State Of Jammu And Kashmir And Ors vs District Bar Association, Bandipora on 8 December, 2016

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Bench: T.S. Thakur, D.Y. Chandrachud, L. Nageswara Rao

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 36084 OF 2016
SPECIAL LEAVE PETITION (C)11941 OF 2016
(@ out of SLP (C) CC No. 16091 OF 2016)

STATE OF JAMMU AND KASHMIR & ORS .....APPELLANTS

VERSUS

DISTRICT BAR ASSOCIATION, BANDIPORA .....RESPONDENT

J U D G M E N T

Dr D Y CHANDRACHUD, J Delay condoned.

Leave granted.

The State of Jammu and Kashmir seeks to challenge the orders dated 1 December 2015 and 10 August 2016 of a Division Bench of the High Court in a Public Interest Litigation instituted by the District Bar Association, Bandipora. The grievance of the Bar Association was that since the creation

of the district of Bandipora in 2007, the Sessions Court has been housed in a building which used to be a part of the Munsif's Court Complex. The Principal District and Sessions Judge, Chief Judicial Magistrate and Munsif discharge their judicial functions in a building which lacks basic amenities. On 30 November 2013 during the course of a mega Lok Adalat, the Administrative Judge expressed the view that a suitable plot of land is urgently required for the District Court. This was communicated by the Additional Deputy Commissioner to the Tehsildar on 30 November 2013. A direction was sought for the transfer of certain land which is stated to have been earmarked for the construction of the District Court Complex or, in the alternative, for the provision of a suitable site. Provision of proper amenities was sought.

During the course of the hearing of the Public Interest Litigation, the Division Bench noted in an order dated 7 October 2015 that an application had been filed by the daily rated workers engaged in the High Court at Srinagar (MP1/2015). The Advocate General informed the Division Bench that a direction had been issued by a co-ordinate Bench in a writ petition filed by the daily rated workers requiring the State to file its response.

By its interim direction dated 7 October 2015, the Division Bench ordered thus :

> "Respondent – State is duty bound to consider claim of the daily rated workers and as a "one time exception" regularize their services. Commissioner Secretary to Government, Department of Law, Justice and Parliamentary Affairs, to file Status Report about this aspect of the matter as well before next date of hearing." A Special Leave Petition filed by the state government against the interim order of the High Court was dismissed by this Court on 16 December 2015.
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> On 1 December 2015, the Division Bench issued a further direction in which notice was taken of the fact that the state government had, over a considerable period of time, failed to create the required number of posts for the state judiciary. As a result, and in order to ensure that the work of the courts was not hampered, arrangements were made to engage persons on a daily wage basis. The High Court observed that the state government is duty bound to create an equal number of posts for the absorption of daily rated employees at the earliest. The observations of the High Court are extracted below :
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> "It is submitted that considerable period of time, the Government has not created required number of posts for the State Judiciary. It is also submitted that because of dearth of staff, the work in the courts was hampered. It is also submitted that in order to ensure that the work of the courts do not suffer and until such time posts are created by the Government, which is the Constitutional responsibility of the State, it was deemed necessary to make engagements on daily wage basis. It is submitted that this step was taken to ensure that the judicial work does not suffer. This class of employees in essence are the substitute for regular employees posts which the Government was duty bound to create. These Daily Rated Workers would not be regulated by the rules governed by SRO 64 of 1994. The information has been already

provided to the Government about these persons who have been engaged in Daily wage Basis and the Government shall have to create equal number of posts in the State Judiciary for their absorption which action is to be taken independent of the Rules notified vide SRO 64 of 1994. The information has been already provided to the Government about these persons who have been engaged on Daily Wage Basis and the Government shall have to create equal number of posts in the State Judiciary for their absorption which action is to be taken independent of the Rules notified vide SRO 64 of 1994. The daily wagers constitute a class in themselves.

The stand taken by the respondents in the aforesaid additional information would not thus affect the rights of the persons who have been engaged on Daily Wages Basis in the State Judiciary. The State is duty bound to create equal number of posts for their absorption, inasmuch as no guarantee of status as Government employee. The State Government besides being duty bound to provide complete infrastructure and paraphernalia area which include creation of posts are duty bound to create posts are those persons engaged on Daily rated Basis at the earliest".

On 10 August 2016 when the petition was taken up by the High Court, the Additional Advocate General submitted that the Registrar General had addressed a communication on 23 April 2014 for the regularization of 188 daily rated workers engaged from time to time in the High Court and subordinate courts. However, the annexure enclosed to the communication contained a list of 228 workers. Hence, on 27 July 2016 a clarification was sought in regard this discrepancy in numbers. On 29 July 2016 the Registrar General clarified that the actual strength of daily rated workers in the High Court was 98 (and not 58 as incorrectly stated earlier) and that the correct number of workers engaged in the High Court and district courts together was 228. The current strength of daily rated workers was stated to be 209. The High Court took the view that following the dismissal of the Special Leave Petition by this Court against its interim order the state was duty bound to create 209 posts for the absorption of the daily rated workers. The statement of the AAG was recorded on instructions that 209 Class IV posts would be created within three weeks. However, the High Court proceeded to issue a notice to show cause to Mr. Mohammad Ashraf Mir, the then Commissioner/Secretary to the State Government in the Department of Law, Justice and Parliamentary Affairs, for having made an incorrect statement on 15 July 2016 that the State Government had already taken steps for implementing the order of the High Court to create additional posts. The State Government is in appeal.

By an order dated 5 September 2016, the Secretary to the Department of Law in the State Government was directed to secure relevant information about the date of joining of all the daily wage employees working in the High Court of Jammu and Kashmir and to file it on affidavit before this Court. Pursuant thereto, an affidavit has been filed stating that the information received from the Registrar General of the High Court indicates that two hundred and nine daily wage employees are working in the High Court and the district judiciary in the State. The information which has been

placed on the record indicates that :

Fifty daily wage employees are engaged in the Jammu wing of the High Court whose dates of engagement fall between August 2001 and March 2015;

Eleven sewaks are employed in the Jammu wing with dates of engagement falling between February 2011 and February 2016;

Forty five daily wagers are engaged in the Srinagar wing of the High Court with dates of engagement between May 1998 and January 2015;

Two daily wagers are posted in the main wing, being recruited in 2008 and 2013;

Thirty seven daily wagers are engaged in ten districts of the Jammu region and sixty four are engaged in twelve districts in Kashmir. While one of them in District Kulgam was engaged as far back as in 1984, the most recent of those engaged (District Badgam) is in March 2014; and Of the two hundred and nine daily wage employees, one hundred and one are engaged in the district courts while one hundred and eight are engaged in the High Court, both at Jammu and Srinagar.

The first submission that has been urged is that the direction issued by the High Court is contrary to the law laid down by this Court in Renu v. District & Sessions Judge, Tis Hazari Courts, Delhi[1].

The issue which arises must be viewed bearing in mind the essence of the judgment of the Constitution Bench in Secretary, State of Karnataka v. Umadevi[2] and subsequent judgments which followed it. In the judgment of the Constitution Bench, the following two issues primarily fell for consideration :

The right of employees seeking regularization on the strength of long and continuous work; and The correctness of directions issued by courts for regularisation of employees under Article 226 of the Constitution.

The decision in Umadevi dealt firstly with the right claimed by temporary employees to be regularised in service on the basis of long continuance, legitimate expectations, employment under the State and the Directive Principles. The second salient question which the Constitution Bench was called upon to answer was whether courts would be justified in issuing directions for regularisation based on such features such as equality and long spells of service. On both counts the Constitution Bench held against the temporary employees.

However Umadevi is not an authority for the proposition that the executive or the legislature cannot frame a scheme for regularisation. Uma Devi does not denude the State or its instrumentalities from framing a scheme for regularisation. In paragraph

53 of the decision, this Court held as follows :

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore v. S.V. Narayanappa, R.N. Nanjundappa v. T. Thimmiah and B.N. Nagarajan v. State of Karnataka and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme." The third aspect of Umadevi which bears notice is the distinction between an "irregular" and "illegal" appointment. While answering the question of whether an appointment is irregular or illegal, the Court would have to enquire as to whether the appointment process adopted was tainted by the vice of non-adherence to an essential prerequisite or is liable to be faulted on account of the lack of a fair process of recruitment. There may be varied circumstances in which an ad hoc or temporary appointment may be made. The power of the employer to make a temporary appointment, if the exigencies of the situation so demand, cannot be disputed. The exercise of power however stands vitiated if it is found that the exercise undertaken

(a) was not in the exigencies of administration; or (b) where the procedure adopted was violative of Articles 14 and 16 of the Constitution; and/or (c) where the recruitment process was overridden by the vice of nepotism, bias or mala fides. If the appointment process is not vitiated by any of the above faults, can it be said that appointments made as an outcome of such an exercise cannot be regularised under a scheme framed in that regard by the employer? This is particularly when the employer himself proceeds to frame a scheme to bring these employees within the protective umbrella of regular service without the intervention or command of a court direction.

This is the issue to which we turn. We propose to analyse the precedents before formulating the principles.

Dealing with the issue of whether Labour Courts are denuded of authority to direct regularization pursuant to labour enactments, this Court in Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana[3], held thus :

> "34. It is true that Dharwad Distt. PWD Literate Daily Wages Employees' Assn. arising out of industrial adjudication has been considered in Umadevi (3) and that decision has been held to be not laying down the correct law but a careful and complete reading of the decision in Umadevi (3) leaves no manner of doubt that what this Court was concerned in Umadevi (3) was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognised by the rules or procedure and yet orders of their regularisation and conferring them status of permanency have been passed.

35. Umadevi (3) is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

36. Umadevi (3) does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established." The labour legislation in that case was the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The decision in Renu v. District and Sessions Judge, Tis Hazari Courts, Delhi[4] dealt with appointments which were shown to be illegal and the outcome of arbitrariness. It was in that backdrop that the following observations came to be made :

> "2. This Court had appointed Shri P.S. Narasimha, learned Senior Counsel as amicus curiae to assist the Court. The matter was heard on 28-1-2014 and deliberations took place at length wherein all the learned counsel appearing for the States as well as for the High Courts suggested that the matter should be dealt with in a larger perspective i.e. also for appointments of employees in the High Court and courts subordinate to the High Court which must include Class IV posts also. A large number of instances have been pointed out on the basis of the information received under the Right to Information Act, 2005 of cases not only of irregularity but of favouritism also in making such appointments. It has been suggested by the learned counsel appearing in the matter that this Court has a duty not only to check illegality, irregularity, corruption, nepotism and favouritism in judicial institutions, but also to provide guidelines to prevent the menace of back-door entries of employees who

subsequently are ordered to be regularised.

27. To say that the Chief Justice can appoint a person without following the procedure provided under Articles 14 and 16 would lead to an indefinite conclusion that the Chief Justice can dismiss him also without holding any inquiry or following the principles of natural justice/Rules, etc. for as per Section 16 of the General Clauses Act, 1897, power to appoint includes power to remove/suspend/dismiss. (Vide Pradyat Kumar Bose v. High Court of Calcutta [AIR 1956 SC 285] and Chief Justice of A.P. v. L.V.A. Dixitulu [(1979) 2 SCC 34 : 1979 SCC (L&S) 99] .) But as no employee can be removed without following the procedure prescribed by law or in violation of the terms of his appointment, such a course would not be available to the Chief Justice. Therefore, the natural corollary of this is that the Chief Justice cannot make any appointment in contravention of the statutory rules, which have to be in consonance with the scheme of our Constitution." This Court considered the modalities adopted by the High Courts across the country in making recruitments and issued directions to ensure that appointments made by judicial institutions are in accordance the principle of equality of opportunity enshrined in Articles 14 and 16 of the Constitution. Emphasizing the principle of transparency in public appointment, this Court observed that :

"Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.

Thus, the aforesaid decisions are an authority on prescribing the limitations while making appointment against public posts in terms of Articles 14 and 16 of the Constitution. What has been deprecated by this Court time and again is "back-door appointments or appointments dehors the rules"." The power that is vested in the Chief Justice of the High Court under Article 229(1) is, the Court held, subject to Article 16 :

"the law can be summarised to the effect that the powers under Article 229(2) of the Constitution cannot be exercised by the Chief Justice in an unfettered and arbitrary manner. Appointments should be made giving adherence to the provisions of Articles 14 and 16 of the Constitution and/or such rules as made by the legislature".

Four fundamental principles emerge from the decision of this Court in Renu. The first principle is that Article 235 enables the High Court to exercise complete

administrative control over the district judiciary which extends to all functionaries attached to those courts, including ministerial staff and employees on the establishment. The purpose of superintendence would be frustrated if the administrative control of the High Court is not to be exercised over the administrative and ministerial staff. However, the Chief Justice of the High Court as a constitutional functionary is subject to the mandate of Articles 14 and 16. No appointment can be made in contravention of statutory rules. Moreover, the rules themselves must be consistent with constitutional principles.

The second principle is that employment in the High Courts or in the courts subordinate to them constitutes public employment. All recruitment in matters of public employment must be made in accordance with prevailing rules and orders:

"30. In today's system, daily labourers and casual labourers have been conveniently introduced which are followed by attempts to regularise them at a subsequent stage. Therefore, most of the times the issue raised is about the procedure adopted for making appointments indicating an improper exercise of discretion even when the rules specify a particular mode to be adopted. There can be no doubt that the employment whether of Class IV, Class III, Class II or any other class in the High Court or courts subordinate to it falls within the definition of "public employment". Such an employment, therefore, has to be made under rules and under orders of the competent authority." Thirdly, the date on which the vacancies are likely to occur are foreseeable with a reasonable amount of clarity and precision. An exercise to fill up vacancies must be undertaken in advance so as to ensure that there is no occasion to appoint persons on an ad hoc basis : "31. In a democratic set-up like ours, which is governed by rule of law, the supremacy of law is to be acknowledged and absence of arbitrariness has been consistently described as essence of rule of law. Thus, the powers have to be canalised and not unbridled so as to breach the basic structure of the Constitution. Equality of opportunity in matters of employment being the constitutional mandate has always been observed. The unquestionable authority is always subject to the authority of the Constitution. The higher the dignitary, the more objectivity is expected to be observed. We do not say that powers should be curtailed. What we want to say is that the power can be exercised only to the width of the constitutional and legal limits. The date of retirement of every employee is well known in advance and therefore, the number of vacancies likely to occur in near future in a particular cadre is always known to the employer. Therefore, the exercise to fill up the vacancies at the earliest must start in advance to ensure that the selected person may join immediately after availability of the post, and hence, there may be no occasion to appoint any person on ad hoc basis for the reason that the problem of inducting the daily labourers who are ensured of a regular appointment subsequently has to be avoided and a fair procedure must be adopted giving equal opportunity to everyone." The information before the Supreme Court indicated that several High Courts have adopted a pattern of centralized recruitment so as to ensure transparency and objectivity in the appointment of ministerial staff both on the

establishment of the High Court and in the district courts. Fourthly, while the High Court is an autonomous constitutional authority whose status cannot be undermined, it is equally necessary for it to strictly comply with the rules framed in making recruitments : "We would like to make it clear that the High Court is a constitutional and an autonomous authority subordinate to none. Therefore, nobody can undermine the constitutional authority of the High Court, and therefore the purpose to hear this case is only to advise the High Court that if its rules are not in consonance with the philosophy of our Constitution then the same may be modified and no appointment in contravention thereof should be made. It is necessary that there is strict compliance with appropriate rules and the employer is bound to adhere to the norms of Articles 14 and 16 of the Constitution before making any recruitment." The following directions have been issued in Renu for observance by all the High Courts :

"35.1. (i) All the High Courts are requested to re-examine the statutory rules dealing with the appointment of staff in the High Court as well as in the subordinate courts and in case any of the rules is not in conformity and consonance with the provisions of Articles 14 and 16 of the Constitution, the same may be modified.

35.2. (ii) To fill up any vacancy for any post either in the High Court or in courts subordinate to the High Court, in strict compliance with the statutory rules so made. In case any appointment is made in contravention of the statutory rules, the appointment would be void ab initio irrespective of any class of the post or the person occupying it. 35.3. (iii) The post shall be filled up by issuing the advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State. In addition thereto, the names may be requisitioned from the local employment exchange and the vacancies may be advertised by other modes also e.g. Employment News, etc. Any vacancy filled up without advertising as prescribed hereinabove, shall be void ab initio and would remain unenforceable and unexecutable except such appointments which are permissible to be filled up without advertisement e.g. appointment on compassionate grounds as per the rules applicable.

Before any appointment is made, the eligibility as well as suitability of all the candidates should be screened/tested while adhering to the reservation policy adopted by the State, etc. if any. 35.4. (iv) Each High Court may examine and decide within six months from today as to whether it is desirable to have centralised selection of candidates for the courts subordinate to the respective High Court and if it finds it desirable, may formulate the rules to carry out that purpose either for the State or on zonal or divisional basis. 35.5. (v) The High Court concerned or the subordinate court as the case may be, shall undertake the exercise of recruitment on a regular basis at least once a year for existing vacancies or vacancies that are likely to occur within the said period, so that the vacancies are filled up timely, and thereby avoiding any inconvenience or shortage of staff as it will also control the menace of ad hocism." The judgment in Renu underlines the importance of the High Court complying with statutory rules in matters of recruitment. The judgment also emphasises the

need to abide by the principles of equality and equal opportunity in Articles 14 and 16.

The judgment in Renu does not preclude, as a principle of law, the framing of an appropriate scheme of regularization in appropriate situations meeting the norms spelt out in Umadevi and the decisions which have followed. Dealing with a scheme framed for regularisation, this Court in Amarendra Kumar Mohapatra v. State of Orissa[5] held as follows :

> "38. Equally important is the fact that even after declaring the true legal position on the subject and even after deprecating the practice of appointing people by means other than legitimate, this Court felt that those who had served for ten years or so may be put to extreme hardship if they were to be discharged from service and, therefore, directed the formulation of a scheme for their regularisation. This was no doubt a one- time measure, but so long as the appointment sought to be regularised was not illegal, the scheme envisaged by para 53 of the decision (supra) extracted above permitted the State to regularise such employees. Dr Dhavan argued that the appellant Stipendiary Engineers had, by the time the decision in Umadevi (3) case was pronounced, qualified for the benefit of a scheme of regularisation having put in ten years as ad hoc Assistant Engineers and fifteen years if their tenure was to be counted from the date of their employment as Stipendiary Engineers. He contended that even in the absence of a Validation Act, Stipendiary Engineers appointed on ad hoc basis as Assistant Engineers, who had worked for nearly ten years to the full satisfaction of the State Government would have been entitled to regularisation of their services in terms of any such scheme.
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> 43. As to what would constitute an irregular appointment is no longer res integra. The decision of this Court in State of Karnataka v. M.L. Kesari , has examined that question and explained the principle regarding regularisation as enunciated in Umadevi (3) case. The decision in that case summed up the following three essentials for regularisation: (1) the employees have worked for ten years or more, (2) that they have so worked in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal, and (3) they should have possessed the minimum qualification stipulated for the appointment. Subject to these three requirements being satisfied, even if the appointment process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby qualify for regularisation. Para 7 in this regard is apposite and may be extracted at this stage :
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> "7. It is evident from the above that there is an exception to the general principles against 'regularisation' enunciated in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , if the following conditions are fulfilled:
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> (i) The employee concerned should have worked for 10 years or more in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have

employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

45. The upshot of the above discussion is that not only because in Umadevi (3) case this Court did not disturb the appointments already made or regularisation granted, but also because the decision itself permitted regularisation in case of irregular appointments, the legislative enactment granting such regularisation does not call for interference at this late stage when those appointed or regularised have already started retiring having served their respective departments, in some cases for as long as 22 years." This would be again evident from the following observations made by the Court in Surendra Kumar v. Greater Noida Industrial Development Authority[6], wherein it was held :

"In the impugned judgment [Greater Noida Industrial Development Authority v. Surendra Kumar, 2013 SCC OnLine All 9827 : (2014) 102 ALR 418] , the Division Bench proceeded on the premise as if Umadevi (3) case held that the State Government, in no circumstance, can regularise the services of contractual employees. In para 53 of Umadevi (3) case, the Constitution Bench carved out an exception by observing that the Union of India/State Governments/their instrumentalities should take steps to regularise the services of such irregular employees who have worked for more than ten years and para 53 reads as under: (SCC p. 42)

13. Considering the facts of the present case on the touchstone laid down in Umadevi (3) case, it will be seen that the Division Bench was not right in setting aside the appointment of the appellants. More so, it was nobody's case challenging the appointment of the appellants. Admittedly, the appellants were engaged as contractual employees from 1994 and have completed more than ten years of continuous service with Respondent 1. They continued in service not by the orders of the Court/Tribunal, but by the decision of the respondents. The appellants were regularised as per the policy decision dated 16-4-2003 taken by Respondent 1 and approved by the State Government vide Letter dated 5-3-2008. Since the appointment of the appellants were made pursuant to the policy of regularisation, the High Court was not right in quashing the appointment of the appellants as the same were never in question before the High Court. The plea that was raised by the appellants was only to seek regularisation with retrospective effect from 20-11-2002

and the consequential seniority." The difference between irregular and illegal appointments as also the scope of paragraph 53 of Uma Devi has fallen for consideration in various subsequent judgments of this Court . These decisions have been adverted to in State of Karnataka v. G.V. Chandrashekar[7]. In Employees' Union v.

Mineral Exploration Corpn. Ltd[8]. this Court observed as follows :

"39. We, therefore, direct the Tribunal to decide the claim of the workmen of the Union strictly in accordance with and in compliance with all the directions given in the judgment by the Constitution Bench in State of Karnataka v. Umadevi (3) and in particular, paras 53 and 12 relied on by the learned Senior Counsel appearing for the Union. The Tribunal is directed to dispose of the matter afresh within 9 months from the date of receipt of this judgment without being influenced by any of the observations made by us in this judgment. Both the parties are at liberty to submit and furnish the details in regard to the names of the workmen, nature of the work, pay scales and the wages drawn by them from time to time and the transfers of the workmen made from time to time, from place to place and other necessary and requisite details. The above details shall be submitted within two months from the date of the receipt of this judgment before the Tribunal." In National Fertilizers Ltd. v. Somvir Singh[9] this Court held thus :

"23. The contention of the learned counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minorities had not been given due consideration.

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25. Judged by the standards laid down by this Court in the aforementioned decisions, the appointments of the respondents are illegal. They do not, thus, have any legal right to continue in service.

26. It is true that the respondents had been working for a long time. It may also be true that they had not been paid wages on a regular scale of pay. But, they did not hold any post. They were, therefore, not entitled to be paid salary on a regular scale of pay. Furthermore, only because the respondents have worked for some time, the same by itself would not be a ground for directing regularisation of their services in view of the decision of this Court in Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] ." In State of M.P. v. Lalit Kumar Verma[10]: this Court held that :

"21. The legal position somehow was uncertain before the decision rendered by the Constitution Bench of this Court in Umadevi (3) [(2006) 4 SCC 1 :

2006 SCC (L&S) 753]. It has categorically been stated before us that there was no vacant post in the Department in which the respondent could be reinstated. The State had also adopted a policy decision regarding regularisation. The said policy decision also has no application in the case of the respondent. Even otherwise, it would be unconstitutional being hit by Article 16 of the Constitution of India." In Post Master General v. Tutu Das (Dutta)[11] this Court held as under :

"20. The statement of law contained in para 53 of Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] cannot also be invoked in this case. The question has been considered by this Court in a large number of decisions. We would, however, refer to only a few of them....

21. In Punjab Water Supply & Sewerage Board v. Ranjodh Singh [(2007) 2 SCC 491 : (2007) 1 SCC (L&S) 713] referring to paras 15, 16 and 53 of Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] this Court observed: (Ranjodh Singh case [(2007) 2 SCC 491 : (2007) 1 SCC (L&S) 713] , SCC p. 500 paras 17-18) '17. A combined reading of the aforementioned paragraphs would clearly indicate that what the Constitution Bench had in mind in directing regularisation was in relation to such appointments, which were irregular in nature and not illegal ones." A three-Judge Bench of this Court in Official Liquidator v. Dayanand[12], held thus :

"75. By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 :

2006 SCC (L&S) 753] is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed by different two-Judge Benches for declining to entertain the claim of regularisation of service made by ad hoc/temporary/daily wage/casual employees or for reversing the orders of the High Court granting relief to such employees — Indian Drugs and Pharmaceuticals Ltd. v. Workmen [(2007) 1 SCC 408 : (2007) 1 SCC (L&S) 270] , Gangadhar Pillai v. Siemens Ltd. [(2007) 1 SCC 533 : (2007) 1 SCC (L&S) 346] , Kendriya Vidyalaya Sangathan v. L.V. Subramanyeswara [(2007) 5 SCC 326 : (2007) 2 SCC (L&S) 143] and Hindustan Aeronautics Ltd. v. Dan Bahadur Singh [(2007) 6 SCC 207 : (2007) 2 SCC (L&S) 441]." The principles will have to be formulated bearing in mind the position set out in the above judgments. Regularisation is not a source of recruitment nor is it intended to confer permanency upon appointments which have been made without following the due process envisaged by Articles 14 and 16 of the Constitution. Essentially a scheme for regularisation, in order to be held to be legally valid, must be one which is aimed at validating certain irregular appointments which may have come to be made in genuine and legitimate administrative exigencies. In all such cases it may be left open

> to Courts to lift the veil to enquire whether the scheme is aimed at achieving the above objective and is a genuine attempt at validating irregular appointments. The State and its instrumentalities cannot be permitted to use this window to validate illegal appointments. The second rider which must necessarily be placed is that the principle as formulated above is not meant to create or invest in a temporary or ad hoc employee the right to seek a writ commanding the State to frame a scheme for regularisation. Otherwise, this would simply reinvigorate a class of claims which has been shut out permanently by Uma Devi. Ultimately, it would have to be left to the State and its instrumentalities to consider whether the circumstances warrant such a scheme being formulated. The formulation of such a scheme cannot be accorded the status of an enforceable right. It would perhaps be prudent to leave it to a claimant to establish whether he or she falls within the exceptions carved out in paragraph 53 and falls within the ambit of a scheme that may be formulated by the State. Subject to the riders referred to above, a scheme of regularisation could fall within the permissible limits of Uma Devi and be upheld.

The judgment in Renu was delivered on 12 February 2014. Neither of the orders of the High Court in the present case would indicate that the principles which have been enunciated by this Court have been considered.

The grievances which have been set out on behalf of the state government in the Special Leave Petition, and during the course of the hearing, include the following :

> In a Public Interest Litigation seeking the construction of a district court complex in Bandipora District the High Court proceeded to issue directions for the regularization of services of daily rated workers. These directions were totally unconnected to the reliefs which were sought in the PIL;
>
> By an order of the High Court dated 7 October 2015, the state government was directed to consider the claim for regularization of the daily rated workers as a one-time exception which required the state government necessarily to decide on the issue of regularization. The state government has constituted an empowered committee on 19 August 2015 to inquire into the issue of creating posts for the regularization of nearly sixty one thousand daily rated and casual workers working in various departments of the state government. These include workers on the establishment of the High Court and the district courts; The High Court has pre-empted consideration by issuing a direction for regularisation;
>
> There is a lack of clarity in the actual number of daily rated workers engaged in the High Court and the district judiciary, as well as in the nature of work performed. The list furnished by the Registrar General contains the names of several Sewaks whose services are governed under a GO dated 28 July 2016. All the two hundred nine workers do not perform the same job and who among them is eligible to be considered for regularization has yet to be determined;

The High Court has proceeded on the erroneous basis that the issue of regularization has attained finality. The dismissal of the Special Leave Petition by this Court on 16 December 2015 against an interim order dated 7 October 2015 does not conclude the issue. There is no vested right to seek regularization; and The High Court has erred, in its order dated 1 December 2015, in holding that daily rated workers on the establishment of the High Court would not be regulated by the rules governed by SRO 64 of 1994. If the Daily Rated Workers are to be regularized, the state government should be required to create a sufficient number of posts for the purpose.

We have adverted to the above grievances in order to emphasise that there is substantial merit in the submission that the High Court proceeded to issue directions for regularization without considering either the legal position enunciated in the judgments of this Court referred to above and without considering the prevailing rules and regulations on the subject. The High Court has observed in its order dated 1 December 2015 that over a considerable period of time the state government has not created the required number of posts for the state judiciary as a result of which work has been hampered. According to the High Court, appointment of daily rated workers was necessitated to ensure that judicial work does not suffer. The High Court opined that these workers have been rendering work which should have been assigned to persons appointed on a regular basis against sanctioned posts. It is unfortunate, in our view, that the state government has allowed the requirements of the state judiciary to be neglected over such a long period of time. The need to facilitate the proper functioning of the High Court and the district judiciary is a constitutional necessity which imposes a non-negotiable obligation on the state government to create an adequate number of posts and to provide sufficient infrastructure. The state government is to blame for the unfortunate situation which has resulted in a large number of persons being recruited on a daily wage basis.

We have already indicated above our conclusion that the direction for regularization was issued by the High Court without considering the relevant constitutional and legal principles. While some of the daily rated workers have been engaged over long periods of time, others have been engaged as recently as in 2015. The issue of whether such appointments were irregular or whether they were illegal should have been determined but has not been considered. Since the issue of regularization is a matter with which the state government is seized, as stated in the proceedings before this Court, we are of the view that at this stage it would be appropriate and proper to set aside the impugned order of the High Court which directs the regularization en masse of two hundred nine daily rated workers. While doing so, we restore the proceedings back to the file of the High Court for reconsideration. We order accordingly, leave it open to the High Court to reconsider the entire matter afresh having due regard to the constitutional and legal principles enunciated and having regard to all relevant factual aspects.

The Civil Appeal shall accordingly stand disposed of. There shall be no orders as to costs.

.....CJI [T S THAKUR] .....J [Dr D Y CHANDRACHUD] .....J [L NAGESWARA RAO] New Delhi December 08, 2016.

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[2] (2014) 14 SCC 50 [4] (2006) 4 SCC 1 [6](2009) 8 SCC 556 [8] (2014) 14 SCC 50 [10](2014) 4 SCC 583 [12](2015) 14 SCC 382 [14](2009) 4 SCC 342 [16] (2006) 6 SCC 310 [18] (2006) 5 SCC 493 [20] (2007) 1 SCC 575 [22] (2007) 5 SCC 317 [24] (2008) 10 SCC 1