IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 17206 of 2014 (O&M)
Date of decision: May 31, 2018

Yogesh Tyagi and another

.. Petitioners

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE ANIL KSHETARPAL

Argued by: Sarvshri Anurag Goyal, Kiran Pal Singh, Gautam Kaile for Dinesh Kumar, Anand Bhardwaj, Rakesh Sobti, Shiv Charan Bhola, Ravinder Malik (Ravi), Sumit Sangwan, S. N. Pillania, R. K. Hooda, Amardeep Hooda, Jagbir Malik, Sandeep Singal, Balraj Singh Rathee, Rajesh Dhankhar, Anil Rathee, Nitin Rathee, Sandeep Sharma, S. P. Arora, Rajesh Arora, Vikas Kuthiala, Virender Kumar, J. P. Dhull, Rakesh Nagpal, Rajesh Nain, R. S. Randhawa, Nihal S. Choudhary, Suresh Kumar Redhu, Ram Niwas Sharma, Sehajbir Singh, P. L. Verma, Manoj Makkar, J. K. Goel, Sandeep K. Sharma, S. K. Hooda, Rajpal Singh for Johan Kumar, Ms. Ekta Saini for Mr. Ekta Thakur, Rohit Jindal for Sunil K. Nehra, S. N. Yadav, D. D. Sharma, Sukhdev Singh Gopera, Harish Nain, Vikas Kuthiala, Arvind Galav, Keshav Gupta, Hitesh Pandit, S. P. Chahar, B. S. Mittal, Vijay Kumar Sheoran, Deepak Girotra, Inderpal Goyat, Deepak Sonak, Suresh Kumar Kaushik, Ajay Chaudhary, Gurinder Pal Singh, Ms. Bhavna Grewal for S. K. Yadav, Ms. Sangita Dhanda and Ms. Monika Thakur, Advocates for the petitioners.

Mr. Akshay Bhan, Senior Advocate with Mr. Amandeep Singh Talwar, Advocate for the applicants in CM No. 15412 of 2017 in CWP No. 16863 of 2014 and petitioners in some petitions.

Mr. Vijay Pal, Advocate for the applicants in CM No. 13681 of 2016 in CWP No. 17206 of 2014 and petitioners in some petitions.

Mr. Jasbir Mor,Advocate for the applicants in CM No. 1683 of 2016 in CWP No. 16863 of 2014 and petitioners in some petitions.

For Subsequent orders see RA-CW-177-2018, RA-CW-193-2018, COCP-3041-2017 and 1 more.

Mr. Lokesh Sinhal, Additional Advocate General, Haryana.

Mr. D. S. Nalwa, Advocate for Haryana Power Generation Corporation Ltd.

Ms. Gitanjali Chhabra and Mr. Raman B. Garg, Advocates for the petitioners in CWP No. 7261 of 2016 and for respondent No. 3 in CWP Nos. 25290 and 25724 of 2012.

Mr. K. S. Malik, Advocate for the respondents in CWP No. 26698 of 2015.

Mr. A. K. Singh Goyat, Advocate for the applicants/ interveners in CM No. 5423 of 2017 in CWP No. 17206 of 2014.

Mr. R. K. Malik, Senior Advocate with Mr. Kuldeep Sheoran, Advocate for respondents No. 4 to 16 in CWP No. 17206 of 2014 and petitioners in some petitions.

Mr. Rajesh K. Sheoran, Advocate for respondent No. 1 in CWP No. 1133 of 2015 and for respondent No. 2 in CWP No. 22148 of 2015.

Mr. Samuel Gill, Advocate for Mr. R. D. Bawa, Advocate for respondents in CWP No. 24504 of 2015.

Ms. Chitwan Kaur, Advocate for Mr. Prateek Mahajan, Advocate for respondents No. 1 and 2 in CWP No. 23872 of 2015 and for respondents No. 1 and 3 in CWP No. 14424 of 2015.

Ms. Anu Chatrath, Senior Advocate with Ms. Alka Chatrath and Mr. Anuj Garg, Advocates for private respondents in CWP No. 17206 of 2014 and for petitioners in some petitions.

Mr. Amit Rao, Advocate for respondent- Pt. B. D. Sharma University in CWP Nos. 9829, 9860, 9866 and 10360 of 2016.

Mr. Sanjeeva K. Uppal, Advocate for Mr. Sourabh Goel, Advocate for respondent-MC in CWP Nos. 22978, 22973, 24169 and 23872 of 2015.

Mr. Shalender Mohan, Advocate for the petitioner in CWP Nos. 5983 and 22285 of 2017.

Mr. Akhilash Vyas, Advocate for the respondents in CWP No. 14424 of 2015.

For Subsequent orders see RA-CW-177-2018, RA-CW-193-2018, COCP-3041-2017 and 1 more.

Mr. Nilesh Bhardwaj, Advocate for respondent No. 2
in CWP No. 3101 of 2018.

Mr. Lekh Raj Sharma, Advocate for respondents No. 2 & 3
in CWP No. 5335, 7009, 6573 of 2016.

...

Rajesh Bindal J.

1. This order will dispose of a bunch of petitions bearing

CWP Nos. 25290 and 25724 of 2012;

CWP Nos. 16024, 16863, 17126, 17206, 21987, 23582, 23909, 23961 of 2014;

CWP Nos. 77, 304, 1133, 1840, 2655, 3470, 3830 to 3835, 4239, 4891 to 4894, 6092, 8141, 8326, 8708, 9074, 9540, 9848, 10751, 10892, 11831, 11983, 12230, 12477, 12570, 12592, 13999, 14424, 14564, 14626, 14686, 16549, 17340, 18920, 20763, 22148, 22973, 22978, 23001, 23050, 23633, 23872, 23910, 24169, 24504, 26119, 26774 of 2015;

CWP Nos. 2, 53, 542, 2298, 4734, 5335, 5879, 5891, 6573, 7009, 7261, 7974, 7983, 8669, 9098, 9776, 9829, 9860, 9866, 10360, 16663, 16792, 17267, 17932, 18502, 18641, 19072, 19107, 19202, 20612, 19741, 22171, 22179, 22886, 24077, 24111, 27154 of 2016;

CWP Nos. 211, 4914, 4975, 5181, 5236, 5811, 5840, 5885, 5983, 6674, 6776, 7022, 7746, 8320, 8592, 8998, 9058, 9587, 9635, 9865, 9886, 10037, 10123, 10399, 10787, 11076, 11119, 11183, 11746, 12087, 12948, 18585, 18969, 19146, 19235, 20356, 22131, 22285, 23440, 24313 of 2017;

CWP Nos. 3013, 3101, 3173 and 7165 of 2018.

2. In this bunch, in some of the petitions, challenge has been made to the policies issued by the State Government on 16.6.2014 (Annexure P-8

in CWP No. 17206 of 2014), 18.6.2014 (Annexure P-15 in CWP No. 17206 of 2014), 7.7.2014 (Annexure P-12 in CWP No. 17206 of 2014) and 7.7.2014 (Annexure P-54 in CWP No. 16863 of 2014). Whereas in some of the petitions, the petitioners, who are working either on contract/ad-hoc/daily wage basis, are seeking a direction for regularisation of their services in terms of the aforesaid policies.

3. The gist of the policies, which are sought to be challenged are as under:

Policy dated 16.6.2014

Vide aforesaid policy, the Government decided to regularise the services of Group 'B' employees, who have worked for not less than 3 years as on 28.5.2014 and were still in service.

Policy dated 18.6.2014

Vide aforesaid policy, the Government provided that services of Group 'C' and Group 'D' employees, who had minimum of three years service as on 28.5.2014 and were still in service be regularised.

Policy dated 7.7.2014

In terms of the aforesaid policy, the Government decided to regularise the services of Group 'B' emloyees, who have or will complete 10 years of service as on 31.12.2018

Policy dated 7.7.2014

In terms of the aforesaid policy, the Government decided to regularise the services of Group 'C' and Group 'D' emloyees, who have or will complete 10 years of service as on 31.12.2018

4. Mr. Anurag Goyal, learned counsel appearing for the petitioners in CWP No. 17206 of 2014 submitted that vide order dated

10.2.2014 passed in CWP No. 22685 of 2011—Rakesh Kumar v. State of Haryana and others, this Court directed that the process of selection of Assistant Professors, for which requisition had already been sent on 29.11.2013, be completed. It was a case in which action of the State in granting extension year after year to Guest Faculty was under challenge, as the vacancies were not being filled on regular basis. Final direction was that Haryana Public Service Commission (for short, 'the Commission') will make its recommendations by 15.11.2014 and thereafter the State shall proceed to complete the process of appointment by 31.12.2014. To circumvent the aforesaid order, the State came out with a policy on 16.6.2014, which provided for regularisation of Group-B employees, appointed/engaged on contract basis. The condition for regularisation provided therein was that the employee/worker should have completed not less than 3 years as on 28.5.2014 and is still in service. The posts against which the incumbents are regularised are to be taken out of the purview of the Commission. The requisition, if any, sent for filling up the posts, may be either withdrawn or the number may be modified. Reference was also made to para No. 6 of the aforesaid policy stating that in future, no illegal/irregular appointment should be made against sanctioned posts, as if earlier the Government was following that process.

5. The petitioners are candidates for the posts of Assistant Professor, which were advertised. With the regularisation of number of Guest Faculty, the number of posts may considerably reduce, as a result of which the chance of selection of the petitioners may be affected, hence, they have a cause of action to challenge the policy. Referring to the judgment of Constitution Bench of Hon'ble the Supreme Court in Secretary, State of

Karnataka and others v. Umadevi (3) and others, (2006) 4 SCC 1 [hereinafter referred to as 'Umadevi (3) and others case (supra)'], it was submitted that one time relaxation was given to the State to frame any policy for regularising services of the employees, who had been working for the last 10 years. Specific directions were given that the process to fill remaining vacancies be initiated. Needful be done within six months and further in future, no appointments should be made by bypassing the constitutional requirements. The aforesaid judgment was delivered on 10.4.2006. All the issues raised by the employees so working on contract basis with reference to their legitimate expectation were considered. After the aforesaid judgment, vide notification dated 13.4.2007, the State Government rescinded all earlier notifications issued regarding regularisation of services of ad-hoc/daily-wage/contract/part-time workers etc.

6. The State failed to comply with the directions as no policy was framed within the time granted by Hon'ble the Supreme Court. The policy was framed on 29.7.2011 with reference to Group-B employees. In terms thereof, an employee/worker, who had been working for not less than ten years as on 10.4.2006 and was still in service, not because of any interim order passed by the Court or the Tribunal and against sanctioned post was to be regularised. The cut-off date taken in the aforesaid policy was the date of judgment of Hon'ble the Supreme Court in Umadevi (3) and others' case (supra). This policy also provided that in future, no illegal/irregular appointment should be made against sanctioned posts.

7. With reference to Group-C and Group-D employees, in terms of the notification dated 29.7.2011, an employee/worker, who had been

working for not less than ten years as on 10.4.2006 and was still in service, not because of any interim order passed by the Court or the Tribunal and against sanctioned post was to be regularised. The cut-off date taken in the aforesaid policy was the date of judgment of Hon'ble the Supreme Court in Umadevi (3) and others' case (supra). This policy also provided that in future, no illegal/irregular appointment should be made against sanctioned posts.

8. The aforesaid policies clearly mention that these have been framed as 'one time measure'.

9. Even though in terms of the judgment of Hon'ble the Supreme Court in Umadevi (3) and others' case (supra), direction was given to the State to frame regularisation policy as 'one time measure' for the employees working for at least 10 years, the State completely in violation thereof, came out with other policy on 16.6.2014 providing for regularisation of Group-B employees working on contract basis, who have been working for not less than 3 years as on 28.5.2014 and were still in service. This policy provided that this is being done as 'one time measure' on humanitarian ground and further that in future, no illegal/irregular appointment should be made against sanctioned posts.

10. With reference to Group-C and Group-D employees, in terms of the policy dated 18.6.2014, an employee/worker, who had been working for not less than three years as on 28.5.2014 and was still in service, was to be regularised. This policy also provided that this is being done as one time measure on humanitarian ground and further that in future, no illegal/irregular appointment should be made against sanctioned posts.

11. Another policy was circulated on 7.7.2014 for regularisation of

Group-B employees, who have or will complete 10 years of service as on 31.12.2018. This policy also suggests that this is being done as 'one time measure' on humanitarian ground and further that in future, no illegal/irregular appointment should be made against sanctioned posts.

12. With reference to Group-C and Group-D employees, in terms of the policy dated 7.7.2014, an employee/worker, who has or will complete 10 years of service as on 31.12.2018, was to be regularised. This policy also provided that this is being done as one time measure on humanitarian ground and further that in future, no illegal/irregular appointment should be made against sanctioned posts.

13. The aforesaid two policies were framed giving benefit of regularisation to the employees more than four years after the circulation of the policies. In fact, the exercise for framing the aforesaid four policies in June and July, 2014 was merely to please the voters as the State was in election mode and Assembly elections were due in October, 2014. For gaining personal benefits, the bosses were not concerned about any order or judgment of the court, hence, they dared to violate the same.

14. It was further submitted that in U. P. State Electricity Board v. Pooran Chandra Pandey and others, (2007) 11 SCC 92, two-Judge Bench of Hon'ble the Supreme Court distinguished the judgment in Umadevi (3) and others' case (supra), however, in a subsequent judgment in Official Liquidator v. Dayanand and others, (2008) 10 SCC 1, three-Judge Bench of Hon'ble the Supreme Court reiterated the view expressed in Umadevi (3) and others' case (supra) and held the same to be binding precedent. It was observed that Pooran Chandra Pandey and others' case (supra) was decided

on its own facts. In this elaborate judgment of Hon'ble the Supreme Court, all the issues were considered threadbare.

15. The contention raised is that there was no authority vested with the State to frame any fresh policy for regularisation of services of employees working on ad-hoc/daily-wage/contract/part-time in the year 2014, especially when all earlier policies provided that exercise was being done as 'one time measure' and so was the liberty granted in Umadevi (3) and others' case (supra). All the policies provided that in future, no illegal/irregular appointment shall be made, but still the process continued. The policies dated 16.6.2014 and 18.6.2014, which provided for regularisation of services of the employees, who had been working for three years as on 28.5.2014 would mean regularisation of services of the employees, who had been appointed by the State in illegal/irregular manner much after the judgment of Hon'ble the Supreme Court in Umadevi (3) and others' case (supra), whereas there was a clear bar for such appointments in future. The intention of the State to issue illegal policies had gone to the extent that in the policies dated 7.7.2014, it is provided that whosoever will complete 10 years' service on 31.12.2018 will be regularised at that stage. If seen backwards, all illegal/irregular appointments made after the judgment of Hon'ble the Supreme Court in Umadevi (3) and others' case (supra) will be regularised. This exercise was done by the State keeping 2019-Assembly elections in mind.

16. Mr. Anurag Goyal further argued that the process being adopted by the State is in complete violation of Articles 14 and 16 of the Constitution of India. The State is regularly making appointments in illegal/ irregular manner without following the requisite rules giving their

favourites back-door entries and thereafter regularising their services. The candidates who may be well qualified but working on posts which may not be commensurate to their qualification would always aspire for the posts which may be befitting their qualification, however, they are not able to apply for the same even if any advertisement is issued. If any post is advertised to be filled up on contract basis, then a candidate, who is already working on a regular post in a lower cadre cannot progress in his career if back-door entrants are allowed to be regularised. In all the appointments being made by the State on contract basis, due process is never followed. The system applied is merely pick and choose. Applications are taken from favourites and appointment letters are issued for different considerations.

17. Mr. Jagbir Malik, learned counsel appearing for the petitioners in CWP No. 16863 of 2014, submitted that the petitioners herein are eligible for Post Graduate Teachers/ Trained Graduate Teachers. The impugned policies framed in the year 2014 provide for regularisation of even those who were appointed by adopting illegal method, as there is no such condition that appointment should be following the process, as provided for in the rules. Explaining the reason why in the policies dated 7.7.2014, cut-off date of 31.12.2018 has been given, he submitted that thousands of Guest Faculty Lecturers were appointed on ad-hoc basis in December, 2008. The object was only to give benefit to them. These Guest Faculty Lecturers/Teachers are so favourites of the Government that earlier effort was made to give them undue benefit in the process of selection by awarding extra marks for their experience as Guest Faculty, which was set aside by this Court in CWP No. 13045 of 2009—Ashok Kumar v. The State of Haryana and others, decided on 6.4.2010. The judgment of this Court was

upheld by Hon'ble the Supreme Court in Petition for Special Leave to Appeal (Civil) No. 29755 of 2010—Mahender Kumar and others v. State of Haryana and others, decided on 21.2.2012. The appointees were termed to be back-door entrants. The judgment of Hon'ble the Supreme Court in Umadevi (3) and others' case (supra) merely provided for regularisation as one time measure of the employees, who were irregularly appointed and not illegally.

18. He also referred to memo No. 6/28/2017-IGSI dated 18.10.2017 from the office of Chief Secretary to Government, Haryana to various authorities in the State regarding regularisation of Group 'B', 'C' and 'D' employees. Vide aforesaid memo, attempt was to circumvent the order passed by this Court staying regularisation in terms of the policies circulated in the year 2014. It was submitted that factum of stay granted by this Court has been noticed but direction has been issued that the policies earlier circulated are still in operation, as there is no interim stay, hence, the cases of the employees covered under those policies may be considered for regularisation. The action of the State was clearly contemptuous. They were trying to over-reach the Court.

19. On the other hand, Mr. Lokesh Sinhal, learned counsel for the State submitted that the impugned policies were issued on 16.6.2014, 18.6.2014 and 7.7.2014 and immediately thereafter, services of ad-hoc/ daily-wage/contract/part-time employees were regularised. They have not been impleaded as parties to the writ petitions, though may be affected by the order passed. In their absence before the court, no effective relief can be granted to the petitioners, whereby the challenge has been made to the policies. In support, reliance was placed upon the judgment of Hon'ble the

Supreme Court in Vijay Kumar Kaul and others v. Union of India and others, (2012) 7 SCC 610.

20. On the locus of the petitioners challenging the policies, it was submitted that their apprehension is mis-placed to the extent that number of posts advertised, for which they were applicants, will be reduced with regularisation of services of the employees already working. The number has not been reduced in the advertisement in question, as there are number of other sanctioned posts, which are lying vacant, hence, the petitioners have no cause of action to file the petitions.

21. Referring to the judgment of Hon'ble the Supreme Court in Umadevi (3) and others' case (supra), it was submitted that Hon'ble the Supreme Court did not opine that the State does not have any power to frame regularisation policy, rather, it was observed that the State has the power to engage employees on contract basis in case need so arises. Even the facts of the case in Umadevi (3) and others' case (supra) were different, where in the absence of any policy, claim was made that the State be directed to regularise their services, which is not the case in hand, as the State, in exercise of executive powers, had framed policies to regularise services of the employees engaged on contract basis.

22. He further submitted that the judgment in Umadevi (3) and others' case (supra) was subsequently subject-matter of consideration before Hon'ble the Supreme Court in State of Karnataka and others v. M. L. Kesari and others, (2010) 9 SCC 247 (two-Judge Bench), where the import of the judgment was discussed in para No. 11 thereof. It was summed up that the object behind directions in para No. 53 in Umadevi (3) and others' case (supra) is two-fold-- first to consider the cases for regularisation of the

employees, who had been working for more than 10 years and second to ensure that the departments or its instrumentalities do not perpetuate the practice of employing persons on ad-hoc/ daily-wage/contract/part-time basis for long period and then regularise them.

23. Mr. R. K. Malik, learned Senior Advocate appearing for respondents No. 4 to 16 in CWP No. 17206 of 2014 taking further the arguments raised by Mr. Lokesh Sinhal, learned Additional Advocate General, Haryana, submitted that thousands of employees working on ad-hoc/ daily-wage/contract/part-time basis were regularised prior to the filing of the writ petitions. They being not party, no order affecting their rights can be passed. He submitted that some of the employees, who may be affected, filed application for being impleaded in the present petition. He is representing them. In support of the arguments, reliance was placed upon State of Kerala v. W. I. Services and Estates Ltd. and others, AIR 1999 SC 562 and State of Bihar v. Kameshwar Prasad Singh, 2000 (2) SCT 889.

24. Defending the policies issued by the State for regularisation, which have been impugned in the writ petition, it was submitted that the employees, whose services were regularised were not the back-door entrants. The posts were duly advertised or the names were sought from employment exchange. Selection Committees were constituted and due process was followed. There can, at the most, be some irregularities but not the illegality. After regularisation of their services, about four years have already passed. They will be highly prejudiced as during this period, they did not apply for any posts, which were filled up. He further submitted that Hon'ble the Supreme Court in Umadevi (3) and others' case (supra) had directed for regularisation of the services of the employees as one time

measure, who had completed 10 years' services. In case three years period is found to be less for regularisation, at least the incumbents, who have been working and have completed 10 years' service now, should be regularised.

25. Without prejudice to the aforesaid legal submissions, in the alternative, it was submitted that in case the policies are struck down, the persons already working should be allowed to continue till the regular appointments are made.

26. Mr. Akshay Bhan, learned senior counsel appearing for the petitioners in CWP No. 10399 of 2017, who were seeking regularisation of services in terms of the policies, which have been impugned in some of the writ petitions, submitted that Hon'ble the Supreme Court had not put any bar on the process of regularisation as a one time measure. There is no bar on the State to frame policies for regularisation of services of the employees working on ad-hoc/ daily-wage/contract/part-time basis, however, if some one is aggrieved, validity thereof can be challenged. He further referred to the judgment of Hon'ble the Supreme Court in State of Jammu and Kashmir and others v. District Bar Association, Bandipora, (2017) 3 SCC 410 (three-Judge Bench) in support of the argument that in Umadevi (3) and others' case (supra), Hon'ble the Supreme Court did not opine that the State cannot frame policies for regularisation. Illegal and irregular appointments were also differentiated. Reliance was also placed upon the judgment of Hon'ble the Supreme Court in Amarendra Kumar Mohapatra and others v. State of Orissa and others, AIR 2014 SC 1716.

27. Mr. Sehaj Bir Singh, learned counsel appearing for the petitioners in CWP No. 11076 of 2017, where the prayer is for issuing a direction to regularise the services of the petitioners, while adopting the

arguments already raised, submitted that right to livelihood is part of right to life and from employment, one gets livelihood, hence, any action to remove the incumbents working would be violative of their fundamental right guaranteed under Article 21 of the Constitution of India. He further submitted that earlier Constitution Bench judgment of Hon'ble the Supreme Court in Olga Tellis and others v. Bombay Municipal Corporation and others, (1985) 3 SCC 545, dealing with this issue, was not considered by Hon'ble the Supreme Court while deciding Umadevi (3) and others' case (supra), hence, the same is *per incuriam* to that extent. However, he did not have any answer to the legal issue whether the High Court has jurisdiction to hold that. He submitted that in any case certificate to appeal can be granted in case the findings go against the writ petitioners. He further submitted that in view of doctrine of separation of power, the courts cannot debar the State from framing any policy which falls in their executive domain.

28. Mr. Gurinder Pal Singh, learned counsel appearing for the petitioners in CWP No. 17126 of 2014 submitted that services of the petitioners in the case in hand were regularised in view of the order dated 21.1.2013 passed by Hon'ble the Supreme Court in Special Leave to Appeal (Civil) No(s). 9230-9231/2009 –State of Haryana and others v. Ashok Kumar and others, , where the State had conceded. Though in the order of regularisation, reference has been made to the policies, which are impugned, however, the same will not affect the rights of the petitioners as in their favour is the order passed by Hon'ble the Supreme Court. It was further submitted that the petitioners have given best part of their life. They are working for the last 7-8 years. In case, they are now removed from service,

they would be over-age for any future employment. That will prejudice them. After their services were regularised, the posts were advertised twice, but they did not apply for the same as they were already working on regular basis.

29. Ms. Alka Chatrath, learned counsel for the applicants in CM No. 14050 of 2015 filed for being impleaded as party in CWP No. 17206 of 2014, submitted that the applicants herein have been regularised in terms of the policies impugned. They had been recruited in pursuance to the advertisement issued in the year 2006-07. They had legitimate expectation for being regularised in view of the policies framed by Government from time to time, hence, at this stage, the applicants may not be disturbed and order of regularisation be not revoked by striking down the policies.

30. In CM No. 5423 of 2017, the prayer made is for being impleaded as respondents in CWP No. 17206 of 2014. The services of the applicants herein were regularised. Learned counsel for the applicants adopted the arguments already addressed by other counsels.

31. In CWP No. 77 of 2015, Mr. Sandeep Sharma, learned counsel for the petitioners submitted that the petitioners herein are seeking regularisation of their services in view of the policies. He adopted all the arguments already addressed. He further submitted that regularisation is not making permanent appointment or confirmation on the post. It is only removing the irregularities in the process of appointment.

32. In response, learned counsel for the writ petitioners, who have challenged various policies framed for regularisation of services, submitted that the argument raised regarding non-impleadment of persons likely to be

affected as party to the writ petitions is totally mis-conceived. This Court vide order dated 2.9.2016, had already directed that regularisation orders, if any, passed earlier shall be subject to final outcome of the writ petition. It was for the State to have informed all the persons, who were likely to be affected after the said order was passed. The object was not to force all to come to the court. In any case, number of employees who were regularised have already moved applications for being impleaded and they are representing their cause. Further, under challenge is the policies of the Government. Whatever is the result, everyone will be bound by that. While challenging any law or a policy, all the persons, who may be affected cannot possibly be impleaded as parties. It is not possible for the petitioners to collect information regarding all the persons who are regularised under illegal policies in different departments. The contention has been raised only to frustrate the relief. They are all back door entrants.

33. Heard learned counsel for the parties and perused the paper book.

Various Regularisation Policies

Policy dated 7.3.1996

34. A letter was issued on 7.3.1996 on the subject 'Regularisation of ad-hoc Class III Employees. Vide aforesaid letter, the Government decided to regularise the services of ad-hoc employees who had completed two years of service as on 31.1.1996.

Policy dated 17.6.1997

35. Notification dated 17.6.1997 provided that ad-hoc Group 'C' employees, who had completed two years of service as on 31.1.1996 and were in service on that date should be made regular. It further provided that

daily wager, who had completed three years of service on Group 'C' posts as on 31.1.1996 and were in service on that date be regularised provided that they fulfil the requisite qualifications. In case, the posts are not available, the same should be got created or they should be regularised in Group 'D' scale on compassionate ground. The posts were to be taken out of the purview of the Subordinate Services Selection Board.

Policy dated 8.12.1997

36. Vide letter letter dated 8.12.1997 on the subject 'Regularisation of ad-hoc Class II employees', the Government decided to withdraw its earlier communication dated 7.3.1996 providing for regularisation of ad hoc Class-II employees, who had completed two years of service as on 31.1.1996. It was withdrawn giving reference to judgment of Hon'ble the Supreme Court in P. Ravindran v. Union Territory of Pondichery and others, (1997) 1 SCC 350.

Policy dated 5.11.1999

37. The policy notified on 5.11.1999 provided that ad-hoc Group 'C' employees, who had completed 15 years of service on the date of publication of the notification and were in service on that date be regularised as a 'one time measure'. The notification covered the employees whose services could not be regularised earlier under various policies framed from time to time because of non-fulfilment of the qualifications of the posts manned by them.

Policy dated 1.10.2003

38. The notification dated 1.10.2003 provided that Group 'C' employees, who had held the posts for a period of minimum 3 years as on 30.9.2003 appointed either on ad-hoc/contract or daily wage basis be taken

out of the purview of the Commission and their services be regularised. The policy also provided for regularisation of daily wage employees (Group 'D') on fulfilment of similar conditions. The policy provided in Clause 6 thereof that to curb the tendency of appointment on ad-hoc/contract/daily wager basis (in Group 'C' or Group 'D') in future, any such appointment will not be made and if done, strict disciplinary action shall be taken against the officials. Relevant clause is reproduced hereunder:

> "6. To curb the tendency of appointment on adhoc/ contract/ daily wager basis (in Group-C or Group-D) in future, any such appointment will not be made and if done so, the officers/ officials responsible will be liable for strict disciplinary action and recovery shall be made from the officers/officials concerned."

39. Certain conditions mentioned in the aforesaid policy were amended vide notification dated 10.2.2004.

Policy dated 25.4.2007

40. Vide letter dated 25.4.2007, the Government had withdrawn all earlier policies of regularisation as notified on 17.6.1997, 5.11.1999, 1.10.2003 and 10.2.2004 giving reference to the Constitution Bench judgment of Hon'ble the Supreme Court in Umadevi (3) and others' case (supra).

Policy dated 29.7.2011

41. Vide notification dated 29.7.2011, the Government provided that the employees/workers who had been working for 10 years as on 10.4.2006 on ad hoc/contract/work-charged/daily wages and part-time be regularised except in the cases where they had continued in terms of any

order passed by the Court or Tribunal. The aforesaid notification had been issued after the judgment of Hon'ble the Supreme Court in Umadevi (3) and others' case (supra). The date of judgment was taken as the cut-off date. The judgment enabled the Government to carry out the exercise as 'one time measure' for the employees who had been working for more than 10 years. The policy specifically provided that the policy is a 'one time measure' on humanitarian ground. In future, no illegal/irregular appointment/ employment on adhoc/daily wages/work-charged and part-time shall be made against sanctioned posts.

Policy dated 16.6.2014

42. A letter was circulated on 16.6.2014 on the subject 'Regularisation policy for Group 'B' employees appointed/engaged on contract basis'. Vide aforesaid policy, the Government decided to regularise the services of Group 'B' employees working on contract basis engaged by the Government/approved agency of the Government. The salient features of the policy were:

(i) The employee should have worked for not less than 3 years as on 28.5.2014 and was still in service.

(ii) The employee should possess the prescribed qualifications for the post on the date of appointment.

(iii) The sanctioned post should be available at the time of initial appointment and also at the time of regularisation.

(iv) The posts against which regularisation is made are to be taken out of the purview of the Haryana Public Service Commission.

(v) The policy was claimed to have been framed as 'one time

measure' on humanitarian grounds.

(vi) In future, no illegal/irregular appointment on ad hoc/ contract basis shall be made against sanctioned posts.

Policy dated 18.6.2014 (Annexure P-15)

43. Vide notification dated 18.6.2014, the Government provided that services of Group 'C' and Group 'D' employees, who had minimum of three years of service as on 28.5.2014 and were still in service be regularised. The salient features of the policy were:

(i) That the employee/worker should have worked for not less than three years as on 28.5.2014 and was still in service.

(ii) That the employee/worker should have possessed the prescribed qualifications for the post on the date of appointment/engagement.

(iii) The sanctioned post should be available at the time of initial appointment and also at the time of regularisation.

(iv) The policy was claimed to have been framed as 'one time measure' on humanitarian grounds.

(v) In future, no illegal/irregular appointment on ad hoc/ contract basis shall be made against sanctioned posts.

Policy dated 18.6.2014

44. Vide notification dated 18.6.2014, the Government added proviso in the earlier notification dated 13.4.2007 vide which earlier regularisation policies notified on 17.6.1997, 5.11.1999, 1.10.2003 and 10.2.2004 were rescinded. The proviso provided that left over Group 'C' and 'D' employees, who could not be regularised under the regularisation

policies, as referred to in the notification dated 13.4.2007 due to administrative reasons, will be regularised from the date they were eligible.

Policy dated 7.7.2014

45. Another letter was circulated on 7.7.2014 on the subject 'Regularisation Policy for Group B employees'. The aforesaid policy was futuristic in its application. It provided to regularise services of Group 'B' employees, who have or will complete 10 years of service as on 31.12.2018 even if his/her original appointment may not have been made through due process of law.

Legal position regarding regularisation

46. The issue regarding regularisation of services of the persons engaged on ad-hoc/daily-wage/contract/part-time workers have been drawing attention of courts from time to time. The issue was considered in Umadevi (3) and others' case (supra). The matter came to be considered by the Constitution Bench as the Court found that there were conflicting opinions expressed earlier by different three-Judge and two-Judge Benches on the issue. It was opined that adherence to the rule of equality in public employment is the basic feature of our Constitution, hence, the rule of law is the core of our Constitution. The Court will not pass any order upholding violation of Article 14 or pass an order over-looking the need to comply with the requirements of Article 14 read with Article 16 of the Constitution of India. In contractual appointment, the term comes to an end on expiry of the period of engagement or the work. Merely because a temporary employee or a casual worker continues to work beyond the term of his appointment, he will not be entitled to be absorbed in regular service merely on the basis of the length of such continuance. Directing regularisation of a

temporary employed worker will create another mode of public employment, which is not permissible. Plea of legitimate expectation to be confirmed, was discarded as it was opined that the State has not held out any promise while engaging these persons either to continue them or making them permanent. In fact, constitutionally such a promise cannot possibly be made. No direction can be issued for regularisation of services of such employees as they do not have any enforceable right. However, as an exception, the States were given liberty to take 'one time measure' to regularise the services of irregularly (not illegally) appointed persons, who had completed more than 10 years of service and were appointed against duly sanctioned posts. The States were further directed to ensure that in future, regular appointments should be made. Regularisation already made need not be re-opened but there should be no further bypassing the constitutional requirement and regularising the services of the persons who were not duly appointed as per the constitutional scheme. Relevant paras thereof are extracted below:

> "26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent-the distinction between regularisation and making permanent, was not emphasised here-- can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to

compete. With respect, the direction made in para 50 (of SCC) of State of Haryana v. Piara Singh, (1992) 4 SCC 118 is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognised in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

xx xx xx

33. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularisation. The cases directing regularisation have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment.

xx xx xx

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, AIR 1967 SC 1071,*

R. N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409 and *B. N. Nagarajan v. Statte of Karnataka, (1979) 4 SCC 507* 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." *[Emphasis added]*

47. In addition to calling names of the candidates from employment

exchange, it is mandatory on the part of the employer to invite applications from open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television.

48. The issue raised regarding violation of right to life as enshrined under Article 21 of the Constitution of India was also deliberated upon by the Constitution Bench in Umadevi (3) and others' case (supra) and the same was over-ruled. Paragraphs 50 and 51 thereof are extracted below:

> "50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the

Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

51. The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means

> of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution."

49. In National Fertilizers Ltd. and others v. Somvir Singh, (2006) 5 SCC 493, Hon'ble the Supreme Court opined that regularisation is not a mode of appointment. The very appointment made in violation of the recruitment rules and also in violation of Articles 14 and 16 of the Constitution of India would be a nullity. The contention raised by the employees that their appointments were irregular and not illegal was not accepted as those were made in violation of the recruitment rules merely on the basis of applications. Proper Selection Committee had not been constituted. Reservation policy adopted by the appellant therein was not maintained. Cases of minority was not given due consideration. Merely because ad hoc/contractual employees had been working for a long time will not entitle them a direction for regularisation.

50. In Official Liquidator's case (supra) Hon'ble the Supreme Court authoritatively ruled that by virtue of Article 141 of the Constitution of India, judgment of the Constitution Bench in Umadevi (3) and others' case (supra) is binding on all courts including the Supreme Court till the same is over-ruled by a larger Bench. Any attempt to dilute the same is obiter and the same should not be treated as binding by any court. It was held that the observations and comments made by two-Judges Bench in Pooran Chandra Pandey and others' case (supra), which run contrary to the law laid down by the Constitution Bench in Umadevi (3) and others' case (supra) should be read as obiter. The same should neither be treated as binding by any judicial or quasi-judicial authority nor it should be made basis for bypassing the principles laid down by the Constitution Bench. Entire history of litigation pertaining to regularisation of services of the employees engaged by adopting the rules other than the regular mode as prescribed in the rules were discussed. It was observed that earlier set of judgments including State of Haryana v. Piara Singh, (1992) 4 SCC 118 encouraged the political set up and bureaucracy to violate the soul of Articles 14 and 16 of the Constitution of India with impunity. Reference was made to subsequent judgment of Hon'ble the Supreme Court in Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and others, (1992) 4 SCC 99. Paragraph 68 of the judgment of Official Liquidator's case (supra) is extracted below:

> "68. The abovenoted judgments and orders encouraged the political set up and bureaucracy to violate the soul of Articles 14 and 16 as also the provisions contained in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

with impunity and the spoils system which prevailed in the United States of America in sixteenth and seventeenth centuries got a firm foothold in this country. Thousands of persons were employed/engaged throughout the length and breadth of the country by backdoor methods. Those who could pull strings in the power corridors at the higher and lower levels managed to get the cake of public employment by trampling over the rights of other eligible and more meritorious persons registered with the employment exchanges. A huge illegal employment market developed in different parts of the country and rampant corruption afflicted the whole system. This was recognized by the Court in *Delhi Development Horticulture Employees' Union v. Delhi Admn.* In the following words: (SCC pp. 111-12, para 23)

> "23. Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is an Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or

who though registered are lower in the long waiting list in the Employment Register. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularization knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularized. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such backdoor entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in government departments, public undertakings or agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularization has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days they have to be absorbed

> as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts."
>
> *[Emphasis supplied]*

51. Umadevi (3) and others' case (supra) came up for consideration before Hon'ble the Supreme Court in M. L. Kesari and others' case (supra) as well. The term 'one time measure', as used in the aforesaid judgment, has been explained. It provides that it was a one time exercise. This one time exercise will conclude only after all employees, who were entitled to be considered in terms of guide-lines laid down in Umadevi (3) and others' case (supra) are considered. Another purpose was to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on ad hoc/contract/work-charged/daily wages and part-time basis for long period and then periodically regularise them on the ground that they had served for more than 10 years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. Paras No. 9 and 11 thereof are extracted below:

> "9. The term "one-time measure" has to be understood in its proper perspective. This would normally mean that after the decision in *Umadevi (3),* each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against

vacant posts and possess the requisite qualification for the post and if so, regularise their services.

xx xx xx

11. The object behind the said direction in para 53 of Umadevi (3) is two- fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3) was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual basis for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi (3)) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi (3) as a one-time measure."

[Emphasis supplied]

52. In State of Orissa and another v. Mamata Mohanty, (2011) 3 SCC 436, Hon'ble the Supreme Court considered the issue regarding appointments being made without advertisement. It opined that any appointment even on temporary or ad-hoc basis without inviting applications of all eligible candidates is violative of Articles 14 and 16 of the Constitution of India, as it deprives all eligible candidates from consideration. A person employed in violation of these principles is not entitled to any relief including salary. Paragraphs No. 35 and 36 thereof are extracted below:

> "35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, it came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said Article of the Constitution.

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit." *[Emphasis supplied]*

53. The distinction in 'irregular' and 'illegal' appointments was summarised in recent judgment of Hon'ble the Supreme Court in District Bar Association, Bandipora's case (supra). It was opined that irregular appointment may *per se* is not illegal, if made on the basis of administrative exigencies, but would be illegal if there was no administrative exigencies or procedure adopted is violative of Articles 14 and 16 of the Constitution of India and/or where recruitment process was overridden by the vice of nepotism, bias or mala fides. Relevant part of para No. 12 thereof is extracted below:

"12. The third aspect of *Umadevi (3)* 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 stand 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." *[Emphasis supplied]*

54. It was further opined in the aforesaid judgment that regularisation is not a source of recruitment nor it is intended to confer permanency on appointments, which have been made without following due process as envisaged under Articles 14 and 16 of the Constitution of India. The State and its instrumentalities cannot be permitted to use this window to validate illegal appointments. To enforce the right of regularisation, one has to establish whether his case falls in the exceptions carved out in para 53 in Umadevi (3) and others' case (supra). Relevant para No. 26 thereof is reproduced hereunder:

"26. 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 (3). 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 (3) and be upheld....."

[Emphasis supplied]

55. Appointment of thousand of employees on ad-hoc/ contractual basis in different departments and instrumentalities of the State for years together even after Umadevi (3) and others' case (supra), without resorting to mode of regular recruitment as prescribed in the rules cannot be said to be on account of administrative exigencies in terms of the exceptions carved out therein. The State was not permitted to carry out this exercise in perpetuity. Only one time exception was carved out. In fact, apparently the idea was to make irregular/illegal appointments on regular basis and later on regularise them. The fact cannot be lost sight of that number of candidates do not apply for a post, which is advertised only for a limited period or on contractual basis. Hence, even in that process of selection even if the post is advertised, there would be violation of Articles 14 and 16 of the Constitution. In the present case, no special circumstances were pointed out to by-pass regular mode of recruitment or special exigencies. Rather, exception had become a rule, which cannot be permitted.

56. The argument of the petitioners regarding framing of the policies in June/July, 2014 to achieve political objectives is made out as the Haryana State was due for Assembly elections in October, 2014. Apparently, action was to please the voters. The constitutional scheme as well as judgment of Hon'ble the Supreme Court were just brushed aside for political gains. Such an action was deprecated by Hon'ble the Supreme Court in earlier judgments and need to be deprecated strongly. Conduct of

the State is evident from the clauses added in various policies.

57. In the policy dated 5.11.1999, it was provided that ad-hoc Group 'C' employees, who had completed 15 years of service on the date of publication of the notification and were in service on that date be regularsed as a 'one time measure' .

58. The notification dated 1.10.2003 provided that Group 'C' employees, who had held the posts for a period of minimum 3 years as on 30.9.2003 appointed either on ad-hoc/contract or daily wage basis be taken out of the purview of the Commission and their services be regularised. Relevant clause 6 thereof is extracted below:

> "6. To curb the tendency of appointment on adhoc/ contract/ daily wager basis (in Group-C or Group-D) in future, any such appointment will not be made and if done so, the officers/ officials responsible will be liable for strict disciplinary action and recovery shall be made from the officers/officials concerned."

59. In the policy dated 29.7.2011 regarding regularising the services of employees/workers who had been working for 10 years as on 10.4.2006 on ad hoc/contract/work-charged/daily wages and part-time be regularised. Relevant clauses 8 and 9 thereof are extracted below:

> "8. Since this policy is a one time measure on humanitarian ground, therefore, no person shall be entitled to claim it as a matter of right, if found unsuitable due to non-fulfilment of the conditions in this notification.
>
> 9. In future, no illegal/irregular appointment/ employment on adhoc/ daily wages/work-charged and part-time shall be made

against sanctioned posts."

60. In the policy dated 16.6.2014 regarding regularising the services of Group 'B' employees, two important clauses were mentioned, which are extracted below:

"(v) The policy was claimed to have been framed as 'one time measure' on humanitarian grounds.

(vi) In future, no illegal/irregular appointment/employment on ad hoc/ contract basis shall be made against sanctioned posts."

61. In the policy dated 18.6.2014 regarding regularising the services of Group 'C' and Group 'D' employees, same clauses were mentioned, which are extracted below:

"(v) The policy was claimed to have been framed as 'one time measure' on humanitarian grounds.

(vi) In future, no illegal/irregular appointment/ employment on ad hoc/ contract basis shall be made against sanctioned posts."

62. In the policy dated 7.7.2014 regarding regularising the services of Group 'B' employees, two important clauses were mentioned, which are extracted below:

"(4) Since this policy is a 'one time measure' on humanitarian ground, no person shall be entitled to claim it as a matter of right, if found unsuitable due to non fulfilment of the conditions mentioned in these instructions.

(5) In future, no illegal/irregular appointment/employment on adhoc/contract shall be made against sanctioned

posts."

63. In the policy dated 7.7.2014 regarding regularising the services of Group 'C' and Group 'D' employees, same clauses were mentioned, which are extracted below:

> "(5) Since this policy is a 'one time measure' on humanitarian ground, no person shall be entitled to claim it as a matter of right, if found unsuitable due to non fulfilment of the conditions mentioned in these instructions.
>
> (6) In future, no illegal/irregular appointment/employment on adhoc/contract shall be made against sanctioned posts."

64. In one of the policies issued on 1.10.2003, an important condition laid down was that in future, no appointment on adhoc/ contract/daily wage shall be made and if any such appointment is made, the officers/officials responsible will be liable for disciplinary action. The same is extracted below:

> "6. To curb the tendency of appointment on adhoc/ contract/ daily wager basis (in Group-C or Group-D) in future, any such appointment will not be made and if done so, the officers/ officials responsible will be liable for strict disciplinary action and recovery shall be made from the officers/officials concerned."

65. Despite the aforesaid conditions being there, still the State continued making appointments in illegal/irregular manner but till date action has not been taken against any officer for violation of the terms laid down in the policies. How the term 'one time measure' is understood by the

Government is a mystery as this is being used ever since the policies are being framed but every time the State comes out with a new policy again stating that this is 'one time measure'. The illegality is continuing in perpetuity.

66. While issuing two policies of even date, i.e., 7.7.2014, the State had gone to the extent of providing for regularisation of services of the employees, who had been illegally appointed, which has been strongly deprecated by Hon'ble the Supreme Court in various judgments starting from Umadevi (3) and others' case (supra). In District Bar Association, Bandipora's case (supra), Hon'ble the Supreme Court had opined that even the appointments made on ad-hoc/ daily-wage/contract/part-time basis, which are not in exigencies of administration are to be termed as illegal and not irregular.

67. In fact, what is experienced is that it is not only that the State is the biggest litigant, rather, it is the creature of majority of avoidable litigation because of its actions which are either patently in violation of Rules or contrary to law laid down by courts. Unless stern action is taken against those involved in these types of actions, this process will not stop. Senior officers are expected to put their strong view forward if that is not in line with law of the land. They should not become party to any action which is patently in violation of law only to please their political bosses. Earlier also, similar action by the Chief Secretary, Haryana was deprecated, where instructions/policy were issued in violation of the judgment of Hon'ble the Supreme Court in M. Nagaraj and others v. Union of India and others, (2006) 8 SCC 212 and in reply to a notice issued to show cause as to why proceedings for contempt be not initiated, he was apologetic of his conduct.

As the officers have not mended their ways, we considered issuing notice to the Chief Secretary for violation of law laid down by Hon'ble the Supreme Court but cannot exercise that jurisdiction in view of the judgment of Hon'ble the Supreme Court in Vitusah Oberoi and others v. Court of its own Motion, (2017) 2 SCC 314. Relevant para No. 11 thereof is extracted below:

> "11. The power to punish for contempt vested in a Court of Record under Article 215 does not, however, extend to punishing for the contempt of a superior court. Such a power has never been recognised as an attribute of a court of record nor has the same been specifically conferred upon the High Courts under Article 215. A priori if the power to punish under Article 215 is limited to the contempt of the High Court or courts subordinate to the High Court as appears to us to be the position, there was no way the High Court could justify invoking that power to punish for the contempt of a superior court. That is particularly so when the superior court's power to punish for its contempt has been in no uncertain terms recognised by Article 129 of the Constitution. The availability of the power under Article 129 and its plenitude is yet another reason why Article 215 could never have been intended to empower the High Courts to punish for the contempt of the Supreme Court. The logic is simple. If Supreme Court does not, despite the availability of the power vested in it, invoke the same to punish for its contempt, there is no question of a Court subordinate to the Supreme Court doing so. Viewed from any angle, the order passed by the High Court appears to us to

be without jurisdiction, hence, liable to be set aside."

68. There is a weight in the argument of learned counsel for the petitioners that the policies framed are totally in violation to the constitutional scheme, as provided for under Articles 14 and 16 of the Constitution of India, if considered in the light of the argument that a person having higher qualification, may be in some professional field, may have joined a lower post just to ensure that he is able to earn his livelihood and when an opportunity comes for applying for a post commensurate to his qualification, he may not choose that if the post is advertised to be filled up on ad hoc/contract/work-charged/daily wages and part-time basis, as in the process he may not be sure of continuity on the new post whereas he may lose his regular job.

69. The argument regarding legitimate expectation is totally mis-conceived. No one can expect something, which is not legally due to him. If the very basis on which they are making claim of legitimate expectation is illegal, no rights will flow. The impugned policies have been framed in violation of the Constitution Bench judgment of Hon'ble the Supreme Court in Umadevi (3) and others' case (supra). No one can claim any right on the basis thereof or take a plea that they had legitimately expected that with the appointment on ad hoc/contract/work-charged/daily wages and part-time basis, in future their services will be regularised. In fact, neither such a promise can be made nor formation of such a scheme creates an enforceable right in favour of a person, unless he makes out a case in term of exceptions carved out in para No. 53 of the judgment in Umadevi (3) and others' case (supra). Regularisation business is not a side window opened to validate irregular/illegal appointments.

70. The extent to which political heads of the State can go to please the voters is evident from the policies dated 7.7.2014 dealing with Group 'B', 'C' and 'D' employees. Though just a few days back policies were issued on 16.6.2014 and 18.6.2014 providing for regularisation of Group 'B', 'C' and 'D' employees, who had rendered not less than three years service as on 28.5.2014, but still new policies in question were issued. It gives a cut-off date, which is more than four years even after the date of issuance of the policy. The illegality sought to be legalised by these policies is that all those employees, who would complete 10 years of service on 31.12.2018 would be considered for regularisation, even if their original appointment may not be following the due process by issuance of advertisement, interview etc., means illegal appointments. Code of Conduct was to be notified in the State for Assembly elections to be held in October, 2014. In fact, at that stage, the State was in a hurry to pass orders, which may or may not stand judicial scrutiny so that they could claim credit and leave it to the courts to adjudicate upon the issues and take dis-credit. Vide this policy, even illegal appointments were sought to be regularised. Ten years period mentioned by Hon'ble the Supreme Court to be considered for the purpose of regularisation in Umadevi (3) and others' case (supra) was not to be applied in perpetuity as it was a one time measure. The object of the aforesaid policy was merely to regularise the services of the employees, who had been appointed by the Government when came into power by adopting illegal means, i.e., back door entrants.

Impleadment of parties

71. The contention raised by learned counsel for the State regarding dismissal of the writ petition on the ground that persons likely to

be affected have not been impleaded as parties to the writ petitions is totally mis-conceived. What is under challenge in the writ petitions is the policies framed by the State providing for regularisation of services. While hearing the bunch of petitions on 2.9.2016, this Court passed the following order:

> "Having heard learned counsel for the parties, *prima facie* we are satisfied that the impugned policy runs contrary to the mandate of the Constitutional Bench judgment in the ***"Secretary, State of Karnataka and others v. Umadevi and others", (2006) 4 SCC 1.*** Hence further regularisation of services under the said policy shall remain stayed till the final decision. The regularisation orders, if any, passed earlier shall be subject to the final outcome of the writ petition."

72. In view of the aforesaid order passed by this Court in the presence of the State Counsel, it was incumbent for the State to have apprised all concerned. In fact, some exercise must have been done. That is why, number of persons have already filed applications for being impleaded as respondents in the petitions and in some of the petitions in the bunch, the prayer is for directing the State to regularise the services of the petitioners therein. The aforesaid order clearly suggests that regularisation of services under the policies impugned in the writ petitions was stayed till final decision and further regularisation orders, if any passed earlier, were to be subject to the final decision in the writ petitions. Hence, there is no merit in this argument and the same is rejected.

73. As regards the case of the candidates, whose services were regularised in terms of the order passed by Hon'ble the Supreme Court, needless to add that there being a direction by the Court in their favour, they

will not be affected with the result of the petitions quashing the regularisation policies.

Regarding locus

74. In our view, the candidates, who could apply for the posts advertised for recruitment will certainly have locus to challenge the policies framed by the State for regularisation of ad hoc/contract/work-charged/daily wages and part-time employees, as with the result of their regularisation, number of posts to be filled up would considerably reduce, thereby restricting the chances of the candidates for recruitment. The contention by learned counsel for the State that number of posts advertised will not be reduced with regularisation of the services of the employees appointed on ad-hoc/contract/work-charged/daily wages and part-time, as there are other vacant posts available is to be noticed and rejected for the reason that even against other posts lying vacant in the State, every eligible candidate has fundamental right to compete.

FINDINGS

75. In view of our aforesaid discussions, we find that the policies dated 16.6.2014, 18.6.2014, 7.7.2014 (Group 'B') and 7.7.2014 (Group 'C' and Group 'D'), having been framed in violation of the law laid down by Hon'ble the Supreme Court deserve to be quashed. Ordered accordingly. Any benefit already granted to an employee shall be withdrawn as in terms of the order passed on 2.9.2016, this Court had already directed that regularisation orders, if any, passed earlier shall be subject to final outcome of the writ petition.

76. In some of the petitions, the contention raised by learned counsel for the petitioners was that they had been regularised in view of the

order passed by Hon'ble the Supreme Court or this Court even after the judgment in Umadevi (3) and others' case (supra), however, in the order reference has been made to the subsequent policies. The present judgment will not affect rights of those employees as they already have an order passed by the court in their favour.

77. As there are thousands of employees who had been appointed on ad-hoc/contract/work-charged/daily wages, to take care of the work being carried out by them in different departments, we direct that they be allowed to continue for a period of six months, during which the State shall ensure that regular posts, wherever required, are advertised and the process of selection is completed. Under no circumstances, any ad-hoc/contract/work-charged/daily wages employees shall be allowed to continue thereafter.

78. This Court cannot lose sight of the fact that even the employees to some extent may not be said to be at fault. They are swayed by the promises made to them or the assurances given, which may not be legally tenable. To take care of the fact that all such employees, who had been appointed on ad-hoc/contract/work-charged/daily wages may not suffer on account of they being over-age, it is directed that all such employees be given relaxation in age to the extent of the period they have worked continuously on ad-hoc/contract/work-charged/daily wage basis in the next process of selection, which is to be carried out in terms of the directions given by this court. The aforesaid relaxation shall be one time measure and not in any subsequent selection.

79. As we have already struck down the policies framed by the Government providing for regularisation of services of ad-

hoc/contract/work-charged/daily wages employees, the writ petitions filed with a prayer for direction to the respondents to regularise their services in terms of the conditions laid down in the policies are dismissed.

80. The writ petitions stand disposed of accordingly.

(Rajesh Bindal)
Judge

(Anil Kshetarpal)
Judge

May 31,2018
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No