# State Of Haryana And Ors. Etc. Etc vs Piara Singh And Ors. Etc. Etc on 12 August, 1992

## Equivalent citations: 1992 AIR 2130, 1992 SCR (3) 826, AIR 1992 SUPREME COURT 2130, 1992 (4) SCC 118, 1992 AIR SCW 2315, 1992 LAB. I. C. 2168, (1992) 3 SCR 826 (SC), 1992 (2) UJ (SC) 692, 1992 (3) SCR 826, (1992) 5 JT 179 (SC), 1992 (2) UPLBEC 1353, 1992 SCC (L&S) 825, (1993) 83 FJR 173, (1993) 2 LABLJ 937, (1992) 2 LAB LN 1037, (1992) 2 PUN LR 547, (1992) 3 SCJ 416, (1992) 4 SERVLR 770, (1992) 2 UPLBEC 1353, (1992) 2 CURLJ(CCR) 557, (1992) 2 CURLR 890

## Author: B.P. Jeevan Reddy

## Bench: B.P. Jeevan Reddy, A.M. Ahmadi, Kuldip Singh

PETITIONER:
STATE OF HARYANA AND ORS. ETC. ETC.

Vs.

RESPONDENT:
PIARA SINGH AND ORS. ETC. ETC.

DATE OF JUDGMENT12/08/1992

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
AHMADI, A.M. (J)
KULDIP SINGH (J)

CITATION:
1992 AIR 2130 1992 SCR (3) 826
1992 SCC (4) 118 JT 1992 (5) 179
1992 SCALE (2)384

ACT:
Civil Services :
Constitution of India, 1950:
Articles ,14 16, 32, 136, 226 and 309-Regularisation/absorption of adhoc and temporary employees of State Governments and work-charged employees, daily wage workers and casual labour-Directions of High Court-Justification of-Orders of State Government prescribing eligibility criteria for regularisation-Whether arbitrary,

unreasonable and discriminatory-Interference by Court in service matters-when warranted-Guidelines for regularisation issued.

HEADNOTE:

Over the last several years a large number of appointments were made to Class III and IV services in the two appellant State on ad hoc basis, i.e., without reference to Public Service Commission or the Subordinate Services Selection Board and without adhering to employment exchange requirement. As a result, a large number of ad hoc employees were continuing for several years without being regularised and were agitating for their regularisation. To meet the situation, both the appellant Governments issued orders from time to time for regularisation of such employees subject to certain conditions.

In pursuance of these orders a number of persons, who satisfied the conditions prescribed in each of those order s were regularised, but many could not be, for the reason that they did not satisfy one or the other of the conditions prescribed in the said orders. They were, however, allowed to continue in service. This category of people approached the High Court praying for issuance of writ, order or direction for regularisation of their service. They contended that the conditions in the said orders were arbitrary, discriminatory and unrelated to the object.

The work-charged employees, daily-wagers, casual labour and those

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employed in temporary/time-bound projects also approached the High Court for regularisation of their services. Some of the petitioners also pleaded for equal pay for equal work.

Accepting the pleas of the petitioners, the High Court gave certain directions to the appellant-States for regularisation of these employees.

Aggrieved by the High Court's orders, the two appellant States filed appeals before this Court. Some of the employees also filed Writ Petitions before this Court directly, contending that they too were governed by the directions given by the High Court and that they should be given the benefit of the same.

On behalf of the appellants the validity and correctness of the directions given by the High Court were questioned on the grounds that the High Court had exceeded its jurisdiction in virtually amending the Government orders and was not justified in holding that the fixation of a particular date in the respective Government orders was arbitrary and/or that it was unrelated to the object sought to be achieved; that the High Court also erred in holding that the requirement of having been sponsored by the

Employment Exchange was invalid; that the High Court was not justified in directing that all persons who had put in one year's service should be regularised unconditionally; and that such a direction would given rise to several difficulties and complications for the administration, that there could be a direction for regularisation, without a post or a vacancy and the Government could not be directed to create posts without number, and it was beyond the capacity of any Government to comply with such directions; that the direction with respect to work-charged establishment, casual labour and daily wagers equally unsustainable in law; that the rule prescribing minimum qualifying service of one year in one State could not be thrust upon the other State; that because of the directions in question, while regularly selected persons would be kept out of jobs, unqualified ineligible persons who had come through back door and whose records of service might also not be satisfactory would be regularised at one go and the rule of reservation would also be violated and that it was the prerogative of the Executive to create and abolish posts, and that the Government could not be compelled to create posts where there was no need for such posts or where the need is no longer there.

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It was contended on behalf of the respondents and the writ petitioners that the directions had been given with a view to curb the arbitrariness of the authorities and with a view to give a satisfactory solution to a human problem created by the policies of the Governments themselves, that the work-charged employees should be treated on par with ad-hoc employees and ought to be regularised on the 1st of April of each year, and all those persons who where working in the permanent posts ought to be regularised.

Disposing of the cases, this Court,

HELD : 1.1. Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making Rules under the proviso to Article 309 of the Constitution or (in the absence of such Rules) by issuing Rules/Instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, Rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. [847 F-H]

1.2. The State must be a model employer. It is for this reason it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution and that a person should not be kept in a temporary or ad hoc status for long. [848A]

1.3. Where a temporary or ad hoc appointment is continued for long, the court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the court may act to ensure fairness cannot be detailed, it is sufficient to indicate that the guiding principles are the ones indicated above. [848B]

Dharwad Distt. P.W.D. Literature Daily Wage Employees' Association v. State of Karnataka and Ors., [1990] 2 S.C.C. 396 and Jacob v. Kerala

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Water Authority, [1990] Suppl. 1 S.C.R. 562, referred to.

2.1. The court must, while giving directions, act with due care and caution. It must first ascertain the relevant facts, and must be cognizant of the several situations and eventualities that may arise on account of such directions. A practical and pragmatic view has to be taken, inasmuch as every such direction not only tells upon the public exchequer but also has the effect of increasing the cadre strength of a particular service, class or category. [852A,B]

2.2. In the instant case apart from the fact that the High Court was not right in holding that the several conditions imposed by the two Governments in their respective orders relating to regularisation were arbitrary, not valid and justified, it acted rather hastily in directing wholesome regularisation of all such persons who have put in one year's service, and that too unconditionally. Several problems will arise if such directions become the norm. Therefore, there is need for fulled consideration and due circumspection while giving such directions. [852C]

3.1. The Government orders in question were issued by the Government from time to time. 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. [853G]

3.2. The first order dated 1st January, 1980 issued by one of the States says, a person must have completed two years of service as on 31st December, 1979, i.e., the day previous to the issuance of the order. It cannot be said that fixing of such a date is arbitrary and unreasonable. Similarly, the order dated 3rd January, 1983 fixes 15th September, 1982 as the relevant date. This

notification/order does two things. Firstly, it excludes Class III posts of clerks from the purview of the S.S.S.B. in case of those who have completed a minimum of two years of service as on 15th September, 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 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.

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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 was 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 24th March, 1987 prescribes the date as 31.12.1986. i.e., the end of the previous year. In the circumstances, there is no basis for holding that fixation of the date can be held to be arbitrary in the facts and circumstances of the case. [854A-D]

Dr. Sushma Sharma v. State of Rajasthan, [1985] S.C. 1367 and Inder Pal Yadav & Ors. etc. v. Union of India & Ors. etc., [1985] 3 S.C.R. 837, referred to.

3.3. The Government orders say that all those who had been sponsored by Employment Exchange or had been appointed after issuing a public advertisement alone be regularised. There is no unreasonableness or invalidity in the same. It is a reasonable and wholesome provision and a requirement designed to curb and discourage back door entry and irregular appointments and ought not to have been invalidated. Moreover, these are not cases where the writ petitioners were appointed only after obtaining a non-availability certificate from the Employment Exchange. [855E-F]

Union of India v. Hargopal, 1987 S.C. 1227, referred to.

3.4. The further requirement prescribed in the orders, viz., that the employees must have possessed the prescribed qualifications for the post at the time of his appointment on ad hoc basis is equally a valid condition. [855G-H]

3.5. The High Court was not justified in holding that inasmuch as the two States were sister States and because prior to 1966 one State was a part of the other State, the rule relating to length of service requisite for regularisation should be uniform in both the States. They are two different States having their own Governments; merely because one Government chooses to say that one year's temporary ad hoc service is enough for regularisation it cannot be said that the other State must also prescribe the very same period or that it cannot prescribe a longer or shorter period. The fact that there is a single High Court for both the States and

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the Union Territory of Chandigarh is no ground for saying that the orders issued by them should be uniform. [856A-C]

3.6. It is not necessary to alter or modify the directions of the High Court, in so far as one of the States was concerned, that Class III and IV posts which were within the purview of the S.S.S.B. should equally be within the purview of regularisation orders issued by it. If any of the petitioners have been excluded from consideration (for regularisation) on the basis that most of the Class III and IV posts were kept out of the purview of the S.S.S.B. they may be considered and appropriate orders passed. [856D-E]

3.7. The High Court was also not justified in giving the direction that all those ad hoc/temporary employees who had continued for more than one year should be regularised. The direction has been given without reference to the existence of a vacancy. It, in effect, means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him - which means creation of a vacancy (b) he was not sponsored by the Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back-door (c) he was not eligible and/or qualified for the post at the time of his appointment and (d) his record of service since his appointment is not satisfactory. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for a regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no `rule of thumb' in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. Judged from this stand point, the directions under challenge must be held to be totally untenable and unsustainable. [856F-H; 857A-C]

3.8. So far as the members of the work-charged establishment are

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concerned, though the work-charged employees are denied certain benefits, they are industrial workers and are entitled to the benefits of the provisions contained in the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment and modification. The work-charged employees,

therefore, are in a better position than temporary servants like the other petitioners who are liable to be thrown out of employment without any kind of compensatory benefits. [857D, 858A-B]

Jaswant Singh v. Union of India, [1980] 1 S.C.R. 426, referred to.

3.9. In view of the orders issued on 24th March, 1987 and 6th April, 1990 by one of the States, the direction given by the High Court becomes unnecessary. Though no orders have been issued in this regard by the other States, a scheme of regularisation of these employees is stated to have been prepared by that State in pursuance of the judgment under challenge. The said scheme is, however, not made conditional upon the result of these appeals against the judgment. The scheme is a reasonably fair one. It is hoped and trusted that irrespective of the result of these appeals, the said scheme would be given effect to by the other State concerned.[858C-D]

3.10. The High Court has directed that all those employees who fell within the definition of `workmen' contained in the Industrial Disputes Act would also be entitled to regularisation on par with the work-charged employees and that they should be regularised on completing five years of service in one State and four years of service in the other State. This direction is given in favour of those casual labour and daily wagers who fall within the definition of workmen. Insofar as work-charged employees, daily-wage workers and casual labourers who did not fall within the definition of work-men are concerned, the High Court has directed their regularisation on completion of one year's service. This direction is as untenable as in the case of ad hoc/temporary employees. The direction regarding persons belonging to the above categories and who fall within the definition of workmen, the terms in which the direction has been given cannot be sustained. While it is true that persons belonging to these categories continuing over a number of years have a right to claim regularisation and the authorities are under an obligation to consider their case for regularisation in a fair manner, keeping in view the prin-

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ciples enunciated by this Court, the blanket direction given cannot be sustained. However, in view of the orders of one of the State Governments contained in the letter dated 6.4.1990 which provided for regularisation of these persons on completion of ten years, no further directions are called for at this stage. The other State Government, of course, has not issued any such orders governing these categories. Accordingly, the State Government concerned should verify the vacancy position in the categories of daily-wagers and casual labour and frame a scheme of absorption in a fair and just manner providing for regularisation of these persons, having regard to their length of service and other relevant

conditions. As many persons as possible shall be absorbed. The scheme should be framed within six months. [858F-H; 859 A-C]

4. Further orders had been issued by one of the State Governments, after the filing of the writ petitions and during the pendency of the Special Leave Petitions in this Court for regularisation of ad hoc/work-charged employees. The other State Government has agreed by an affidavit before this Court, to adopt the same mutatis mutandis so far as Class III employees are concerned. It is hoped that many of the employees would get regularised under the orders aforementioned issued by both the Governments. [859D, 865F, 867E]

5.1. The instant case is not a case where the Governments have failed to take any steps for regularisation of their ad hoc employees working over the years. Every few years they have been issuing orders providing for regularisation. In such a case, there is no occasion for the court to issue any directions for regularising such employees more particularly when none of the conditions prescribed in the said orders can be said to be either unreasonable, arbitrary or discriminatory. The court cannot obviously help those who cannot get regularised under these orders for their failure to satisfy the conditions prescribed therein. Issuing general declaration of indulgence is no part of jurisdiction of this Court. In case of such persons it is for the respective Governments to consider the feasibility of giving them appropriate relief, particularly in case where persons have been continuing over a long number of years, and were eligible and qualified on the date of their ad hoc appointment and further whose record of service is satisfactory. [867 F-H]

5.2. The normal rule, is regular recruitment through the prescribed

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agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of

administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. An unqualified person ought to be appointed only when qualified persons are not available through the above processes. If for any reason an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provide he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. [868D-H; 869A-C]

5.3. The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with the observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be. [869D]

5.4. So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as

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early as possible subject to their fulfilling the qualification, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. Security of tenure is necessary for an employee to give his best to the job. In this behalf, this Court commends the orders of one of the State Governments, contained in its letter dated 6.4.1990 both in relation to work-charged employees as well as casual labour. [869 E-G]

5.5. The orders issued by both the Governments providing for regularisation of ad hoc/temporary employees who have put in two years/one year of service are quite generous and leave no room for any legitimate grievance by any one. [869H]

5.6. These observations are not exhaustive nor can they be understood as immutable. Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while

doing so, it should bear in mind the observations made herein. [870 A-B]

6.1. So far as the employees and workmen employed by Statutory/Public Corporations are concerned, they have not issued any orders akin to those issued by the two State Governments. Even so, it is but appropriate that they adopt as far as possible, keeping the exigencies and requirements of their administration in view, the criteria and principles underlying the orders issued by their Government in the matter of regularisation and pass appropriate orders. The orders contained in the letter dated 6.4.1990, as supplemented by the orders in the Notification dated 28.2.1991 issued by one of the States should be followed by the Statutory/Public Corporations located in that State, whereas the Statutory/Public Corporations located in the other State should follow the criteria and principles stated in the affidavit of the Government of that State filed before this Court. [870 C-D]

6.2. These directions would not, however, apply to these Statutory/Public Corporations, functioning within these States as are under the control of the Government of India. These Corporations would evolve an

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appropriate policy of regularisation in the light of this judgment, if they have not already evolved one, or make their existing policy consistent with the judgment to avoid litigation. [870E]

7. As regards, equal pay for equal work, the judgment is singularly devoid of discussion. The direction given by the High Court is totally vague. It does not make it clear who will get what pay and on what basis. Hence, this direction is set aside.

Delhi Development Horticulture Employees' Union v. Delhi Administration, (1992) 1 J.T. 394, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2979 of 1992 etc.etc. From the Judgment and order dated 26.9.1988 of the Punjab and Haryana High Court in C.W.P. No. 72 of 1988. H.L. Sibal, D.S. Tewatia, D.S. Mehra, M.S. Gujral, M.K. Ramamurthy, Hardev Singh, K.T.S. Tulsi, S.K. Bagga, S.P. Goyal, J.K. Sibal, H.S. Mattewal, Adv. Genl. Punjab, Mrs. Jai Shree Ananda, D.A.G., Punjab, Rajesh, S.K. Mehta, Dhruv Mehta, Aman Vachher, H.S. Munjral, G.K. Bansal, H.S. Sohal, P.P. Singh. Ms. Mridula Ray, Kartar Singh, H.M. Singh, S.C. Paul, R.K. Agnihotri, G.K. Chatrath, P.L. Syngal, N.A. Siddiqui, R.K. Kapoor, Syed Ali Ahmed, K.C. Bajaj, Ms. Rupinder Sodhi Daulat, M.R. Bidsar, K.K. Gupta, Syed Tanweer Ahmed, Mohan Pandey, Jitender Sharma, Naresh Kaushik, Mrs. Lalitha Kaushik, Shankar Divate, S.S. Khanduja, Yash Pal Dhingra, Baldev Krishan Satija, Kirpal Singh, R.D. Upadhyay, S.N. Bhardwaj, J.D. Jain, S. Bala Krishnan, Ms. Madhu Mool Chandani, R.S. Sodhi, Prem Malhotra, Mrs. J.S. Wad, S.D. Sharma, B.S. Gupta, Ms. Geetanjali Mohan, A.K. Mahajan, S.K. Gambhir, T.N. Singh, B.M. Sharma, N.K. Aggarwal, S.M. Ashri, A.K. Goel, N.N. Sharma, M.K. Dua,

E.C. Agarwala, Ms. Kamini Jaiswal, C.V. Subba Rao, K.R. Nagaraja, Manoj Swarup, P.K. Chakraborty, P.N. Puri, Ashok Grover, P. Gaur, Mrs. Chandan Ramamurthi, M.A. Krishnamoorthy, B.S. Malik, Pankaj Kalra, A.M. Khanwilkar, Dr. Meera Aggarwal, R.C. Misra, Gian Singh, S.C. Patel, M/s Mitter & Mitter & Co., M/s Agarwal Mishra & Co. Mahabir Singh, R.C. Kaushik, K.K. Mohan, Mrs. Naresh Bakshi, R.S. Suri, Sudershan Goel, R.K. Chopra, Ravinder Chopra, Mrs. Sureshtha Bagga, Sanjay Bansal, Ms. Kanwaljit Kochhar, Ms. Indu Malhotra, R.C. Gubrele, Ms. Renu George, R.P. Sharma, D.K. Garg, Vishnu Mathur, Ms. Madhu Tewatia, Ms. Kamakshi S. Mehlwal, Indeevar Goodwill, Ranbir Singh, Ms. Savita Prabhakar, Ujjal Singh, Ms. Kusum Choudhary, J.L. Puri, T.S. Arora for the appearing parties. Ramesh Chand and Kuldeep Singh appeared in person.

The Judgment of the Court was delivered by B.P. JEEVAN REDDY,J. 1. This batch of Special Leave Petitions are directed against the judgment of a Division Bench of Punjab and Haryana High Court in a batch of writ petitions, the first among them being Writ Petition (C) No. 72 of 1988 (Piara Singh and Anr. v. State of Haryana and Ors.). A large number of writ petitions arising both the States of Punjab and Haryana were heard together and a common judgment delivered giving certain directions in the matter of regularisation of the adhoc/temporary employees, members of work charged establishments, daily-wagers, casual labour and those engaged temporarily in temporary schemes. We have heard all the counsel appearing in this batch at quite some length.

Leave granted in all the Special Leave Petitions.

2. Over the last several years a large number of appointments were made to Class III and IV services in the States of Punjab and Haryana on ad hoc basis i.e., without reference to Public Service Commission or the Subordinate Services Selection Board and without adhering to employment exchange requirements. They were initially appointed for a period of six months or so but were continued for years together under orders passed from time to time. (In so far as the State of Haryana is concerned, most of the class III posts in the Education Department were kept out of the purview of the S.S.S.B. during the period 1970 to 1987. For a period of 10 years, it is stated, there was no Board in existence in the State. Only in March 1987, almost all the posts in Education Department and other Departments were brought within the purview of the S.S.S.B.). As a result of the above policy, a large number of ad hoc employees came into existence in both the States, who were continuing over several years without being regularised and were agitating for their regularisation. To meet the situation, both the Governments issued orders from time to time for regularisation of such employees subject to certain conditions. The orders issued by the Government of Punjab are the following:

S.No. Date of issue Substance of the Order 1 2 3

1. 3.3.1969 Regularisation of ad hoc employees completing one year service on 28.2.1969.

2. 29.1.1973 Regularisation of ad hoc employees completing one year service on 1.1.1973.

3. 3.5.1977 Regularisation of ad hoc employees completing one year service on 1.4.1977.

4. 20.10.1980 Regularisation of ad hoc employees completing one year service on 1.10.1980.

5. 20.10.1982 Regularisation of ad hoc employees completing one year service on 26.10.1982.

6. 29.3.1985 Regularisation of ad hoc employees completing two years service on 1.4.1985.

7. 8.8.1985 Modifying the order issued on 29.3.1985 and directing that all Class III ad hoc employees having one year service on 1.4.1985 may be regularised.

8. 1.9.1986 Regularisation of Class III ad hoc employees appointed after 1.4.1984.

The orders are issued by the Government of Haryana are the following:

| S.No. | Date of issue | Substance of Order |
|---|---|---|
| 1 | 2 | 3 |
| 1 | 1.1.1980 | Regularisation of all Class III ad hoc employees who have completed two years service on 31.3.1979. |
| 2. | 3.1.1983 | Regularisation of ad hoc Clerks in Class III who have completed two years service on 15.9.1982. |
| 3. | 19.1.1984 | Regularisation of Class III ad hoc employees who have completed two years of service on 15.9.1982. (The employees who were left out in the orders dt. 3.1.1983 were brought within the purview of this order.) |
| 4. | 15.2.1987 | Regularisation of all Class III ad hoc employees other than teachers working against posts which have been taken out of the purview of the S.S.S.B. and who have completed two years service on 1.11.1986. |

In pursuance of the above orders a number of persons who satisfied the conditions prescribed in each of those orders were regularised but many could not be. Their services could not be regularised for the reason that they did not satisfy one or the other of the conditions prescribed in the said orders. They were, however, allowed to continue in service. It is this category of people who approached the High Court of Punjab and Haryana praying for issuance of Writ, Order of Direction for regularisation of their service.

3. At this stage, it would be appropriate to notice the conditions prescribed by the aforesaid orders which were not satisfied by the writ petitioners and on account of which they were not regularised. The order of the Government of Haryana dated 1st January, 1980 prescribed the following conditions for regularisation:

> (1) He must have put in a minimum service to two years on 31.12.1979.
>
> (2) He must have been recruited through the Employment Exchange.
>
> (3) The service and conduct of such employee should be of an overall good category.
>
> (4) He must have possessed the prescribed qualifications for the post at the time of his appointment on ad hoc basis.

In the Order dated 3rd January 1983, a further condition, besides the aforesaid conditions, was imposed viz., that the employee must belong to the category for which the post stands reserved.

Similarly in the Order dated 29th March, 1985 issued in the case of Government of Punjab (issued by the President of India) the conditions prescribed were the following:

> (1) He must have completed a minimum of two years service on 1st April, 1985.
>
> (2) He must have fulfilled the conditions for eligibility (academic qualifications, experience and age) at the time of his first adhoc/temporary appointment. (3) He must have been recruited through the Employment Exchange or by open advertisement. (4) His record of service has been satisfactory. (5) He is found medically fit for entering the Government service; his character and antecedent have been duly verified and found suitable for Government service. (6) A regular post/vacancy is available for regularisation.
>
> (7) He has been found fit for regularisation by the Departmental Selection Committee. (8) Among the persons regularised, interse seniority would be observed. All these persons would be placed junior to those working on regular basis.

These are the conditions common to all the orders issued from time to time by the Government of Punjab and Haryana. Only those ad hoc/temporary employees who could not be regularised for want of satisfying one or the other of the conditions prescribed in the respective orders that had

approached the High Court by way of Writ Petitions. They contended that the conditions prescribed in the said orders were arbitrary, discriminatory and unrelated to the object. It is this contention which was examined at some length and accepted by the high court.

4. Besides the ad hoc/temporary employees, certain other categories of persons also approached the High Court whose cases too have been dealt with in the judgment under appeal. They are work-charged employees daily-wagers, casual labour and those employed in temporary/time-bound projects. They too wanted to be regularised. A plea of equal pay for equal work was also advanced by certain petitioners. These pleas too were considered and upheld.

5. The reasons for which the High Court held the conditions prescribed in the orders of regularisation aforementioned, as bad are to the following effect:

(a) VALIDITY OF FIXING A PARTICULAR DATE BY WHICH THE SPECIFIED PERIOD OF SERVICE SHOULD HAVE BEEN COMPLETED.

The High Court held, "there is no magic in fixing a date by which an employee was to complete the prescribed tenure of service for regularisation.....fixing of a date has no reasonable basis or intelligible differentia for the object to achieve.....following that view (the view taken by this Court in Inder Pal Yadav, [1985] 3 S.C.R. 837) we hold that the dates fixed for the policies of regularisation of the two Governments are discriminatory.....we hold that the various dates fixed from time to time in their regularisation policies are hit by Articles 14 and 16 of the Constitution of India."

(b) VALIDITY OF THE REQUIREMENT THAT THE EMPLOYEE SHOULD HAVE BEEN SPONSORED BY EMPLOYMENT EXCHANGE.

The High Court held that this Court has, in the Union of India v. Hargopal (1987 S.C. 1227), held that "if at a given moment suitable candidates amongst candidates sponsored by the Employment Exchanges are not available or no candidate has been sponsored by the Employment Exchange and recruitment is made on ad hoc basis from the sources other than employment exchange, it cannot be said in regularisation policy that such candidates would not be entitled to be regularised. The basic policy decision is that ad hoc employees who have worked for quite some time and have gained experience should be regularised and in case they are shunted out, hardship would be caused in numerous ways.....we find no justification in the policy of regularisation that the candidates sponsored through the Employment Exchanges alone would be entitled to regularisation." No finding was, however, recorded that the petitioners or any of them were appointed without reference to the Employment Exchange only after the Employment Exchange intimated the concerned authority that no suitable candidate is available with it.

(c) VALIDITY OF THE REQUIREMENT THAT THE CON-

CERNED POSTS SHOULD NOT BE WITHIN THE PURVIEW OF S.S.S.B. The High Court held that inasmuch as most of the Class III and Class IV posts were kept out of the purview of the S.S.S.B. in the State of Haryana during the period 1970 to March, 1987 and also because for a period of ten

years there was no S.S.S.B. in existence in this State, imposition of this condition by the Government of Haryana is unreasonable and arbitrary.

6. Having expressed the opinions above-mentioned, the High Court referred to certain decisions of this Court and of its own, and expressed the view that continuing employees on adhoc basis for more than one year without regularising them is arbitrary and unreasonable. This principle was also held applicable to other categories of employees like daily wagers, casual labour and others, who were - "workmen" as defined in the Industrial Disputes Act. The court further opined that inasmuch as the State of Haryana was prescribing one year's service for regularisation (in its orders) the Punjab Government cannot prescribe two years qualifying service. Thus, one year service was declared as the norm for all such employees to become entitled to regularisation.

7. The directions ultimately granted by the High Court while allowing the batch of writ petitions are to the following effect:

> (1) The State Government should avoid making any ad hoc appointments. If they do so, it shall be for initial period of six months and not be extended beyond other six months. If their term is extended beyond one year, to such employees the benefits arising from our following conclusions will apply, according to the group in which they fall. (2) The Punjab State employees covered by Group No. 1 would be considered as regular members of the service on completion of more than one year after ignoring national and permissible breaks in service, as noticed by the Supreme Court in various judgments and also by our Full Banch in Jagdish Lal's case (supra). However, the concerned departments would pass orders for their regularisation and they would be entitled to all benefits of service from the date of their initial appointments.

As regards Haryana employees covered by Group No. 1 on completion of two years of service they would be considered as regular members of service after ignoring their national and permissible breaks as noticed by the Supreme Court in various judgments and also by our Full Bench in Jagdish Lal's case (supra), and the concerned departments would pass orders for their regularisation. In case of those, who have completed more than one year of service, their services shall not be terminated till the new policy for regularisation in accordance with our judgment, is framed, in which a direction has been issued to re-frame the policy for regularisation on completion of more than one year of service, and without the condition which may hamper the policy of regularisation, irrespective of the fact whether or not their names were sponsored by the Employment Exchange or that their posts are within or outside the purview of the S.S.S.B. In case such petitioners complete two years, then on completion of two years, they will be considered as regular members of service and appropriate orders for their regularisation will be passed by the concerned departments, and such employees would be entitled to all service benefits from the date of their initial appointments.

(3) The services of work charged, daily wage workers and casual labourers (other than those who fall within the definition of workmen under the 1947 act covered by Group III) Serving in the different departments of Government of Punjab and Haryana, as also their corporations who have put in

more than one year of service, would continue to serve and their services will not be dispensed with. The concerned departments shall frame scheme for their absorption, as regular employees on completion of more than one year of service, and their services shall be regularised under those schemes. On regularisation they would be entitled to all service benefits from the date of initial appointments.

As regards work charged employees, who have completed five years of service, they shall be considered to be regular employees under the scheme of regularisation framed by the State of Punjab and order for their regularisation shall be passed. As regards work charged employees of the State of Haryana, on completion of four years of service they shall be considered to be regular under the regularisation scheme framed by the State and appropriate orders for their regularisation shall be passed. However, they would be entitled to all service benefits from the date of initial appointments.

(4) The persons falling in group (III) are those who come within the definition of `workmen' under the 1947 Act. On completion of 240 days, which shall be counted keeping in view the decision of the Supreme Court in The Workmen of American Express International Bank Corporation v. The Management of American Express, A.I.R. 1986 S.C. 458, they would be entitled to benefits of all the provisions of Chapter V-a of the 1947 Act, and their services should not be dispensed with without following the procedure laid in that Chapter. For the purposes of regularisation, what has been stated for the employees falling in Group II, would also be applicable to the employees falling in this group. On regularisation they would be entitled to the benefits of provisions of the 1947 Act as also the Service Rules, from the date of their initial appointments, as applicable to the departments concerned from time to time.

(5) The ad hoc temporary employees in temporary organisations like the Adult Education Scheme and Integrated Child Development Scheme, covered by Group IV, who have continued in service for more than one year with national breaks would be entitled to the benefits of service and benefit of the directions issued by the Supreme Court in Bhagwan Dass's case supra, and the service of none of them would be terminated except on abandonment of the scheme.

(6) In case services of an employee, who come within the ambit of Groups I to III, have already been terminated on the completion of his more than one year of service, he shall have to be taken back in service in case of a request being made by him to the concerned department of the government before the expiry of three years and two months of such termination.

Some of the petitioners, who had put in more than one year of service are out. They would be reinstated forthwith with continuity of service and all benefits. (7) In case some posts are abolished or some persons are found surplus, junior most would be out on the rule of Last come first go? But if later on vacancies arise or posts are created, they will have to be called back first in the order of seniority, that is, on the rule of last go first come and if still some vacancies remain, new incumbents through S.S.S.B. may be accommodated. (8) The learned counsel for the State was asked to point out if the claim made by the petitioners for equal pay for equal work as being paid to their counterparts, in view of the decision taken by the Supreme Court in various cases, was not justified. He was not

able to point out if the claim so made was not correct. Accordingly, they would be paid wages as claimed from the date of initial appointments in service. The arrears should be paid within six months from today.

It is again made clear that till regularisation policies are framed as directed by us and regularisation orders are passed, the employees shall continue and their services shall not be terminated."

8. The States of Punjab and Haryana are questioning the validity and correctness of the above directions in these appeals. Some employees have also directly approached this court by way of writ petitions contending that they too are governed by the directions given by the High Court and should be given the benefit of the same. The respondents in these appeals and such writ petitioners are supporting the judgment and directions aforesaid.

Mr. Sibal, learned counsel for the appellants questioned the validity and correctness of the directions given by the High Court on the following grounds:

> (1) That the High Court has exceeded its jurisdiction in virtually amending the Government orders on the subject of regularisation. The learned Judges were not justified in holding that the fixation of a particular date in the respective G.Os. was arbitrary and/or that it was un-related to the object. The learned Judges have also erred in holding that the requirement of have been sponsored by the employment Exchange was invalid.
>
> (2) The learned Judges were not justified in law in directing that all persons who have put in one year's service should be regularised unconditionally. No court has gone so far nor is there any warrant for giving such a direction. Such a direction gives rise to several difficulties and complications for the administration which were evidently not taken into consideration by the learned Judges while giving the said directions. (3) For regularisation, the first pre-condition is that there must be a vacancy, whether permanent or temporary.

Such a vacancy must either be existing or may be created but it must be there. There cannot be a direction for regularisation without a post or a vacancy and the Government cannot be directed to create posts without number. It is beyond the capacity of any Government in India to comply with such directions.

(4) The direction with respect to work-charge establishment is equally unsustainable in law. So is the direction with respect to casual labour and daily wagers. (5) The learned Judges erred in directing the Government of Punjab to reduce the minimum qualifying service to one year just because the Haryana Government has been prescribing only one year's qualifying service in its orders. Both are independent States and the rule in one State cannot be thrust upon the other.

(6) Because of the impugned directions, regularly selected persons are being kept out of jobs. The effect of the impugned directions is that unqualified ineligible persons who have come through back

door and whose records of service may also not be satisfactory are all being regularised at one go. The rule of reservation is also being violated by the said directions.

(7) It is prerogative of the Executive to create and abolish posts. The Government cannot be compelled to create posts where there is no need for such posts or where the need is no longer there.

(8) The above contentions are supported and reiterated by the counsel appearing for the State of Punjab.

9. On the other hand, it is contended by the counsel for the respondents and the counsel for the writ petitioners that the directions given are perfectly warranted in all the circumstances of the case and have been given following the decisions of this court. It is submitted that the said directions have been given with a view to curb the arbitrariness of the authorities and with a view to give a satisfactory solution to a human problem created by the policies of the Governments themselves. It is submitted by Shri R.K. Garg that the work-charged employees should be treated on par with ad hoc employees and ought to be regularised on the 1st of April of each year. All those persons who are working in the permanent posts ought to be regularised, says the counsel. Shri M.K.Ramamurthy, appearing for the work charged employees contended that the general concept as to work charge employees, viz., that the employment is confined to a particular work or project is not correct. He submitted that this is a legacy left behind by the British. He submitted that the work charge employees are employees of the work charge establishment and so long as once or the other work is there, they should be continued. Inasmuch as the Government, particularly at the present stage of development, is never without a project or work, these employees must also be regularised. Indeed, according to the counsel the concept of work charge establishment is a mere matter of accountancy. It is distinct from project employment. It is really temporary employment which in the nature of things must be treated as regular. Other counsel appearing for the respondents in the appeals and for the writ petitioners supported these contentions.

10. Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made the appropriate legislature. This power to prescribe the conditions service can be exercised either by making Rules under the proviso to Article 309 of the Constitution or (in the absence of such Rules) by issuing Rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, Rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the court may act to

ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above. The principle relevant in this behalf are stated by this Court in several decisions, of which it would be sufficient to mention two decisions having a bearing upon the issue involved here. They are Dharwad Distt. P.W.D. Literature Daily Wage Employees Association v. State of Karnataka and Ors. [1990] 2 S.C.C. 396 and Jacob v Kerala Water Authority alleged that about 50,000 persons were being employed on daily-rated or on monthly-rated basis over a period of 15 to 20 years, without regularising them. It was contended that the very fact that they are continued over such a long period is itself proof of the fact that there is regular need for such employment. In that view of the matter, following directions were given,after reviewing the earlier decisions of this court elaborately.

> "From amongst the casual and daily rated employees who have completed ten years of service by December 31, 1989, 18,600 shall immediately be regularised with effect from January 1, 1990 on the basis of seniority-cum-suitability.
>
> There shall be no examination but physical infirmity shall mainly be the test of suitability. The remaining monthly rated employees covered by the paragraph 1 who have completed ten years of service as on December 31, 1989 shall be regularised before December31,1990, in a phased manner on the basis of seniority-cum-suitability, suitability being understood in the same way as above.
>
> The balance of casual or daily rated employees who become entitled to absorption on the basis of completing ten years of service shall be absorbed/regularised in a phased manner on the same principle as above on or before December 31,1997.
>
> At the point of regularisation, credit shall be given for every unit of five years of service in excess of ten years and one additional increment in the time scale of pay shall be allowed by way of weightage.
>
> There was a direction that the claims on other heads would be considered at the time of final disposal. We have come to the conclusion that apart from these reliefs no other would be admissible."

Having given the said direction, the Bench (Ranganath Misra, M.M.Punchhi and S.C.Agarwal, JJ.) made the following observations:

> "We are alive to the position that the scheme which we have finalised is not the ideal one but as we have already stated, it is the obligation of the court to individualise justice to suit a given situation in a set of facts that are placed before it. Under the scheme of the constitution the purse remains in the hands of the executive. The legislature of the State controls the Consolidated Fund out of which the expenditure to be incurred, in giving effect to the scheme, will have to be met. The flow into the Consolidated Fund depends upon the policy of taxation depending perhaps on the capacity of the payer. Therefore, unduly burdening the State for implementing the

> constitutional obligation forthwith would create problems which the State may not be able to stand. We have, Therefore, made our directions with judicious restraint with the hope and trust that both parties would appreciate and understand the situation. The instrumentality of the State must realise that it is charged with a big trust. The money that flows into the Consolidated Fund and constitutes the resources of the State comes from the people and the welfare expenditure that is mated out goes from the same Fund back to the people. May be that in every situation the same tax payer is not beneficiary. That is an incident of taxation and a necessary concomitant of living within a welfare society."

11. The second case (Jacob) arose from Kerala. Upon the establishment of Kerala Water Authority under Kerala Water Supply and Sewerage Act, 1986, all the functions of Public Health Engineering Department were also transferred to the Authority. All the employees of the said department were transferred to the Authority. After its constitution, the Authority too recruited some persons. With effect from 30.7.1988, the Authority came within the purview of the Public Service Commission. The employees of the Authority thus fell into four categories namely, (i) those who were in the employment of PHED before the constitution of the Authority and were transferred to the Authority, (ii) those whom the Authority employed between 1st April, 1984 and 4th August, 1986, (iii) those who were appointed between 4th August 1986 and 30th July 1988, and (iv) those who were appointed after 30th July, 1988. Rule 9 of the Kerala State and Subordinate Services Rules empowered the Government to appoint persons, in the case of an emergency, otherwise than in accordance with the Rules. Such appointment was to be valid only for a limited time and such appointee was bound to be replaced by a regular appointee. At the same time, clause (e) of the Rule provided that persons so appointed may be regularised provided they completed two years continuous service on 22.12.1973. Construing the said clause in the light of the constitutional philosophy, this court held:

> "Therefore, if we interpret Rule 9(a) (i) consistently with the spirit and philsophy of the Constitution, which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job, should not be thrown out but their services should be regularised as far as possible. Since workers belonging to this batch have worked on their posts for reasonably long spells they are entitled to regularisation in service."

In the light of the said principle and in the light of the principles emerging from the decisions of this court - which were elaborately discussed-the following directions were given:

> "(1) The Authority will with immediate effect regularise the services of all ex-PHED employees as per its Resolution of 30th January, 1987 without waiting for State Government approval. (2) The services of workers employed by the Authority between 1st April, 1984 and 4th August, 1986 will be regularised with immediate effect if they possess the requisite qualifications for the post prescribed on the date of appointment of the con-

cerned worker.

(3) The services of workers appointed after 4th August, 1984 and possessing the requisite qualifications should be regulated in accordance with Act 19 of 1970 provided they have put in continuous service of not less than one year, artificial breaks, if any, to be ignored. The Kerala Public Service Commission will take immediate steps to regularise their services as a separate block. In doing so the Kerala Public Service Commission will take the age bar as waived. (4) The Kerala Public Service Commission will consider the question of regularisation of the services of workers who possess the requisite qualifications but have put in less than one year's service, separately. In doing so the Kerala Public Service commission will take the age bar as waived.

If they are found fit they will be placed on the list along with the newly recruited candidates in the order of their respective merits. The Kerala Public Service commission will be free to rearrange the list accordingly. Thereafter fresh appointments will issue depending on the total number of posts available. If the posts are inadequate, those presently in employment will make room for the selected candidates but their names will remain on the list and they will be entitled to appointment as and when their turn arrives in regular course. The list will enure for such period as is permissible under the extant rules.

(5) The Authority will be at liberty to deal with the services of the workers who do not possess the requisite qualifications as it may consider appropriate in accordance with law.

(6) Those workers whose services have been terminated in violation of this Court's order in respect of which Contempt Petition No. 156 of 1990 is taken out shall be entitled to the benefit of this order as if they continue in service and the case of each worker will be governed by the clause applicable to him depending on the category to which he belongs and if he is found eligible for regularisation he will be restored to service and assigned his proper place."

12. As would be evident from the observations made and directions given in the above two cases, the court must, while giving such directions, act with due care and caution. It must first ascertain the relevant facts, and must be cognizant of the several situations and eventualities that may arise on account of such directions. A practical and pragmatic view has to be taken, inasmuch as every such direction not only tells upon the public exchequer but also has the effect of increasing the cadre strength of a particular service, class or category. Now, take the directions given in the judgment under appeal. Apart from the fact the High Court was not right-as we shall presently demonstrate in holding that the several conditions imposed by the two Governments in their respective order relating to regularisation are arbitrary not valid and justified - the high Court acted rather hastily in directing wholesome regularisation of all such persons who have put in one year's service, and that too unconditionally. We may venture to point out the several problems that will arise if such directions become the norm:

(a) Take a case where certain vacancies are existing or expected and steps are taken for regular recruitment either through Public Service Commission or other such body, as the case may be. A large number of persons apply. Inevitably there is bound to be some delay in finalising the selections and making the appointments. Very often the process of selection is stayed or has to be re-done for one or the other reason. Meanwhile the exigencies of administration may require appointment of temporary hands. It may happen that these temporary hands are continued for more than one year because the regular selection has not yet been finalised.

Now according to the impugned direction the temporary hands completing one year's service will have to be regularised in those posts which means frustating the - regular selection. There would be no post left for regularly selected persons even if they are selected. Such cases have indeed come to this court from these very two States.

(b) In some situations, the permanent incumbent of a post may be absent for more than a year. Examples of this are not wanting. He may go on deputation, he may go on Faculty Improvement Programme (F.I.P.), or he may be suspended pending enquiry into charges against him and so on. There may be any number of such situations. If a person is appointed temporarily in his place and after one year he is made permanent where will the permanent incumbent be placed on his return? Two persons cannot hold the same post on a regular or permanent basis.

(c) It may also happen that for a particular post a qualified person is not available at a given point of time. Pending another attempt at selection later on an unqualified person is appointed temporarily. He may continue for more than one year. If he is to be regularised, it would not only mean foreclosing of appointment of a regular qualified person, it would also mean appointment of an unqualified person.

(d) Such directions have also the effect of disregarding and violating the rule relating to reservation in favour of backward class of citizens made under Article 16(4). What cannot be done directly cannot be allowed to be done in such indirect manner.

(e) Many appointments may have been made irregularly - as in this case - in the sense that the candidates were neither sponsored by the Employment Exchange nor were they appointed after issuing a proper advertisement calling for applications. In short, it may be a back door entry. A direction to regularise such appointments would only result in encouragement to such unhealthy practices.

These are but a few problems that may arise, if such directions become the norm. There may be many such and other problems that may arise. All this only emphasises the need for a fuller consideration and due circumspection while giving such directions.

13 . Now we shall proceed to examine whether the High Court was right in holding that the several conditions prescribed in the orders issued by the two Governments from time to time are bad. In particular, whether the High Court was right in holding that prescribing a particular date by which

the prescribed period of service should have been put in and the further condition that the candidate must have been sponsored by Employment Exchange, are arbitrary and unreasonable. These G.Os. were issued by the Government from time to time. 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 1st January, 1980. It says, a person must have completed two years of service as on 31st December, 1979, i.e., the day previous to the issuance of the order. How could it be said that fixing of such a date is arbitrary and unreasonable? Similarly the order dated 3rd January, 1983 fixes 15th September, 1982 as the relevant date. This notification/order does two things. Firstly, it excludes class III posts of clerks from the purview of the S.S.S.B. in case of those who have completed a minimum of two years of service as on 15th September, 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 24th March, 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. In this connection, reference may be made to the decision of this court in Dr. Sushma Sharma v. State of Rajasthan, (1985) S.C. 367. The Governor of Rajasthan had issued an ordinance stating that "all temporary lectures as were appointed as such on or before the 25th day of June 1975 and are continuing as such at the commencement of the Rajasthan Universities Teachers (Absorption of Temporary Lecturers) Ordinance, 1978 (Ordinance No. 5 of 1978) shall be considered by the University concerned for their absorption and substantive appointment on the recommendation of the Screening Committee constituted under section 4 subject to their fulfilling the conditions of eligibility including minimum qualifications prescribed by the University concerned under the relevant law as applicable on the respective dates of their temporary appointments and subject also the availability of substantive vacancies of lecturers in the department concerned."

The validity of the said ordinance was questioned on the ground that the fixation of the date, 25th day of June, 1975, was arbitrary and has been chosen only because that was the date on which internal emergency was proclaimed. It was also submitted that the further requirement that the lecturer appointed should be continuing as such on the date of commencement of the ordinance (12.6.1978) is an equally arbitrary and unreasonable condition. Both these contentions were rejected by this court. The court negatived the contention that the prescription of the said date and the further requirement of being in service on the date of ordinance have the effect of excluding persons who have put in long years of service but were not continuing on the date of ordinance, making the said conditions discriminatory. Such possibilities, it was held, were not enough to castigate the said condition as aribitrary. It was observed that there was no evidence to show any attempt on the part

of the Government to separate or penalise pre-emergency appointees or for that matter any particular class of oppointees. In this context, we must remember that what is in issue is not the wisdom of the executive in issuing a particular order or orders but the validity thereof. The court may think it more desirable that the order should be in particular terms as indicated by it, but that is not enough.

14. The next question is whether the orders issued by the two Government were arbitrary and unreasonable in so far as they prescribed that only those employees who had been sponsored by Employment Exchange should alone be regularised. In our opinion, this was a reasonable and wholesome requirement designed to curb and discourage back door entry and irregular appointments. The Government orders say that all those who have been sponsored by Employment Exchange or have been appointed after issuing a public advertisement alone should be regularised. We see no unreasonableness or invalidity in the same. As stated above, it is a wholesome provision and ought not to have been invalidated. Moreover, as pointed out hereinbefore, it is not found by the High Court that the writ petitioners were appointed only after obtaining a non-availability certificate from the Employment Exchange. The decision relied upon by the High Court does not say that even without such a certificate from Employment Exchange, an appointment can be made or that such appointment should be consistent with the mandate of Articles 14 and 16.

We must also say that the further requirement prescribed in the orders viz., that the employees must have possessed the prescribed qualifications for the post at the time of his appointment on ad hoc basis is equally a valid condition. Indeed, no exception is taken to it by the High Court.

15. We may now consider whether the High Court was justified in holding that inasmuch as Haryana and Punjab are sister States and because prior to 1966 Haryana was a part of Punjab, the rule relating to length of service requisite for regularisation should be uniform in both the states. We see absolutely no basis for the said holding. They are two different States having their own Governments, merely because one Government chooses to say that one year's temporary or ad hoc service is enough for regularisation it cannot be said that the other state must also prescribe the very same period or that it cannot prescribe a longer or shorter period. The fact that there is a single High Court for both the States and the Union Territory of Chandigarh is no ground for saying that the orders issued by them should be uniform.

16. The learned Judges have further directed that in so far as the State of Haryana is concerned class III and IV posts which were within the purview of the S.S.S.B. shall equally be within the purview of regularisation orders issued by it. The learned Judges have pointed out that for a period of 10 years there was no such Board functioning and further that from the year 1970 to 1987 "most of the class III and IV posts with which we are concerned were kept out of the purview of the S.S.S.B. "The correctness of the said factual statement is not questioned before us. It is therefore, not necessary to alter or modify the direction made by the High Court on this aspect. In fact, no arguments were addressed to us with respect to the said direction made by the High Court. If any of the petitioners have been excluded from consideration (for regularisation) on the basis of the above condition, they may be considered and appropriate orders passed.

17. Now coming to the direction that all those adhoc/temporary employees who have continued for more than an year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every adhoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him- which means creation of a vacancy (b) he was not sponsored by the Employment Exchange nor was he appointed in pursuance of a notification calling for applications - which means he had entered by a back-door

(c) he was not eligible and/or qualified for the post at the time of his appointment (d) his record of service since his appointment is not satisfactory. These are in addition to some of the problems indicated by us in pare 12, which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such whole-sale , Unconditional orders. Moreover, from the mere continuation of an adhoc employee for one year, it cannot be presumed that there is need for a regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no 'rule of thumb' in such matters. Conditions and circumstances of one unity may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. Judged from this stand point, the impugned directions must be held to be totally untenable and unsustainable.

18. So far as the members of the work-charged establishment are concerned, the nature of their employment is already pronounced upon by this court in Jaswant Singh v. Union of india, [1980] 1 S.C.R.426 It is stated therein:

> "A work-charged establishment broadly means an establishment of which the expensed, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work.
>
> The entire strength of labour employed for the purpose of the Beas Project was work-charged. The work-charged employees are engaged on a temporary basis and their appointments are made for the executive of a specific work. From the very nature of their employment, their services automatically come to an end on end on the completion of the works for the sole purpose of which they are employed. They do not get any relief under the Payment of Gratuity Act nor do they receive any retrenchment benefits or any benefits under the Employees State Insurance Schemes.
>
> But though the work-charged employees are denied these benefits, they are industrial workers and are entitled to the benefits of the provisions contained in the Industrial Disputes Act. Their rights flow from that special enactment under which even

> contracts of employment are open to adjustment and modification. The work-charged employees, therefore, are in a better position than temporary servants like the other petitioners who are liable to be thrown out of employment without any kind of compensatory benefits."

Be that as it may, so far as the State of Haryana is concerned, this contention has become of academic interest in view of the orders issued on 24th March, 1987 and 6th April 1990, which we shall presently notice. In view of the said orders, the direction given by the High Court becomed unneccesary. Though the State of Punjab has not issued any such orders, it appears from the the affidavit filed on its behalf(sworn to by Sri P.C.Sangar, Deputy Secretary to the Government, Department of Personnel dated 19.3.1991) that a scheme of regularisation of these employees has been prepared in pursuance of the impugned judgement. The said scheme is, however, not made conditional upon the result of these appeals against the judgment. On a perusal of the scheme, we find it to be a reasonably fair scheme. We hope and trust that irrespective of the result of these appeals, the said scheme shall be given effect to by the State of Punjab.

19. The High Court has also directed that all those employees who fall within the definition of "workmen" contained in the Industrial Disputes Act will also be entitled to regularisation on par with the work-charged employees in whose case it is directed that they should be regularised on completing five years of service in Punjab and four years of service in Haryana. This direction is given in favour of those casual labour and daily wagers who fall within the definition of workmen. In so far as work- charged employees, daily wage workers and casual labourers who do not fall within the definition of workmen are concerned, the High Court had directed their regularisation on completion of one year's service. We find this direction as untenable as the direction in the case of adhoc/temporary employees. In so far as the persons belonging to the above categories and who fall within the definition of Workmen are concerned, the terms in which the direction has been given by the High Court cannot be sustained. While we agree that persons belonging to these categories continuing over a number of years have a right to claim regularisation and the authorities are under an obligation to consider their case for regularisation in a fair manner, keeping in view the principles enunciated by this court, the blanket direction given cannot be sustained. We need not, however, pursue this discussion in view of the orders of the Government of Haryana contained in the letter dated 6.4.1990 which provide for regularisation of these persons on completion of ten years. We shall presently notice the contents of the said letter. In view of the same, no further directions are called for at this stage. The Government of Punjab, of course, does not appear to have issued any such orders governing these categories. Accordingly, there shall be a direction to the Government of Punjab to verify the vacancy position in the categories of daily wagers and casual labour and frame a scheme of absorption in a fair and just manner providing for regularisation of these persons, having regard to their length of service and other relevant conditions. As many persons as possible shall be absorbed. The scheme shall be framed within six months from today.

20. So far as temporary or time-bound schemes are concerned, the matter is exhaustively dealt with and pronounced upon in Delhi Development Horticulture Employees Union v. Delhi Administration, (1992) 1 J.T. 394. We need not add to it. In any event, the direction given by the High Court with respect to this category has not been assailed before us.

21. We may also point out that after the filing of the writ petitions and during the pendency of the Special Leave Petitions in this court, the Government of Haryana has issued certain further orders to which reference may now be made.

(i) On 24th March 1987 the Chief Secretary to the Government of Haryana wrote to all the Heads of Departments and others stating the following : "the matter relating to the regularisations of the work charged employees was engaging attention of the Government for some time past. After careful consideration it has now been decided that the services of all the work charge employees working in the Haryana State who have completed four years or more continuous service on 31.12.1986 should be regularised". All the authorities were directed to take immediate appropriate action in that behalf. (We have no reason to believe that the said orders will not be given effect to in full).

(ii) On 5th February, 1990 the Chief Secretary to the Government of Haryana wrote to all the Heads of Departments and others apprising them of the new policy and procedure evolved by the Government in the matter of making adhoc appointments. The letter says that no adhoc appointment shall be made in future on any posts unless a proper requisition has been sent to Haryana Public Service Commission/Subordinate Services Selection Board. It says further that if any adhoc appointment is required to be made it shall be made only through Employment Exchange or by advertising such post in a daily newspaper after obtaining a N.A.C. certificate from the Employment Exchange. Such appointment even if made shall not last beyond nine months and will be subject to a regular appointment being made by H.P.S.C./S.S.S.B.

(iii) In pursuance of the interim orders passed by this court in this batch (recording the undertaking given by the counsel for the State of Haryana to frame a scheme for absorption) the Government of Haryana did frame of such a scheme contained in the Chief Secretary's letter dated 6.4.1990 addressed to all the Heads of Department. It covers the ad hoc employees, work charged employees, casual workers/daily rated employees, workmen, ad hoc/temporary employees in temporary organisation as also seasonal workers. It is but appropriate that we set out the said letter in full:

> No.6/4/90-2GSI From The Chief Secretary to Govt., Haryana To
>
> 1. All Head of Departments, Commissioner Ambala, Hisar, Rohtak and Gurgaon Divisions and all the Deputy Commissions in the State.
>
> 2. The Registrar, Punjab and Haryana High Court, Chandigarh.

Dated Chandigarh, the Subject: Policy regarding regularisation of adhoc/work- charged employees and causal/daily wagers etc. c .....

Sir, I am directed to refer to the subject noted above and to state that the matter regarding laying down the policy with regard to regularisation of the services of Class-III ad hoc employees, work-charged/daily wagers etc. has been under consideration of Govt. for some time past. After careful consideration, it has been decided that the Regularisation of these employees shall be on the

following terms and conditions:-

Category-I, Adhoc employees

(i) Only such adhoc class-III employees, who have completed two years service on 30.9.1988, shall be regularized to the extent of available regular posts/vacancies on that date.

(ii) The work and conduct of such employees should have been over all good category and no disciplinary proceedings are pending against them.

(iii)The employees posses the prescribed qualifications for the post at the time of their appointment on adhoc basis.

(iv) The regularisation will be against the posts/vacancies of the relevant categories only and in case, the employees belonging to general category have been appointed against reserved category posts/vacancies the services of such adhoc appointees shall not be regularises and their services shall be terminated in case, no general category vacancy/post(s) is available on 30.9.88.

(v) The recommendees of the SSS board shall be absorbed against the remaining vacancies, if any.

The names of such remaining recommendees as cannot be absorbed shall be returned to the Board to enable it to recommend their names to other departments for appointments against the clear vacancies.

(vi) After regularisation of adhoc employees under the policy, if some posts/vacancies still remain unfilled, these shall be filled in from the recommendees of the SSS Board, if any. If some shortfall remains even after than, the procedure laid down in the insts. issued vide No.50/35/88- 5GSI, dated 5.2.90 shall be followed, for making up the shortfall, it felt necessary.

(vii) The employees, who are not covered under the above policy, their services shall be terminated.

(viii) The seniority of the adhoc class-III employees so regularised viz-a-viz class-III employees appointed on regular basis shall be determined w.e.f.30.9.88. The inter-se seniority of such adhoc Class-III employees shall be determined in accordance with the date of joining the post on adhoc basis. If the date of joining the post(s), on adhoc basis by such adhoc employees was the same, then the elder employee shall rank senior to an employee younger in age. If the date of joining the direct recruit and the date of Regularisation is the same, the direct recruit shall be senior.

Category-II. Work-Charged employees The work-charged employees who have completed 4 or more years of continuous service as on 30.9.88 shall be regularised. On Regularisation these employees shall be liable for transfer anywhere in the State of Haryana on any project/work. Category-III.

Casual Workers/Daily rated employees With regard to these employees, the following policy will be followed:

> (i) Casual/daily rated employees appointed on or before 30.9.1983 shall be treated as monthly rated established employees on a fixed pay of Rs. 750 (minimum of Class-IV pay scale) or the rates as fixed by the Deputy Commission concerned p.m. without any allowance w.e.f. 1.10.88. They shall be entitled to an annual increment of Rs. 12 till their services are regularized. On Regularisation, they shall be put in the time scale of pay applicable to the lowest Group 'D' in the Govt. and they would be entitled to all other allowances and benefits available to regular Govt. servants of the corresponding grade.

(ii) The casual of daily rated employees, who have completed 10 years or more of service on 30.9.88 shall be regularized w.e.f. 1.10.88 on the basis of seniority-cum-suitability.

(iii) In respect of all such daily rated employees who have not yet completed 5 years service, a special review should be carried out regarding the requirement of their continuance or retrenchment as the case may be.

(iv) In the case of those, who are required to be continued in service, the same terms and conditions will be applicable as in sub-paras (i) & (ii) above on completion of 5 years and 10 years service respectively.

(v) In the case of those whose services are no longer required, they may be relieved of their duties at the earliest possible.

Category-IV. Workmen.

The employee, who come within the definition of 'Workmen' under the Industrial Disputes Act, shall be entitled to the benefits under the Act and their services should be dispensed with only after following the procedure laid down in the Act and after granting the requisite retrenchment benefits. Category-V. Adhoc/temporary employees in temporary organization.

The services of the employees working in temporary organization can be terminated at the abandonment of the scheme and they will not be eligible for Regularisation.

Category-VI. Seasonal workers.

The services of seasonal workers appointed as daily wager or on work-charged basis shall not be regularized and they will be retrenched on completion/abandonment of the work.

2. The above policy may be brought to the notice of all concerned for strict compliance.

Yours faithfully, Sd/-

Under Secretary General Administration
for Chief Secretary to Government, Haryana.

(iv) On 28th February, 1991, yet another order has been issued by the Governor of Haryana under the proviso to Article 309 of the Constitution providing for regularisation of class III employees who have put in service of two years on 31st December, 1990 subject to usual conditions. This order reads as follows:

> "Notification The 28th February, 1991 No. G.S.R. 11/Const./Art.309/91.- In exercise of the powers conferred by the proviso to article 309 of the Constitution of India read with the proviso to clause 6 of Haryana Government, General Administration Department (General Services), notification No.523-3 GSI-70/2068, dated the 28th January, 1970 the Governor of Haryana hereby specifies such Class III posts as have been held for a minimum period of two years on the 31st December, 1990, by Class III employees on ad hoc basis to be taken out of the perview of the Subordinate Services Selection Board, Haryana and their services shall be regularised if they fulfill the following conditions, namely:-
>
> (i) that the employees have completed two years services on 31st December, 1990, and were in service on 31st December, 1990.
>
> (ii) that the employees shall be regularised against the posts/vacancies of relevant categories.

The employees of general category may be regularised in excess of their quota with the clear stipulation that in future recruitments only the candidates from reserve categories will be appointed until the back log arising out of utilisation of reserve category vacancies by general category ad hoc employees is cleared:

> (iii) that the employees should have been recruited through the Employment Exchange or directly appointed by the appointing authority after obtaining the non-availabilty certificate from the Employment Exchange;
>
> (iv) that the work and conduct of such employees shall be of over all good category and no disciplinary proceedings are pending against them, and
>
> (v) that the employees possessed the prescribed qualifications for the post at the time of their appointment on ad hoc basis.

2. The seniority of the ad hoc Class III employees so regularised, viz-a-viz, the Class III employees appointed on regular basis should be determined with effect from 31st December, 1990. The inter-se-seniority of such ad hoc Class III employees shall be determined in accordance with the date of their joining the post on ad hoc basis. If the date of joining the post (s) on ad hoc basis by such ad

hoc employees was the same, the an old employees shall rank senior to an employee younger in age. If the date of appointment of the direct recruit and the date of regularisation of ad hoc employees is the same, the direct recruit shall be senior.

KULWANT SINGH chief Secretary to Government Haryana "

> 22. So far as the Punjab Government is concerned, an affidavit sworn to by Sri G.K.Bansal, Under Secretary to the Government, Department of Personnel, Government of Punjab has been filed before us stating that the instructions issued by the Haryana Government for regularisation of the services of class III ad hoc employees contained in their notification dated 28.2.1991 shall be adopted by the Punjab Government mutatis mutandis. The relevant portion of the affidavit may be extracted herein below:
>
> "The policy instructions for the regularisation of services of Class-III adhoc employees issued by Haryana Government vide their notification dated 28/2/91 mutatis mutandis will be adopted as under:-
>
> (i) That the adhoc/temporarily appointed employees should have completed a minimum of two years service on 31/12/90 and was in service on 31/12/90.

While calculating the period of service, any break of notional nature not exceeding 30 days falling between adhoc/temporarily appointments in the same category of post (s) and in the same Department is to be ignored. However, the break in adhoc/temporary service would be ignored in cases where:

> (a) The employee concerned left service of his own volition either to join some other Department or for some other reasons, or
>
> (b) the adhoc/temporary appointment was against a post/vacancy for which no regular recruitment was intended/required to be made e.g. leave arrangements for filling of other short-term vacancies.
>
> (ii) that they fulfill the conditions of eligibility as prescribed (i.e. they have been recruited through the Employment Exchange or by open advertisement) academic qualifications, experience and the condition of age at the time of their first/adhoc/temporary appointment in accordance with the Departmental service rules and instructions issued by the government.
>
> (iii) that their record of service is satisfactory.
>
> (iv) that they have been found medically fit for entry into Government service and that their character and antecedents have also been duly verified and found suitable for Government service;

(v) that a regular post/vacancy is available for regularisation;

(vi) that they have been found fit for regularisation by the Departmental Selection Committees constituted in accordance with the instructions contained in Government circular letter No.12/30/86/IGE/5139 dated 15/4/86;

(vii) The seniority of the adhoc/temporarily appointed class-III employees so regularized vis-a-

vis class-III employees appointed on regular basis shall be determined w.e.f. 31.12.90. The inter-se seniority of such adhoc/temporarily appointed class-III employees shall be determined in accordance with the date of their joining the post on adhoc/temporary basis. If the date of joining the post(s) on adhoc/temporary basis by such adhoc/temporarily appointed employees was the same then an older employee shall rank senior to an employee younger in age. If the date of joining of the direct recruit and the date of regularisation of adhoc-temporarily appointed employee is the same, the direct recruit shall be senior;

The cases of such adhoc/temporarily appointed employees who have already completed three years service on 31st December, 90 and have satisfactory record of service but who do not fulfill the prescribed conditions with regard to qualifications, age or mode of their initial recruitment will also be considered for regularisation in relaxation of these conditions if the Departmental Service Rules applicable to these employees provide for relaxation of these conditions of recruitment."

We are sure that many of the employees would get regularised under the orders aforementioned issued by both the Governments.

23. This is not a case, we must reiterate, where the Governments have failed to take any steps for regularisation of their adhoc employees working over the years. Every few years they have been issuing orders providing for regularisation. In such a case, there is no occasion for the court to issue any directions for regularising such employees more particularly when none of the conditions prescribed in the said orders can be said to be either unreasonable, arbitrary or discriminatory. The court cannot obviously help those who cannot get regularised under these orders for their failure to satisfy the conditions prescribed therein. Issuing general declaration of indulgence is no part of our jurisdiction. In case of such persons we can only observe that it is for the respective Governments to consider the feasibility of giving them appropriate relief, particularly in cases where persons have been continuing over a long number of years, and were eligible and qualified on the date of their adhoc appointment and further whose record of service is satisfactory.

24. With respect to direction No. 8 (equal pay for equal work) we find the judgment singularly devoid of any discussion. The direction given is totally vague. It does not make it clear who will get what pay and on what basis. The said direction is liable to be set aside on this account and is, accordingly, set aside.

In the matters posted before and heard by us, there are several S.L.Ps. preferred against orders of the High Court allowing writ petitions following the judgment in Piara Singh. Leave is granted in all such matters as well and the appeals allowed in the same terms as the appeals against the judgement in Piara Singh.

25. Before parting with this case, we think it appropriate to say a few words concerning the issue of regularisation of adhoc/temporary employees in government service.

The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee.

Secondly, an adhoc or temporary employee should not be replaced by another adhoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an adhoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

If for any reason, an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

The proper course would be that each States prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same way be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.

So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated 6.4.90 referred to hereinbefore) both in relation to work-charged employees as well as casual labour.

We must also say that the orders issued by the Governments of Punjab and Haryana providing for regularisation of adhoc/temporary employees who have put in two years/one year of service are quite generous and leave no room for any legitimate grievance by any one.

These are but a few observations which we thought it necessary to make, impelled by the facts of this case, and the spate of litigation by such employees. They are not exhaustive nor can they be understood as immutable. Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made herein.

26. So far as the employees and workmen employed by Statutory/Public Corporations are concerned, it may be noted that they have not issued any orders akin to those issued by the Punjab and Haryana Government. Even so, it is but appropriate that they adopt as far as possible, keeping the exigencies and requirements of their administration in view, the criteria and principles underlying the orders issued by their Government in the matter of regularisation and pass appropriate orders. In short, the Statutory/Public Corporations in Haryana will follow the orders contained in the letter dated 6.4.1990 referred to above, as supplemented by the orders in the Notification dated 28.2.1991, where as the Statutory/Public Corporations in Punjab shall follow the criteria and principles stated in the affidavit of Sri G.K.Bansal, Under Secretary to the Government of Punjab, Department of Personnel referred to in para 22 above. These directions shall not, however, apply to these Statutory/Public Corporations functioning within these States as are under the control of the Government of India. These Corporations will do well to evolve an appropriate policy of regularisation, in the light of this judgment, if they have not already evolved one, or make their existing policy consistent with this judgment to avoid litigation.

27. For the above reasons, all the appeals are allowed and the orders under appeal are set aside. The directions given by the High Court in the judgment in W.P.(C) No.72/88 namely direction Nos. 1,2,3,4,6 and 8 are set aside. The only direction given herewith is the one contained in para

19. The writ petitions seeking the benefits given in the judgment under appeal are dismissed.

No costs.

H N.P.V. Appeals disposed of.