

UNION OF INDIA & ORS.

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v.

CENTRAL ADMINISTRATIVE TRIBUNAL & ORS. ETC.ETC.

(Civil Appeal Nos.175-176 of 2019)

JANUARY 08, 2019

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**[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

Service Law – Regularization – Group ‘D’ workers engaged on casual basis at the Institute in question (under the administrative control of Comptroller and Auditor General of India) not regularized despite long years of service – Central Administrative Tribunal mandated preparation of seniority list and for working out the possibility of regularizing services of the casual workers – Order affirmed by the High Court – Casual workmen moved Tribunal stating that despite the specific directions of the Tribunal to observe seniority, persons below in seniority regularized – Tribunal directed the authorities to accord the benefit of regularization to the casual workers as accorded to their juniors – Challenged by Union of India – High Court confirmed the order, also directing that even if posts in the Institute are not available, casual workers who claimed regularization be considered in other places where Group ‘D’ posts are available – Propriety of – Held: Direction to consider the casual workers for regularization in other establishments was not justified – Original order passed by the Tribunal did not contain mandamus for regularization – Order mandated that seniority list should be maintained by the Union of India and that the possibility of regularizing the casual workmen at the Institute should be considered against existing and future vacancies in Group ‘D’ posts – Acting on the basis of the decision of the Tribunal, affirmed by the High Court, Union of India proceeded to formulate seniority list and, in fact, regularized at least four individuals – Action of selecting juniors for regularization, by-passing in the process, persons who had put in longer years of service was manifestly unfair and arbitrary – Picking up individuals for regularization, while ignoring seniors shows that a favoured few have been rewarded – Arbitrariness in the conduct of the authorities at the Institute is writ large – Having decided to implement the decision of the Tribunal,

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- A *affirmed by the High Court, the Union of India must follow a rational principle and abide strictly by the seniority list in proceeding to regularize the workmen concerned – Such persons who are available for regularization on the basis of vacancies existing at present, be considered in accordance with law – Indian Audit and Accounts Department Multi-Tasking Staff Recruitment Rules, 2011.*

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Group ‘D’ workers, engaged on casual basis at the Regional Training Institute, claimed before the Central Administrative Tribunal that despite long years of service they were not regularized. The Tribunal *inter alia* issued directions for working out the possibility of regularizing services of the casual workers.
C The order was affirmed by the High Court. Casual workmen moved the Tribunal stating that despite the specific directions of the Tribunal to observe seniority, persons below in seniority were regularized. The Tribunal directed the authorities to accord the benefit of regularization to the casual workers as accorded to
D their juniors. High Court while confirming the order of the Tribunal directed that even if posts in the Institute are not available, the casual workers who claimed regularization be considered in other places where Group ‘D’ posts are available. Hence the present appeals.

E Disposing of the appeals, the Court

HELD: 1.1 In the present case, the original order passed by the Tribunal did not contain a mandamus for regularization. The order mandated that a seniority list should be maintained by the Union of India and that the possibility of regularizing the casual
F workmen at the Regional Training Institute should be considered against existing and future vacancies in Group ‘D’ posts. Acting on the basis of the decision of the Tribunal, which was affirmed by the High Court, the Union of India proceeded to formulate a seniority list and, in fact, regularized at least four individuals. The judgment of the High Court attained finality. The Tribunal
G justifiably held that the action of selecting juniors for regularization, by-passing in the process, persons who had put in longer years of service was manifestly unfair and arbitrary. This direction of the Tribunal has been affirmed by the High Court in its impugned decision. The arbitrariness in the conduct of the

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authorities at the Institute is writ large in the facts of this case. A
Picking up individuals for regularization, while ignoring seniors
shows that a favoured few have been rewarded. This is arbitrary.
[Para 19][326-B-D]

1.2 The judgment of this Court in Uma Devi does not
preclude the claims of employees who seek regularization after B
the exercise has been undertaken with respect to some
employees, provided that the said employees have completed
the years of service as mandated by Uma Devi. The ruling casts
an obligation on the State and its instrumentalities to grant a fair
opportunity of regularization to all such employees entitled C
according to the mandate under Uma Devi and ensure that the
benefit is not conferred on a limited few. The subsequent
regularization of employees who have completed the requisite
period of service is to be considered as a continuation of the
one-time exercise. [Para 23] [328-G; 329-A-B]

1.3 The High Court directed the Union of India to absorb D
the casual workmen, if it is not possible at the Institute in question,
then in any other establishment. The latter part of the direction
cannot be sustained. Equally, the authorities cannot be heard to
throw their hands in despair by submitting that there are no
vacancies and that it had already regularized such of the persons E
in the seniority list, who reported for work. The Tribunal entered
a finding of fact that this defence is clearly not borne out of the
record. Having decided to implement the decision of the Tribunal,
which was affirmed by the High Court, the Union of India must
follow a rational principle and abide strictly by the seniority list in
proceeding to regularize the workmen concerned. Accordingly, F
it is directed that the case for regularization shall be considered
strictly in accordance with the seniority list in pursuance of the
directions which were issued by the Tribunal and confirmed by
the High Court and such of the persons, who are available for
regularization on the basis of vacancies existing at present, shall G
be considered in accordance with law. The Tribunal had denied
back-wages but ordered a notional fixation of pay and allowances.
While affirming that direction, it is also directed that persons
who have crossed the age of superannuation will be entitled to

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A **the computation and payment of their retiral dues on that basis. If it becomes necessary to grant age relaxation to the concerned workmen, the appellants shall do so. [Para 26] [329-G-H; 330-A-E]**

B *Secretary, State of Karnataka v. Uma Devi* (3) (2006) 4 SCC 1 : [2006] 3 SCR 953 – followed.

State of Karnataka v. M L Kesari (2010) 9 SCC 247 : [2010] 9 SCR 543 ; *Narendra Kumar Tiwari v. State of Jharkhand* (2018) 8 SCC 238 – relied on.

C *Malathi Das v. Suresh* (2014) 13 SCC 249 : [2014] 3 SCR 637 ; *Prem Ram v. Managing Director Uttarakhand Pey Jal and Nirman Nigam Dehradun* (2015) 11 SCC 255 : [2015] 7 SCR 192 – referred to.

D Case Law Reference

[2006] 3 SCR 953 followed Para 14

[2014] 3 SCR 637 referred to Para 15

[2015] 7 SCR 192 referred to Para 15

E [2010] 9 SCR 543 relied on Para 21

(2018) 8 SCC 238 relied on Para 23

F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 175-176 of 2019.

From the Judgment and Order dated 19.07.2013 of the High Court of Judicature at Allahabad in Civil Misc. Writ – A Nos. 35395 & 35398 of 2013.

G Vikramjit Banerjee, ASG, Ms. V.D. Makhija, Sr. Adv., Sachin Sharma, P.V. Yogeshwaran, A.K. Sharma, Ms. Meenakshi Grover, Mrs. Anil Katiyar, Advs. for the Appellants.

Ms. Preetika Dwivedi, Gaurav Agarwal, Raj Singh Rana, Advs. for the Respondents.

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The Judgment of the Court was delivered by A

DR DHANANJAYA Y CHANDRACHUD, J. 1. The Union of India has moved these proceedings aggrieved by a judgment of a Division Bench of the Allahabad High Court dated 19 July, 2013.

2. The issue pertains to a direction for regularizing the services of eighteen respondents in Group ‘D’ posts at the Regional Training Institute at Allahabad¹. The organization falls under the administrative control of the Comptroller and Auditor General of India. B

3. The first round of proceedings was initiated on behalf of persons who had been engaged as Group ‘D’ workers on a casual basis at the Institute. The grievance before the Central Administrative Tribunal was that since 1986, the Institute had engaged casual workers and, despite long years of service, they had not been regularized. By the time the Tribunal delivered its judgment on 6 January, 2006, many of them had put in well over twelve years of service. While disposing of the Original Application², the Tribunal issued directions (i) mandating the preparation of a seniority list in accordance with the number of days worked; and (ii) for working out the possibility of regularizing the services of these casual workers against vacant Group ‘D’ posts then existing or as may be created in the near future. C D

4. The Tribunal directed that in the meanwhile the workers shall be accommodated in batches of twenty in accordance with the exigencies of work in the Institute. The directions contained in the judgment of the Tribunal are extracted below: E

“6...The possible solution, therefore, would be that the respondents carry out an exercise of preparing a seniority list in the descending order of the number of days these casual labourers worked as on 01.04.2005 (irrespective of whether the casual labourers were on duty on this day) and on the basis of their seniority, they shall work out the possibility of regularizing the services of such casual labourers against any vacant post of Group D post or any new post created in the near future. In so far as day to day work is concerned, the respondents shall accommodate the first 20 and in case of their unavailability for any span of time, according to the seniority they may engage other casual labourers on need basis. F G

¹‘The Institute

² OA No 1191 of 2004 H

A Those who are tailenders, may be suitably informed of their bleak prospects of being engaged in view of the fact that there are adequate number of casual labourers to be engaged for day to day work who are senior to such persons. Out of the seniors as on date, if any of them are not being engaged, the respondents shall accommodate them as well.”

B 5. The judgment of the Tribunal was assailed before and considered by a Division Bench of the Allahabad High Court in writ proceedings³ initiated by the Comptroller and Auditor General of India. The High Court by its judgment dated 23 March 2006 observed that “it was not in dispute” that there was no positive direction as such for regularization of the service of the casual workmen and that there was only a direction for considering the possibility of regularization. Hence, while disposing of the petition, the High Court observed thus:

C “It is not disputed by ... learned counsel for the respondents that the Tribunal had not issued any positive direction for regularization of service of such casual labourers but had merely observed that the petitioners should consider the possibility of regularizing the services against any vacant group ‘D’ post or any new post that was likely to be created in near future. In this view of the matter, the contention advanced by Sri Amit Sthalekar, learned counsel for the petitioners that a positive direction for regularization could not have been issued by the Tribunal, is misconceived.

D We are also of the considered opinion that the direction by the Tribunal to accommodate the first 20 casual labourers from the list prepared on the basis of the seniority is also in consonance with the provisions of Rule 77 of the Industrial Dispute (Central) Rules, 1957 and as such it calls for no interference from this Court.”

E 6. After the judgment of the High Court, the casual workmen moved the Tribunal in another Original Application in 2008⁴. The specific grievance with which the application was moved was that despite the specific directions contained in the order of the Tribunal to observe seniority, persons who had been regularized and given permanent status were below the applicants in the order of seniority. Specific examples were furnished of the manner in which the seniority list was breached.

³ Civil Miscellaneous Writ Petition No 15825 of 2006

⁴ OA No 1052 of 2008

7. The Union of India responded to the averments contained in the Original Application and sought to contend that it had engaged such of the casual workers who had reported for work. A

8. The Tribunal by its decision dated 2 April, 2013 held that in pursuance of its earlier order, which was confirmed by the Allahabad High Court, the Union of India was obliged to prepare a seniority list based on the number of days worked and to consider the possibility of regularization against existing or future vacancies. The Tribunal observed that despite its earlier directions, the authorities at the Institute had proceeded to regularize persons junior to them and with a lesser length of service. B

9. In the meantime, in 2011, new recruitment rules titled “the Indian Audit and Accounts Department Multi- Tasking Staff Recruitment Rules, 2011”⁵ came into force in pursuance of which advertisements were issued for filling up several posts of Multi-Tasking Staff. C

10. The Tribunal observed that though the applicants before it had admittedly worked for a longer period of time than the private respondents (Respondents 6 to 9) who had been regularized, the benefit of regularization had not been granted to seniors in the seniority list. The Tribunal has rejected the defence that those who are not regularized, though senior, had not reported for work. In this view of the matter, the Tribunal noted that the Union of India had committed a breach of its assurance furnished in the course of earlier contempt proceedings that those who would report for duty would be accepted on work. Moreover, while failing to regularize persons who had put in more than 12 years of service as casual workers, the benefit of regularization had been granted to juniors despite the earlier orders which had attained finality. The Tribunal accordingly issued the following directions: D E F

“21. In view of the above discussion, it is directed that the respondents shall accord the same benefit of regularisation to the applicants as has been admittedly accorded to their juniors Respondent Nos. 6 to 9. While according the said benefit to the applicants, the respondents would follow the order of seniority in the seniority list admittedly prepared in pursuance to the orders of this Tribunal in OA No.1191 of 2004 as upheld by the Hon’ble Allahabad High Court in Civil Misc. W.P. No.15825/06. The said G

⁵Multi-Tasking Rules

- A benefit shall be accorded to the applicants from the same date as that of their admitted juniors. The said regularisation would be accorded in the available vacancies in various categories like unreserved, SC, ST and OBC by maintaining the category of the respective applicants and subject to availability of vacancies in the respective categories. However, the applicants will not be entitled to any back wages for the period they have not actually worked but they will be entitled to notional fixation of pay and allowances from the date of joining of their admitted juniors and on that basis actual pay and allowances from their actual date of joining. The applicants will also be entitled to all other consequential benefits.”
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11. It was the above direction of the Tribunal which the Union of India questioned in the proceedings before the High Court and which culminated in the impugned order. The High Court has, while confirming the order of the Tribunal, held that in regularizing the juniors of the private respondents against vacant Group ‘D’ posts, the appellants have frustrated the orders passed by the Court in the earlier proceedings. Hence, it has been directed that even if posts in the Institute are not available, the applicants who claimed regularization could be considered in other places where Group ‘D’ posts are available.
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12. At the outset, Mr Vikramjit Banerjee, learned Additional Solicitor General has urged that the Division Bench was not justified in issuing a direction for considering the case for regularization in other places where Group ‘D’ posts are available. The learned ASG urges that no posts are available at the Institute for regularization. The Multi-Tasking Rules have come into force in 2011 and at the highest, the workmen may be allowed an age relaxation if any posts are freshly advertised.
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13. We find merit in the contention that the direction to consider the casual workers for regularization in other establishments was not justified. The issue essentially is whether regularization in the establishment of the Regional Training Institute was required to be carried out, consistent with the earlier directions which had attained finality.
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14. We must, at the outset, note that the earlier decision of the Tribunal was rendered on 6 January, 2006 while the decision of the High Court was rendered on 23 March, 2006. The judgment of the Constitution

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Bench of this Court in **Secretary, State of Karnataka v. Uma Devi (3)**⁶ was delivered on 10 April, 2006. A

15. The submission which has been urged on behalf of the respondents by Ms. Preetika Dwivedi is that the applicability of **Uma Devi** has been considered in two decisions of this Court in **Malathi Das v. Suresh**⁷ and in **Prem Ram v. Managing Director Uttarakhand Pey Jal and Nirman Nigam Dehradun**⁸. B

16. Learned counsel submitted that in pursuance of the judgment of this Court in **Uma Devi**, the Union of India was required to adhere to a seniority list. There was a clear breach on the part of the Union of India in doing so inasmuch as juniors to those who were senior in the seniority list were admittedly regularized. Ms Dwivedi has ably assisted this Court in pursuing her client's cause for justice. C

17. From the record before this Court, it has emerged that as a matter of fact, four persons were regularized after the judgment of the High Court in the earlier round of proceedings. The Tribunal has entered a finding of fact that the persons who were regularized were junior to those who ranked above them in the seniority list. The applicability of **Uma Devi** to a situation such as present, has been dealt with in several judgments of this Court, including the decisions in **Malathi Das** and **Prem Ram**, referred to earlier. D

18. In **Malathi Das**, this Court noted that, as a matter of fact, the authorities had granted regularization to various other individuals who were similarly placed. Among them were persons who were regularized even after the decision in **Uma Devi**. Similarly, in **Prem Ram**, this Court observed that persons who were appointed on a date subsequent to the appellant were regularized. A distinction was sought to be made in the case of the appellant on the specious plea that they were brought on to a work-charge establishment. This Court observed that what was important was that the appellant had been appointed as early as in the year 1988 and, by the time the decision in **Uma Devi** was rendered, he had completed more than ten years of service. The Government had formulated Rules for regularization. This Court noted that neither the State Government nor the Jal Nigam had resented the idea of regularizing those who had served for over a decade. In this background, the Court E
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⁶(2006) 4 SCC 1

⁷(2014) 13 SCC 249

⁸(2015) 11 SCC 255

- A came to the conclusion that there was no impediment in directing regularization of the services of the appellant and for the release of retiral dues on that basis.

19. In the present case, the original order passed by the Tribunal did not contain a mandamus for regularization. The order mandated that a seniority list should be maintained by the Union of India and that the possibility of regularizing the casual workmen at the Regional Training Institute should be considered against existing and future vacancies in Group 'D' posts. Acting on the basis of the decision of the Tribunal, which was affirmed by the High Court, the Union of India proceeded to formulate a seniority list and, in fact, regularized at least four individuals.
- C The judgment of the High Court attained finality. Even before the decision in **Uma Devi**, as the Tribunal noted, the workmen had put in over twelve years of service. The Tribunal, in our view, justifiably held that the action of selecting juniors for regularization, by-passing in the process, persons who had put in longer years of service was manifestly unfair and arbitrary.
- D This direction of the Tribunal has been affirmed by the High Court in its impugned decision. The arbitrariness in the conduct of the authorities at the Institute is writ large in the facts of this case. Picking up individuals for regularization, while ignoring seniors shows that a favoured few have been rewarded. This is arbitrary.

- E 20. Following the logic of the two decisions of this Court which have been noted earlier, we are of the view that the decision in **Uma Devi** cannot be used as a charter to discriminate between similarly placed employees, once the Union of India in fact takes a decision to regularize the individuals borne on a seniority list. This decision, as we have already noted earlier, was taken in pursuance of the judgment of the Tribunal
- F and of the High Court both of which were rendered before the decision in **Uma Devi**.

21. It is of relevance to consider the directions rendered by a Constitution Bench of this Court in **Uma Devi**. Justice P K Balasubramanyan, speaking for the Court, held thus:

- G "53...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

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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.”

22. The directions issued in **Uma Devi** have been considered by subsequent benches of this Court. In **State of Karnataka v. M L Kesari**⁹, a two-judge bench of this Court held that the “one-time measure” prescribed in **Uma Devi** must be considered as concluded only when all employees who were entitled for regularisation under **Uma Devi**, had been considered. Justice R V Raveendran, who wrote the opinion of the Court, held:

“9. The term “one-time measure” has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularise their services.

10. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/ad hoc/casual employees were still pending before courts. Consequently, several departments and instrumentalities did not commence the one-time regularisation process. On the other hand, some government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision in Umadevi, will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases,

⁹(2010) 9 SCC 247

A or because the six-month period mentioned in para 53 of Umadevi has expired. **The one-time exercise should consider all daily-wage/ad hoc/casual employees who had put in 10 years of continuous service as on 10-4-2006 without availing the protection of any interim orders of courts or tribunals. If**
B **any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the**
C **employees who are entitled to be considered in terms of para 53 of Umadevi, are so considered.**

11. The object behind the said direction in para 53 of Umadevi is two-fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in Umadevi] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. **The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi as a one-time measure.”**

(Emphasis supplied)

23. The judgement of this Court in **Uma Devi** does not preclude the claims of employees who seek regularization after the exercise has been undertaken with respect to some employees, provided that the said

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employees have completed the years of service as mandated by **Uma Devi**. The ruling casts an obligation on the State and its instrumentalities to grant a fair opportunity of regularization to all such employees which are entitled according to the mandate under **Uma Devi** and ensure that the benefit is not conferred on a limited few. The subsequent regularization of employees who have completed the requisite period of service is to be considered as a continuation of the one-time exercise.

24. The decisions of this Court in **Uma Devi** and **ML Kesari** were considered by a two-judge bench of this Court in **Narendra Kumar Tiwari v. State of Jharkhand**¹⁰. Justice Madan Lokur construed the decision in **Uma Devi** in the following terms:

“7. The purpose and intent of the decision in *Umadevi* was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those irregularly appointed in the past...”

25. The Court noted in the above judgment that if a strict and literal interpretation was given to the decision in **Uma Devi**, no employee from the State of Jharkhand appointed on an irregular basis could ever be regularized as the State was formed on 15 November 2000 and the cut-off date had been fixed as 10 April 2006. The intent of the Court was to grant similarly-placed employees who had put the requisite years of service as mandated by **Uma Devi**, the benefit of regularization. The Court thus held that the *Jharkhand Sarkar ke Adhinasth Aniyamit Rup se Niyukt Ewam Karyarat Karmiyo ki Sewa Niyamitikaran Niyamawali*, 2015 (“the Regularisation Rules”) must be interpreted in a pragmatic manner and employees of the State who had completed 10 years of service on the date of promulgation of the rules, ought to be regularized. In doing so, the Court ensured that employees in the State of Jharkhand who had completed the same years of service as employees from other States, are granted parity in terms of regularization. The spirit of non-discrimination and equity runs through the decisions in **Uma Devi**, **ML Kesari** and **Narendra Kumar Tiwari**.

26. In this background, the issue which now arises before this Court is in regard to the effective direction which would govern the present case. The High Court has directed the Union of India to absorb the casual workmen, if it is not possible at the Institute in question, then

¹⁰ (2018) 8 SCC 238

- A in any other establishment. The latter part of the direction, as we have already noted, cannot be sustained. Equally, in our opinion, the authorities cannot be heard to throw their hands in despair by submitting that there are no vacancies and that it had already regularized such of the persons in the seniority list, who reported for work. The Tribunal has entered a finding of fact that this defence is clearly not borne out of the record.
- B Accordingly, we are of the view that having decided to implement the decision of the Tribunal, which was affirmed by the High Court, the Union of India must follow a rational principle and abide strictly by the seniority list in proceeding to regularize the workmen concerned. Accordingly, we direct that the case for regularization shall be considered
- C strictly in accordance with the seniority list in pursuance of the directions which were issued by the Tribunal and confirmed by the High Court and such of the persons, who are available for regularization on the basis of vacancies existing at present, shall be considered in accordance with law. The Tribunal has denied back-wages but has ordered a notional
- D fixation of pay and allowances. While affirming that direction, we also direct that persons who have crossed the age of superannuation will be entitled to the computation and payment of their retiral dues on that basis. This exercise shall be carried out within a period of three months from the receipt of a copy of the judgment. If it becomes necessary to grant age relaxation to the concerned workmen, the appellants shall do
- E so.

27. The appeals stand disposed of in the above terms. There shall be no order as to costs.