# Vasapu L. Kumar, S/O Lakshmana ... vs Ongc Field Operators Union, Regd. ... on 5 January, 2018

## Author: M. Ganga Rao

## Bench: M. Ganga Rao

THE HONBLE SRI JUSTICE V.RAMASUBRAMANIAN and THE HONBLE SRI JUSTICE M. GANGA RAO

Writ Appeal Nos.285 of 2017 AND BATCH

05-01-2018

Vasapu L. Kumar, S/o Lakshmana Swamy,aged 31 years, R/o H.No.2-109, Main Road,Penumarthi

ONGC Field Operators Union, Regd. No.G.3048/3.C.1,Zone-II, Rajahmundry Asset; and others

Counsel for the appellant in all W.A.s : Mr. B. Adinarayana Rao,
Except W.A.No. 285 of 2017 for Mr. K. Venkata Rao
Counsel for Appellant in W.A.No 285 of 2017 : Mr.K.R.K.V.Prasad

Counsel for the respondents: Mr. C.V. Mohan Reddy,
Mr. Vedula Venkataramana
Mr. A. Satyaprasad

Counsel for petitioners in W.Ps.: Mr. Dasari S.V.V.S.V.Prasad
Mr. Rama Mohan Palanki

Counsel for respondent in W.Ps. : Mr. K. Venkata Rao

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>HEAD NOTE:

? Cases referred
1. (2015) 6 SCC 494
2. AIR 2008 SC 1867
3. 2015) 2 SCC 317
4. (2006) 4 SCC 1
5. (2009) 8 SCC 556
6. (2013) 14 SCC 65
7. Judgment dt. 12.10.2015 in L.P.A.654/2010
8. L.P.A.No.797/2013 and batch dt.29.04.2015
9. Order dt.20.11.2015 in W.A.Nos.229/2010 & batch

HONBLE SRI JUSTICE V. RAMASUBRAMANIAN
AND

HONBLE SRI JUSTICE M. GANGA RAO

Writ Appeal Nos.285, 287, 302, 303, 305, 306, 328,
373, 374, 375, 376, 378, 381, 382, 383, 384, 390, 391,
392, 405, 456, 513, 548, 551 and 558 of 2017
and
Writ Petition Nos.21077 of 2016, 8726, 36866 and 36884 of 2017

COMMON JUDGMENT:

(V. Ramasubramanian, J) Aggrieved by a common order passed by the learned Judge directing the management of ONGC to regularize the services of persons, who had completed 240 days of service in a period of 12 months, after their appointments on tenure basis in the year 2008, together with notional benefits, the management of ONGC has come up with 24 writ appeals. The 25th writ appeal (W.A.No.285/2017) is filed by an individual, who applied for appointment to a post in ONGC, pursuant to the recruitment notification issued in September, 2014. His dream is that if hundreds of workers are deprived of the benefit of regularization, he will get appointment. Apart from these 25 writ appeals, there are 4 writ petitions, which were left out of the batch of cases disposed of by the learned Judge and hence they are also tagged along with the writ appeals.

2. Heard Mr. B. Adinarayana Rao, learned Senior Counsel appearing for the appellant/management in 24 writ appeals Mr. K.R.K.V. Prasad, learned Counsel appearing for the appellant in one writ appeal and Mr. C.V. Mohan Reddy, learned Senior Counsel, Mr. Vedula Venkata Ramana, learned Senior Counsel and Mr. A. Satyaprasad, learned Senior Counsel appearing for the respondents. We have also heard Mr. Dasari S.V.V.S.V. Prasad and Mr. Rama Mohan Palanki, learned counsel appearing for the petitioners in the writ petitions.

3. The respondents in the writ appeals, filed by the management, were originally engaged as Field Operators through private contractors on contract basis from the year 1994/1995 or so. Raising certain demands on behalf of these contract labourers, the ONGC Contract Workers Union served a strike notice on 06-11- 1996. Subsequently, three more strike notices were issued on 16-07-1997, 03-10-1997 and 20-10-1997, demanding the recognition of the contract workers as the employees of the ONGC.

4. The strike commenced on 04-11-1997 and continued up to 28-11-1997, leading to a meeting being organised between the representatives of the management, office bearers of their union and also the Local Member of Parliament and the local Member of Legislative Assembly. In the meeting held on 11-10-1997, an understanding was reached between the management and the trade union, to organise these workers into Cooperative Societies and to engage their services through these Cooperative Societies. It was also agreed that the Cooperative Societies so formed will enter into agreements with the management under the Industrial Disputes Act, 1947 and that the agreement so reached will be operative from 01-01-1998 for a period of 5 years.

5. Immediately, after the expiry of the initial period of 5 years, another meeting was held on 12-01-2003 between the representatives of the management and the representatives of the Cooperative Societies, for chalking out the future course. It was agreed in the said meeting that the

existing contracts with some of those Cooperative Societies will stand terminated with effect from 01-01-2003 and that fresh contracts will be entered into between the societies and the ONGC for a period of 5 years with effect from 01- 01-2003. It is was further agreed in the said meeting that the members of the Cooperative Societies, who were academically/ technically qualified in the areas of their assignments (I.T.I., Diploma, Competency Certificate, Certificate in Fire Fighting, Degree, Post Graduation etc., from recognized Universities/ Institutions) may be taken up for consideration from existing semi- skilled to skilled categories. It was also agreed that ONGC will create and fill up 60 posts to meet operational requirements and to start the process of recruitment immediately. The process of recruitment in the second phase was agreed to be initiated in January, 2004 and it was agreed that ONGC will make efforts to fill up 60 posts per year totaling to 300 posts in a period of 5 years. ONGC also agreed that the members of the societies, who were found suitable for identified posts as per ONGC Modified Recruitment and Promotion Rules, 1980 and registered with Employment Exchange will be considered for appointments by granting age relaxation wherever required.

6. Pursuant to the agreement so reached on 20-01-2003, the management appears to have obtained details of workers and also sent proposals for creation of 60 posts to be filled up in the first phase. It is not known as to whether the promise to absorb 300 persons over a period of 5 years was fulfilled or not.

7. However, history repeated itself, when the term of 5 years agreed under the Memorandum of Understanding (MOU) dated 20- 01-2003 was about to come to an end, with the union serving a strike notice on 12-11-2007. The Assistant Commissioner (Labour), Vijayawada initiated conciliation proceedings and the proceedings continued before the Regional Labour Commissioner (Central), Hyderabad on 08-01-2008. In the conciliation proceedings held on 08-01-2008, the management agreed to provide term based employment to those society workers, who were technically qualified, subject to verification of certificates pertaining to fire fighting, paramedical, heavy vehicle driving licence, Telecom Competency Certificate, Degrees and Diplomas etc. The management also agreed that those society workers, who did not possess technical qualifications will be taken for term based employment upon their acquiring technical qualifications within 3 years and that till then they would continue as society workers. Society workers not falling under the aforesaid two categories, were agreed to be continued on contract basis for a period of 5 years with effect from 09-01-2008.

8. It appears that after the agreement reached in the course of conciliation proceedings, the management conducted a written examination followed by oral interview and medical examination. The society workers, who came out successful, were issued with orders of appointment dated 05-07-2008 as Field Operators on tenure basis for 4 years. Upon the expiry of the first period of 4 years in 2012, they were granted a second renewal for a further period of 4 years.

9. At this stage, the management issued a circular dated 01-09-2014 followed by a paper publication dated 05-09-2014 inviting applications for filling up the posts in A1, A2 and W1 levels from the open market. Fearing a breach of the agreement, the ONGC Field Operators Union and some of the workers employed on tenure basis, came up with a first batch of writ petitions seeking regularization of their services and also challenging the notification for recruitment from the open market.

Thereafter, another set of writ petitions came to be filed in the year 2015 and one writ petition came to be filed in 2016 with similar prayers.

10. All the writ petitions were tagged together and heard by a learned Judge of this Court. By a final order dated 30-12-2016, the learned Judge allowed all the writ petitions with certain directions. The operative portion of the order of the learned Judge in paragraph 147 of his judgment reads as follows:

> Accordingly the writ petitions are allowed as follows:
>
> (a) Those of the writ petitioners (except those mentioned in the para-142 above) who have been given term based appointments and who have completed 240 days in the period of 12 months after their respective appointments on term basis in 2008 shall be regularized by the ONGC in the posts to which are attached duties being performed by them presently within two months from today;
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> (b) They shall be granted notional benefits from the date they complete 240 days of service within the 12 calendar months from their first term based appointment in 2008 and also regular pay and allowances.
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> (c) Till the petitioners services are regularized as directed above, the ONGC shall not take up any regular recruitment for the posts in A1, A2 and W1 levels including as per circular dated 01.09.2014 issued by it. No costs.

11. Aggrieved by the directions issued by the learned Judge, the management has come up with the above writ appeals. A few individuals, who were denied relief by the learned Judge, have also come up with writ appeals. One person, who applied from the open market in response to the recruitment notification, also came up with a writ appeal. The writ appeals filed by the unsuccessful employees, require consideration on a case to case basis and hence, they were separated from the present batch. As a consequence, the present batch of cases is concerned only the claim for regularization and the directions issued by the learned single Judge.

12. Before looking at the grounds of attack to the order of the learned Judge, it will be useful to see how the learned Judge dealt with the claim of the workmen for regularization of their services. To begin with, the learned Judge took note of the historical developments by splitting them into five different periods of time, viz., (1) position prior to 1997, during which the respondents were engaged through private contractors; (2) the period from 1997 to 2002 when the respondents were formed into cooperative societies under the agreement dated 11.12.1997 and engaged through those cooperative societies; (3) the period between 2003 and 2008 when the engagement of workers through cooperative societies was ordered to continue with an additional undertaking on the part of the management to create about 300 posts in a phased manner over a period of five years and to accommodate the workmen as against those posts; (4) the period between 2008 and 2012 when in pursuance of an agreement reached before the Regional Labour Commissioner, the workers were given term based appointment directly by the management without any intermediary, for a period of

five years; and (5) the breach committed by the management towards the end of the year 2012, of the undertaking given before the Regional Labour Commissioner on 08.01.2008.

13. After recording the historical facts, the learned Judge took note of the contentions of both the parties and formulated the following points for consideration:

> (a) Whether the contention of the respondents that the cases involve disputed questions of fact and cannot be entertained under Article 226 of the constitution of India is correct?

(b) Whether the existence of a remedy of seeking a reference through the ONGC Field Operator Union under Section 10 of the Industrial Disputes Act, 1947 is, in the facts and circumstances of these case, a bar for entertainment of these Writ Petitions by this Court?

(c) Whether, in the facts and circumstances of these cases, it can be said that the ONGC is guilty of unfair labour pactice as defined in Section 2(ra) r/w Item 10 of Schedule V of the Act?

(d) Whether, on the facts of these case, the relief of regularization of their services sought by the petitioners in these Writ Petitions can be granted by this Court exercising power under Article 227 of the Constitution of India?

(e) Whether the decision in Umadevi (11 Supra) is a bar for grant of any relief of regularization to the petitioners?

(f) What is the relief to be granted?

14. On the 1st point arising for consideration, the learned Single Judge held that there are neither any disputed questions of fact nor any complex facts that could persuade the Court not to entertain the writ petitions and that in view of the decision of the Supreme Court in Oil and Natural Gas Corporation Limited v. Petroleum Coal Labour Union , a writ Court was entitled to deal with the issue of unfair labour practice.

15. On point No.(b), the learned Single Judge held that the availability of alternative remedy is not always a bar, but only a self imposed restriction and that since the workmen have been employed for more than 20 years through different modes of engagement designed by the management that may tantamount to unfair labour practice, the writ petitions cannot be thrown out on the ground of availability of alternative remedy.

16. On point No.(c) the learned Judge held that the act of the management in engaging the respondents first through private contractors, then through cooperative societies and later on term based appointments with a view to deprive them of the status and privileges of a regular workmen, tantamounted to an unfair labour practice as defined in Section 2(ra) r/w Item No.10 of Schedule-V of the Industrial Disputes Act, 1947. To come to the said conclusion, the learned Judge relied upon the decisions of the Supreme Court in Hindalco Industries Limited v. Association of Engineering

Workers and Sudershan Rajpoot v. Uttar Pradesh State Road Transport corporation .

17. On points (d) (e) and (f), the learned Judge took note of the reliance placed by the management on the decision of the Supreme Court in State of Karnataka v. Umadevi and the decision of the Supreme Court in Maharashtra State Road Transport Corporation v. Casteribe Rajya Parivahan Karmachari Sanghatan , in which Uma Devi was distinguished. The learned Judge also took note of the decision in Nihal Singh v. State of Punjab and others , and concluded that the decision in Petroleum Coal Labour Union pushed of the other decisions to the background. Thereafter the learned Judge went on to point out that at least two High Courts, viz., Delhi and Gujarat has considered identical issues respectively in Krishan Gopal v. ONGC and the Executive Director/Basin Manager Oil and Ntural Gas Corporation Ltd. v. ONGC Employees Mazdoor Sabha and held in favour of the workmen. Therefore, the learned Judge thought fit not to follow the decision of the Division Bench of the Madras High Court in M. Rajan v. Oil and Natural Gas Corporation and eventually held that the relief of regularization can be granted by the writ Court and that the decision in Umadevi was not a bar for grant of regularization.

18. After holding so, the learned Judge segregated the cases of a few individuals in para146 of his decision and held that except those individuals everyone else was entitled to the reliefs that were indicated in para-147 of his judgment. We have already extracted para-147 earlier.

19. Assailing the judgment of the learned Judge, it is contended by Mr. B. Adinarayana Rao, learned Senior Counsel appearing for the management

1. That the learned Judge committed a serious error in framing the first point for consideration, by mistaking an argument advanced on behalf of the management;

2. That the learned Judge overlooked the fact that having raised an industrial dispute leading to the initiation of conciliation proceedings, it was not open to the workers to invoke the writ jurisdiction of this Court;

3. That the learned Judge erred in holding that there were no disputed questions of fact nor any complex facts, when the very nature of the duties performed by the writ petitioners were in dispute;

4. That the question of unfair labour practice prohibited by the Industrial Disputes Act should normally be allowed to be adjudicated only by the mechanism provided under the Industrial Disputes Act itself;

5. That the probable delay on the part of an Industrial Tribunal/ Labour Court in adjudicating industrial disputes cannot be a ground for directly invoking the writ jurisdiction of this Court;

6. That the very finding of unfair labour practice recorded by the learned Judge was contrary to facts, as the respondents are receiving almost all benefits as the regular employees are in receipt of;

7. That even by the standards stipulated in the decision of the Constitution Bench in Umadevi, a writ Court cannot direct regularization of the services of workmen;

8. That the inspiration drawn by the learned Judge from the decision in Petroleum Coal Labour Union, is not correct in view of the fact that the said decision of the Supreme Court arose out of an adjudication by appropriate authorities under the Industrial Disputes Act;

9. That the direction issued by the learned Judge to regularize the services of the respondents in the posts to which are attached duties being performed by them presently is meaningless and unsustainable; and

10. That the prohibition order issued by the learned Judge not to make appointments to posts in A1, A2 and W1 levels, went beyond the scope of the writ petition.

Contentions 1, 2 & 3:

> 20. The first contention of the learned Senior Counsel for the management is that the first mistake committed by the learned Judge was in the very framing of points (a) and (b) arising for consideration. The second contention is that the workers, after having raised an industrial dispute leading to the initiation of conciliation proceedings, could not have invoked the writ jurisdiction of this Court and that this objection of the management was misunderstood by the learned Judge to be an argument revolving around the existence of disputed questions of fact and the availability of alternative remedy. The third contention is that the question revolving around the nature of the duties performed, is actually a question of fact.
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> 21. We have carefully considered the above submissions.
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> 22. It is conceded by Mr. B. Adinarayana Rao, learned Senior Counsel for the management that there is no dispute at least with respect to the following facts, which are borne out by the very records produced by the appellant/management:
>
> (a) The respondents were engaged through contractors even prior to the year 1997 and these contract workers at Narsapur went on a strike with effect from 04-11-1997 and also intensified their strike with effect from 10-11-1997 and continued the strike up to 28-11-1997. The strike was actually a sequel to a strike notice served by the ONGC Labour Contract Workers Union, Narsapur, on 06-11-1996 leading to the initiation of conciliation proceedings and the reference of the matter to the Industrial Tribunal, Visakhapatnam, by the Government of India for adjudication. In the meantime, two other strike notices were served on 16-7-1997 and 03-10-1997 followed by the contract workers going on strike from 04-11-1997. One of the demands made by them was to recognize the contract workers as ONGC employees. The 2nd and 3rd strike notices led to a fresh conciliation before the Assistant Commissioner of Labour, Visakhapatnam. But since the deadlock could not be

broken, a meeting between the high level officials of ONGC with the office-bearers of the Union took place on 25-11-1997 in the presence of the Member of Parliament representing Narsapur Constituency. On the basis of the assurance given at the meeting, the workers withdrew their strike from 28-11-1997. In a 2nd meeting held on 11-12-1997, a settlement was reached and the understanding was reduced into writing. As per this understanding signed by all parties, the workers were to form themselves into Cooperative Societies and the work entrusted till then to the contractors should be entrusted to the Cooperative Societies. What was agreed to was to become operative from 01-01-1998 and the same was to remain in force for a period of five years. All these facts are borne out by the Memorandum of Understanding dated 11-12-1997, a copy of which is filed in the material papers by the Management.

(b) In Annexure-I to the Memorandum of Understanding dated 11-12-1997, the terms and conditions of engagement of the workers through Cooperative Societies were incorporated. These terms and conditions included (i) a revision of wage at the specified rate,

(ii) provision of kits and liveries like safety shoe, helmet etc.,

(iii) minimum food facilities along with dormitory accommodation, wherever drill site accommodation is available, (iv) medical facilities either through ESI or through Jan Arogya Insurance Policy,

(v) bonus as per the Payment of Bonus Act, (vi) coverage under the Workmens Compensation Act, 1923, (vii) PF at the stipulated rate and (viii) Group Insurance coverage for every member of the Cooperative Society for an amount of Rs.one lakh.

(c) Two clauses in Annexure-I to the Memorandum of Understanding dated 11-12-1997 may be of importance. The first is Clause 6 under which the question of payment of arrears was referred to arbitration. We do not know the outcome of this arbitration. The 2nd provision is Clause 9 which stipulated that in case any vacancy arises in future in K.G. Project, Narsapur, the members of the Cooperative Society will be considered subject to fulfillment of current applicable R&P Regulations of ONGC.

(d) Under Clause 12 of the Annexure-I to the Memorandum of Understanding dated 11-12-1997, it was agreed that the firemen on deputation, will be considered by the Management for appropriate posts, as and when they get qualified and undergo prescribed training and get trade certificates at their own cost.

(e) The above Memorandum of Understanding dated 11-12-1997 was to be in force for a period of five years from 01-01-1998.

(f) A few days before the expiry of the term of five years under the Memorandum of Understanding dated 11-12-1997, the Contract Workers Union formed a Joint Action Committee and raised a demand through a notice dated 20-12-2002 for regularization/ absorption.

(g) Thereafter, discussions were held and the minutes of the meeting held on 12-01-2003 were recorded with representatives of both sides signing the same.

(h) The agreement reached in the meeting held on 12-01-2013, included (i) an undertaking by the Management to renew the contracts with the Cooperative Societies for a period of five years from 01-01-2003, (ii) revision of wages, (iii) availability of the services of the duty doctors at ONGC, for the contract workers,

(iv) the consideration of the cases of members of Cooperative Societies who are technically/academically qualified in the areas of their assignments, for conversion from semi-skilled to skilled categories, (v) the creation and filling up of 60 posts in the first phase to meet the operational requirements, (vi) the creation of 300 posts to be filled up at the rate of 60 posts per year and

(vii) the filling up of those posts with the members of the Societies who are found suitable as per ONGC Modified Recruitment and Promotion Rules, 1980. These particulars could be culled out from the minutes of the meeting dated 12-01-2003 filed in the material papers by the Management.

(i) The aforesaid agreement reached on 12-01-2003 was also to be in force for a period of five years viz., up to 31-12-2007.

(j) Therefore, a few days before the said tenure was to expire, the Union again served a strike notice dated 12-12-2007.

(k) Immediately, the Assistant Commissioner of Labour, Vijayawada, initiated conciliation proceedings.

(l) The discussions continued before the Regional Labour Commissioner (Central), Hyderabad, on 08-01-2008.

(m) In the discussions held before the Regional Labour Commissioner, it was suggested by the Conciliation Officer that around 280 society workers who were technically qualified should be considered for term based employment.

(n) In the discussions held before the Regional Labour Commissioner, the Management agreed to give age relaxation and provide term based employment to the society workers who were qualified, subject to verification of certificates.

(o) Those workers having non-technical qualifications were also agreed to be taken for a term based employment on condition that they acquired the technical qualifications within three years.

(p) The remaining society workers were agreed to be engaged on contract for a period of five years with effect from 09-01-2008.

(q) Interestingly, one of the agreements reached before the Regional Labour Commissioner (Central), Hyderabad, was that the workers who were members of the Cooperative Societies, will not initiate any proceedings before any Forum in respect of any issues directly or indirectly related with the subject matter of the agreement, during the period of five years of the validity of the contract.

(r) Pursuant to the agreement reached before the Regional Labour Commissioner on 08-01-2008, the Management appears to have conducted a written examination followed by oral interview, not only for 280 society workers who were technically qualified and whose cases were agreed to be considered for a term based employment, but also for the candidates from the open market. Candidates who were successful were engaged as Field Operators for a period of four years on tenure basis.

(s) On the expiry of the period of four years, a similar process of short listing in the form of written examination, oral interview and medical examination was held and the candidates were appointed for a further period of four years with effect from 2012.

(t) It is not known whether the original undertaking given by the Management for the creation of 300 posts and the filling up of the same at the rate of 60 posts per year, was ever fulfilled by the Management.

(u) But by a Circular dated 01-9-2014 and an advertisement issued in the Newspapers on 05-9-2014, the Management sought to fill up posts in A1, A2 and W1 levels, triggering the litigation on hand.

23. Since all the facts that we have extracted in the preceding paragraph are borne out by the copies of documents filed by the Management themselves in the material papers, it was virtually conceded by Mr. B.Adinarayana Rao, learned Senior Counsel appearing for the appellant/Management, that there was no dispute in this batch of cases on facts. On the other hand, his contention was that the learned single Judge misunderstood the nature of his objections to the maintainability of the writ petitions as one revolving around disputed questions of fact or complicated questions of fact. The learned Senior Counsel admitted that there were no disputed questions of fact and that it was not his contention that the writ petitions are not maintainable on account of the existence of disputed questions of fact.

24. The contention of the learned Senior Counsel for the Management is that what was in dispute was jurisdictional facts which would determine the maintainability of the writ petition. According to the learned Senior Counsel, the Union as well as the respondents were seeking regularization of the services of the workers in the posts to which the duties performed by them were attached. But there was nothing on record to show what was the nature of the duties performed by these respondents.

Hence, his contention is that the question as to what kind of duties the respondents were called upon to perform and the question as to what type of posts were available in the organization for the performance of these duties, became questions of fact that could not be gone into in a writ petition, but could be conveniently dealt with only by the Labour Court/Industrial Tribunal. It was this contention raised by him, that according to the learned Senior Counsel, was not properly understood and appreciated by the learned Judge.

25. Let us assume for a moment that the true nature and spirit of the contentions raised by the Management were not looked at from the proper perspective by the learned Judge. Even then we do not think that a different conclusion could have been reached by the learned Judge.

26. The question as to the nature of the duties performed by the respondents and the question as to the existence of posts to which such duties are assigned in the organization, are all questions that may be relevant, from the point of view of service jurisprudence. These questions have no relevance to industrial or labour law jurisprudence. Unfortunately, the dichotomy between service law and labour law is lost sight of many a time and the principles applicable in one branch are applied wrongly in the other.

27. Two expressions are of significance in service law. They are (i) civil posts and (ii) Civil Services of the State. The appointment of a person to a civil post or in the Civil Services of the State, brings within it, certain consequences, both for the holders of these posts and for the Government. For instance, the appointment of a person to a civil post or to the Civil Services of the State, is one of status. It is protected by the provisions of the Constitution, as the sovereign functions of the State are sought to be performed through them. Therefore, for anything and everything they have to look up to the appointing or controlling authority and their services are to be available throughout. The service conditions of persons appointed to civil posts or the Civil Services of the State are governed by Statutory Rules issued in exercise of the power conferred by the proviso to Article 309 of the Constitution. There are any number of Rules such as Fundamental Rules, General Rules, Special Rules, Leave Rules, Pension Rules etc., which apply to these persons, whom we call in common parlance as Government Servants.

28. In contrast, the engagement of a person in an industry or factory or other establishment is not one of status. It could be one of contract, but the Management and the workmen are not entitled to contract out of the Statutes such as Factories Act, Industrial Disputes Act, ESI Act, EPF Act, Industrial Employment (Standing Orders) Act, Payment of Wages Act, Payment of Gratuity Act, Maternity Benefit Act etc.

29. Another important distinguishing feature is that a person who is engaged by an industrial establishment in a workman category, acquires statutory protection only after his appointment. In respect of some benefits, such as ESI, PF etc., he acquires protection after being engaged for 60 days or more. He acquires protection against termination, upon completion of 240 days of service in a period of 12 calendar months. He acquires permanency, in some States (and not in all States), upon completion of 480 days of service within a period of 24 calendar months under certain special enactments such as Tamil Nadu Industrial Employment (Conferment of Permanent Status on

Casual Workmen) Act, 1981 (such an enactment is not there in the State of Andhra Pradesh).

30. In other words, a workman category employee in an industrial establishment acquires statutory rights, only after appointment and that too after completing a particular period of service. On the contrary, every person qualified for appointment to a civil post or to the Civil Services of the State, acquires a Constitutional right, even before appointment, for consideration of his case for appointment in accordance with the Constitutional scheme.

31. Under labour law, strike is a weapon in the hands of the workmen and lockout is a weapon in the hands of the management, to strike a balance. But in service law, Government servants have no right to strike work (Refer TK Rangarajan vs Government of Tamil nadu (2003) 6 SCC 581). The fact that the decision in Umadevi lies in the realm of service law and not labour law, was already indicated by the Supreme Court in Para 17 of Ajaypal Singh Vs. Haryana Warehousing Corporation (2015) 6 SCC 321).

32. Therefore, we must always keep in mind the complete distinction between persons whose cases are to be tested on the principles of service jurisprudence and persons whose cases are to be tested on labour law jurisprudence. We must also be cautious while looking at the ratio decidendi of the decisions pronounced by the Supreme Court, in these two different jurisdictions.

33. If we keep in mind the above distinction, it will be clear that the questions relating to the nature of the duties performed by the respondents and the posts to which these duties are attached, may hardly be of significance, while dealing with a demand for permanency made by a workman category employee in an industrial establishment. If it is so, then it follows that there were virtually no jurisdictional facts as sought to be contended by the learned Senior Counsel for the Management that required the workmen to have these questions adjudicated by the Labour Court.

34. Yes, it is true that the workmen as well as the Unions repeatedly raised industrial disputes, participated in conciliation proceedings, but came up before this Court invoking the writ jurisdiction. But we do not think that there was anything wrong in the respondents choosing to do so. On the other hand, we are of the view that the Management left them with no alternative except to invoke the extraordinary jurisdiction of this Court, in the peculiar facts and circumstances. This can be seen from the number of times the workmen raised an industrial dispute and how such industrial disputes came to be resolved. At the cost of repetition, we shall record the following:

> (i) The story that unfolds in the batch of cases on hand has its origin, to a strike notice served on the Management by the ONGC Limited Contract Workers Union, Narsapur, on 06-11-1996. Since the expression industrial dispute is defined in Section 2(k) of the Industrial Disputes Act, 1947, to mean any dispute between employers and employees or employers and workmen or workmen and workmen, which is connected either with employment or with non employment or the terms of the employment or with the conditions of labour of any persons, the service of a strike notice by the ONGC Limited Contract Workers Union was construed rightly as giving rise to an industrial dispute within the meaning of the Act. This lead to the initiation

of conciliation proceedings and upon failure of the conciliation, the matter appears to have been referred to the Industrial Tribunal, Visakhapatnam, by the Ministry of Labour, Government of India. These facts are stated in para 02 of the Memorandum of Understanding reached between the Management and the Union in the presence of the local Member of Parliament on 11-12-1997.

(ii) Three more strike notices dated 16-7-1997, 03-10-1997 and 20-10-1997 were served by the Union, forcing the Assistant Commissioner of Labour (Central), Visakhapatnam to initiate fresh conciliation.

(iii) But both parties went out of the conciliation proceedings and participated in a high level meeting held on 25-11-1997, at the behest of the local Member of Parliament, as seen from para 03 of the Memorandum of Understanding, dated 11-12-1997. The agreements reached between the parties on 11-12-1997 have already been discussed by us elsewhere and hence they are not repeated. But it is sufficient to point out that under the said understanding, persons who were working through contractors, were formed into Cooperative Societies and they were engaged through these Cooperative Societies for a period of five years with effect from 01-01-1998.

(iv) Towards the end of the five year period, a Joint Action committee was formed by the Unions of Contract Workers and they served a notice on 20-12-2002. Immediately, a meeting was organized on 12-01-2003 between the representatives of the Management and the office-bearers of the Union, in the presence of one Union Minister of State in the Government of India and another Minister of the State Government. The Director (HR) of ONGC also participated in the meeting convened in the presence of the Minister of State for Consumer Affairs, Government of India and the Minister for Energy, Coal and Boilers of the Government of Andhra Pradesh.

(v) In the agreement reached on 12-01-2003, the contracts of the Cooperative Societies were agreed to be renewed for a further period of five years. In para 6 of the said agreement, an understanding was given by the Management to convert semi-skilled workmen to skilled category, if they were technically/ academically qualified in the areas of their assignments. In para 8 of the said Memorandum of Understanding dated 12-01-2003, 300 posts were agreed to be created over a period of five years, to be filled up at the rate of 60 posts per year. Thus an industrial dispute was averted probably before even the initiation of conciliation proceedings, in January, 2003.

(vi) History repeated itself towards the end of the five year term under the Memorandum of Understanding dated 12-01-2003, when a strike notice was served by the Union on 12-12-2007.

The Assistant Commissioner of Labour, Vijayawada, initiated conciliation and they were taken over by the Regional Labour Commissioner (Central), Hyderabad, on 08-01-2008. In the minutes of the

conciliation proceedings held on 08-01-2008 the Regional Labour Commissioner (Central), Hyderabad, informed all parties that around 280 society members who are technically qualified will be considered for term based employment. With regard to relaxation in physical requirements, the matter was taken up with the Chief Labour Commissioner (Central), New Delhi. In fact, the proceedings dated 08-01-2008 were signed even by the Regional Labour Commissioner (Central), Hyderabad, we do not know why the proceedings dated 08-01-2008 were not accorded the status of a settlement under Section 12(3) of the Industrial Disputes Act, despite the fact that the agreement was reached in the course of conciliation proceedings. In the last paragraph of the minutes of the conciliation proceedings dated 08-01-2008, the Unions as well as the members of the Cooperative Societies agreed to withdraw the cases from the Courts/Tribunals/Conciliation Officers/High Court and to submit proof of withdrawal of cases to the Management, so as to enable the Management to provide term based employment to the society workers. The Unions also agreed, as seen from the last paragraph of the minutes of the conciliation proceedings dated 08-01-2008, not to facilitate any proceedings before any Forums in respect of any issues which are directly or indirectly related with the subject matters covered by the meeting, during the subsistence of the fresh contracts for a period of five years.

(vii) But unfortunately, the members of the Societies were subjected to a process of written examination followed by interview, in the year 2008, to be given a term based appointment for four years. Upon expiry of the period of four years, they were again subjected to similar written examination followed by interview in the year 2012, to be granted just an extension for another 4 years.

35. The above sequence of events which are not controverted would demonstrate that every time the workmen served a strike notice leading to the initiation of conciliation proceedings, some kind of sops were given by the Management for a temporary period of time to avert the danger of the drilling operations coming to a grinding halt. But even the undertaking given by the Management before the Regional Labour Commissioner (Central), does not appear to have been fulfilled. The Management appears to have gained an expertise in dousing the fire of labour unrest once in five years, without actually conceding to the demand made by the workers for more than 20 years from 1996. It is in these circumstances that the workmen have taken recourse to the Constitutional remedy, since their right to life and livelihood guaranteed under Article 21, has been made a mincemeat by the Management.

36. To be precise, whenever there was labour unrest and an industrial dispute was raised, the same was tackled either through political intervention or through the Conciliation Officer. From the year 1997 till date, the industrial disputes were resolved twice in the presence of the political leaders and twice in the presence of the Conciliation Officers, without the original demand for absorption and permanency not bearing fruit at all. Probably one more round of industrial dispute and conciliation would have ensured for the Management that those who staked a claim for regularization in 1997 would have reached the age of superannuation. If this is what the Management actually wanted, the workers were well within their rights to come to this Court.

37. It is also not as though the respondents rushed to the Court without first making a demand. The ONGC Field Operators Union sent a representation dated 09-6-2014 to the Management with copies to various Ministries and also to the Regional Labour Commissioner (Central), Hyderabad. The Deputy Chief Labour Commissioner (Central) called for a report from the Management and also advised the Labour Enforcement Officer of the locality to make an inspection and submit a report. The Labour Enforcement Officer (Central), Rajahmundry, made an inspection and submitted a report merely recording a portion of the past history. Unlike the previous occasions, even the conciliation proceedings do not appear to have been initiated. At least nothing is placed before us on record to show the initiation of conciliation after the year 2014.

38. In the light of the above circumstances and the history of this long drawn out litigation, we do not think that the workers had a better alternative in proceeding through the industrial disputes route.

39. Persons who were identically placed as the respondents herein, but from the Karaikal region, adopted the industrial disputes route even in the first instance and eventually got the award passed by the Industrial Tribunal confirmed by the Supreme Court in its decision in Petroleum Coal Labour Union.

40. It was not as though the Management was very charitable to the workers who went through the industrial disputes route. After fighting their case before the Industrial Tribunal, the Management prosecuted the dispute before a learned single Judge of the High Court, then a Division Bench of the High Court and thereafter before the Supreme Court. Therefore, the contention that the respondents ought to have pursued their remedy through the industrial disputes route, is not borne out of the noble intentions.

41. In fact, persons in Management today do not seem to have appreciated the fact that the failure of the respondents to take the industrial disputes route has actually benefited the Management. Since the High Court dealing with a writ petition under Article 226 does not merely look at the plight of the individual workmen before the Court but also takes into account a larger picture including the stability of the Management, we are very conservative in granting benefits to the workmen. This is why the learned Judge directed absorption with effect from the date of completion of 240 days of service after the appointment on term based employment in the year 2008. If the workmen had gone to the Labour Court (or if they had been allowed by the Management to go before the Labour Court in 1997 or 2003), the workmen would have gained regularization from a period much before 2008 or 2009, causing a severe dent in the coffers of ONGC. In fact, the Management should thank the workers for approaching this High Court and walking away with a limited benefit than what they would have got through the Labour Court. Hence, we are of the considered view that the first three contentions do not merit acceptance.

CONTENTION No.4 -- UNFAIR LABOUR PRACTICE:

42. The fourth contention of the learned Senior Counsel for the appellant/Management is that the question of unfair labour practice should normally be allowed to be adjudicated by the mechanism

provided under the Industrial Disputes Act and that a Writ Court should not venture to adjudicate upon the same. But the learned Judge recorded that the Management was guilty of unfair labour practice within the meaning of Section 2(ra) of the Industrial Disputes Act read with Item No.10 of Schedule-V of the Industrial Disputes Act. This according to the learned Senior Counsel, was an error of jurisdiction.

43. It is true that unfair labour practice within the meaning of Section 2(ra) read with Schedule-V to the Industrial Disputes Act is prohibited by the Industrial Disputes Act. Employing workmen as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workmen is included in Item No.10 of Schedule-V to the Industrial Disputes Act.

44. Chapter VC of the Industrial Disputes Act contains two provisions, one in Section 25T prohibiting unfair labour practices and another in Section 25U providing for penalty for committing unfair labour practices.

45. Section 25T prohibits the employer, as well as the workmen and Trade Union, irrespective of whether the Trade Union is registered under the Trade Unions Act or not, from committing any unfair labour practice. Any person committing an unfair labour practice is made liable for punishment under Section 25U.

46. But under Section 34(1) of the Industrial Disputes Act, 1947, no Court can take cognizance of any offence punishable under the Act, except on a complaint made by or under the authority of the appropriate Government. Therefore, if the workmen had taken the industrial disputes route, they could have at best sought the prosecution of persons responsible, in terms of Section 25U. Such prosecution would not have brought the desired results for the workmen.

47. We may also look at the issue from another angle. Right from the year 1997, the plight of these workers and the act of the Management in retaining them for a long number of years as temporaries has been brought to the notice of the appropriate Government. But the Government did not take any action for preventing this unfair labour practice. Therefore, all that the workers did was to bring to the notice of the learned Judge that what has been done for the past 20 years on admitted facts constituted an unfair labour practice. In fact, the Supreme Court took note of this in Petroleum Coal Labour Union, the facts of which were exactly identical to the facts of the batch of cases on hand, except that the Union in that case undertook a long sojourn from the Industrial Tribunal up to the Supreme Court.

48. Inviting our attention to the decision of the Supreme Court in Sarva Shramik Sangh v. Indian Smelting & Refining Co. Ltd., and others , it is contended by Mr. B. Adinarayana Rao, learned Senior Counsel for the appellant that the sine qua non for the application of the concept of unfair labour practice is the existence of a direct relationship of employer and the employee and that until that basic question is decided, the forum recedes to the background. In other words, his contention is that if the learned Judge had to give relief on the ground that there was unfair labour practice, the learned Judge ought to have found that there was a direct relationship of employer and employee,

but a decision on the said question may have to be made only by the Labour Court or the Industrial Tribunal and not by a Writ Court.

49. We have two difficulties in accepting the above contention. The first is that the decision in Sarva Shramik Sangh arose out of a dispute as to whether the workmen were entitled to go before the Labour Court under the Industrial Disputes Act or before the appropriate authority under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Supreme Court held that in order to entertain a complaint under the Maharashtra Act, the complainant should first establish that he was an employee of the person against whom the complaint is made. In the batch of cases on hand, no conflict of jurisdiction as between the two different authorities created under different Labour Welfare Legislations has arisen.

50. The second difficulty in accepting the above contention of the learned Senior counsel for the appellant is that in the batch of cases on hand, the workmen were first engaged through contractors up to 1997, then engaged through Cooperative Societies for a period of 10 years and later engaged with effect from 01-01-2008, directly by the appellant. Therefore, there is no dispute with respect to the existence of employer and employee relationship. Paragraph 24 of the decision in Sarva Shramik Sangh itself clarifies that where there is no dispute, with respect to the relationship, there is no confusion with respect to jurisdiction.

Contention 5:

51. The next contention of the Learned Senior Counsel for Management is that the possibility of delay in having the matter adjudicated through the industrial dispute route cannot be a ground for the workmen to invoke the writ jurisdiction of this Court.

52. We agree. As a matter of fact the availability of alternative remedy used to be countered by persons who invoke the writ jurisdiction of this Court on the ground that the alternative remedy will not be efficacious. But delay, by itself may not lead to the presumption that the remedy was ineffective.

53. Today the remedy of a Writ itself has become ineffective in some cases and in some Courts, due to the huge pendency in High Courts. Therefore, it is true that the possible delay in getting relief through the industrial disputes route cannot be a ground for bypassing the alternative remedy.

54. But in the batch of cases on hand, there is a long history. Whenever the workmen and the unions ignited the fire of industrial dispute, the Management switched over to the fire-fighting mode and eventually ensured that a permanent solution to the problem was never reached. In this process a period of more than 20 years has gone. Therefore, this is not a case where the workmen could be expected to go to the first point in the game of Snakes & ladders and start the exercise all over again.

Contention 6:

55. The next contention of the Learned Senior Counsel for the appellant-Management is that the respondents are actually receiving almost all benefits like the regular employees and that therefore the finding that they are retained as temporaries for the purpose of depriving them of the benefits available to regular employees, is contrary to facts.

56. But we fail to understand the logic behind the refusal of the Management to grant the relief of regularisation, if the Management is providing all benefits to these workmen as are admissible to the regular employees. If the respondents are in receipt of all benefits as are payable to the regular employees, then the grant of regularisation to these workmen may not cause any prejudice to the Management. The Management can as well treat them as regular employees, if they were not discriminating them from the regular employees.

57. On admitted facts it is seen that the Management is fighting a similar litigation before various Courts across India from persons who are identically placed as the respondents herein. All those litigations are meaningless and they all can come to a close if the Management was extending the same benefits as admissible to the regular employees.

Contention 7:

58. The next contention of the Learned Senior Counsel for the Management is that even by the standards stipulated in the decision of the Constitution Bench in Umadevi, a Writ Court cannot direct regularisation of the services of the workmen. The learned Senior Counsel for the Management conceded that the decision in Umadevi arose under the Service law, as it concerned (a) the cases of persons engaged in the Commercial Taxes Department of the State of Karnataka, whose claim for regularisation was rejected by the Administrative Tribunal and (b) the cases of persons engaged by the Government of Karnataka and its local bodies. But according to the Learned Senior Counsel the Constitution Bench laid down the law in para 43 of the report, in general terms, to the effect that the High Courts acting under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularisation or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional scheme. Therefore the Learned Senior Counsel for the Management contended that the principle laid down by the Constitution Bench in Umadevi is not confined to service law, but also applicable to industrial law and that a Writ Court under Article 226, cannot issue a direction for regularisation/absorption.

59. But we do not think that the decision in Umadevi is so elastic as to cover cases under the industrial law. The reference to daily wage employees, temporary employees etc in Umadevi should be taken to be confined only to persons employed in Government service or those employed in institutions that fall within the definition of the expression State under Article 12 of the Constitution. The Judgment in Umadevi should be read with reference to the context in which it was rendered. In Umadevi the Supreme court was dealing with cases of persons employed on daily wages in the Commercial Taxes Department or in Zilla Parishads. Therefore the reference to the Constitutional scheme, wherever it appears in Umadevi, is a reference to Articles 14, 16, 309, 320 and 335 of the Constitution.

60. As we have pointed out in a separate Paragraph devoted to the distinction between service law and labour law, all labour welfare legislations are aimed at the prevention of exploitation of labour, which has a direct nexus to Article 21. Therefore predominantly the reference to a Constitutional scheme, whenever it takes place in labour law, is with reference to Article 21. In contrast, it is always with reference to Articles 14, 16, 309, 320 and 335 in Service law. Therefore the observation made by the Supreme Court in Umadevi that a Writ Court cannot normally issue a direction for regularisation, absorption etc is confined to the service law context.

61. Though the learned Senior Counsel for the appellant placed heavy reliance upon a few portions of the judgment in Maharashtra State Road Transport Corporation and another v. Casteribe Rajya Parivahan Karmchari Sanghatana , in support of his contention that a High Court cannot issue directions for absorption or regularization, we do not think that the said decision can be understood in that fashion. What happened in Maharashtra State Road Transport Corporation was that the registered Trade Union filed complaints before the Industrial Court, Bombay under the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Some of the practices adopted by the Management were held to be Unfair Labour Practices and the others not. When the matter landed up before the Supreme Court, the contention of the Management was that the grant of permanent status was contrary to the procedure prescribed in General Standing Order 503 and contrary to the law laid down in Umadevi. While rejecting the said contention, the Supreme Court pointed out in Para-35 of the report that Umadevi is an authoritative pronouncement for the proposition that the Supreme Court under Article 32 and the High Courts under Article 226 should not issue directions for absorption, regularization etc. But in Para-36, the Supreme Court pointed out that Umadevi does not denude the Industiral and Labour Courts of their statutory power under Section 30 read with Section 32 of the Maharashtra Act.

62. Therefore, what was said by Umadevi in Para 35 was not in the context of the question whether the workmen should have gone to the Labour Court or could have come to the High Court under Article 226 directly.

63. At the cost of repetition, we have to point out again that the decision in Umadevi was in the context of Service Jurisprudence and unfortunately there is a tendency to mix up the chaff and the grain. In the batch of cases on hand, one set of employees adopted the industrial disputes route as against the very same employer viz., ONGC and succeeded before the Supreme Court in Petroleum Coal Labour Union case. Therefore, driving every group of employees in every region to go back to the original point of travel, could at the most give a sadistic pleasure and nothing else. As we have pointed out earlier, in Petroleum Coal Labour Union, the very same Management challenged even the jurisdiction of the Industrial Tribunal to grant the relief. Therefore, it is not as though the management is going to accept the jurisdiction of any of the Courts. Perhaps according to the management, any Court Civil, Industrial or Writ, which orders regularization, would have no jurisdiction.

64. The reliance placed upon the decision in Union of India v. Vartak Labour Union , is also misplaced. In Vartak Labour Union, the dispute concerned persons employed as casual labourers in the Border Roads Organisation, which was part of a department of Union of India. Therefore, the

principles laid down in Umadevi will naturally be applicable to them. Interestingly, the Supreme Court set aside the direction issued by the High Court in Vartak Labour Union but nevertheless issued similar directions in the last paragraph.

65. The decision of the Supreme Court in Nihal Singh v. State of Punjab , made a distinction between irregular appointments and illegal appointments, again with reference to the Service Jurisprudence. Therefore, if at all, this decision can go only to the rescue of the respondents, as rightly observed by the learned Judge, since despite the directions in Uma Devi, the Supreme Court directed the regularization in Nihal Singh.

66. Placing reliance upon the decision of the Supreme Court in Hari Nandan Prasad v. Food Corporation of India , it is contended by Mr. B. Adinarayana Rao, learned Senior Counsel for the appellant that the Labour/Industrial Tribunals are given wide powers not only to enforce the rights but even to create new rights and that therefore, the respondents should have done well to approach the mechanism created under the Industrial Disputes Act.

67. In response to the above contention, Mr. Vedula Venkataramana, learned Senior Counsel appearing for one set of workmen contended that the jurisdiction of a Writ Court has already been held to be wide, by a Three Member Bench of the Supreme Court in Gujarat Steel Tubes Ltd., v. Gujarat Steel Tubes Mazdoor Sabha . In paragraphs 78 and 79 of its decision, the Supreme Court pointed out that so broad are the expressive expressions designedly used in Article 226 that any order which should have been made by the lower authority could be made by the High Court.

68. But the decision in Gujarat Steel Tubes Ltd., v. Gujarat Steel Tubes Mazdoor Sabha was sought to be distinguished by the learned Senior Counsel for the appellant on the ground that the said decision arose out of arbitral proceedings under Section 10 A of the Industrial Disputes Act.

69. We do not think that we need to go as far as the Supreme Court had gone in Gujarat Steel Tubes Ltd. In the case of the very same management, one group of individuals originally appointed through contractors before the year 1997, later appointed through Cooperative Societies for a period of 10 years from 1997 and then appointed on tenure basis directly by the employer from 2008 onwards, went through the rigmarole of an industrial dispute and reached the Supreme Court in Petroleum Coal Labour Union. A Writ Court is duty bound to ensure that similarly placed employees, who were first appointed through contractors before 1997 and appointed thereafter through Cooperative Societies for a period of 10 years from 1997 and then appointed on tenure basis by the Employer himself receives the same benefit.

70. As we have pointed out elsewhere, the management should thank the workmen for not going to the Labour Court/ Industrial Tribunal. Since the workmen came up with a writ petition, they could get a benefit only with prospective effect from 2008, thereby wiping out a period of service that they rendered for more than 20 years before 2008.

Contention 8:

71. The next contention of the Learned Senior Counsel for the Appellant is that the inspiration drawn by the Learned Judge from the decision in Petroleum Coal Labour Union may not be correct in view of the fact that the said decision arose out of an adjudication by the appropriate authorities under the Industrial Disputes Act.

72. Factually it is true that the decision in Petroleum Coal Labour Union arose out of a case that traveled from Karaikal in the Union Territory of Puducherry up to Delhi, on board the passenger train of the Industrial Tribunal. But all the facts that the workers established in that case before the Industrial Tribunal are exactly similar to the facts admitted in the cases on hand. Therefore the attempt of the workmen to make their travel from point to point without stopping at all stations cannot be said to be a shortcut.

73. In fact the Supreme Court did not dismiss the case of the Management in Petroleum Coal Labour Union on the short ground of the limited nature of the jurisdiction available to the High Court and the Supreme Court over the decisions of fact finding bodies especially like the Industrial Tribunals. If the Supreme Court had done this, it may be possible to contend that in Petroleum Coal Labour Union the hands of the Court were tied in view of the findings of fact recorded by the Industrial Tribunal. But that is not the case here. Apart from the fact that all the facts found established before the Industrial Tribunal in Petroleum Coal Labour Union case are identical to the admitted facts in the batch on hand, one more aspect is to be taken note of. As seen from the caption given above para 27 of the report in Petroleum Coal Labour Union case, the very same management questioned before the Supreme Court, the jurisdiction of the Tribunal to order regularisation. Today the Management questions the jurisdiction of this Court to order regularisation. In other words if the workmen takes the Industrial disputes route the Management erects a traffic diversion post there. If the workmen come to the High Court, the Management reverses the direction of the signpost. Therefore we do not think that the Learned Judge committed any error in following the decision in Petroleum Coal Labour Union whose facts are exactly identical to those on hand. Contention 9:

74. The next contention of the Learned Senior Counsel for the appellant-Management is that the direction issued by the learned Judge to regularize the services of the workers in the posts to which are attached the duties being performed by them presently, is meaningless, since there are no such posts in the Organization.

75. But we do not think that the direction issued in Para 147(a) by the learned judge in his decision, can be understood or interpreted to be to have something to do with post, cadre post or ex-cadre post, as these expressions are used in Service Jurisprudence. The direction issued by the learned Judge should be understood to mean only a direction to absorb the respondents/ workmen and regularize their services. The essence of the direction issued by the learned Judge is absorption and regularization. The manner in which the relief is couched, cannot be taken advantage of, as the same may tantamount to missing the tree for the wood. Contention 10:

76. The last contention of the learned Senior Counsel for the appellant is that the direction issued by the learned Judge in Para 147(c) of his judgment not to take up the regular recruitment for the posts in A1, A2 and W1 levels till the completion of the process of regularization, went beyond the scope of

the Writ Petitions.

77. But we do not think so. The main reliefs sought in the writ petitions, included a prayer for injuncting the Management from going ahead with recruitment to certain posts, if the recruitment will make the claim for absorption and regularization infructuous. In fact, one of the persons selected in the recruitment, pursuant to the Circular dated 01-09-2014 impugned in the writ petition, has actually come up with a Writ Appeal in W.A.No. 285 of 2017. But by the time the writ appeal came up hearing, he was already issued with appointment orders. Therefore, we do not know whether the Management actually complied with the direction contained in Para 147(c) of the impugned judgment.

78. In any case, if the direction issued by the learned Judge to regularize the services of the respondents will not be affected, it may always be open to the Management to take a stand that the claim of the respondents-workmen will not get frustrated by fresh recruitment. But, today the Management is not prepared to make a statement that the recruitment that they wanted to make will not hamper the chances of regularization of the respondents. Moreover one point that goes against the Management is that their undertaking to create 300 posts and to absorb the respondents-workmen against 60 posts year after year, does not appear to have been fulfilled. This undertaking was given exactly 15 years ago on 12-01-2003 as seen from the minutes of the meeting. Therefore, the Management has no moral authority to contend that recruitments are stalled. Hence, the last contention also deserves to be rejected.

79. Lastly, it is contended by the learned Senior Counsel for the appellant that the learned Judge could not have placed reliance upon the decision of the Division Bench of Gujarat High Court in Executive Director/Basin Manager, ONGC v. ONGC Employees Mazdoor Sabha (decision dated 29-04-2015), as the same arose out of the award of the Industrial Tribunal. The learned Senior Counsel for the appellant further contended that under similar circumstances, a Division Bench of the Madras High Court refused relief under Article 226, in its decision in M. Rajan and others v. ONGC (dated 20-11-2015).

80. We have carefully considered the above submissions.

81. It could be seen from the facts of the case out of which the decision of the Madras High Court arose in M. Rajan that the workmen therein filed a writ petition in the year 1999 itself. There was no checkered history to the case before the Madras High Court. That was not a case where a slow transition took place over a period of 20 years, as has happened in the batch of cases on hand. More over the case before the Madras High Court related to security guards posted at several places such as Harbour Stores, Regional Office, the residences of Officers etc. But in the batch of cases on hand, the respondents are engaged as Field Operators, who are carrying on the core activity of the ONGC.

82. More over it is not as though the respondents herein approached to the Writ Court at the earliest point of time. From the year 1997, the workmen served strike notices once in five years, participated in the conciliation proceedings and got something better than what they claimed, in the forum of a settlement, even before a reference could be made by the Government to the Labour Court or before

an adjudication can take place before the Industrial Tribunal. Every time the management ensured that a settlement was reached either before a reference is made or immediately after the reference is made. As part of such settlements entered into once in five years, the management also ensured that the workers did not agitate the issue before any forum. Hence, the reliance placed upon the decision of the Madras High Court, cannot be accepted.

83. Mr. A. Satyaprasad, learned Senior Counsel appearing for some of the respondents placed reliance upon a few decisions in support of his contention that there is no absolute bar for a Writ Court to issue a direction for regularization. The first decision relied upon by him was that of the Supreme Court in National Federation of Railway Porters, Vendors and Bearers v. Union of India . This decision and the next decision relied upon by the learned Senior Counsel for the appellant in Union of India v. Subir Mukharji and others , were rendered before the decision in Umadevi. Both cases related to appointment to the Railway Administration. Therefore, we do not wish to go into these decisions especially after the decision in Umadevi has come to fill up the void in Service Law.

84. The decision in Mineral Exploration Corporation Employees Union v. Mineral Exploration Corporation Ltd., drew a distinction between irregular appointments and illegal appointments, after taking note of the decision in Umadevi. But the said decision arose out of an award of the Industrial Tribunal. Therefore, we will not go into it, lest it may give a handle for the management to contend that the same is inapplicable.

85. As rightly contended by Mr. C.V. Mohan Reddy, learned Senior Counsel appearing for some of the respondents, the decision of the Gujarat High Court relied upon by the learned single Judge, was confirmed by the Supreme Court. The learned Senior Counsel was also right in pointing out that the Constitution Bench, in Umadevi, exempted persons selected through a constitutionally accepted mode. In the batch of cases on hand, the respondents herein were made to appear for written examination followed by interview, not once but twice, first in the year 2008 and then in the year 2012 and were granted term basis employment for 4 years at a stretch. They have now completed 8 years under two terms. Therefore, even if we ignore that the decision in Umadevi arose out of the Service Law, the respondents cannot be non-suited.

86. In the light of the above, we are of the considered view, that none of the grounds of attack to the well considered and well crafted judgment of the learned single Judge are sustainable in law or on facts. Therefore, all the 24 writ appeals filed by the management are liable to be dismissed. Accordingly, they are dismissed.

87. Coming to the Writ Appeal W.A.No.285 of 2017, it is filed by an individual, who applied in response to the recruitment notification issued by management in September, 2014. His grievance is that the possibility of his selection is hampered by the directions issued by the learned Judge.

88. But we do not think that the appellant in W.A.No.285 of 2017 has any locus standi to challenge the order of the learned Judge. He is an outsider craving for appointment in ONGC. No right has accrued to him merely by virtue of his application in response to the notification. More over, it was stated across the bar at the time of hearing of the writ appeals that this appellant was issued with an

appointment order. Therefore, nothing survives in his writ appeal and hence it is dismissed.

89. Coming to the four writ petitions, W.P.Nos.21077 of 2016, 8726, 36866 & 36884 of 2017, the reliefs sought by the petitioners in these writ petitions are identical to the reliefs sought by the petitioners in the writ petitions out of which the above writ appeals arise. The petitioners in these writ petitions are also similarly placed as the respondents in the writ appeals. Therefore, they are also entitled to the same benefits as the learned Judge granted to the respondents in the writ appeals.

90. Therefore, in fine, all 25 writ appeals are dismissed and the four writ petitions are allowed in terms of the order of the learned Judge in para 147 of his judgment.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ appeals and writ petitions shall stand closed.

_____ V.RAMASUBRAMANIAN, J _____ M.GANGA RAO, J Date: 05-01-2018