* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 24.05.2018*
Date of Judgment: 27.06.2018

\+ **W.P. (C) 7309/2014**

RAHUL SHARMA … Petitioner

Through: Mr.Anuj Aggarwal, Advocate with Mr.Ashutosh Dixit, Advocate.

Versus

NORTH DELHI MUNICIPAL CORPORATION & ORS.

… Respondents

Through: Ms.Eshita Baruah, Advocate for Mr.Gaurang Kanth, Advocate.

\+ **W.P. (C) 7311/2014**

SHANKAR PRASAD ARYA … Petitioner

Through: Mr.Anuj Aggarwal, Advocate with Mr.Ashutosh Dixit, Advocate.

Versus

NORTH DELHI MUNICIPAL CORPORATION & ORS.

… Respondents

Through: Ms.Eshita Baruah, Advocate for Mr.Gaurang Kanth, Advocate.

\+ **W.P. (C) 7312/2014**

MEENU RANI … Petitioner

Through: Mr.Anuj Aggarwal, Advocate with Mr.Ashutosh Dixit, Advocate.

Versus

NORTH DELHI MUNICIPAL CORPORATION & ORS.
… Respondents
Through: Ms.Eshita Baruah, Advocate for Mr.Gaurang Kanth, Advocate.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. By this judgment, I propose to decide all three writ petitions since common question of facts and law are involved.

2. Public employment in a sovereign socialist secular democratic republic, has to be set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be in terms of the constitutional scheme. This preface was expressed by the **Constitutional Bench** of **Hon'ble Supreme Court** in the case of **Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others,** ***(2006) 4 SCC 1.***

3. In fact, while disposing of these writ petitions, this court is to keep in mind the basic principles of law laid down in Umadevi's case *(supra)* by the Constitutional Bench of the Hon'ble Supreme Court.

4. The petitioners in these writ petitions seek quashing of impugned awards dated 10.09.2014 rendered by the learned Presiding Officer, Labour Court-XVII, Karkardooma Courts, Delhi (in short as 'Industrial Adjudicator') in DID No.03/12, 04/12 & 02/12 respectively to the extent of declining the relief of reinstatement and continuity in service with full back wages to them.

5. The petitioners filed their direct industrial disputes under Section 2A of the Industrial Disputes Act, 1947 (in short 'ID Act') against the respondent before the Industrial Adjudicator for setting aside/quashing the impugned order dated 09.05.2011 issued by the respondent/management by which approval of five employees including the petitioners on contractual basis was extended till 31.05.2011, an order dated 28.05.2011 which is in fact a memorandum issued to the petitioners separately seeking their explanation for not attending the office on Saturdays; and seeking a direction to the respondent/management to appoint them on the post of LDC or reinstate them on the post of Assistant with full back wages from the date of illegal termination along with all the consequential benefits.

6. By the impugned separate awards the Industrial Adjudicator has drawn an adverse inference against the respondent/management that the petitioners No.1 and 3 were in its continuous employment since 29.11.2007 and petitioner No.2 since 20.11.2007 till their termination except for artificial breaks and they had served the management till 31.05.2011. The Industrial Adjudicator has held that the respondent/management has terminated the services of the petitioners illegally. He found that the petitioners had worked for just about three and a half years; at the time of passing the award more than three years were already elapsed; and there were certain allegations against the petitioners by the management, he thought it fit in his wisdom not to order their reinstatement but to grant a lump sum compensation of Rs.1,00,000/- to each of the petitioners payable with interest @ 9% per annum. The Industrial Adjudicator also burdened the Management with exemplary cost of Rs.50,000/- in each case.

7. Admittedly, by an office order dated 29.11.2007, the competent authority of the management had agreed to engage the petitioners No.1 and 3 as Assistants in the IT Department for a period of 180 days on daily wages @ Rs.152.45 paise per day. It was made clear that it was purely a temporary arrangement arisen due to the emergent situation and these appointees shall not have any right to seek appointment on regular basis in the MCD. The office order dated 29.11.2007 reads as under:-

"MUNICIPAL CORPORATION OF DELHI
DEPARTMENT OF INFORMATION TECHNOLOGY
Ring Road, Lajpat Nagar, New Delhi

No. D-352/17/MCD/07 Dated: 29/11/2007

OFFICE ORDER

The Competent Authority agreed to engage the following two persons as Assistants in the I.T. Department @ Rs.152.45p per day, for a period of 180 days on daily wages. This is purely a temporary arrangement arisen due to the emergent situation and in this regard, the following two persons will not have any right toseek the appointment on regular basis in MCD:

1. Sh. Rahul Sharma s/o. Shri Jagat Narayan Sharma
2. Km.Meenu Rani d/o. Shri Ashok Kumar

The acceptance of the order shall reach to the I.T. Department, MCD within two days of receipt of the order.

This issues with the approval of the competent authority.

Sd/-
29.11.2007
Addl.Dy. Commissioner (I.T.)
29.11.2007

DISTRIBUTION:

1. Shri Shri Rahul Sharma s/o. Shri Jagat Narayan Sharma
2. Km. Meenu Rani d/o. Sh. Ashok Kumar
3. A.C.A. (Central Zone)
4. Office Copy."

8. Similarly, by an office order dated 20.11.2007, the Competent Authority of the Management has agreed to engage petitioner No.2 as Assistant in the I.T. Department for a period of 180 days on daily wages @ Rs.152.45 per day. It was made clear that it was purely a temporary arrangement arisen due to emergent situation and the appointee shall not have any right to seek appointment on regular basis in the MCD. The office order dated 20.11.2007 reads as under:-

"MUNICIPAL CORPORATION OF DELHI

No. D-338/17/MCD/07 Dated: 20/11/2007

OFFICE ORDER

The Competent Authority agreed to engage Sh. Shankar Prasad Arya s/o B.R. Arya as Assistant in I.T. Department @ Rs.152.45 per day for a period of 180 days on daily wages. This is purely a temporary engagement arison due in the emergent situation and in this regard Sh. Shankar Prasad Arya will not have any right to seek the appointment on regular basis in M.C.D. The acceptance of the order shall reach to I.T. Deptt. MCD within two days of receipt of the order.

This issue with the approval of competent authority.

Sd/-
Addl. Deputy Commissioner (IT)

Copy to:
1. Sh. Shankar Prasad Arya s/o Sh. B.R. Arya
2. ACA/Central Zone
3. O/C.

9. The petitioners have admittedly signed on the office orders acknowledging the terms and conditions mentioned therein.

10. Admittedly, the petitioners were given further extensions by various office orders from time to time for 89 days each on same terms and conditions after giving small gap of time till 08.05.2011. However, by an order dated 09.05.2011, the petitioners were given extension on same terms and conditions till 31.05.2011. In this manner, the petitioners have worked on daily wages rates with the respondent/management on contractual basis in its I.T. Department w.e.f. 20/29.11.2007 till 31.05.2011 with small breaks after every 89 days. The respondent/management has admittedly not issued any termination letter to the petitioners and in fact the respondent/management has not issued any other office order after 31.05.2011 for further extending the tenure of the petitioners.

11. It is alleged by the petitioners in their respective statement of claims before the Industrial Adjudicator that office order dated 09.05.2011 giving them extension only till 31.05.2011 is illegal and unjustified; the job of the petitioners were of perennial in nature; identical nature of work was assigned to the LDCs; the petitioners have been in continuous employment since 20/29.11.2007 till the office order dated 09.05.2011 and they have completed more than 240 days in the preceding year of

termination of their services; fresh hands are appointed for the post of LDC without considering them; the petitioners fulfil the eligibility criteria for the post of LDC as educational qualification for the post of LDC is 10th class whereas the petitioners are 12th class pass; the petitioners have not committed any misconduct as no charge-sheet was ever issued to them before their termination; their services have been terminated in violation of Section 25-F of the ID Act; several counterpart as well as juniors of the petitioners have been retained in service whereas their services were terminated illegally in violation of Section 25-G of the ID Act; and fresh hands have been engaged by the management for the work done by the petitioners without affording them any opportunity in violation of Section 25-H of the ID Act.

12. In its written statement, the respondent/management, *inter-alia*, pleaded that the claims are not maintainable under Section 2(OO)(bb) of the ID Act since the petitioners were engaged on contractual basis as Assistants; after induction of computerization in the Municipal Corporation to mitigate burden, the I.T. Department engaged some Assistants on contract basis for entering data in the computers; the petitioners along with some other persons were engaged for specific purpose and specific period from time to time purely on contractual basis which they duly accepted; neither recruitment procedure was followed by the respondent/management to

engage these Assistants nor were they engaged against any permanent sanctioned post; there is no sanctioned post in the nomenclature of "Assistant" in the respondent corporation; the petitioners were engaged as Assistants in I.T. Department on daily wages @ Rs.152.42 per day initially for a period of 180 days; they were given time to time extension of 89 days as per the requirement of the work and after completion of the work they were not engaged further; the contract period of the petitioners lasted on 31.05.2011 as there was no requirement, no extension was received from the competent authority; and that the petitioners were never engaged on regular basis and had no lien being the daily wager.

13. It is pleaded that no termination order was ever passed as the petitioners were engaged against the specific contract and after expiry of the contract their services automatically came to an end as per the agreed terms and conditions. Regarding the allegation of engaging the fresh hands, it is pleaded that admittedly no post of "Assistant" has been created by the management and for the post of LDC there is a prescribed recruitment system and all these posts are filled up through Delhi Subordinate Service Selection Board by competitive exam. It is denied that the petitioners were unemployed from the date of expiry of the contract.

14. The petitioners preferred to file rejoinder to the written statement of their statement of claim filed by the management

denying its allegations and reaffirmed the averments made in their respective statement of claim.

15. Admittedly, the respondent/management has not challenged the impugned awards holding termination of the petitioners to be illegal and granting lump sum compensation of Rs.1,00,000/- along with exemplary cost of Rs.50,000/- to each of them. During the course of the arguments, it was brought to the notice by both the learned counsel for the parties that the respondent/management has made the payment of the awarded amount to the petitioners.

16. Learned counsel for the petitioners argued that the petitioners had worked for more than 240 days in the year preceding the date of their termination i.e. 31.05.2011 as the petitioners started working with the management since 20/29.11.2007 and their services were terminated illegally without any notice or inquiry in violation of Section 25-F of the ID Act. He urged that when the Industrial Adjudicator found that the termination of the petitioners was illegal, the normal rule of granting the benefit of reinstatement with full back wages and benefit of continuity in service should have been followed instead of granting lump sum compensation of Rs.1,00,000/- to each of the petitioners with cost. In this regard, he has relied upon a judgment of **Hon'ble Supreme Court** titled as **Krishan Singh Vs. Executive Engneer, Haryana State Agricultural marketing Board, Rohtak, Haryana,** ***(2010) 3 SCC 637*** to

urge that even an employee appointed as a daily wager in a government department of State of Haryana who had worked for 267 days prior to his termination in violation of Section 25-F of the ID Act was granted the benefit of reinstatement with 50% back wages by the Hon'ble Supreme Court.

17. Similarly, he has relied upon a recent judgment of Single Judge of this court dated **05.04.2018 in W.P. (C) 11041/2004** titled as **Delhi Jal Board Vs. Vimal Kumar,** wherein the services of the workman, who was appointed as a Sewer Cleaning Machine Driver, were terminated in violation of Section 25-F of the ID Act. The award of the Labour Court dated 29.05.2003 to the extent of his reinstatement with all consequential benefits with continuity of service was upheld by this Court but with the modification of awarding 50% back wages instead of full back wages.

18. He argued that the petitioners have specifically pleaded in Para No.2.14 of their statement of claim that several counterpart as well as juniors to them have been retained in services while terminating their services in violation of Section 25-G of the I.D. Act. He argued that though the Industrial Adjudicator has found the termination of the petitioners in violation of Section 25-F of the ID Act, the Industrial Adjudicator has failed to notice that there was violation of Section 25-G of the ID Act as well since the junior employees to the petitioners appointed on the same terms and conditions were retained by the

respondent/management. In this regard, he has relied upon a judgment of **Hon'ble Supreme Court** in the case of **Director, Fisheries Terminal Division Vs. Bhikubhai Meghajibhai Chavda, *AIR 2010 SC 1236,*** wherein the claimant/workman was appointed on daily wages on 01.12.1985 and his services were terminated without giving any notice and complying with the provisions of ID Act. His stand before the Labour Court was that he was appointed on daily wages and had worked for more than 240 days in the year preceding his termination. The Labour Court granted him the benefit of reinstatement with 25% back wages. It was also found by the Labour Court that the services of some of the employees junior to the claimant were continued after the termination of his services and the Labour Court found that there was violation of Section 25-G of the ID Act. The Apex Court did not interfere with the order of the High Court dismissing the writ petition against the Award of the Labour Court.

19. On the same point, he has relied upon another judgment of **Hon'ble Supreme Court** in the case titled as **B.S.N.L. Vs. Bhurumal, (2014) 7 SCC 177** wherein it was held that there may be a situation when the persons junior to the workman were regularized under some policy but the services of the concerned workman were terminated and in such circumstances the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of

grant of compensation instead of reinstatement. Para 25 of the judgment relied upon by the learned counsel for the petitioner reads as under: -

> "25. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied."

20. He has also relied upon the judgment of **Hon'ble Supreme Court** in the case titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others, *(2013) 10 SCC 324,*** to urge Para 38.1 holding that in case of wrongful termination of service, reinstatement with continuity of service with back wages is the normal rule and Para 38.3 to urge that once an employee shows that he was not employed the onus lies on the employer to plead and prove that he was gainfully employed and getting the same or substantial similar emoluments. He argued that in the present case the petitioners

have pleaded in the statement of claim that after termination of their services, they remained unemployed from the date of their illegal termination and they have no source of income and despite their best efforts they were unable to secure any employment. He submitted that though the management has denied this contention in the written statement but did not plead that the petitioners were gainfully employed after their termination.

21. When the learned counsel for the petitioners was confronted with the affidavit of the petitioners tendered in evidence before the Industrial Adjudicator, he fairly conceded that the petitioners did not depose in support of their pleadings that several counterpart as well as juniors were retained in service by the respondent/management while terminating their services in violation of Section 25G of the ID Act. He also conceded that the petitioners have not adduced any evidence about retention of any of their juniors or counterpart in service.

22. He also fairly conceded that in their respective affidavits tendered in evidence the petitioners have not testified before the Industrial Adjudicator that after the termination of their services, they remained unemployed or were not gainfully employed in any establishment.

23. He further relied upon the judgment of Division Bench of this Court in **Delhi Cantonment Board Vs. Central Govt. Industrial Tribunal & Ors.,** ***129 (2006) DLT 610 (DB),*** to

urge that there is no distinction in industrial law between the "permanent employee" and "temporary employee" and as long as the person is employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, he is a workman under the ID Act and will get the benefits of that Act. The Division Bench has dismissed the appeal against the judgment of a Single Judge upholding the award of the Industrial Adjudicator holding the termination of the respondent/workman to be illegal as the compliance of Section 25-F was not made when the workmen had put in 240 days of service in the year prior to the date of his termination of his services.

24. Lastly, he has relied upon the judgment of the **Hon'ble Supreme Court** in the case titled as **Jasmer Singh Vs. State of Haryana and Another, *(2015) 4 SCC 458,*** to urge that even the daily wages paid workers in the government department who had completed more than 240 days continuous service in the calendar year preceding to the date of his termination without complying with the provisions of Section 25-F, 25-G and 25-H of the ID Act has been held to be illegal by the Industrial Tribunal cum Labour Court and he was given reinstatement in his job with continuity of service with full back wages, and that the award though was set aside by the Division Bench of the Punjab & Haryana High Court but was restored by the **Hon'ble Supreme Court.**

25. While concluding the arguments, learned counsel for the petitioners submitted that the petitioners may not be awarded even the back wages and benefit of continuity in service but they may be granted reinstatement in service.

26. Per contra, it is submitted by the learned counsel for the respondent that in fact after induction of the computerization in the corporation, its I.T. Department engaged some persons including the petitioners as Assistants on contract basis to meet out the exigency for entering data in computers. They were appointed for a specific purpose and period from time to time purely on contract basis and in their initial letter of appointment it was specifically mentioned that they were appointed on daily wage rates and it was purely a temporary arrangement arisen due to emergent situation and they will not have any right to seek appointment on regular basis in the corporation. These terms and conditions were accepted by the petitioners. He submitted that due to exigency, the recruitment process could not be followed by them. There was no sanctioned post of Assistant in the corporation and they were not appointed against the sanctioned post. The contract period of the petitioners has ended on 31.05.2011 and since there was no requirement, no further extension was given to them. He submitted that the petitioners were never engaged against a regular post and after expiry of the contract their services automatically came to an end as per the terms and conditions of the contract. He

submitted that in their written statement they had relied upon a judgment of Constitutional Bench of **Hon'ble Supreme Court** in the case titled as **Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others,** ***(2006) 4 SCC 1*** to urge that unless the appointment is in terms of the relevant rules and after a proper competition among the qualified persons, the same would not confer any right on the appointee.

27. He further submitted that there is no sanctioned post of "Assistant" to appoint the petitioners and the services of the petitioners are no more required by the corporation when admittedly the regular LDCs have already been appointed. He also relied upon a judgment of Single Bench of this Court **dated 18.05.2012 in W.P. (C) 493/2011** titled as **Dheeraj Kumar & Anr. Vs. Union of India & Anr.,** to urge that the workman having been appointed on daily wage rate without following the rules of recruitment but had worked for more than three years should not be granted reinstatement in service but only the lump sum compensation. The relevant Para No. 23 & 24 reads as under: -

> "23. From these judgments of the Supreme Court it is quite clear that till date it has not been held so far in any of the decisions by the Supreme Court that in no case the relief of re-instatement and back wages should be granted to the workmen who succeed in getting a declaration from the labour Courts that the termination of their services by their employer was illegal and unjustified. The crux of these decisions is that these reliefs should not be granted by the Courts

mechanically after holding the termination of services of the concerned workmen to be illegal and by ignoring special and peculiar facts and circumstances in each case which justify refusal of these reliefs and grant of lump sum monetary compensation in lieu thereof. **It is however significant to notice, and as was pointed out even by the learned counsel for the respondent also, that as far as daily wagers are concerned the Supreme Court is now taking the view that they should not be re-instated and instead monetary compensation should be awarded to them.**

24. In the present case both the petitioners-workmen were daily wagers. They had not been appointed in accordance with the Rules of Recruitment. The Tribunal has while denying them the reliefs of reinstatement and back wages relied upon the decision of the Supreme Court wherein the relief of re-instatement and back wages was denied to the daily wages and so its decision cannot be said to be suffering from any infirmity as far as the denial of relief of reinstatement and back wages is concerned. However, considering the fact that both the petitioners had worked for more than three years with the respondent the compensation amount of Rs.25,000/- each awarded to them appears to be not reasonable compensation. As noticed already, the Supreme Court in Narender Kumar's case (supra) had taken note of inflation and increase in cost of living etc. while enhancing the amount of compensation payable to the workman involved in that case. Thus, the amount of compensation in the present case needs to be enhanced. It is increased to Rs.75,000/-.

24. This writ petition, therefore, succeeds partly and while maintaining the award of the Tribunal to the extent the relief of reinstatement and back wages has been denied to both the workmen the amount of

compensation payable to each of the two petitioners is enhanced from Rs.25,000/- to Rs.75,000/-.

28. I have heard the learned counsel for the parties.

29. The only point involved in the writ petitions left to be decided is to whether in the facts and circumstances of the case, the petitioners are entitled for their reinstatement in service with the respondent/management or not.

30. Admittedly, the petitioners were appointed as "Assistants" in terms of the office order dated 20/29.11.2007 issued by the respondent/management in its I.T. Department for a period of 180 days on daily wages @ Rs.152.42 p. per day. It was made clear that it was purely a temporary arrangement arisen due to the emergent situation and these appointees shall not have any right to seek appointment on regular basis with the respondent/management. The petitioners have admittedly accepted the terms and conditions by signing on the office order itself. They were given extension with small breaks by various subsequent orders to work on the same terms and conditions. On the last occasion, their services were extended till 31.05.2011 and thereafter admittedly the services of the petitioners were not extended. No letter of termination was admittedly issued to the petitioners obviously for the reason that their tenure came to an end on 31.05.2011 as per the contract.

31. Admittedly, the computerization was inducted in the Municipal Corporation of Delhi. To meet out the exigency to feed the data

in the computers the petitioners were engaged on contractual basis on daily wage rate as Assistants. Due to acuteness of the issue, no recruitment procedure was followed. It is also not disputed that there was no sanctioned post of the nomenclature of Assistant in the Municipal Corporation of Delhi. These facts were specifically pleaded by the respondent/management by way of preliminary objections no.3 in its written statement, which were not controverted by the petitioners specifically in the corresponding para of the rejoinder. Even at the bar, it is admitted by both the learned counsel that no recruitment procedure was followed by the management while engaging the services of the petitioners due to induction of computerization in the Municipal Corporation of Delhi and to meet out the exigency in order to feed the necessary data in the computers. As pleaded in Para 1.10 of the statement of claim, the petitioners have admitted that subsequent to their appointment on daily wage rate on contract basis, the respondent/management has approved vide notification dated 09.05.2011 for creation of 13 Group 'C' posts in I.T. Department. The copy of the notification is annexed along with the writ petition and these 13 posts includes five posts of Data Entry Operators, three of LDC, 1 of UDC and 2 of Hardware Assistant and Programme Assistant each. These posts have been admittedly filled up by the respondent/management by

following due process of the recruitment through Delhi Subordinate Service Selection Board.

32. The **Hon'ble Supreme Court** has categorically held in **Umadevi's case *(supra)*** 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, the 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. **Unless the appointment is in terms of the relevant rules and after a proper competition among the qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.** The relevant paragraphs no.43, 45, 47, 51 and 53 of the 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 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.

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.

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.

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.

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to

> work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

33. Admittedly, the appointments of the petitioners were made to meet out the exigency by the respondent/management on contractual basis on daily wage rate due to induction of computerization. In view of urgency of the issue of making the entries in the computers, the appointments were made without following the requisite recruitment procedure. The petitioners were designated as Assistants for which there were no sanctioned posts. Thus the appointment of the petitioners was not as per the recruitment rules. Since the petitioners had worked for more than 240 days in the year preceding to their

termination by not giving them further extension beyond 31.05.2011, the Industrial Adjudicator found it to be illegal termination in violation of Section 25-F of the ID Act. The Industrial Adjudicator did not grant the relief of reinstatement in service for the reasons mentioned herein before but awarded a lump sum compensation of Rs.1,00,000/- along with exemplary cost of Rs.50,000/- to each of the petitioners. Admittedly, the respondent/management has not impugned the award and rather preferred to make the payment of the awarded amount to the petitioners. The particular issue involved in the case has been answered by the **Hon'ble Supreme Court** in **Bhurumal's case *(supra)*** to the effect that when the workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization and when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the court itself. Para 21 and 24 of the judgment reads as under: -

> "21. In the case of Telecom District Manager Vs. Keshab Deb MANU/SC/7620/2008: (2008) 8 SCC 402 the Court emphasized that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one months' pay in lieu of one month's notice and wages of 15 days of each completed year of service as envisaged under Section 25F of the Industrial Disputes Act. He could not have been directed to be regularized in service or granted/given a temporary status. Such a scheme has been held to be

> unconstitutional by this Court in A.Umarani v. Registrar, Coop. Societies MANU/SC/0571/2004: (2004) 7 SCC 112 and Secy., State of Karnataka v. Umadevi Manu/SC/1918/2006: (2006) 4 SCC1.
>
> 24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by payment him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization. (See: State of Karnataka v. Uma Devi MANU/SC/1918/2006: (2006) 4 SCC 1). Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as it he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose."

34. In the light of these judgments of **Hon'ble Supreme Court** in **Umadevi's** case *(supra)* and **Bhurumal's** case *(supra)*, when the petitioners were appointed on daily wage basis without following the requisite recruitment process and their services have come to an end after expiry of the contractual period, the petitioners have no vested right to seek their reinstatement or reinstatement with a different designation as LDC or on the

similar post of Assistant which does not exist. In such a situation, they could only be considered for granting of lump sum compensation, which has been adequately granted to them by the Industrial Adjudicator by the impugned award.

35. The judgment of **Krishan Singh's** case *(supra)* relied upon by the learned counsel for the petitioners is not applicable as in that case the management had not taken the plea in its written statement that the post on which the workman was working was not a sanctioned post or that appointment was contrary to the statutory rules; whereas in the present case specific defence has been taken by way of preliminary objection no.3 in the written statement by the respondent/management, which has not been controverted by the petitioners in the corresponding paras of the rejoinder. This factual position was not disputed by the learned counsel for the petitioners even at the time of arguments. The Judgment of Single Bench of this Court in **Vimal Kumar's** case *(supra)* the workman Vimal Kumar was admittedly appointed by following the due procedure of recruitment and is distinguishable. The judgment of Division Bench of this court in **Delhi Cantonment Board's** case *(supra)* is also distinguishable in view of the later development in law particularly in view of the judgments of **Hon'ble Supreme Court** in **Umadevi's *(supra)* and Bhurumal's *(supra).*** The judgment of **Deepali Gundu Surwase's** case *(supra)* also does not apply as the workman involved was not appointed on

contractual or daily wages basis but was a regular teacher working in a private school in which aid-in-grant was being given by the State Government. The judgment of **Jasmer Singh's** case *(supra)* does not come to the rescue of the petitioners since the State had taken the only plea of abandonment of service by the workman and no plea was taken about his appointment in violation of recruitment rules.

36. In view of these discussions, I do not find any merit in the writ petitions. The writ petitions are accordingly dismissed.

(VINOD GOEL)
JUDGE

JUNE 27, 2018
"shailendra"