

APHC010073172023



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3463]

FRIDAY ,THE TWENTY THIRD DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR

**PRESENT
THE HONOURABLE SRI JUSTICE G.NARENDAR
AND
THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY**

WRIT APPEAL NO: 295/2023

Between:

The Chief Executive Officer

...APPELLANT**AND**

T Seshagiri and Others

...RESPONDENT(S)**Counsel for the Appellant:**

1.G SRINIVASULA REDDY (SC FOPP MPP AND GP SERVICES)

Counsel for the Respondent(S):

1.S SYAMSUNDER RAO

The Court made the following:**JUDGMENT:** (per Hon'ble Sri Justice G.Narendar)

Heard Sri G.Srinivasulu Reddy, Learned Standing Counsel, appearing for the Appellant; Sri S.Syam Sunder Rao, Learned Counsel appearing for the 1st respondent/writ petitioner; and learned G P (S-IV) appearing for Respondents 2 and 3.

2. The Appellant is the Chief Executive Officer of the Zilla Praja Parishad, Eluru, West Godavari District, and is before this Court in this intra-Court Appeal being aggrieved by the order of the learned Single Judge rendered in W.P.No.474 of 2021, dated 05.01.2023.

3. The parties are referred to in this Appeal by their nomenclature before the learned Single Judge for the sake of brevity and convenience.

4. It is the case of the Petitioner that his demand for regularization has been accepted by the Tribunal and also this Court and in that view, he is entitled for counting of his service from the day he was first employed and that the learned Single Judge was right in allowing the Writ Petition and directing that his entitlements be settled within a stipulated period.

5. The learned Counsel for the Petitioner has taken the Court through various orders passed by the Tribunal and the Composite High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and this High Court.

6. It is pertinent to trace the judicial “Long March” of the Petitioner at the outset itself.

(i). The material placed on record would reveal that the petitioner initially filed O.A.No.377 of 1996 praying for a direction to the Respondents to pay the applicant the arrears of salary based on confirmation and revised scale with effect from 30.11.1987 to 03.09.1995 with all consequential benefits. The Tribunal placed reliance on G.O.Ms.No.212, dated 22.04.1994 and after taking note of the fact that the services of the Petitioner were regularized pursuant to the said

G.O., proceeded to hold that there was no provision which prohibited **payment of arrears of salary from the date of initial appointment and proceeded to grant a relief pursuant to the order of regularization, regularizing the services of the Petitioner with effect from 10.07.1995.** The same came to be disposed of by order, dated 17.09.1997. Aggrieved thereby, the Respondent approached the High Court in W.P.No.22873 of 2004. The said Writ Petition came to be rejected without being admitted. But, while so rejecting, the High Court was pleased to reserve liberty to the Respondent to seek review of the order, dated 17.09.1997, and the Writ Petition came to be disposed of on 10.12.2004. The Petitioner, being aggrieved by the said liberty, preferred Review WPMP No.33050 of 2005 questioning the grant of liberty to the Respondent to approach the Tribunal and seek review of the order, dated 17.09.1997. The High Court was pleased to review the order and after hearing the parties was pleased to recall the liberty reserved to the Respondent to approach the Tribunal for seeking review of the order, dated 17.09.1997. Thereby, the order of the Tribunal, dated 17.09.1997, was given a stamp of finality.

(ii). Thereafter, the Petitioner preferred O.A.No.3368 of 2007 praying for grant of career advancement scheme increments for 8 and 16 years from the date of his initial appointment and regularization i.e. from 30.11.1987 and to pay arrears of increments from that date onwards.

The said O.A. also came to be allowed. While allowing, the Tribunal was pleased to place reliance on G.O.Ms.No.212, dated 22.04.1994, but, rejected the applicability of G.O.Ms.No.430, dated 14.11.1997, which sought to bring about an amendment to the G.O.Ms.No.618, dated 23.09.1994, whereby the G.O. was sought to be made effective prospectively i.e. from the date of regularization and not from the date of original appointment.

(iii). The same left the Respondent twiddling with their thumbs. Emboldened the Petitioner moved one more O.A. i.e., O.A.No.9217 of 2011 seeking to fix his notional seniority from the date of his initial appointment and also to implement the Government Memo, dated 09.06.2011. The Tribunal, by order, dated 21.06.2015, was pleased to dispose of O.A.No.9217 of 2011 by directing the Respondents, more particularly, the Commissioner, Panchayat Raj and Rural Development, Hyderabad, and the Chief Executive Officer, Zilla Praja Parishad, West Godavari District, to consider the claim of the Petitioner by taking into account the date of regularization i.e. from the date of appointment i.e. 30.11.1987 and to also take into account G.O.Ms.No.618, dated 23.09.1994, G.O.Ms.No.430, dated 14.11.1997 and to pass appropriate orders in accordance with statutory rules in existence and the law governing the subject within a period of three months. The Respondent sought for a legal opinion from the Standing Counsel and it was opined

that the reckoning date could never be 30.11.1987, as the Petitioner was not even borne in the cadre much less against a regular post and a regular vacancy. That the Petitioner had been appointed as a daily wagger in the post of the Typist and without reference to the rule of reservation. It was further opined that any action favouring the Petitioner would result in the Petitioner leapfrogging his seniors, who have been appointed on a regular basis and against notified vacancies and in a manner known to law. It was further opined that the conditional right to regularization having come about only with the promulgation of the G.O.Ms.No.212, dated 22.04.1994, and the consequential G.O.Ms.No.618, dated 23.09.1994 regularizing the services of the Petitioner seniority could not be granted from an anterior date and the Respondent accepting the opinion reiterated the same in their endorsement/proceedings, dated 14.10.2015. Additionally, it was also held against the Petitioner that the Petitioner has not called in question G.O.Ms.No.430, dated 14.11.1997, G.O.Ms.No.392, dated 21.09.1998, G.O.Rt.No.1060, dated 29.07.2000 and placing reliance on the conditional relief granted in favour of the other three Typists subject to the order in W.P.No.5205 of 2005 and W.P.No.24857 of 2006 preferred by the Government, the Respondent rejected the case of the Petitioner for fixing his notional seniority with effect from 30.11.1987.

(iv). Aggrieved thereby, the Petitioner preferred one more O.A. i.e. O.A.No.4265 of 2016, which later came to be renumbered as W.P. No.18475 of 2021 before this Court. The learned Single Judge proceeded to pass the following orders:

“7. Accordingly, the Writ Petition is allowed, while declaring the impugned proceedings dated 14.10.2015 issued by the 3rd respondent as illegal and arbitrary and same is hereby set aside. The respondents are directed to fix the notional seniority in the cadre of Typist with effect from 30.11.1987 and release all increments and consequential benefits to the petitioner, such as revision of seniority and further respective promotions to the next higher level along with consequential benefits as per Government memo dated 09.06.2011 issued by the 1st respondent and order in R.C.No.H6/3277/2008, dated 15.10.2009 passed by the Deputy Chief Executive Officer, Eluru, within a period of eight (08) weeks from the date of receipt of a copy of this order. There shall be no order as to costs”

7. It is pertinent to note that even the learned Single Judge has placed reliance on G.O.Ms.No.212, dated 22.04.1994.

8. From the above narration, it is apparent that the Petitioner has been conducting his litigation in a staggered manner. In the first round of litigation, which commenced in the year 1996, the Petitioner simply asked for arrears of salary in view of the order of regularization, dated 23.09.1994, which in itself was consequential to G.O.Ms.No.212, dated 22.04.1994. Thereby implying his acceptance of the terms of

regularization. Thereafter, the second round of litigation was initiated in 2007 seeking for grant of advancement scheme increments for 8 and 16 years and the third round of litigation commenced in 2011 seeking for fixation of notional seniority from the date of his appointment and the fourth round of litigation was in 2016, which came to be renumbered in the year 2021 before this High Court, resulting in the impugned order.

9. The impression that one can gather is that the Petitioner has carefully orchestrated the litigation in a staggered manner. Notional seniority, arrears of wages and career advancement scheme increments, all being consequential reliefs to the relief of regularization, are litigated over a period of 20 years i.e. from the first O.A. which commenced in 1996 and culminating in the last O.A. in 2016. Though, at the first blush it appeared to be a classic case of State oppression, but a closer scrutiny of the facts and in particular the orders, go to speak otherwise. The reasoning and conclusions drawn hereinafter would clearly justify our observation.

10. CONTENTIONS OF THE WRIT PETITIONER:

(i). It is the case of the Petitioner that he was lawfully appointed as a Typist on daily wage basis; that the order of appointment was issued on 30.11.1987; that since then he has been diligently discharging his duties and he is presently discharging duties as a Senior Assistant in the office

of the Mandal Praja Parishad, Dwaraka Tirumala, West Godavari District;

(ii). That while so, his services came to be regularized under G.O.Ms.No.618, dated 23.09.1994, with effect from the date of their first appointment, subject to the appointing authority duly following the rule of reservation;

(iii). That G.O.Ms.No.618, dated 23.09.1994, came to be issued consequent to G.O.Ms.No.212, dated 22.04.1994; and the orders of regularization having been issued with effect from the date of appointment, the Petitioner was entitled to all reliefs consequential to the act of regularization;

(iv). That arrears and back-wages, applicability of career advancement scheme and fixation of seniority are all consequential and that successive orders of the Tribunal have recognized and upheld the entitlement of the Petitioner to back- wages from 1987 to 1996, career advancement scheme and lastly for notional seniority; and

(v). That the issue of regularization, having been settled, the other reliefs being consequential and the Tribunal having repelled the attempt of the Respondents to apply the amended G.O.Ms.No.618, dated 23.09.1994 and G.O.Ms. No.430, dated 14.11.997, there is no impediment to grant the reliefs sought for by the Petitioner under various

proceedings. The learned Counsel for the Petitioner would pray for rejection of the Writ Appeal.

11. CONTENTIONS OF THE 3rd RESPONDENT/APPELLANT:

The 1st respondent in the Writ Petition is the Appellant herein. This Respondent has canvassed the case on multifarious grounds.

(i). The learned Government Pleader would strenuously contend that there has been a clear miscarriage of justice and on account of the careful maneuvering & orchestration of the litigation by the Petitioner, the State's exchequer has been mulcted with a liability which was not envisioned under G.O.Ms.No.212 dated 22.04.1994 nor to which the Petitioner was made entitled under G.O.Ms.No.618, dated 23.09.1994.

(ii). That the G.O.'s never granted back-wages or notional seniority.

(iii). He would contend that all the orders are in the teeth of G.O.Ms.No.212, dated 22.04.1994 and G.O.Ms.No.618, dated 23.09.1994 and being contrary to law are rendered per incuriam;

(iv). That the Petitioner has also not mounted any challenge to either G.O.Ms.No.430, dated 14.11.1997 or G.O.Ms.No.392, dated 21.09.1998, whereby the rights of the persons, who are entitled for regularization under G.O.Ms.No.212, dated 22.04.1994, stood crystallized; that the orders that have flown from the Tribunal are contrary to the G.O.Ms.No.430, dated 14.11.1997 and G.O.Ms.No.392, dated 21.09.1998, which are still holding the field and in that sense, the

orders are rendered *per incurium* being in ignorance and contrary to law; and

(v). The learned Government Pleader would vehemently refute the claim of the Petitioner that he is entitled for regularization from the date of his original appointment and the Learned Government Pleader would pray that the Writ Appeal be allowed and the order of the learned Single Judge be set aside and the rights of the Petitioner be settled in terms of G.O.Ms. No.212, dated 22.04.1994 and G.O.Ms.No.430, dated 14.11.1997 and G.O.Ms.No.392, dated 21.09.1998.

12. We have bestowed our anxious consideration to the various contentions canvassed on behalf of both the parties and so also to the material papers. In the course of hearing, it became apparent that regularization of the Petitioner's services had its genesis in G.O.Ms.No.212, dated 22.04.1994. It is also apparent that in the entire line of litigations, there is critical reference to the aforesaid G.O. Hence, we deem it necessary to subject it to a close scrutiny and hence, we re-produce the same hereunder:

**“GOVERNMENT OF ANDHRA PRADESH
ABSTRACT**

Public Services – Regularisation and absorption of Daily Wage /
NMR or Consolidated Pay – Specific Scheme – Formulated –
Orders – Issued.

FINANCE AND PLANNING (FW.PC.III) DEPARTMENT

G.O.Ms. No.212

Dated:22-04-1994
Read the following :

1. The A.P. (Regulation of Appointment to Public Services and Rationalization of Staff Pattern and Pay Structure) Act 2 of 1994.
2. Govt. Memo. No.42246-A/907/PC.I/A1/93, Dated.2-2-1994.

ORDER:

Government noticed that appointing authorities of the Institutions and Establishments under the control of State Government, Local Authorities, Corporations owned and controlled by the State Government grossly violated the instructions issued from time to time by the Government and appointed persons indiscriminately to various categories of services either on Daily Wage basis or temporary basis without there being a post and without being sponsored by Employment Exchange and without observing the rule of reservation to the Scheduled Castes, Scheduled Tribe and Backward Classes. In most of the cases, the persons appointed for a specific work have been continued even after their need ceased. After a lapse of some time, all these appointees have approached the various Courts and Tribunals for regularisation of their services and Courts and Tribunal have been directing the State Government to regularize the services on the ground that they have a long service to their credit. This practice has been causing considerable drain on the finances of the State Government. Government have thought it imperative to prohibit the unauthorized and irregular appointments by a law in the public interest. Accordingly the State Government have enacted law regulating the appointments to Public Services and for Rationalization of the Staff Pattern and Pay Structure in the reference read above. This will streamline the recruitment along healthy lines, to enforce Employment Exchanges (Compulsory Notification of Vacancies) Act in its true letter and spirit, to follow the rule of reservation enshrined, in the Constitution with utmost strictness and to punish those who are guilty of violating the law. The above Act came into force with effect from 25-11-1993.

(underlining by this Court)

2. Though the reference 2nd cited, information has been obtained from various Government Offices, Local Bodies, Public Sector undertakings etc., from the information received by Government, it is seen that appointing authorities have violated the instructions issued by Government and appointed several individuals. Appointments have been made indiscriminately in the Government Offices, Local Bodies, Universities, Public Sector undertakings and various other Bodies and Institutions

operating on Government finances. In fact, there is no need to continue all these Daily Wage / Temporary employees for the reasons that not all of them are appointed in sanctioned posts and the recruitment was in many cases not through Employment Exchange. Their appointment was made without following rule of reservation and in the case of work-charged employees; there is no work for them as the specific work for which they were appointed has already been completed. Though the Act provides that no person who is Daily Wage employee and no person who is appointed on temporary basis shall have any right to claim for regularization of service on any ground, it has been the endeavour of the Government to regularize as many as NMR/ Daily wage employees as possible who are otherwise qualified depending on the requirement of the workload while keeping in mind the hardship that would be caused if their services are not regularized. The Hon'ble Supreme Court in its Judgment dated 12-08-1992 in Civil Appeal No. 2979/92 and batch have also observed to evolve an appropriate policy for regularization. Accordingly, Government after careful examination of the whole issue and in supersession of all previous orders on the subject including G. O. Ms. No.193, General Administration Department, dated.14-03-1990 and keeping in view the above judgment of Supreme Court of India, have formulated a scheme for regularization of services of the persons appointed on Daily Wage / NMR or on consolidated pay and are continuing on the date of commencement of the Act. Government accordingly decided that the services of such persons who worked continuously for a minimum period of 5 years and are continuing on 25-11-1993 be regularized by the appointing authorities subject to fulfillment of the following conditions:

(underlining by this Court)

1. The Persons appointed should possess the qualification prescribed as per rules in force as on the date from which his/her services have to be regularized.
(underlining by this Court)
2. They should be within the age limits as on the date of appointment as NMR/Daily wage employee.
3. The rule of reservation wherever applicable will be followed and back-log will be set-off against future vacancies.
(underlining by this Court)
4. Sponsoring of candidates from Employment Exchange is relaxed.
5. Absorption shall be against clear vacancies of posts considered necessary to be continued as per work load

excluding the vacancies already notified to the Andhra Pradesh Public Service Commission / District Selection Committee. *(underlining by this Court)*

6. In the case of Work charged Establishment, where there will be no clear vacancies, because of the fact that the expenditure on Work-charged is as fixed percentage of P.S. Charges and as soon as the work is over, the services of work charged establishment will have to be terminated, they shall be adjusted in the other departments, District Offices provided there are clear vacancies of Last Grade Service.

3. All the Departments of Secretariat / Heads of Departments are requested to process the cases of absorption / regularization of services of N.M.Rs. / Daily Wage Employees etc. in pursuance of above scheme and obtain the clearance of Government before orders are issued for such regularization or absorption.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF
ANDHRA PRADESH)

A.R. Jaya Prakash,
Secretary to Government"

13. The abstract would carry the subject under the caption "Public Services – Regularisation and absorption of daily wage/NMR/consolidate pay/Part-time employees – Specific Scheme – Formulated – Orders – Issued". Thereafter, the preamble to Act 2 of 1994 i.e. Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994 (Act 2 of 94) reveals the rationale behind the "Specific Scheme". A reading of the preamble to the order would record that there has been a gross violation of the instructions issued by the Government from time to time with regard to appointments on daily wage basis or temporary basis being made indiscriminately and sometimes without even there being a post much less being sponsored by the Employment Exchange and even

without observing the rule of reservation to Scheduled Castes and Scheduled Tribes and Backward Classes, which is a constitutional mandate. It also records that people appointed to tenure posts or for a particular purpose have been continued even after the purpose ceased to exist; that as a result and after a passage of time, all such persons approached various Courts and Tribunals praying for regularisation resulting in a drain on the exchequer and the Government of the day in order to alleviate an obnoxious practice and with the objective of ridding itself of this menace of unauthorised and irregular appointments, thought it imperative to enact law for regulating appointments to public services and for rationalisation of the staff pattern and pay structure and also to stream-line recruitment along healthy lines and to enforce Employment Exchange (Compulsory Notification of Vacancies) Act in its true letter and spirit and to follow the rule of reservation enshrined in the Constitution with utmost strictness and to punish those who are guilty of violating the law and Act 2 of 1994 came to be legislated and came into effect on 25.11.1993.

14. Para.2 would record that the information was secured by the State from various Government Offices, Local bodies, Public Sector Undertakings etc., and that the information reveals that there has been a gross violation of the instructions issued by the Government resulting in appointment of several individuals. It further records that appointments

have been made indiscriminately resulting in a huge burden on the Government finances. It further records that the information furnished and collected from various departments would reveal that there was no need to continue daily wage/temporary employees, as most of them are not appointed against sanctioned posts and the recruitment is not through the Employment Exchange. That their appointments have been made without following the rule of reservation and in case of work charged employees appointments are made, though there is no work that could be allotted much less discharged by them.

15. That apart, in view of the ruling of the Hon'ble Apex Court in C.A.No.2979 of 1992, dated 12.08.1992, which recommended the framing of an appropriate policy for regularisation, the Government proceeded to issue G.O.Ms.No.212 and thereby superseded all previous orders on the subject and the G.O. is claimed to be issued keeping in view the afore stated judgment of the Hon'ble Apex Court and the same has resulted in the framing of a Scheme for regularisation of services of the persons of the above noted class of persons.

16. That one of the elementary pre-conditions stipulated is that they should possess the eligibility as stipulated for the post under the rules and the second pre-condition is that they ought to have worked continuously for a minimum period of five years and are continued as on 25.11.1993 and only such persons and not all and sundry were made

eligible to be considered for regularisation. That apart, sub-paras (1) to (6) of para.2 also impose certain pre-conditions apart from the twin eligibility conditions of having worked for five years and continuing working on the appointed date i.e. 25.11.1993. The first pre-condition stipulates that the person so appointed should possess the prescribed qualification as per Rules in force as on the date.

17. The other pre-conditions are that they should be within the age limit as on the date of appointment; thirdly, the rule of reservation wherever applicable is to be followed and backlog to be set off against future vacancies; fourthly, sponsoring of candidate by the Employment Exchange is waived or relaxed; fifthly, the absorption should be against the clear vacancy of posts considered necessary to be continued as per work load excluding the vacancies already notified to the APPSC/DSC; sixthly and lastly, employees who are rendering service as work charged establishments have to be shifted to other departments after their services are terminated in the work charged establishment.

18. Thus, from the above, it can be safely inferred that G.O.Ms. No.212, dated 22.04.1994, was not a licence for indiscriminate application as a matter of right but was a Scheme designed to enable the regularization of the employment of people, who otherwise were not

entitled to be appointed on a regular basis, as they had not undergone the prescribed process of selection and were all back door entrants.

19. As a consequence to the same, G.O.Ms.No.618, dated 23.09.1994 came to be issued by the Secretary to Government, Panchayat Raj and Rural Development and Relief (Estt.V) Department.

The same reads as under:

**“GOVERNMENT OF ANDHRA PRADESH
ABSTRACT**

ESTABLISHMENT - Ministerial - Zilla Parishad, West Godavari District - Certain Temporary Typists working on daily Wage basis in the Zilla Parishad, West Godavari District - Regularisation of their Services in the cadre of Typists - Orders - Issued.

**PANCHAYAT RAJ & RURAL DEVELOPMENT & RELIEF
(ESTT.V) DEPARTMENT**

G.O.Ms.No: 618.

Dated: 23-09-1994.
Read the following:-

1. G.O.Ms.No: 1175, PR & RD Dept., dt: 17-07-87.
2. G.O.Ms.No: 212, Fin. & Plg. (FW) Department, dt: 22-04-94.
3. From the CEO, Z.P., West Godavari District letter No:H6/2216/94, dated: 30-05-94 and 02-09-94.

ORDER:

Orders were issued in the reference first read above permitting all the Zilla Parishads in the State as a Special Case in the exigencies of work to appoint typists on daily wage basis in relaxation of the ban orders subject to certain conditions therein. The Chief Executive Officer, Zilla Parishad has appointed the four persons on daily wage basis based on the above orders.

2. Orders were issued in the reference 2nd read above to regularise temporary employees who are working on daily wage basis in the State who fulfilled the conditions laid

down in the said G.O. and also requested all the Departments of Secretariat to obtain approval of the Finance & Planning (F.W) Department before issue of orders.

3. The Chief Executive Officer, Zilla Parishad, West Godavari District in the reference third read above, has reported that there are no Junior Assistants working on daily wage basis. The following 4 Typists who are working on daily Wage basis and the individuals are continued on the direction of A.P. Administrative Tribunal in O.As and requested the Government to issue necessary orders to regularise the following 4 Typists who are working on daily wage basis.

Date of appointment

1. Sri T.Jacob Raju, Typist, M.P., Pedavegi, 11-02-1987
2. Sri G. Ramam, Typist, M.P., Elamanchili 12-02-1987
3. Sri P.V.R. Bhaskara Bhushanam, Typist, 18-02-1987
M.P., Dwarakatirumala.
4. Sri T. Seshagiri, Typist, M.P., Nallajarla. 30-11-1987

4. Government after careful examination hereby permit the Chief Executive Officer, Z.P., West Godavari District to regularise the services of the following temporary Typists who are working on daily wage basis under the management of Zilla Parishad, West Godavari District with effect from the date of their first appointment duly following the rule of reservation and also subject to withdrawing the court cases filed by them.

1. Sri T.Jacob Raju, Typist, M.P., Pedavegi from 11-2-1987
2. Sri G. Ramam, Typist, M.P., Elamanchili from 12-2-1987
3. Sri P.V.R. Bhaskara Bhushanam, from 18-2-1987
Typist, M.P., Dwarakatirumala.

4. Sri T. Sheshagiri, Typist, M.P., Nallajerla. from 30-11-1987

5. This order issues with the concurrence of the Finance and Planning (F.W) Department vide their U.O.No. 23574/A1/337/PC.III/94, dated: 10-08-1994.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF
ANDHRA PRADESH)

Sd/-G.SUDHIR
Secretary to Government"

20. A reading of the Ref.2 and Para.2 would make it clear as crystal that the said G.O. is enabled by G.O.Ms.No.212, dated 22.04.1994. Subsequently, the Respondents realising that certain errors have crept in to G.O.Ms.No.618, dated 23.09.1994, proceeded to issue an addendum by way of G.O.Ms.No.430, dated 14.11.1997, seeking to clarify the date from which they were entitled to have their services regularised. It is pertinent to note here itself that the said G.O. has not been set aside and still holds the field. Subsequently, another G.O.Ms.No.392, dated 21.09.1998, came to be issued and the same was issued to deal with another or fourth class of persons who were left out of the scope and ambit of G.O.Ms.No.212, dated 22.04.1994. In a sense, under G.O.Ms. No.430, dated 14.11.1997, what was sought to be clarified is that the regularisations in terms of G.O.Ms.No.212, dated 22.04.1994, were required to be from the date on which they were regularised and not from the date of their original appointment.

21. The G.O.Ms.No.430, dated 14.11.1997, reads as under:

“GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Establishment - Ministerial - Z.P., West Godavari Dist., - Certain Temporary Typists working on Daily Wage basis under the control of Z.P., West Godavari District - Regularisation of their services in the cadre of Typists - Ordered - Amendment - Issued.

PANCHAYAT RAJ AND RURAL DEVELOPMENT (ESTT-V)
DEPARTMENT

G.O.Ms.430

Dated: 14.11.1997

GO.Ms.No.618,P.R &R.D. (Estt-V) Department, dated 23.9.94.

ORDER:

1. The following amendment is issued to the G.O.Ms. No.618, P.R & R.D (Estt-V) Department, Dated 23.9.94:-

For the words "with effect from the date of their first appointment" occurred in para-4 of the said G.O., the words "with prospective effect" shall be substituted.

2. This order issues with the concurrence of Finance and planning (FW.PC.III) Department vide their U.O.No.25453/180/A3/PC.III/97, dated 22.7.1997.
(BY ORDER AND IN THE NAME OF THIS GOVERNMENT OF ANDHRA PRADESH)

P.RAMAKANTHA REDDY
SECRETARY TO GOVERNMENT"

22. We have heard the parties at length. The question that falls for consideration before this Court was whether the petitioner could have sought for settlement of seniority after nearly thirty years of his alleged appointment. At the very outset, we observe that the petitioner has been using the justice dispensation system, namely the Courts, as a tool to secure orders more on the basis of sympathy than any legal entitlement vested in him. In this regard, we have examined the various G.Os., more particularly, G.O.Ms. No.212, dated 22.04.1994. The preamble to the G.O. is clear that it is a "specific scheme" that has been formulated by the Government to address the scourge of irregular and illegal appointments made by various authorities and State owned Corporations and the instant writ petitioner is a classic case of pounding the executive with series of litigation and beating them down into

submission with a deluge of orders. The G.O. also speaks about the indiscriminate appointments and the yearning of the State to streamline recruitment along healthy lines.

23. The notification fell for consideration before the Hon'ble Apex Court in **A.Manjula Bhashini v. A.P. Women's Coop. Finance Corpn. Ltd.**¹ The Hon'ble Apex Court has proceeded to not only interpret the G.O.Ms.No.212, dated 22.04.1994, but also has upheld the Act of 1998. It is pertinent to note that both the G.Os. still hold the field. The relevant paragraphs in **A. Manjula Bhashini's** case¹ are extracted hereunder for a better and critical appraisal of the facts of the case:

“**25.** The relevant portions of the Division Bench judgment are extracted below:

“58. The entire basis whereupon the judgment of the learned Single Judge is based is, therefore, erroneous. As indicated hereinbefore having regard to the mode of appointment, the requirements thereof, absence of sanctioned posts, non-observance of the statutory rules the part-time employees, ad hoc employees and NMRs did not derive any legal right whatsoever to continue in service. In fact, save and except the right conferred upon them to be considered for regularisation by reason of GOMs No. 212, they did not have any other legal right whatsoever. It is now well-settled principle that by reason of a catena of decisions of the High Court as also of the Supreme Court of India a prolonged service would not ripen into permanence nor by reason thereof the status of employee can be changed.

59. It is also not a case where an individual decision inter-party had been sought to be taken away by reason of the said Amendment Act in terms whereof their rights and liabilities alone were affected. The interpretation of a policy decision is a judgment in rem and by reason thereof, no inter-party rights had been conferred or adjudicated upon.

¹ (2009) 8 SCC 431

60. The validation Act or for that purpose any Amendment Act does not offend the doctrine of separation of powers. It is also trite that the Court in exercise of its jurisdiction under Article 226 of the Constitution while exercising its power of judicial review over legislation would not invalidate an Act on the ground of malice or otherwise. Such an approach, in our opinion, is wholly unwarranted inasmuch as the question as to whether the statute suffers from the vice of fraud on legislation or not must be kept confined to the legislative competence and not otherwise. Right to employment is not a fundamental right or a constitutional right. In terms of Articles 14 and 16 of the Constitution the right of a citizen is confined only to consideration therefor. Thus it would be incorrect to contend that the same would be a right of property.

67. The next question which may arise for consideration would be as to whether the cut-off date 25-11-1993 is so arbitrary as to attract the wrath of Article 14 of the Constitution.

68. Fixing a cut-off date is normally not arbitrary unless it can be said to be case where such a date has been fixed arbitrarily or capriciously and no reason exists therefor.

69. After the decision of the Apex Court in *Piara Singh* case [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403. **Ed.:** *Piara Singh* case has been overruled in *Umadevi* (3) case, (2006) 4 SCC 1.] the State had appointed a committee. The committee had gone into the matter and made certain recommendations including fixation of cut-off date. Such a cut-off date was fixed keeping in view the coming into force of such policy decision. In *Sushma Sharma v. State of Rajasthan* [1985 Supp SCC 45 : 1985 SCC (L&S) 565] the Apex Court has held: (SCC pp. 64-65, paras 38-39).

‘38. It may be borne in mind that wisdom or lack of wisdom in the action of the Government or legislature is not justiciable by court. See in this connection the observations of the US Supreme Court in *Metropolis Theater Co. v. City of Chicago* [57 L Ed 730 : 228 US 61 (1912)] . To find fault with a law is not to demonstrate its invalidity. McKenna, J. observed as follows:

“It may seem unjust and oppressive, yet be free from judicial interference. The problems of Government are practical ones and may justify, if they do not require, rough recommendations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always

discernible, the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void."

39. This passage has been quoted with approval by Chief Justice Chandrachud in *Prag Ice & Oil Mills v. Union of India* [(1978) 3 SCC 459 : AIR 1978 SC 1296 : (1978) 3 SCR 293] , SCC at p. 498 : SCR at p. 333: AIR at p. 1318.'

70. Yet again in *Cauvery Water Disputes Tribunal, Re* [1993 Supp (1) SCC 96 (2)] the Apex Court clearly held: (SCC p. 140, para 73)

'73. ... To the extent that the Ordinance interferes with the decision of this Court and of the Tribunal appointed under the Central legislation, it is clearly unconstitutional being not only in direct conflict with the provisions of Article 262 of the Constitution under which the said enactment is made but being also in conflict with the judicial power of the State.'

71. There is another aspect of the matter which we may not lose sight of. In terms of Act 2 of 1994 a complete ban had been imposed in making recruitment of NMR, part-time or ad hoc employees. Thus on and from 25-11-1993 nobody had been employed nor could be employed. Any such appointment would ex facie violate the provisions of the said Act 2 of 1994 which not only contains a penal provision but also imposed statutory liability upon the officers to pay and unto the State all such salaries and emoluments paid to such employees. Even a ban had been imposed on the treasuries to honour such bills.

72. Act 27 of 1998 has come into force on 19-8-1998. Thus the ban which now would be imposed, as regards grant of regularisation will be effective from that date. Can it be said that five years' continuous service as on 13-8-1998 is a condition which is wholly arbitrary and irrational so as to attract Articles 14 and 246 of the Constitution.

The answer to the aforementioned question must be rendered in the negative. It will be a repetition to state that by reason of GOMs No. 212 no workman derives any vested right to be appointed as such. But the employees who fulfil the criteria were entitled to be only considered therefor. Regularisation of service in terms of the aforementioned GOMs No. 212 is dependent upon fulfilment of the condition enumerated therein.

As is evident from the decision of the Apex Court in *M.L. Singh case* [(2009) 8 SCC 480 : (1998) 2 An LT 5] a

distinction must be borne in mind between a vested right and a right to be considered inasmuch as the requirement of a clear vacancy has a direct nexus therewith. Even if there were clear vacancies, such vacancies were required to be filled up having regard to the reservation policy of the State.”

27. Learned counsel further argued that by virtue of the policy contained in the G.O. dated 22-4-1994, persons appointed on daily wages or nominal muster roll or consolidated pay acquired a right to be regularised in service and the State could not have deprived them of the said right by retrospectively amending the 1994 Act.

28. Another argument of the learned counsel for the employees is that once this Court held that all persons appointed on daily wages or nominal muster roll or consolidated pay are entitled to be regularised with effect from the date of completion of 5 years' continuous service, the legislature was not justified in prescribing 25-11-1993 as the cut-off date for determining the eligibility of daily wagers, etc. for the purpose of regularisation. Learned counsel emphasised that the interpretation placed by this Court on the G.O. dated 22-4-1994 is final and the same could not have been undone by amending the 1994 Act.

29. Learned counsel for the State of Andhra Pradesh and its agencies/instrumentalities argued that the 1994 Act was amended to clarify the object underlying the policy of regularisation contained in the G.O. dated 22-4-1994 and to make the same an integral part of the statute and the Division Bench rightly held that the Amendment Acts do not have the effect of nullifying the judgment of this Court in *District Collector/Chairman v. M.L. Singh* [(2009) 8 SCC 480 : (1998) 2 An LT 5] .

30. Learned counsel for the State pointed out that the policy contained in the G.O. dated 22-4-1994 was a one-time measure for relaxing the negative mandate contained in Section 7 against regularisation of the persons appointed on daily wages or on temporary basis and argued that the legislature did not exceed its jurisdiction by laying down the requirements of completing 5 years' continuous service on or before 25-11-1993 for the purpose of regularisation. They, however, questioned the direction given by the Division Bench for considering the cases of all daily wagers and the like for regularisation who completed five years on 19-8-1998 i.e. the date on which Amendment Act 27 of 1998 was published in the gazette, by arguing that it was legally impermissible for the Division Bench to change and/or

extend the date of eligibility for regularisation from 25-11-1993 to 19-8-1998 simply because the amendment made in Section 7 by Act 27 of 1998 was not enforced retrospectively.

31. In the light of the above, we shall first consider whether the amendments made in the 1994 Act have the effect of nullifying or overriding the judgment of this Court in *District Collector/Chairman v. M.L. Singh* [(2009) 8 SCC 480 : (1998) 2 An LT 5] and whether Section 7-A of (*sic* inserted by) Act 27 of 1998 amounts to an encroachment on Courts' power of judicial review. For this purpose, it is necessary to understand the true nature of the 1994 Act, mischief sought to be remedied by enactment thereof and the reasons for its amendment.

32. The 1994 Act was enacted in the backdrop of the decision taken by the State Government to curb irregular appointments, to rationalise the staff pattern and pay structure and thereby reduce unnecessary expenditure and also to ensure that only those selected by the specified recruiting agencies are appointed against the sanctioned posts. This is clearly discernible from the Statement of Objects and Reasons contained in the Bill which led to enactment of the 1994 Act and provisions contained therein to which reference will be made hereinafter.

41. We may now advert to the Statement of Objects and Reasons contained in the Bill introduced in the Andhra Pradesh Legislative Assembly. A perusal thereof shows that between 1976 and 1993, the total number of employees of the State Government, agencies/instrumentalities of the State and bodies/institutions receiving aid from the Government increased by 82% i.e. from 6.78 lakhs to 12.34 lakhs and in 1993-1994, the State Government had to spend more than 80% of the total revenue in payment of salaries, allowances, pension, etc. of the employees causing severe strain on the revenue of the State which adversely affected implementation of the welfare schemes and development programmes. That apart, there was growing dissatisfaction among several thousand unemployed persons including those belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes, who were registered with the employment exchanges but could not get opportunity of competing for selection for appointment against the sanctioned posts.

42. With a view to redeem the situation, the State Government decided to totally prohibit employment on daily wages and also restrict appointment on temporary basis and, at

the same time, ensure that all appointments are made against the sanctioned posts only on the recommendations of the specified recruiting agencies. In furtherance of that decision, the Governor of Andhra Pradesh promulgated the Ordinance, which was replaced by the 1994 Act.

43. The term “daily-wage employee” has been defined in Section 2(ii) to mean any person employed in any public service on the basis of payment of daily wages and includes a person employed on the basis of nominal muster roll or consolidated pay either on full-time or part-time or piece-rate basis or as a work-charged employee and any other similar category of employees by whatever designation called other than those who are selected and appointed on sanctioned posts in accordance with the relevant rules on a regular basis.

44. The term “public service” has been defined in Section 2(vi) to mean service in any office or establishment of the Government, a local authority, a corporation or undertaking wholly owned or controlled by the State Government, a body established under any law made by the legislature of the State whether incorporated or not, including a university, and any other body established by the State Government or by a society registered under any law relating to the registration of societies for the time being in force, and receiving funds from the State Government either fully or partly for its maintenance or any educational institution whether registered or not but receiving aid from the Government.

46. Section 4 of the Act lays down that no recruitment in any public service to any post in any class, category or grade shall be made except from the panel of candidates selected and recommended for appointment by the Public Service Commission/College Service Commission or from a panel prepared by any Selection Committee constituted for the purpose in accordance with the relevant rules or orders or from among the candidates having the requisite qualification and sponsored by the employment exchange.

47. Section 5 of the Act provides that where an appointment has been made otherwise than in accordance with Section 4, the drawing authority shall not sign the salary bill of the appointee concerned and the Pay and Accounts Officer, Sub-Treasury Officer or any other officer upon whom duty has been cast of passing the salary bill shall not pass such bill.

48. Section 6 envisages imposition of different types of penalties on the holders of elective offices or any other officer or authority responsible for making appointment in contravention of the provisions of the Act. It also provides for recovery of the pay and allowances paid to a person appointed in contravention of the provisions of the Act.

49. Section 7 contains a prohibition against regularisation of persons appointed on daily wages or on temporary basis. It lays down that such appointee shall have no right to claim regularisation of service on any ground whatsoever and his/her service shall be liable to be terminated without any notice and without assigning any reason. By virtue of the first proviso to Section 7, an exception has been made in the case of workman to whom Section 25-F of the Industrial Disputes Act, 1947 is applicable. The service of such person can be terminated only after complying with the provisions of Section 25-F.

54. If the State Government had sincerely implemented the provisions of the 1994 Act, it may have succeeded in cleansing the mess created due to irregular employment of thousands of persons and, thereby, saved considerable revenue which could be utilised for execution of welfare schemes and development programmes. By ensuring that appointments against the sanctioned posts are made only from among the candidates selected by the specified recruiting agencies like Public Service Commission/College Service Commission, etc. or from among the candidates sponsored by the employment exchanges, the State Government could have demonstrated its commitment to the system established by the rule of law and determination to comply with the equality clause enshrined in the Constitution and other relevant statutory provisions in their true spirit.

55. Unfortunately, that did not happen because, in spite of the prohibition contained in Section 7 against regularisation of the existing daily-wage employees and persons appointed on temporary basis, the State Government wilted under the pressure exerted by the vested interests and issued the G.O. dated 22-4-1994 incorporating therein policy for regularisation of the services of those appointed on daily wages or nominal muster roll or consolidated pay, who had continuously worked for 5 years and were continuing on 25-11-1993 i.e. the date of enforcement of the 1994 Act. This was intended to be a one-time measure and not an ongoing process/scheme for regularisation of the services of all daily-wage employees on their completing 5 years.

57. While reversing the order of the Central Administrative Tribunal, this Court observed: (*Mohan Pal* case [(2002) 4 SCC 573 : 2002 SCC (L&S) 577] , SCC pp. 576-77, para 6)

“6. ... We do not think that Clause 4 of the Scheme envisages it as an ongoing scheme. In order to acquire ‘temporary’ status, the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing five days a week. From Clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving ‘temporary’ status to all the casual workers, as and when they complete one year’s continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given ‘temporary’ status and later they are to be absorbed in Group D posts.”

The ratio of the aforementioned judgment was reiterated in *Union of India v. Gagan Kumar* [(2005) 6 SCC 70 : 2005 SCC (L&S) 803] and *Director General, Doordarshan v. Manas Dey* [(2005) 13 SCC 437 : 2006 SCC (L&S) 1084] .

58. So far as these appeals are concerned, we find that the learned Single Judge interpreted the G.O. dated 22-4-1994 as entitling all daily-wage employees to claim regularisation in service with effect from the date of completion of five years irrespective of the date on which such period was completed or would have been completed. The Division Bench maintained the order of the learned Single Judge with the modification that regularisation would be from the date of completion of 5 years' continuous service.

59. This Court in *M.L. Singh* case [(2009) 8 SCC 480 : (1998) 2 An LT 5] approved the view taken by the Division Bench apparently because even though the policy contained in the G.O. dated 22-4-1994 was intended to be a one-time measure for facilitating regularisation of those who completed 5 years' service on 25-11-1993, it did not contain a specific stipulation that only those who have completed 5 years' continuous service as on 25-11-1993 will be regularised. A reading of the judgment in *District Collector/Chairman v. M.L. Singh* [(2009) 8 SCC 480 : (1998) 2 An LT 5] makes it clear that while examining correctness of judgment of the Division Bench of the High Court, this Court did not consider the background in which the 1994 Act was enacted, mischief sought to be remedied by it and various provisions

contained therein including Section 7 whereby it was made clear that no person employed on daily-wage or on temporary basis and continuing as such on the date of commencement of the Act shall have or shall ever be deemed to have the right to claim regularisation of service and his/her services shall be liable to be terminated at any time without any notice and without assigning any reason.

60. We may observe that if the officers responsible for drafting the G.O. dated 22-4-1994 had bothered to carefully read the provisions of the 1994 Act then instead of using the expression “such persons who worked continuously for a minimum period of five years and are continuing on 25-11-1993”, they would have employed the expression “such persons who have completed minimum five years of continuous service on or before 25-11-1993 on daily wages or nominal muster roll or consolidated pay”. However, utter non-application of mind by the officers concerned resulted in the use of an ambiguous expression in the policy of regularisation which generated enormous litigation requiring the individual employees and the State Government to invest money for an avoidable exercise.

61. In order to remove the ambiguity and imperfectness in the language of the G.O. dated 22-4-1994 and make the policy of regularisation an integral part of the 1994 Act, the legislature enacted Amendment Acts 3 and 27 of 1998. The purpose of making the policy of regularisation a part of the 1994 Act was not to dilute the main object of the 1994 Act i.e. to curb the menace of irregular appointments and also ensure that appointments are made against the sanctioned posts only from among the candidates selected by the designated recruiting agencies but also to harmonise the same with the prohibition contained in Section 7 against regularisation of daily-wage and temporary employees.

62. The preface of Act 27 of 1998 clearly shows that the policy contained in the G.O. dated 22-4-1994 was intended to be a one-time measure for regularisation of the persons employed on daily wages or nominal muster roll or consolidated pay, who completed 5 years' continuous service on or before 25-11-1993 i.e. the date of enforcement of the 1994 Act and it was not a continuing scheme for regularisation of all “daily-wage employees” as and when they were to complete five years' period.

63. The language of the first proviso to Section 7 by which the policy of regularisation was engrafted in the 1994 Act shows

that the amendments were made with the sole object of removing the ambiguity in the policy contained in the G.O. dated 22-4-1994 and the same were not intended to nullify or override the judgment in *District Collector/Chairman v. M.L. Singh* [(2009) 8 SCC 480 : (1998) 2 An LT 5] .

64. We have no doubt that if the language of the policy contained in the G.O. dated 22-4-1994 was similar to the one contained in newly inserted proviso to Section 7 and there was no ambiguity in it, the courts would not have interpreted the same in a manner which would entitle all persons employed on daily wages before 25-11-1993 to claim regularisation irrespective of the date of completion of five years' service. Here it will also be apposite to mention that the policy contained in the G.O. dated 22-4-1994 did not confer an indefeasible right upon all daily-wage employees [as the term has been defined in Section 2(ii) of the 1994 Act] to be regularised in service de hors the date of enforcement of the Act. Therefore, it cannot be said that by incorporating the policy of regularisation in the 1994 Act, the legislature has taken away an accrued or vested right of the daily-wage employees.

65. It is interesting to note that the judgment of this Court in *State of Haryana v. Piara Singh* [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403. **Ed.:** *Piara Singh* case has been overruled in *Umadevi* (3) case, (2006) 4 SCC 1.] of which shelter was taken by the State Government for framing the policy of regularisation of daily wagers, etc. in the teeth of the prohibition contained in Section 7 against such regularisation does not lay down that there will be wholesale regularisation of daily wagers, casual employees, work-charged employees, etc.

66. While dealing with the question whether the High Court was right in declaring that the Government could not have prescribed the requirement of particular length of service on a particular date as a condition for regularisation, this Court observed: (*Piara Singh* case [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403. **Ed.:** *Piara Singh* case has been overruled in *Umadevi* (3) case, (2006) 4 SCC 1.] , SCC pp. 139-40, para 27)

“27. ... These orders are not in the nature of a statute which is applicable to all existing and future situations. They were issued to meet a given situation facing the Government at a given point of time. In the circumstances, therefore, there was nothing wrong in prescribing a particular date by which the specified period of service (whether it is one year or two years) ought to have been put in. Take for example,

the orders issued by the Haryana Government. The first order is dated 1-1-1980. It says, a person must have completed two years of service as on 31-12-1979 i.e. the day previous to the issuance of the order. However could it be said that fixing of such a date is arbitrary and unreasonable? Similarly the order dated 3-1-1983 fixes 15-9-1982 as the relevant date. This notification/order does two things. Firstly, it excludes Class III posts of clerks from the purview of the SSSB in the case of those who have completed a minimum of two years of service as on 15-9-1982, and secondly, it provides for their regularisation subject to certain conditions. No particular attack was made as to this date in the High Court. Consequently the Government of Haryana had no opportunity of explaining as to why this particular date was fixed. Without giving such an opportunity, it cannot be held that the fixation of the said date is arbitrary. *What is more relevant is that the High Court has not held that this particular date is arbitrary. According to it, fixation of any date whatsoever is arbitrary, because in its opinion the order must say that any and every person who completes the prescribed period of service must be regularised on completion of such period of service. The next order dated 24-3-1987 prescribes the date as 31-12-1986 i.e. the end of the previous year. In the circumstances, we see no basis for holding that fixation of the date can be held to be arbitrary in the facts and circumstances of the case.*"

(emphasis added)

88. In none of the abovenoted cases, this Court considered an issue akin to the one examined by us. Therefore, the proposition of law laid down in those cases cannot be relied upon for entertaining the claim of daily-wage employees for regularisation irrespective of the fact that they may not have completed 5 years' continuous service on or before 25-11-1993.

89. In view of the above discussion, we hold that the amendments made in the 1994 Act by Acts 3 and 27 of 1998 do not have the effect of nullifying or overriding the judgment in *District Collector/Chairman v. M.L. Singh* [(2009) 8 SCC 480 : (1998) 2 An LT 5] . We further hold that the policy of regularisation contained in the first proviso to Section 7 inserted by Act 27 of 1998 is a one-time measure intended to benefit only those daily-wage employees, etc. who completed 5 years' continuous service on or before 25-11-1993 and the employees who completed 5 years' service after 25-11-1993 cannot claim regularisation.

91. We shall now consider whether the cut-off date i.e. 25-11-1993 specified in the first proviso to Section 7 of the 1994 Act (as amended by Act 27 of 1998) for determination of the eligibility of daily-wage employees to be considered for regularisation is arbitrary, irrational and violative of Articles 14 and 16 of the Constitution.

92. Undisputedly, the Ordinance issued in 1993 was the first exercise of legislative power by the State to prohibit employment on daily wages and to restrict appointments on temporary basis and, at the same time, streamline the recruitment in public services by adopting a procedure consistent with the doctrine of equality embodied in Articles 14 and 16 of the Constitution.

93. The 1994 Act was enforced with effect from 25-11-1993 i.e. the date on which the Ordinance was published in the Official Gazette. Therefore, that date had a direct bearing on the policy of regularisation circulated vide the G.O. dated 22-4-1994, which was issued by the State Government in exercise of its executive power under Article 162 of the Constitution. When that policy was engrafted in the 1994 Act in the form of the proviso to Section 7, the legislature could not have fixed any date other than 25-11-1993 for determining the eligibility of daily-wage employees who fulfilled the requirement of 5 years' continuous service. If any other date had been fixed for counting 5 years' service of daily-wage employees for the purpose of proviso to Section 7, the object sought to be achieved by enacting the 1994 Act would have been defeated, inasmuch as the regular recruitment could not have been made for appointment against the sanctioned posts and back door entrants would have occupied all the posts. Therefore, the cut-off date i.e. 25-11-1993 prescribed by the legislature for determining the eligibility of daily-wage employees and others covered by Section 7 of the 1994 Act cannot be dubbed as arbitrary, unreasonable, irrational or discriminatory.

94. This view of ours is in tune with judicial precedents on the subject. In *Union of India v. Parameswaran Match Works* [(1975) 1 SCC 305] a three-Judge Bench was called upon to decide whether the date for making the declaration i.e. 4-9-1967 fixed for grant of the benefit of concessional rate of duty was irrational and arbitrary. The High Court declared that the cut-off date fixed for grant of the concessional rate of duty violated Article 14 of the Constitution. This Court disapproved the view taken by the High Court and held that the choice of a date as the basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the same, unless it is shown

to be capricious or whimsical. It was further held that there is no mathematical or logical way for fixing a particular date and the decision of the legislature or its delegate must be accepted unless the fixation of date is found to be very wide off the reasonable mark.

96. This Court approved the view taken by the Division Bench and observed: (*Sushma Sharma* case [1985 Supp SCC 45 : 1985 SCC (L&S) 565] , SCC pp. 58-59, para 30)

“30. The object of this legislation was to provide for absorption of temporary lecturers of long standing. So therefore experience and continuous employment were necessary ingredients. The Hindi version of the Ordinance used the expression ‘ke prarambh ke samaya is roop me karya kar rahe hein’ is capable of meaning ‘and are continuing’ to work as such at the time of the commencement of the Ordinance. *Keeping the background of the purpose of the Act in view that would be the proper construction and if that is the proper construction which is in consonance with the English version of the Ordinance and the Act as well as with the object of the Act then in our opinion the Act and the Ordinance should be construed to mean that only those would be eligible for screening who were appointed prior to 25-6-1975 and were continuing at the time of the commencement of the Ordinance i.e. 12-6-1978 i.e. approximately about three years. If that is the correct reading, then we are unable to accept the criticism that those who were for a short period appointed prior to 25-6-1975 then again with interruption were working only at the time of the commencement of the Ordinance i.e. 12-6-1978 would also be eligible. In other words people with very short experience would be eligible for absorption. That cannot be the purpose of the Act. It cannot be so read reasonably. Therefore on a proper construction it means that all temporary lecturers who were appointed as such on or before 25-6-1975 and were continuing as such at the commencement of the Ordinance shall be considered by the University for screening for absorption. The expression ‘were continuing’ is significant. This is in consonance with the object of the Act to ensure continuity of experience and service as one of the factors for regularising the appointment of the temporary lecturers. For regularising the appointment of temporary lecturers, certain continuous experience is necessary. If a legislature considers a particular period of experience to be necessary, the wisdom of such a decision is not subject to judicial review. Keeping the aforesaid reasonable meaning of clause 3 of the Ordinance and Section 3 of the Act in view, we are of the opinion that the*

criterion fixed for screening for absorption was not an irrational criterion not having any nexus with the purpose of the Act. Therefore, the criticism that a teacher who was working even for two or three months only before 25-6-1975 and then with long interruptions was in employment of the University at the time of the commencement of the Ordinance would be eligible but a teacher who had worked continuously from 26-6-1975 i.e. after the date fixed i.e. 25-6-1975 for three years would be ineligible and as such that will be discrimination against long experience, cannot be accepted. Such a construction would be an unreasonable construction unwarranted by the language used in the provisions concerned. *It is well settled that if a particular period of experience is fixed for screening or for absorption, it is within the wisdom of the legislature, and what period should be sufficient for a particular job or a particular employment is not subject to judicial review.*"

(emphasis added)

100. A reading of paras 54, 67, 68 and 72 of the impugned judgment shows that even though the Division Bench did not find the cut-off date i.e. 25-11-1993 specified in the first proviso to Section 7 for determining the eligibility of daily-wage employees for regularisation to be arbitrary, irrational or discriminatory, yet it changed the said date from 25-11-1993 to 19-8-1998 solely on the premise that Act 27 of 1998 was enforced with effect from that date. In our view, once the Division Bench negated the challenge to the validity of Acts 3 and 27 of 1998, there was no warrant for altering the date of eligibility specified in the first proviso to Section 7 of the 1994 Act and thereby extend the zone of eligibility of daily-wage employees who could be considered for regularisation.

101. As a corollary, we hold that the declaration made by the Division Bench that all persons who completed 5 years' service as on the date of coming into force of Act 27 of 1998 would be entitled to be considered for regularisation of their services is legally unsustainable and is liable to be set aside. In the result, the appeals filed by the employees (CAs Nos. 3702-07, 3709, 3710, 3721, 3733, 3734, 3737, 3742, 3744, 3748, 3749 and 3751 of 2006) are dismissed and those filed by the State Government and agencies/instrumentalities of the State (CAs Nos. 3685, 3712-18, 3723, 3724, 3726-32, 3750 and 3752-55 of 2006) are allowed.

102. The declaration made by the Division Bench that the ban on regularisation will be effective from 19-8-1998 i.e. the date on which Act 27 of 1998 came into force and that all

persons who have completed 5 years' service as on that date would be entitled to be considered for regularisation of service is set aside. It is, however, made clear that the daily-wage employees and others who are covered by Section 7 of the 1994 Act (amended) and whose services have not been regularised so far, shall be entitled to be considered for regularisation and their services shall be regularised subject to fulfilment of the conditions enumerated in the G.O. dated 22-4-1994.

103. With a view to obviate further litigation on this issue, we direct the Government of Andhra Pradesh, its officers and agencies/instrumentalities of the State to complete the exercise for regularisation of the services of eligible employees within four months of the receipt/production of copy of this order, without being influenced by the fact that the application, writ petition or appeal filed by any such employee may have been dismissed by the Tribunal or the High Court or this Court. Since some of the appeals decided by this order relate to part-time employees, we direct that similar exercise be undertaken in their cases and completed within four months keeping in view the conditions enumerated in G.O. (P) No. 112 dated 23-7-1997.”

24. Certain observations of the Constitutional Bench in **Secretary, State of Karnataka v. Umadevi**(3)², in our opinion, are relevant for better understanding of the concept of regular employment and employment on a non-permanent or casual or daily wage basis. Paras.43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 and 54 in the said Judgment read 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

² (2006) 4 SCC 1

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, regularisation, 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 *Dharwad decision* [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] 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 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 *Dharwad* [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] , *Piara Singh* [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] , *Jacob* [*Jacob M. Puthuparambil v. Kerala Water Authority*, (1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] and *Gujarat Agricultural University* [*Gujarat Agricultural University v. Rathod Labhu Bechar*, (2001) 3 SCC 574 : 2001 SCC (L&S) 613] 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 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] , *National Buildings Construction Corpn. v. S. Raghunathan* [(1998) 7 SCC 66 : 1998 SCC (L&S) 1770] and *Chanchal Goyal (Dr.) v. State of Rajasthan* [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] .] 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* [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] . 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 (Dr.) v. Governing Body of the Nalanda College* [1962 Supp (2) SCR 144 : AIR 1962 SC 1210] . 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 permanently 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 *S.V. Narayanappa* [(1967) 1 SCR 128 : AIR 1967 SC 1071] , *R.N. Nanjundappa* [(1972) 1 SCC 409 : (1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979)

3 SCR 937] 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 aboveresferred 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 principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.”

25. A reading of the above paragraphs would go to demonstrate that the entire conspectus of the terminology “employment” with reference to Constitutional provisions has been settled for good. That apart, the interpretation of the Government Order and the Acts referred to hereinabove by the Hon’ble Apex Court in **A.Manjula Bhashini’s** case¹ leaves no scope for any meandering or circumspection of the settled position in law.

26. What is alarming is that the learned Single Judge has proceeded to render the judgment and adjudicate the rights of the parties even

without reference to the facts. A critical appraisal of the facts would demonstrate that the petitioner, as on the date of his appointment i.e. 30.11.1987, had not even passed the Intermediate course which was stipulated as the minimum qualification for being eligible to be considered for appointment. In fact, the appointment is made on 30.11.1987, while the certificate would reveal that the same is issued on 05.12.1987, that is even before the certificate certifying him as having completed the Intermediate course, appointment orders came to be issued. That apart, it is seen that the petitioner has not placed before the Court any material particulars like the eligibility criteria and the date on which he acquired the said criteria. The same becomes crucial in view of the stipulation under the G.O.Ms.No.212, dated 22.04.1994, which categorically mandates that the candidate must possess the stipulated qualification on the date of his appointment. As stated supra, the academic qualification of Intermediate is acquired on 05.12.1987. He has acquired the stipulated technical qualifications on various dates: (a) English Typewriting lower in Nov/Dec., 1986; (b) Telugu Typewriting lower in August, 1990; (c) English Typewriting Higher in August, 1990; and (d) Telugu Typewriting Higher in May/June, 1991; and B.A. Graduation in 1992. None of these aspects have even been looked into by the learned Single Judge. On the other hand, the order impugned gives the picture that the same has proceeded on the presumption of the

petitioner having been eligible for appointment as on the date of his appointment. There is neither a discussion regarding the eligibility of the petitioner to be appointed as on 30.11.1987 nor as the petitioner disclosed these material facts.

27. It is settled position in law that no person is entitled to seek employment if his candidature is vitiated by lack of eligibility on the date of consideration. The Hon'ble Apex Court, in the case of **State of Maharashtra v. Shashikant S. Pujari**³, has been pleased to observe in paras.23, 34, 36 and 37, which read as under:

“23. The question with regard to retrospective effect of the said resolution will have to be answered having regard to the fact situation obtaining herein. If prior to October 1991, the respondent was validly appointed, he could justifiably contend that the 1991 Regulations could not have been given a retrospective effect. With a view to examine the said question, we may notice the following provisions of the Act.

34. It is in that view of the matter no relaxation about percentage of the marks obtained by the respondent in Master's degree was available to him, as he had not submitted his PhD thesis. He, it will bear repetition to state, was also not appointed on permanent post by the University Selection Committee.

36. The respondent could not take any benefit of the said circular letter also, inter alia, for the reason that he had not been appointed by duly constituted University Selection Committee. Another question which was relevant but had not been considered by the High Court was that having regard to the breaks in service, he could have been appointed only as a freshly recruited teacher. At one point of time, the College and the University might have committed mistake in treating him as a full-time teacher, but such mistakes could have been rectified, if they were apparent on the face of the records. Moreover, the order impugned in the writ petition, in our opinion, cannot be said

³ (2006) 13 SCC 175

to be wholly arbitrary and unreasonable so as to warrant interference by a superior court. The eligibility criteria cannot be relaxed unless there exists a specific provision therefor. A person can avail the benefit of relaxation notification only when he comes within the purview thereof and when he satisfies the conditions specified therein.

37. It has been contended that the University had not given any approval as regards his appointment as part-time teacher in Political Science, as he did not receive a copy therefor. If there had been no approval to his appointment after 30-10-1985, the decision of the University Management Council on 30-10-2000 cannot be faulted. Condonation of breaks in his service was also imperative in nature which had not been given.”

28. The Hon’ble Apex Court in the case of **State of Uttar Pradesh v.**

Vijay Kumar Misra⁴ has been pleased to observe and hold in paras.4 and 6 as under:

“**4.** The relevant facts over which there is no dispute may be stated thus:

The respondent herein did not have the educational qualification prescribed under the rules for the post of SDI (Basic) as he had no degree of Bachelor in Education and did not have the LT certificate at the time of submission of the application and also at the time of selection. Subsequent thereto he got the LT certificate. As expected, the Service Commission had not considered him for the post of SDI (Basic) for want of prescribed qualification.

6. The position is fairly well settled that when a set of eligibility qualifications are prescribed under the rules and an applicant who does not possess the prescribed qualification for the post at the time of submission of application or by the cut-off date, if any, prescribed under the rules or stated in the advertisement, is not eligible to be considered for such post. It is relevant to note here that in the rules or in the advertisement no power was vested in any authority to make any relaxation relating to the prescribed qualifications for the post. Therefore, the case of a candidate who did not come within the zone of consideration for the post could not be compared with a candidate who possessed the prescribed qualifications and was considered and appointed to

⁴ (2017) 11 SCC 521

the post. Therefore, the so-called confession made by the officer in the Court that persons having lower merit than the respondent have been appointed as SDI (Basic), having been based on a misconception is wholly irrelevant. The learned Single Judge clearly erred in relying on such a statement for issuing the direction for appointment of the respondent. The Division Bench was equally in error in confirming the judgment of the learned Single Judge. Thus the judgment of the learned Single Judge as confirmed by the Division Bench is unsustainable and has to be set aside.”

29. The said position in law came to be reiterated by the Hon’ble Apex Court in its own ruling in **Ramesh Chand v. State of Haryana**⁵ in para.11, which reads as under:

“**11.** It may also be remembered that the promotion in question was an intra-departmental promotion within the Panchayat Department. The principle enunciated by this Court in *Vijay Kumar Mishra case* [*State of U.P. v. Vijay Kumar Mishra*, (2017) 11 SCC 521 : (2015) 3 SCC (L&S) 804] which has been relied upon by Respondent 2 applies in those cases where the applications were invited from the candidates either by advertisement or in terms of the rules. This is clear from para 7 of the Report where this Court has said: (SCC p. 522)

“7. The position is fairly well settled that when a set of eligibility qualifications are prescribed under the rules and an applicant who does not possess the prescribed qualification for the post at the time of submission of application or by the cut-off date, if any, *prescribed under the rules or stated in the advertisement*, is not eligible to be considered for such post. It is relevant to note here that in the rules or in the advertisement no power was vested in any authority to make any relaxation relating to the prescribed qualifications for the post. Therefore, the case of a candidate who did not come within the zone of consideration for the post could not be compared with a candidate who possessed the prescribed qualifications and was considered and appointed to the post.”
(emphasis supplied)

This decision has no application to this case and the letter cannot be construed as setting down a cut-off date for the

⁵ (2017) 11 SCC 516

purposes of making of recommendations by the addressees of the letter.”

30. The said position in law came to be reiterated by the Hon’ble Apex Court in its latest ruling in **State of Madhya Pradesh v. Shyam Kumar Yadav**⁶ in para.5, which reads as under:

“It is true that an employee engaged on daily wages has no legally vested right to seek regularization of his services. However, if the competent authority takes a policy decision within the permissible framework, its benefit must be extended to all those who fall within the parameters of such a policy. Authorities cannot be permitted to pick and choose in such circumstances.”

31. From a reading of the facts and circumstances and an analysis of the case leaves no doubt in the mind of this Court that the petitioner has been abusing the judicial system and attempting to secure favourable orders in subsequent litigation based on the strength of the orders passed in collateral proceedings. The petitioner was bound to disclose the irregularities in his appointment, *prima facie*, he not having possessed the stipulated eligibility criteria on the date of his appointment, in our, *prima facie*, view, he would not be entitled to the benefits conferred on that class of people enumerated under G.O.Ms. No.212, dated 22.04.1994. The twin conditions of possessing the eligibility and of having rendered continuous five years service as on 25.11.1993, *prima facie*, do not appear to have been complied with. In

⁶ Special Leave to Appeal (C) No.25609 of 2018, dated 22.07.2024.

that view, the order impugned, in our considered opinion, is legally unsustainable.

32. The facts recounted above *prima facie* demonstrate that the present proceedings is also hit by the principles of constructive *res judicata*. In this regard, we place reliance on the findings rendered by the Hon'ble Apex Court in the case of **M.J. Exporters (P) Ltd. v. Union of India**⁷. The findings recorded in paras.14 and 15 of the said judgment are reproduced hereunder:

“**14.** Consequently in the second writ petition, when the appellant as well as its counsel knew that the issue as to whether the interest is payable or not on other grounds had already been foreclosed in the earlier writ petition, the counsel for the appellant did not make any submission with regard to the aforesaid plea raising the issue in show-cause notice and limited his prayer from the date from which the interest was to be paid.

15. In these circumstances, we feel that when this issue was raised and abandoned in the first writ petition which was dismissed as withdrawn, the principles of constructive *res judicata* which are laid down under Order 23 Rule 1 of the Code of Civil Procedure, 1908, and which principles are extendable to writ proceedings as well as held by this Court in *Sarguja Transport Service v. STAT* [*Sarguja Transport Service v. STAT*, (1987) 1 SCC 5 : 1987 SCC (Cri) 19] would squarely be applicable.”

33. In that view, we request the learned Single Judge to also examine the applicability of the above principle with the facts of the instant case. It is also pertinent to note the law evolved by the Hon'ble Apex Court in

⁷ (2021) 13 SCC 543

Sarguja Transport Service v. State Transport Appellate Tribunal⁸.

The elucidation of the principle in paras.7 and 9 would *prima facie* appear to have a bearing on the facts of the instant case. Paras.7 and 9 of the said judgment read as under:

“7. The Code as it now stands thus makes a distinction between “abandonment” of a suit and “withdrawal” from a suit with permission to file a fresh suit. It provides that where the plaintiff abandons a suit or withdraws from a suit without the permission, referred to in sub-rule (3) of Rule 1 of Order XXIII of the Code, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. The principle underlying Rule 1 of Order XXIII of the Code is that when a plaintiff once institutes a suit in a court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the court to file fresh suit. *Invito beneficium non datur* — the law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will lose it. In order to prevent a litigant from abusing the process of the court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of Rule 1 of Order XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of *res judicata* contained in Section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. The rule of *res judicata* applies to a case where the suit or an issue has already been heard and finally decided by a court. In the case of abandonment or withdrawal of a suit without the permission of the court to file a fresh suit, there is no prior adjudication of a suit or an issue

⁸ (1987) 1 SCC 5

is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of Rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the court.

9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in *Daryao* case [AIR 1961 SC 1457 : (1962) 1 SCR 574] is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open.”

34. In that view of the matter, the order of the learned Single Judge is set aside and the matter is remitted back to the learned Single Judge for

consideration of the rights of the parties in terms of the law laid down by the Hon'ble Apex Court in **A.Manjula Bhashini's** case¹ and the law enunciated by the Constitutional Bench of the Hon'ble Apex Court in **Umadevi(3)'s** case².

35. The Writ Appeal stands ordered accordingly. No costs.

Consequently, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE G.NARENDAR

JUSTICE NYAPATHY VIJAY

Date:23.08.2024.
cs/anr

*** THE HON'BLE SRI JUSTICE G.NARENDAR**
AND
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY

+ Writ Appeal No.295 of 2023

% Dated 23-08-2024

The Chief Executive Officer, Zilla Praja Parishad, Eluru.

..... Appellant

v.

\$ 1. T.Seshagiri & Ors.

..Respondents

! Counsel for the Appellant : Sri G.Srinivasulu Reddy

^ Counsel for the 1st respondent : Sri S.Syam Sunder Rao

Counsel for respondents 2 & 3 : Ld. G.P. (S-IV)

<GIST:

> HEAD NOTE:

? Cases referred :

1. (2009) 8 SCC 431
2. (2006) 4 SCC 1
3. (2006) 13 SCC 175
4. (2017) 11 SCC 521
5. (2017) 11 SCC 516
6. Special Leave to Appeal (C) No.25609 of 2018, dated 22.07.2024.
7. (2021) 13 SCC 543
8. (1987) 1 SCC 5

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH**Writ Appeal No.295 of 2023**

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...Respondents

JUDGMENT PRONOUNCED ON: 23-08-2024

THE HON'BLE SRI JUSTICE G.NARENDAR
AND
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY

1) Whether Reporters of Local newspapers may be allowed to see the Judgments? -Yes-

2) Whether the copies of judgment may be marked to Law Reporters/Journals -Yes-

3) Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? -Yes-

JUSTICE G. NARENDAR