within the four corners of Section 23. Appropriate Scheme or regulation should have been framed by the Board of Directors for regularisation and continuance of almost 2000 respondent employees working since more than decade.

(V) Since out of 55 posts, 30 posts have been reserved leaving 25 posts for general category, the impugned advertisement suffers from the vice of arbitrariness in view of settled principle of law (supra).

In view of above, all the special appeals deserve to be and are dismissed on merit. The impugned judgment and order is affirmed with the modification that it shall be open for the Board of Directors of the appellant State Warehousing Corporation to take a fresh decision with regard to fate of the respondent employees and to fill up the vacancies by fresh advertisement keeping in view the observation made in the body of judgment.

Subject to above, the special appeals are dismissed. No order as to costs.