

(2007) 01 MAD CK 0140

In the Madras High Court

Case No : Writ Petition No's. 699 and 854 of 2001

V. Muthukumarasamy and Others

APPELLANT

Vs

The Chairman, L.I.C., Zonal Manager, L.I.C., Senior Divisional
Manager, L.I.C. and Regional Manager (E and OS), L.I.C.

RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16, 21, 226
Life Insurance Corporation Act, 1956 — Section 48(2)

Citation : (2007) 01 MAD CK 0140

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : R. Singaravelan, for the Appellant; P. Jayaraman for R. Subbiah, for the Respondent

Judgement

R. Banumathi, J.—Challenge in these Writ Petitions are the order of Termination of the Petitioners dated 30.12.2000 and 06.01.2001 and to direct L.I.C to reinstate the Petitioners in their perspective posts - Watchman, Lift man.

2. Since same set of facts are relevant for both the Writ Petitions, they were taken up together and disposed of by this common order.

3. Relevant facts in brief are as follows: In the year 1994, name of the Petitioners were sponsored by Employment Exchange, Adyar, for the post of Lift Man and Watchman in L.I.C. In the interview held in October 1994, the Petitioners were selected for the post of Lift Man and Watchman. In April 1995, the Petitioners were posted to the said posts for 85 days at the initial stage and on expiry of 85 days, the Petitioners' services were periodically extended till the end of December 2000. The Petitioners' services were terminated on 30.12.2000 and on 06.01.2001, which are challenged in these writ petitions.

4. The Petitioners contend that they were sponsored candidates by Employment Exchange and are eligible to hold the said posts and their services ought not to

have been terminated. It is the further case of the Petitioners that the Petitioners having served for 5 1/2 years were illegally terminated by appointing some other persons in their places for extraneous consideration and the termination of the Petitioners is malafide.

5. L.I.C has filed the Counter Affidavit inter alia contending that the Petitioners were appointed only as temporary employees and their appointments are purely temporary, pending regular appointment and that the Petitioners have no right to claim for regularisation / absorption of services.

6. For a quite long time, L.I.C has been engaging Badli, temporary and part time workmen, which has been the subject matter of litigation before various Forums in various rounds of litigations in various states for more than two decades.

7. Learned Counsel for the Petitioner has meticulously collected and presented the details of various cases at length. Some of which are:

An "Award-In-Invitum" in NTB-1/85 dated 17.04.1986, which was passed by National Tribunal, Bombay by Justice Tulpule, directing the L.I.C to absorb the temporary employees of Class III, who were engaged and have worked for 85 days in any two calendar years and Class IV employees who were engaged and have worked for 70 days in any two calendar years;

Award in NTB-1 of 1987 dated 26.08.1988 and the subsequent S.L.P filed by L.I.C and the compromise between L.I.C and eight Unions and the order of the Supreme Court in terms of the Compromise by its order dated 01.03.1989;

Award in I.D. No. 27 of 1991 and the subsequent proceedings in various Forums;

8. In view of the decision of the Constitution Bench of Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , it is not necessary to elaborately deal with the earlier proceedings. For the purpose of proper appreciation of arguments and for the sake of completion, we may briefly refer to I.D. No. 27 of 1991.

9. I.D. No. 27 of 1991 and related Proceedings: In the year 1989, number of Writ Petitions were filed by the Members of "Terminated Full Time Temporary LIC Employees Welfare Association" against L.I.C. In the decision reported in Terminated Full Time Temporary LIC Employees Welfare Association v. Senior Divisional Manager LIC 1993 (1) L.L.J 1030 a Full Bench of this Madras High Court has considered the question whether non-absorption of temporary employees by LIC amounted to unfair labour practice. In the said decision, the Full Bench has held that the provisions of L.I.C Act relating to terms and conditions of Service will prevail over the provisions of Industrial Disputes Act and that the provisions of Industrial Disputes Act are not applicable to the Petitioners with reference to the matter u/s 48(2)(cc) of the L.I.C. Act. The Full bench has given opportunity to the Temporary Employees to approach Central Government Industrial Tribunal (for short "CGIT") New Delhi (I.D. No. 27 of 1991) for their remedy. An award was passed by CGIT, New Delhi in I.D. No. 27

of 1991 on 18.06.2001 for the absorption of all Class III Temporary Employees, who have worked for atleast 85 days in any two calendar years and Class IV employees, who have worked for 70 days in any two calendar years engaged after 20.05.1985, without any further test.

10. S.L.P.Nos.10393 to 10413 of 1992 - Prabavathy's case: Aggrieved over the decision of the Full Bench in 1993 (1) L.L.J 1030 Prabavathy and others have filed batch of Special Leave Petitions before the Supreme Court on 23.10.1992 and they were all disposed of on the basis of the scheme submitted by L.I.C in State of Haryana and others Vs. Piara Singh and others etc. etc., . As per the scheme, all those Temporary employees who have worked for 85 days in any two consecutive calendar years with LIC from 20.05.1985 till the date of the order and who conformed to the required eligibility criteria for regular appointment, were permitted to continue for their next regular appointment to be made by LIC then scheduled for November 1992. The Supreme Court has interalia directed that the candidates will be given age relaxation for regular recruitment.

11. W.P. No. 4346 of 2001 on the file of Delhi High Court and the Appeal thereon:

As against the order of the Tribunal in I.D. No. 27 of 1991, L.I.C has filed W.P. No. 4346 of 2001 before Delhi High Court challenging the Award dated 18.06.2001. Setting aside the Award, the Writ was allowed on the basis of the order passed by the Supreme Court in the case of Piara Singh's case in JT 1992 (5) S.C. 179 and another Judgment of the Supreme Court in "Sudhakar's case" dated 22.11.2001. As against that order, the Workers have filed a Writ Appeal before the Division Bench of Delhi High Court and the same is pending.

12. I.D. No. 639 of 2001 and W.P. No. 9505 of 2003: Learned Counsel for the Petitioners has submitted that between 1992 - 1993, nearly 400 workers were again appointed on temporary basis for 85 days and they were allowed to continue for nearly 150 days. Those temporary employees demanded for regularisation in LIC. By the order dated 22.07.1998, the Central Government has referred the matter to CGIT, Chennai in I.D. No. 639 of 2001. On the basis of the order of the Supreme Court in the case of Prabhavathy and others, the claim of the workmen was negatived by the Tribunal. As against the Award in I.D. No. 639 of 2001, W.P. No. 9505 of 2003 has been filed in the High Court, Madras and the same is also pending.

13. When various litigations stood thus, in 1995 the Petitioners were appointed as Temporary Watchman / Lift Man in Class IV for 85 days and their services were extended. Learned Counsel for the Petitioners has submitted that inspite of interdict passed by various Forums to temporary appointment, LIC has been adopting unfair labour practice in continually recruiting temporary employees and creating thousands of terminated temporary employees. Laying stress upon the Award passed "In-Invitum" dated 17.04.1986, learned Counsel for the Petitioners has submitted that when that Award remained unchallenged, the Petitioners, who are the subsequent recruits can take advantage of that Award "In-Invitum".

Contending that unless the Awards are set aside by the competent Court of law or terminated in accordance with law, learned Counsel for the Petitioners has submitted that u/s 90(6) of the Act, they continue to be binding on the parties even after the period of their expiry. It was further submitted that by extending the services of the Petitioners, the Petitioners have legitimate expectation of being made permanent and while so, the termination of their services is unfair and unsustainable. In support of his contention, learned Counsel for the Petitioners has inter alia placed reliance upon the decisions reported in (1) South Indian Bank Ltd. Vs. A.R. Chacko, .

14. Placing reliance upon the decision of the Constitution Bench of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, learned Senior Counsel Mr.P.Jayaraman has submitted that the Petitioners cannot seek for absorption, regularization or permanent continuance of temporary service. Drawing the attention of the Court to the terms and appointments, learned Senior Counsel has submitted that the Petitioners being temporary employees have no right to post or regularization or absorption. It was further submitted that in view of stay order, inevitably the services of the Petitioners were extended and that would not confer vested right upon them to claim absorption.

15. There is no dispute that appointment of the Petitioners is purely temporary. Even in the order of Appointment of the Petitioners, it is clearly stated that "their employment is purely on temporary basis and shall be governed by the provisions of Life Insurance Corporation of India (Employment of Temporary Staff) Instructions, 1993. Clauses 2,6 and 8 of the Appointment Order of the Petitioners read as under:

...2. Your employment on a temporary basis as aforesaid shall be governed by the Provisions of the Life Insurance Corporation of India (Employment of Temporary Staff) Instructions 1993....

6. You shall not be entitled to any other benefit for or on account of this employment on a temporary basis. Further, it is expressly understood that by reason of this temporary appointment, you shall not be entitled to any preference for recruitment to any post or claim absorption / regularization in the service of the Corporation....

8. This appointment is being given to you purely on a temporary basis and it shall come to an end on the expiry of the period mentioned in para 1 above, or at any time prior thereto, if it becomes necessary to terminate such appointment, without assigning any cause therefor....

16. Learned Counsel for the Petitioner has submitted that the appointment of the Petitioners as temporary employees is against the Statement made by L.I.C in Prabhavathy's case that the device of employment for 85 days may not be resorted in future. In Prabavathy's case, Mr. Salve, learned Counsel for the LIC has made the following Statement, which was recorded by the Supreme Court as

under:

...Mr. Salve, the learned Counsel for the LIC also informed us that in regard to future adhoc appointments / regularization, the LIC is in the process of making a scheme consistent with the guidelines laid down in Piara Singh's case so that this device of employment of 85 days which has not been approved may not be resorted to in future....

The above statement was only made by the Counsel, which may not have binding effect on the Corporation, which is governed by the staff regulations.

17. The matter is sub judice in various Forums. The matter is to be considered in the light of:

i. Life Insurance Corporation of India (Employment of Temporary Staff) Instructions 1993.

ii. the decision of the Constitution Bench of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

18. LIC has framed Rules for regulation of employment of temporary staff in Class III and IV, who have been appointed on a temporary basis in the offices of Corporation. Clause VII of Life Insurance Corporation of India (Employment of Temporary Staff) Instructions 1993 deals with Consideration of Temporary Employees for Regular Recruitment. Clause VII reads as under:

...Sub-regulation (2) of Regulation 8 of the (Staff) Regulations stipulates that no person appointed on a temporary basis shall only by reason of such appointment be entitled to absorption in the services of the Corporation or claim preference for recruitment to any post. In view of this and the fact that these instructions provide that temporary employment in vacancies of long duration or in vacancies arising intermittently, be only of persons who have been empanelled in accordance with the Recruitment Instructions, no temporary employee will be considered for absorption. But, he may compete along with other eligible candidates for recruitment on a regular basis under the Recruitment Instructions, as and when such recruitment takes place, provided he satisfies all the eligibility conditions then in force. Where such a temporary employee has worked for a minimum period of 85 days or more in a financial year, he will, however, be allowed relaxation in upper age limit to compete in the immediately following regular recruitment under the Recruitment Instructions....

19. Having been appointed as Temporary Employee, the Petitioners are governed by Life Insurance Corporation of India (Employment of Temporary Staff) Instructions 1993 and have no right to post or regularisation or absorption. In the decision reported in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the Constitution Bench of the Supreme Court has exhaustively dealt with the matter and held that the temporary employees have no right to post and claim regularisation. Holding that even if an adhoc or casual appointment is made in some contingency and the same was continued, the

Supreme Court has held that the employees have no right or regularization or absorption. In Paragraphs 43 to 54, the Supreme Court has laid down the law as under:

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts 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 paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules.

This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But, the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after *The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc.*, the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arm's length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even

that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in *The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc.*, *State of Haryana and others Vs. Piara Singh and others etc. etc.*, *Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others*, and *Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others*, and the like, have given rise to an expectation in them that their services would also be regularised. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until 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 for Civil Services Union v. Minister of Civil Service* 1985 A.C. 374 *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, and *Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan*, There is no case that any assurance was given by the Government or the department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case

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

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 cases concerned, 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.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be

absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the

employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

51. The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

52. Normally, what is sought for by such temporary employees when they approach the Court, is the issue of a Writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College*, . That case arose out of a refusal to promote the writ petitioner therein as the Principal of a College. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanent absorbed or that the State has a legal duty to make them permanent.

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

54. It is also clarified that those decisions which run counter to the principles settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents....

The highlighted portions clearly negates the claim of the Petitioners. In the above decision, the Constitution Bench of the Supreme Court has held that casual, daily rated and adhoc employees have no right to be continued in service, far less of being regularised and get regular pay.

20. Elaborately referring to *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, and various other decisions, in the decision reported in *Indian Drugs and Pharmaceuticals Ltd. v. Workman, Indian Drugs and Pharmaceuticals Ltd.* 2006 AIR SCW 5994 speaking for the Bench, Markandey Katju, J. has held as under:

33. In Paragraphs 46 to 48 of the Judgment(*Uma Devi's case*), this Court also observed that temporary, contractual, casual or daily wage ad hoc employees appointed deports the constitutional scheme to public employment have no legitimate expectation to be absorbed or, regularised for granted permanent continuation in service on the ground that they have continued for a long time in service. It was observed by this Court that non-grant of permanent continuation in service of such employees does not violate Article 21 of the Constitution and such employees do not have any enforceable legal right to be permanently absorbed, nor to be paid salary of regular employees. A regular process of recruitment or employment has to be resorted to when regular vacancies and

posts are to be filled up. This Court further observed that public employment must comply with Articles 14 and 16 of the Constitution as the rule of equality in public employment is a basic feature of the Constitution.

34. No doubt, there can be occasions when the State or its instrumentalities employ persons on temporary or daily wage basis in a contingency as additional hands without following the required procedure, but this does not confer any right on such persons to continue in service or get regular pay. Unless the appointments are made by following the rules, such appointees do not have any right to claim permanent absorption in the establishment.

35. A perusal of the record of the present case shows that the respondents were appointed on purely casual and daily rate basis without following the relevant service rules. Thus, they had no right to the post at all vide State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla,

21. In view of Life Insurance Corporation of India (Employment of Temporary Staff) Instructions 1993 and in view of the decision of the Constitution Bench of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the Petitioners have no right to claim absorption or continuation in service or regularisation.

22. Though as of right, the Petitioners have no right to claim absorption / regularisation, the Petitioners' claim on the basis of the undertaking given by LIC in the Contempt Petition Nos.162 and 163 of 2003 is to be reckoned with.

23. In the present case, the Petitioners were sponsored by Employment Exchange and have been appointed on temporary basis from short listed candidates. The Petitioners have put in five years of service. In recognition of their continued service for five years, LIC had undertaken to consider the claim of the Petitioners.

24. At the time when these Writ Petitions were filed, the Petitioners have filed Stay Petitions to stay the operation of order of termination of services, which were dismissed. As against the dismissal of the stay petitions, the Petitioners have preferred W.A.Nos.967 and 972 of 2001 before a Division Bench. In the said Writ Appeals, in consideration of the continuous service of the Petitioners, the Division Bench has directed LIC to consider the claim of the Appellants while filling the existing vacancies. The Petitioners have filed W.P.M.P.Nos.30196 and 30238 of 2002 seeking direction to consider the Petitioners in the vacancies arising in the post of Lift Man, Watchman and Sub-staff. In these W.P.M.Ps, P.K.MISRA, J. has directed LIC to consider the representations of the Petitioners. Alleging that LIC has not complied with the direction of the Division Bench and the Learned Single Judge, the Petitioners have filed Contempt Petition Nos.162 and 163 of 2003. In the said Contempt Petitions, LIC has made the following statement:

...Even now the respondents herein respectfully submit that as and when

permanent vacancies arise in the matter of appointments to the posts of Watchman / Lift Man, in compliance and obedience to the above said orders of this Hon''ble Court, the respondents are bound to and will consider the claims of the petitioners herein to such permanent vacancies, if any arising in future....

Recording the above statement of LIC, P.K.MISRA, J. has ordered that the Petitioners may also be considered if there is any temporary vacancy. It would be appropriate to issue direction to LIC to comply with its undertaking given in the said Contempt Petitions.

25. Onbehalf of the Petitioners, it was stated that there are many temporary vacancies and also permanent vacancies. If that be so, time frame could be fixed, directing LIC to absorb the Petitioners.

26. The Respondent / Life Insurance Corporation of India is directed to absorb the Petitioners to any one of the permanent vacancies in Class IV category. In the meanwhile, the Respondent / Life Insurance Corporation is directed to appoint the Petitioners in any one of Temporary vacancies in Class IV category within a period of six months from the date of this order.

27. With the above direction, these Writ Petitions are disposed of. No costs.