

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13673 OF 2025

Oil & Natural Gas Corporation Ltd.

..... *Petitioner*

: *Versus* :

Central Government Industrial
Tribunal-II and another.

.... *Respondents*

Mr. J.P. Cama, Senior Advocate with Ms. Mallika Joshi & Mr. Akshay Gupte i/b Solomon & Co., for the Petitioner.

Mr. Lilesh P. Sawant, for Respondent No. 2.

CORAM : SANDEEP V. MARNE, J.

Reserved On : 27 AUGUST 2026.

Pronounced On: 09 SEPTEMBER 2026.

Judgment:

1) Rule. Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for final disposal.

2) Petitioner-ONGC is aggrieved by the Award dated 24 April 2025 passed by the learned Presiding Officer, CGIT-II, Mumbai in Reference No. CGIT 1/19 of 2008. By the impugned Award, the Tribunal has answered the Reference in the affirmative and has held that the nine employees in the Reference are entitled for permanency. ONGC was accordingly directed to make the nine employees permanent from the date of completion of 240 days of service and by granting them the financial benefits of permanency within 2 months.

3) Petitioner is a Public Sector Undertaking and a Government Company engaged in the activities of exploration and mining of hydrocarbons throughout the country including Western Offshore at Mumbai High and Eastern Offshore, Kakinada. Petitioner has rigs, platforms and processing complex i.e. offshore installations in the Western Offshore Unit, Mumbai which is located at Mumbai High at 12 nautical miles beyond the baseline in the high seas. At such installations, Petitioner carried out the activities of exploration, drilling and production of oil and natural gas. According to the Petitioner, the exploration activities of hydrocarbon involve years of operations and that the success of exploration of locations for crude oil and natural gas is uncertain and that the ratio of success is also very low. As a result, employment of very huge manpower in anticipation of success of oil exploration is not viable for Petitioner's business.

4) Around 2000-01, ONGC was expanding its exploration and production operations at Mumbai High Offshore field and was desirous of engaging technical personnel for a limited purpose of *inter-alia* drilling and production activities. Since there was no certainty about the outcome

of exploration/production at the offshore field, Petitioner thought it prudent to employ lesser manpower and to employ the same for short period of time. The Petitioner otherwise follows a system of engaging manpower on a tenure-based or term-based employment and/or field operators, to meet such requirements, which remain uncertain until production from such exploration materializes.

5) In the year 2000-01, Petitioner sent requisitions to the employment exchange for engagement of manpower for fixed tenure of 2-3 years for meeting its activities of exploration and production of crude oil and natural gas. From the names suggested by the employment exchange, Petitioner selected the sponsored candidates to work as Assistant Rigman/Field Operator (Drilling). The workmen were selected after meeting the minimum qualifications for the post viz. Matriculation with Science and trade certificate in Mechanics (diesel/ instruments/ turner/ tractor/ motor-vehicle/ fitting/ welding/ blacksmith/ boiler attendant) from recognized institute. The Petitioner subjected the candidates to a written test and interview, followed by medical examination, and only thereafter engaged them. According to the Petitioner, it was specifically made clear in the appointment letters that the engagements were limited to the fixed term period indicated therein and it is the case of the Petitioner that the terms of appointment were accepted by the concerned workmen.

6) Later the Petitioner decided to standardize/rationalize the terms and conditions of appointments on fixed tenure basis and approved fresh terms and conditions of appointment and compensation package under the tenure based system of employment. Since requirement was for

young, fit and technically qualified workforce to man the field operations, the engagements was for fixed period of 4 years. At the end of the tenure, the concerned workmen were offered fresh tenure engagements by re-engaging them.

7) In the year 2008, 79 workmen raised a dispute demanding regularization. The Ministry of Labour, Government of India made a Reference vide letter dated 3 November 2008 to CGIT-II, Mumbai for adjudication on following dispute:

Whether the action of the management of ONGC, Mumbai, employing the 79 Field operators in the offshore on fixed term employment is legal and justified? What relief these workmen are entitled to? And whether they are entitled for regularization as demand by the Union, viz. ONGC (BOP) Karmachari Sanghatana?

8) According to the Petitioner, during pendency of the Reference, several notifications/ advertisements were issued for filling up regular posts and several of the employees covered under the Reference applied in pursuance of the same. Out of the 79 workmen who had initially raised the dispute and who were prosecuting the Reference, 55 workmen were found eligible under the recruitment notices and were appointed on regular basis.

9) In the pending Reference, the workmen filed their Statement of Claim on 10 April 2012, which was resisted by the Petitioner by filing Written Statement on 6 August 2014. As observed above, out of 79 workmen, 55 workmen were regularly appointed during pendency of the Reference and 15 workmen dropped out of the Reference due to

retirement, death or resignation. The Reference was thus prosecuted only by 9 workmen.

10) The CGIT has made Award dated 24 April 2025 answering the Reference in the affirmative and holding that the 9 employees are entitled for permanency. ONGC is accordingly directed to make those 9 employees permanent w.e.f the date of completion of 240 days of service. Aggrieved by the impugned Award dated 24 April 2025, the Petitioners have filed the present petition.

11) Mr. Cama, the learned Senior Advocate appearing for the Petitioner submits that the impugned Award made by the learned Tribunal is *ex-facie* illegal and liable to be set aside. That the provisions of the Industrial Disputes Act, 1947 (**ID Act**) do not apply to the concerned workmen, who are appointed to work on the oil rigs of the Petitioner located beyond 12 nautical miles of the coastline where the laws made by India do not apply. He relies on judgment of the Apex Court in **Aban Loyd Chilies Offshore Limited and another Versus. Union of India**¹. That the Tribunal therefore did not have jurisdiction to adjudicate the Reference. Since the Award is without jurisdiction, the same is liable to be set aside.

12) Mr. Cama further submits that the Industrial Court has overstepped the terms of reference. That the Reference was made for demand of 'regularization' whereas what is granted by the Tribunal is 'permanency'. That regularization and permanency are two distinct and independent concepts. He relies on judgment of the Apex Court in **Secretary, State of Karnataka and others Versus. Umadevi (3) and**

1 2008 11 SCC 439

others² in support of his contention of regularization and permanency being distinct concepts. That in the present case, appointments of 9 workers were not irregular, which were capable of being regularized. The appointments were tenure specific and that therefore there was no question of regularization of such appointments. Even otherwise, long service by itself is not sufficient to claim regularization where the initial appointment was not made in accordance with the constitutional requirements embodied in Articles 14 and 16 of the Constitution of India. The impugned Award, in effect, results in the conferment of permanency upon persons who had entered service through the back door. That the concerned workers did not hold requisite qualifications and were temporarily engaged. That even one time exception in the judgment of ***Umadevi (3)*** (supra) is not attracted in the present case.

13) Mr. Cama further submits that the concerned workers participated in various selection processes for the purpose of regular appointments but failed in the same. That therefore they are estopped from turning around and claiming the relief of permanency. That out of 79 workers, 55 have been absorbed after participating in the regular selection process. That the only way for securing regular appointments was to clear regular selection process. He relies on judgment of the Apex Court in ***State of Punjab and others Versus. Jagit Singh and others***³ in support of his contention that sanctioned posts are to be filled only by regular recruitment process and not by granting permanency to back door entrants.

2 2006 4 SCC 1

3 2017 1 SCC 148

14) Mr. Cama further submits that no evidence was led on behalf of Respondent No. 2 and in absence of any evidence, the Tribunal has erroneously raised the presumption of existence of sanctioned vacancies. That neither were there any sanctioned vacancies available nor were the workers duly qualified, nor were they selected pursuant to any open advertisement and that therefore, the relief of permanency could not have been granted to them. That even otherwise, permanency on completion of 240 days of service cannot be granted to those who accept tenure-based appointments. That Tribunal has virtually created posts on the establishment of ONGC by directing permanency on completion of 240 days of service. He submits that at the highest, regularization can be prospective as the same disturbs the seniority. In support, he relies on **Registrar General of India and another Versus. Thippa Shetty and others⁴**. He prays for setting aside the impugned Award of the Tribunal.

15) Mr. Sawant, the learned counsel appearing for Respondent No.2 opposes the petition. He submits that the point of jurisdiction and non-applicability of provisions of ID Act raised by the Petitioner is totally baseless. That the workers are only posted on the Rigs but all their service related decisions are taken at office of ONGC at Mumbai. That appointments are also effected at Mumbai. That if any accident or crime occurs at the Rig, the same is reported at Yellow Gate Police Station, Mumbai. That even disciplinary action of workers working at the Rigs is taken at Mumbai. That therefore the provisions of the ID Act are fully applicable to the nine workers.

4 1998 8 SCC 690

16) Mr. Sawant further submits that the concerned workers are not back door entrants as their names were sponsored by the employment exchange. That they participated in regular selections at the time of initial engagements. That they were always treated as regular for all practical purposes such as deduction of Provident Fund, issuance of I-Card etc. That Petitioners have worked continuously for 25 long years without any break in service. That their engagements were not project specific. That Petitioners are so experienced on the positions as Assistant Rigman that some of them are utilized on the position of Topman. On many occasion, they train other employees posted at the Rigs. He submits that mere participation in other selection process, does not destroy or affect the right of regularization of the workers. He relies on similar orders passed by the Tribunal at Ahmedabad, Madras, etc. in support of the contention that similarly placed workmen are already regularized. That the process of sanctioning the posts is nothing but internal management of the Petitioner which the workers are not aware of. That having completed over 25 years of service, the least that is required to be granted to the workers is regularization of their services. Mr. Sawant accordingly prays for dismissal of the petition.

17) Rival contentions urged on behalf of the parties now fall for my consideration.

18) Petitioner-ONGC is aggrieved by the impugned Award made by the CGIT which contemplates grant of permanency to the nine workers with effect from the date of completion of 240 days of service by them with all consequential financial benefits. Since the concerned nine workers joined services of ONGC from various dates beginning from the

year 2001, they will have to be made permanent almost after a year of their joining and paid the difference in wages paid to the regular employees.

19) The law on the subject of regularization of services of temporary/casual/*ad-hoc* employees in the services of the Governments and State Instrumentalities is now well settled by the Constitution Bench judgment in ***Umadevi (3)***. The Hon'ble Apex Court has authoritatively held that appointments made dehors the constitutional scheme governing public employment cannot be regularized. The Apex Court held that mere continuous service for long period is not a factor sufficient for granting the benefit of regularization. The judgment in ***Umadevi (3)*** mandates that all regular sanctioned posts in the services of the State and its instrumentalities must be filled up by following regular selection process and it is impermissible to make *ad-hoc*, casual or temporary appointments dehors the selection process. The Apex Court has further ruled that Governments cannot make irregular appointments and Courts cannot seek to regularize such appointments by issuing directions. The Apex Court has held that adherence to the principle of equality in matters of public employment is a basic feature of the Constitution. Since the very core of public employment is governed by this constitutional mandate, the Courts cannot pass orders that are inconsistent with the constitutional scheme governing public employment. The High Courts, exercising jurisdiction under Article 226 of the Constitution of India, cannot ordinarily issue directions for absorption, regularization and permanency, unless such directions are consistent with and in conformity

with the constitutional scheme. The Apex Court has held in paragraphs 43 to 47 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. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

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 decision, 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 of India 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 regularized or made permanent, courts are swayed by the fact that the concerned person 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 eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If 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 succor 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 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 regularized since the decisions in **Dharwad** (supra), **Piara Singh** (supra), **Jacob**, and **Gujarat Agricultural University** and the like, have given rise to an expectation in them that their services would also be regularized. 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* ,*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 department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after Dharwad decision. Though, there is a case that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some 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 recognized 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.

20) However, in para-53 of the judgment in *Umadevi (3)*, the Apex Court has recognized an exception by directing regularization of services of those irregular employees who were qualified and those whose

appointments were made against duly sanctioned vacant posts and who continue to work for over 10 years. The Apex Court has held in paragraph 53 of the judgment as under:

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 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 regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the 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 regularization, if any already made, but not sub judice, 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.

21) In the present case, Petitioner needed the work force for the purpose of carrying out its exploration activities and accordingly sent requisitions to the Employment Exchange. All the 9 workers were sponsored by Employment Exchange and were apparently subjected to the written tests before being selected for tenure-based appointments. The manner of making initial appointments is described by the Petitioner itself in para-4.3 of the petition which reads thus:

4.3 Initially, Petitioner sought for applications through the employment exchange (within the meaning of Employment Exchange (Compulsory

Notification of Vacancies) Act, 1959) for a fixed tenure of two to three years on the terms and conditions to be stipulated in the letter containing the offer of Tenure Based engagement to meet the immediate manpower requirement for the Petitioner's activities of exploration and production of crude oil and natural gas. It bears mention that oil exploration is an extremely uncertain process. There is no guarantee that the oil will be found at the current location where the exploration is on-going. Hence the Petitioner had, of necessity, to engage fixed term employees for the period of proposed exploration at any site. Hence the Petitioner offered fixed term appointments to workers who were available with the employment exchange. The Petitioner selected some workmen for the post of Assistant Rigman / Field Operator (drilling). Each workman was selected (i) after meeting the minimum qualifications for the post, inter alia, having a matric with science and trade certificate in mechanic (diesel / instrument / turner / tractor / motor vehicle / fitting / welding / blacksmithy / boiler attendant) from a recognized institute (ii) after clearing a written test and interview, and (iii) after a medical certificate of fitness to work on the offshore rigs as issued by Medical Officer of Petitioner. No open advertisement was however made since this was not meant to be a case of regular recruitment.

22) Thus, from the pleadings in the Petition itself, it is clear that the concerned 9 workers are not backdoor entrants in that sense. A backdoor entrant is usually a person who is engaged without following any process and without verifying the eligibility criteria. Backdoor entry is like local level officials hiring services of known persons without following the selection process. In the present case, Petitioners themselves have admitted that the eligibility criteria was prescribed and only those meeting the criteria were allowed to participate in the written test. The appointments of 9 workers were made during the year 2000-01 and there is no dispute to the position that they have continued to work without any breaks, in real and practical sense. Mere issuance of fresh tenure appointments does not constitute break in service.

23) After working for about 7/8 years, a Reference was made at the instance of the Union of the workers for adjudication of the demand

for regularization vide Reference order dated 3 November 2008. Petitioner did not question the validity of Reference order dated 3 November 2008 on the ground of non-applicability of provisions of the ID Act to the concerned workmen. Without challenging the reference order, the Petitioner however raised a defense of absence of jurisdiction before the Tribunal on the ground that provisions of ID Act do not apply to the workers who were posted to work beyond 12 nautical miles from the line of India's main land. Petitioner also raised a defense of absence of jurisdiction of CGIT over workers working at the Rig located beyond 12 nautical miles. The Tribunal considered the evidence and has answered the issue of jurisdiction against the Petitioner.

24) I find the contention raised on behalf of the Petitioner about absence of jurisdiction to be totally baseless. Through the concerned workers may be posted to work at the Rigs located beyond 12 nautical miles of India's coastline, however, their appointment orders were issued at Mumbai and were addressed to the workers at Mumbai. Petitioners have placed on record some of the orders of re-engagement at Exh-G to the petition. By order dated 11 February 2013, Mr. Kailas Shankar Dandekar was granted tenure engagement as Field Operator. The appointment order was signed by the Deputy General Manager (HR) in Human Resources and Employees Relations Services Department at Office of ONGC at Bandra. The address of the employee was shown at Dandekar House, Goma Gally, Andheri (West), Mumbai. Thus, the appointment order is issued to the worker by the Petitioner at Mumbai and the same was addressed to him at Mumbai. There is no dispute to the position that all the decisions relating to service conditions of the workers were taken

at Mumbai. As rightly held by the Tribunal, the disciplinary actions against employees performing duties on the oil rigs were initiated and conducted at the Indian territory in accordance with Indian Law. Mr. Sawant points out that even untoward incidents and crimes occurring at the rigs are always reported at Yellow Gate Police Station at Mumbai. I therefore find the objection of non-applicability of provisions of the ID Act and absence of jurisdiction of the Tribunal over service conditions of 9 workers raised by the Petitioner-ONGC to be preposterous, baseless and outrageous. The case does not involve engagement of a foreign national to work at the oil rig. Here, the appointments are made in Mumbai, India and all decisions relating to service conditions of the workers are taken at Mumbai, India. It is therefore absurd to suggest that Indian laws do not apply to the service conditions of the concerned workers or that CGIT does not have jurisdiction to decide the Reference concerning them.

25) Reliance by Mr. Cama on judgment of the Apex Court in *Aban Loyd Chilies Offshore Limited* (supra) is inapposite. The issue before the Apex Court was about applicability of custom duties on spare parts required for oil rigs located outside territorial waters, but within the exclusive economic zone of India. The Apex Court in fact ruled in favour of Government of India by holding that customs duty was applicable and leviable by virtue of extension of Indian territory to the designated areas in exclusive economic zone. The judgment has absolutely no application to the issue of applicability of ID Act to the workers who are merely deployed to work at oil rigs, but whose appointments are essentially made at Mumbai. The objection of absence of jurisdiction is accordingly repelled.

26) Returning to the main issue of permissibility to make the 9 workers permanent in service of ONGC, it is seen that their initial appointments could be treated, at the highest, as irregular and not completely dehors the constitutional scheme of public employment under Articles 14 and 16 of the Constitution of India. They are not backdoor entrants. As observed above, they have participated in the selection process after being sponsored by the Employment Exchange. May be the ONGC treated their engagements for fixed term on account of the uniqueness of its requirement where the oil exploration activities are uncertain making it impossible to predict as to whether the concerned employee is permanently required at the oil field or not. However, the fact of the matter is that the nine workers have been in continuous service for over a quarter of a century, and it is difficult to believe that their engagement was solely for the limited purpose of any specific project or that ONGC does not require their services. On the other hand, the evidence on record suggests that the concerned workers have proved to be an asset for ONGC who have worked for over a quarter of century in adverse conditions at the oil rigs.

27) Mr. Cama has highlighted the act on the part of the workers in participating in the selection process for applicability of bar of estoppel. In my view, mere participation in the selection process by the 9 workers would not disentitle them from claiming permanency or regularization. The references remained pending for 17 long years and the workers may have taken chances by participating in the regular selection process. In many selection processes, they were apparently adjudged ineligible. Similarly, the mere fact that 55 other workers got

themselves permanently appointed after participating in regular selection process would not again deprive the 9 workers from claiming the benefit of regularization.

28) The Tribunal has considered the service tenures of each of the 9 workers as under:

On careful perusal of the various copies of appointment orders it reveals that, the Ankush Gopal Katara was initially appointed on the post of Asst. Rigman (D) by order dated 20 December 2000 on the recommendation of the selection committee and medical certificate issued by DGM (MS) for the period of three years, his appointment was for fixed period. Subsequently he was appointed by order dated 29.01.2005 for a fixed period of four years till 31.01.2009, order dated 08.02.2013 for a fixed period of four years, order dated 14.02.2017 for a fixed period of four years, reengaged by order dated 22.02.2021 for further period of four years.

Liladhar M. Koli was sponsored by employment exchange and was by letter dated 14.11.2000 called for written test for the post of Asst. Rigman which was held on 19.11.2000 and subsequently by order dated 29.12.2000 was engaged on the recommendation of the selection committee and medical fitness certificate for fixed period of three years. Thereafter by letter dated 18.11.2013, he was called for interview, which was held on 05.12.2003 and office order dated 19.02.2003 his appointment was extended for a period of three years ends on 28.12.2003, subsequently by another order dated 19.12.2003, the appointment was extended till 27.02.2004, by office order dated 24.02.2004, it was approved upto 31.03.2004, office order dated 26.03.2004 appointment was extended upto 30.09.2004 by office order dated 15.09.2004 further extended upto 31.12.2004, by order dated 30.11.2004, fresh appointment for fixed period of four years. Thereafter by order dated 29.01.2005 appointed as a Field Operator (Drilling) for the period till 31.01.2009, by order dated 06.02.2009 appointed for a fixed period of four years till 02.02.2013, by order dated 08.02.2013 appointed for a fixed period of four years, by order dated 04.02.2017 appointed as a field operator for a period of four years.

Kailash S. Dandekar was sponsored by employment exchange as written test dated 28.10.2001, by order dated 24.10.2001 appointed for a fixed period of three years, by order dated 29.01.2005 engaged as Field Operator Drilling for fixed period of four years, by order dated 03.02.2009 appointed for a period of four years by order dated 11.02.2013 again appointed for four years, by another order dated

25.03.2017 appointed for a period of four years, by letter dated 15.02.2021, he was advised to appear before Medical Board for further extension of tenure engagement for the period of four years.

Sandeep D. Chari was initially appointed on the basis of recommendation of selection committee and medical fitness certificate by order dated 20.12.2000 for fixed period of three years, by order dated 29.01.2005, he was engaged as Field Operator Drilling for further period of four years till 31.01.2009, by order dated 08.02.2013 engaged for another four years.

Sunil Tukaram Sakpal on the recommendation from employment exchange for the post of Asst. Rigman (D) by letter dated 14.11.2000, he was called for written test on 19.11.2000 and by order dated 20.12.2000 appointed for the post of Asst. Rigman (D) for fixed period of three years accordingly he joined on 22.12.2000 and directed to report to Rig Incharge, Sagar Shakti, by order dated 05.03.2001, he was conveyed about House Rent Allowance, appointment was extended upto 27.02.2004, by letter dated 24.02.2004 appointment was extended w.e.f. 01.04.2004 and by letter dated 26.03.2004 till 30.09.2004, again extended till 31.12.2004 by letter dated 15.09.2004 by another order dated 29.01.2005, he was engaged as Field Operator Drilling for the period of four years by order dated 03.02.2009 appointed for further period of four years, by letter dated 15.02.2013 he was asked to appear for before OGM Incharge medical service ONGC Mumbai and by order dated 15.02.2017 appointed as a field operator for a period of four years.

Milind Parkar joined as Asst. Rigman (Drilling) by order dated 22.12.2000 and by letter dated 15.03.2001, he was granted House Rent Allowance. After completion of period by letter dated 18.11.2003 he was called for interview which was scheduled on 05.12.2003 by order dated 26.03.2004 he was appointed as Asst. Rigman (Drilling) for a period of three years then by order dated 29.01.2005 appointed as Field Operator Drilling for a fixed period of four years, by order dated 06.02.2009 appointed for a period of four years till 02.02.2013 by order dated 11.11.2016 engaged for a period of four years w.e.f. 21.11.2016 and on 24.12.2020, he submitted joining report for continuation of five term employment.

Siddharth D. Bhika on recommendation of selection committee, he was appointed by order dated 15.11.2000 for a period of three years, by order dated 22.10.2004 his period of appointment was extended upto 31.12.2004. Thereafter by order dated 30.11.2004 he was appointed for a fixed period of four years, then by another order dated 29.01.2005 he was engaged as a Field Operator - Drilling for a period of four years. It reveals that, he reported for duty on 09.02.2009 and his appointment

was expiring on 08.02.2013. Thereafter by order dated 08.02.2013 he was appointed for a period of four years and it also reveals from letter dated 15.02.2021, the medical section was asked about advised the employee for medical examination.

Prashant Pawaskar was engaged as Field Operator by order dated 08.02.2013 for a period of four years and by another order dated 20.02.2017 engaged for another period of four years accordingly he joined the services w.e.f. 08.03.2017 and post at Rig Sagar Kiran.

Abraham Ahmad Mohammed was offered letter of appointment based on the recommendation of selection committee for the post of Asst. Rigman (Drilling) dated 15.11.2001, he was appointed for a period of three years. Thereafter by order dated 08.02.2013 engaged as Field Operator for a period of four years and by order dated 13.02.2017 appointed for a period of four years.

29) Considering the above position, it appears that the concerned nine workers cannot be treated as backdoor entrants and that they are in service for a substantial period of time.

30) Mr. Cama has attempted to highlight the inconsistencies in use of the word '*regularisation*' in the Reference as against use of the word '*permanency*' in the Award. He has relied on judgment of the Apex Court in *Umadevi (3)* in support of his contention that regularization and permanency are two different concepts. After referring to the judgment in *R. N. Nanjundappa vs T. Thimmiah & Anr*⁵ and *B.N. Nagarajan Versus. State of Karnataka*⁶, the Apex Court held in paragraphs 15 and 16 as under:

15. Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence. In *State of Mysore v. S.V. Narayanappa* MANU/SC/0232/1966 : [1967]1SCR128, this Court stated that it was a mis-conception to consider that regularization meant permanence. In

5 1972 2 SCR 799

6 1979 4 SCC 507

R.N. Nanjundappa v. T. Thimmiah and Anr. MANU/SC/0680/1971 : (1972)ILLJ565SC , this Court dealt with an argument that regularization would mean conferring the quality of permanence on the appointment. This Court stated:-

Counsel on behalf of the respondent contended that regularization would mean conferring the quality of permanence on the appointment, whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority, but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.

16. In B.N. Nagarajan and Ors. v. State of Karnataka and Ors. MANU/SC/0450/1979 : (1979)ILLJ209SC , this Court clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This court emphasized that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

31) No doubt, the concept of regularization and permanency are distinct and different. Regularization envisages conversion of irregular

appointments into regular ones. In paragraph 53 of the judgment in ***Umadevi (3)***, the Apex Court has explained the scope of regularization and held that only duly qualified employees engaged against duly sanctioned and vacant posts may be considered for regularization, even though the regular selection process was not followed at the time of their initial engagements. In the present case also, the workers were duly qualified and also participated in the selection process by appearing in written tests. Whether posts were sanctioned at the oil rigs is itself a matter of debate, particularly in view of the peculiar nature of the activities undertaken by ONGC. However, the fact that services of the workers are continued for over 25 years can give rise to an assumption about need for their services. Therefore, the benefit of regularization cannot be denied to them.

32) The term '*permanency*' is used by the Industrial Tribunal in the Award since it has directed making the workers permanent on completion of 240 days of service. In my view the Tribunal has faltered to this limited extent as the direction for making workers permanent on completion of 240 days of service is akin to creation of posts on the establishment of ONGC, which power the industrial adjudicator does not possess. By now, it is well settled principle that an industrial adjudicator cannot direct creation of posts on establishments of the State and its Instrumentalities. In ***Municipal Council Tirora Versus. Tulsidas Baliram Bindhade***⁷ the Division Bench of this Court has held that Model Standing Order 4(c) cannot be the basis for directing creation of posts on the establishments of State Instrumentalities. The Division Bench held thus:

7 2016 (6) MH.L. 867

19. In this reference, the position emerging before us is similar. There is no conflict between the provisions of M.S.O. 4-C and the provisions of the S. 76 of the 1965 Act. In the event of the appointment having been made validly, it may be possible to invoke the provisions Cl. 4-C of M.S.O. A view to the contrary would result in regularizing/validating a void act. Cl. 4-C neither permits nor contemplates the same. As held in the above judgments, if the appointment is not made in accordance with the constitutional scheme, it is void ab-initio and, therefore, there can be no claim to its regularization or for grant of permanency in any manner. This is all the more so as Cl. 32 of the M.S.O. clarifies that the Standing Orders are not to operate in derogation of any other law i.e. S. 76 of 1965 Act. Definitely any interpretation of Clause 4C conducive to defeating the Constitutional mandate is unwarranted. Violation of Clause 4C of the MSO may tantamount to an unfair labour practice under item 9 of Sch. IV of the 1971 Act but unless & until, other additional factors are proved on record, finding of indulgence in an unfair labour practice under item 6 of Sch. IV thereof can not be reached. As explained by the Hon. Apex Court in case of Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana, (supra), existence of a legal vacancy must be established & as discussed above, the power to recruit with the employer must also be demonstrated. In absence thereof, workman can not succeed in proving the commission of unfair labour practice under item 6 by the employer. These two ingredients, therefore, also must be established when benefit of Cl. 4-C is being claimed. Unless availability of a vacancy is shown or then power with the employer to create the post and to fill it is brought on record, mere continuation of 240 days can not and does not enable the workman to claim permanency by taking recourse to Cl. 4C read with item 9 of Sch. IV of 1971 Act. Clause 4C does not employ word "regularisation" but then it is implicit in it as no "permanency" is possible without it. Conversely, it follows that when a statutory provision like S. 76 disables the employer either from creating or filling in the posts, such a claim can not be sustained. This also nullifies the reliance upon the judgment of learned Single Judge in case of Maharashtra Lok Kamgar Sanghatana v. Ballarpur Industries Limited (supra) where the employer was a private Company not subjected to such regulatory measures by any Statute and enjoyed full freedom to create the posts and to recruit. One of us (B.P. Dharmadhikari, J.) is party to the judgment of this Court in Raymond UCO Denim Private Ltd. v. Praful Warade & Ors. (supra) which again needs to be distinguished for the same reasons. The judgment of learned Single Judge in case of Indian Tobacco Company Ltd. v. The Industrial Court and Ors. (supra), judgment of Hon'ble Apex Court affirming it or then judgment of Hon'ble Apex Court reported at Western India Match Company Ltd. and Workmen are all considered therein & are distinguishable as the same do not pertain to the province of public employment or consider inherent Constitutional restraints (the suprema

lex - see Mahendra L. Jain v. Indore Development Authority and others (supra) and Cl. 32 of the MSO. For same reasons, law laid down by the Full Bench judgment of this Court in MANU/MH/0888/2006 : 2007 (1) CLR 460 : 2007 (1) Mah. L.J. 754- Gangadhar Balgopal Nair v. Voltas Limited & Anr. does not advance the cause of workmen. The Division Bench of this Court in May & Baker Ltd. v. Kishore Jaikishandas Ichchaporla (supra) while construing Section 10-A(3) held that the expression "other law" would not refer to the model standing orders or the certified standing orders since they are laws made under the provisions of parent act itself and not under any other law. The Model Standing Orders and Certified Standing Orders, held the Division Bench, "are laws no doubt but they are laws made under the provisions of the Act". They were held not to be provisions under any other law. This discussion therefore shows how these words "in derogation of any law for the time being in force" in Cl. 32 of MSO need to be understood & does not help Adv. Jaiswal or Adv. Khan.

20. In Vice-chancellor, Lucknow University v. Akhilesh Kumar Khare & Anr. (supra) relied upon by Adv. Parihar, Hon. Apex Court follows its Constitution Bench in Umadevi (III) and while rejecting relief of regularization to the daily wagers who were engaged in public employment without proper procedure, grants them compensation of Rs. 4 Lakh each by way of compassion. This judgment does not consider any welfare labour legislation and, therefore, can not provide direct answer to the reference made. Judgment of this Court taking similar view in the light of 1971 Act in the case of Punjabrao Krishi Vidyapeeth, Akola v. General Secretary, Krishi Vidyapeeth Kamgar Union & Anr. (supra) is already considered above. The Division Bench of this Court in State of Maharashtra and Anr. v. Pandurang Sitaram Jadhav (supra) finds that the respondents before it were employed as daily wagers in the establishment of the government milk dairy for a longer period of 12 to 20 years. There were no sanctioned posts and vacancies in existence in the concerned department. Respondents failed to demonstrate that their appointments were made in accordance with the procedure prescribed for selection. The Division Bench finds it wholly unjust to direct the appellant State Government to grant permanency to the respondents. It points out that the provisions of Model Standing Orders are subject to the Rules regulating selection and appointment so also subject to the constitutional scheme of public employment. Respondents - Daily wagers are declared to possess no legal right to claim permanency. Order passed by the learned Single Judge to the contrary have been quashed. State Government is held obliged to make appointments in adherence to the constitutional scheme of Public employment. Respondents -Daily Wagers appointed without following the prescribed procedure for selection by passing public participation did not acquire any legal right to claim permanency. It is apparent that no inconsistency exists and

cannot be worked out in State of Maharashtra & Anr. v. Pandurang Sitaram Jadhav as also Pune Municipal Corporation v. Dhananjay Prabhakar Gokhale (supra) on one hand and Ballarpur Industries Limited v. Maharashtra Lok Kamgar Sanghatana (supra) on the other hand. Status of employer, nature of employment and inherent Constitutional limitation on public employer or absence of such fetters on any private employer or absolute freedom available to it to create post/s and recruit, are some of the distinguishing features which prohibit this exercise.

21. Thus, in the light of this discussion, it follows that in absence of vacant sanctioned posts with the Municipal Council, a workman who has put in continuous service of 240 days or more in span of 12 months, can not invoke Clause 4C of the MSO to claim either permanency or regularization. We accordingly answer the question referred. Registry to place the writ petitions before the learned Single Judge as per roaster assignment for further consideration.

33) Post the judgment of the Constitution Bench in *Umadevi (3)*, the issue arose as to whether an industrial adjudicator is bound by the principles enunciated therein. In *Maharashtra State Road Transport Corporation and others Versus. Casteribe Rajya P Karmachari Sanghatana*⁸ and *Hari Nandan Prasad and others Versus. Employer I/R to Management of FCI and others*⁹, this issue has been considered. The principles enunciated by the Constitution Bench in *Umadevi (3)* are also applicable to the industrial adjudication when it comes to the industrial adjudicator dealing with the cases of governments and their instrumentalities. It is held that regularization can be directed by an industrial adjudicator only in accordance with a scheme formulated by the employer or where other similarly placed workers have been regularized, and when denying regularization to the concerned workers would amount to a breach of the equality clause under Article 14 of the Constitution. In my view, therefore it is impermissible to direct grant of benefit of

8 2009 8 SCC 556

9 2014 7 SCC 190

permanency to the workers merely on completion of 240 days of service. However, the cases of the concerned 9 workers need to be considered in the light of exception recognized by the Apex Court in paragraph 53 of the judgment in **Umadevi (3)** and the 9 workers can be granted the benefit of regularization on completion of 10 years of service by them. To this limited extent only, the impugned award warrants modification.

34) It is sought to be suggested by Mr. Cama that it is impermissible to direct retrospective regularization as per the judgment of the Apex Court in **Registrar General of India** (supra). The judgment was rendered in the peculiar facts of that case, where the concerned employees had been appointed on *ad-hoc* basis, and their regularization, as sought, would have disturbed the seniority of regularly appointed employees in the cadre. The judgment, therefore, cannot be read as supporting an abstract proposition that, in no case, can Courts and Tribunals grant regularization with effect from a date anterior to the date of the judgment or award. In the present case, the Reference was made in the year 2008. If regularization is granted on completion of 10 years of service, the benefit of regularization would enure to the workers on/or after the year 2011 i.e. after making of the Reference. In that sense, regularization would not be retrospective.

35) Considering the above position, in my view, the benefit of regularization cannot be denied to the 9 workers. However, direction for making them permanent from the date of completion of 240 days of service deserves to be set aside and instead it needs to be directed that the workers shall be treated as in regular service of ONGC from the date

of completion of 10 years of service by them. I accordingly proceed to pass the following order:

- (I) Award dated 24 April 2025 passed by CGIT-II in Reference No. CGIT 1/19 of 2008 is modified by directing that the concerned nine workers shall be treated in regular service of the Petitioner w.e.f. the date of completion of 10 years of service from their initial engagements.
- (II) The consequential benefits be granted to them within 8 weeks.

36) With the above directions, the writ petition is **partly allowed**. Rule is made partly absolute. There shall be no order as to costs.

NEETA
SHAILESH
SAWANT

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NEETA SHAILESH
SAWANT
Date: 2026.09.09
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[SANDEEP V. MARNE, J.]