CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/021/01044/2014

HYDERABAD, this the 9th day of October, 2020

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

C.Ravinder S/o late Sri C.Rajeshwara Rao,
Aged about 47 years, working as Mechine
Operator (Casual), O/o Central Institute of Tool
Design, Ministry of Micro Small Medium Enterprises,
Govt of India, Balanagar, Hyderabad-500 037.

...Applicant

(By Advocate : Mrs K.Udaya Sri)

Vs.

1.The Union of India, Rep by
The Principal Director,
Central Institute of Tool Design,
Ministry of Micro Small Medium Enterprises,
Govt. of India, Balanagar, Hyderabad-500 037.

2. The Secretary,
Central Institute of Tool Design,
Ministry of Micro Small Medium Enterprises,
Govt. of India, Balanagar, Hyderabad-500 037.

....Respondents

(By Advocate : Mrs.K.Rajitha, Sr.CGSC)

ORAL ORDER
(As per Hon'ble Mr. B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed for granting temporary status and regularization of the services of the applicant as Machine operator in the respondents' organization.

3. Brief facts are that the applicant was certified in Fitter trade by ITI in 1987 and thereafter, he obtained a Diploma certificate in Tool Making from the respondents organization. Armed with the said qualifications, applicant responded to the notification of the respondents dated 23/24.3.2004 for the post of Machine Operator and on successfully clearing the interview, was selected vide letter dated 31.5.2004. Applicant joined on 9.6.2004 and the appointment was initially for a period of 5 years and continued thereafter periodically. While working as Machine Operator he was sent for training to Bhubaneswar on a special machine and on completing the training he was asked to execute an indemnity bond binding him to the institute for 3 years. Applicant despite rendering service for nearly 10 years, his services were not regularised but made to work as casual Machine operator, though CPF contribution is deducted from salary, income tax collected at source, job card is maintained etc, as is the case in respect of regular employees. Further, DOPT has ordered regularisation of services of casual labour vide memo dated 10.9.1993, if they render 240 days service with certain conditions. Similarly situated employees working for CPWD and Nehru Yuva Kendras on approaching Hon'ble Apex Court got the relief of salary being paid on par with regular employees coupled with a direction that their

services shall be regularised within a period of 6 months. Aggrieved that applicant's services were not regularised despite the above developments, OA has been filed.

4. The contentions of the applicant are that though he has been working continuously without break for nearly a decade, temporary status has not been granted and services were not regularised, from the date due as per DOPT Scheme of 1993 and in terms of the Hon'ble Apex Court orders in respect of employees working for CPWD and Nehru Yuva Kendras. Applicant cited the judgment of the Hon'ble High Court of Telangana to support his contentions.

5. Respondents state that the respondents' organization is an autonomous institute of the Govt. of India whose functions are controlled by the Governing Council. In view of acute staff shortage, 10 Machine Operators were engaged on contract basis on an annual basis, to be renewed every year for a period of 5 years with a stipend of Rs.7000 to be increased at the rate of Rs.500 per year. The contract is purely on an adhoc basis and that there would be no claim for regular appointment against any vacancy in CITD at any time. Accordingly, applicant was engaged after he accepted the relevant conditions and was also later sent for training on a special machine with attendant conditions. CPF deductions, issue of Form 16 for Income Tax, etc was done as is being done in respect of other employees complying with relevant rules. Applicant was essentially engaged on contract basis and not as a casual labour and hence, his services were continued periodically on a contract basis.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about non grant of temporary status and regularization of the services of the applicant as Machine Operator in the respondents Organization. The claim of the applicant that though he has been working for nearly a decade, his services are not being regularized as per DOPT memo dated 10.9 1993, which deals with grant of temporary status and regularization of services of casual labour on complying with certain conditions. Moreover, similarly placed employees working for CPWD and Nehru Yuva Kendras have been granted relief sought, by the Hon'ble Apex Court. However, we observe that the applicant failed to cite the relevant details of the judgment in his OA nor did the Ld. Counsel for the applicant while making oral submissions. *Per contra*, respondents have taken the stand that since the applicant was appointed on contract basis, he has no *locus standi* to claim regularization. Being a contract employee, the 1993 OM of DOPT issued in respect of casual labours, would not apply to the case of the applicant.

II. The main plank of the defence of the respondents is that applicant is a contract employee and hence, bound by the terms of the contract, which he has agreed to, in toto. This is too familiar an argument, which we come across entailing exploitation of the working class and which, we feel does not reverberate with the socialistic pattern of society to which a Welfare State is committed to. Hence, such submissions lack substantive substance since the respondents cannot escape the mandate of equality enshrined in Art 14 of the Constitution. It is the argument of the

Ld. Counsel of the applicant that similarly placed employees in the organizational spectrum related to that of the respondents organization are paid higher salaries on par with the regular employees of equivalent grade and in some cases services, were regularized too. Getting employment is a Himalayan task in view of the prevailing unemployment and therefore, it is natural to accept harsh terms as are stipulated by the prospective employer. The applicant's case is no different since he has to either take up the employment or starve. Survival is the basic need as per the Maslow's hierarchy of needs. Therefore, out of sheer compulsion, he had to accept the unreasonable terms of not seeking regularization and other relevant benefits. Applicant is a Machine Operator, appointed through a regular recruitment process, discharging the same functions as would be discharged by anyone who would have been given different nomenclature like casual labour/contract employee/ regular employee. By adopting different designations and exploiting the applicant by denying the relief sought is not desirable to be attempted on part of the respondents. We rely on the observations of the Hon'ble Apex Court in ***Dhirendra Chamoli And Anr. vs State Of U.P***. on 5 August, 1985 [1986 (52) FLR 147, (1986) ILLJ 134 SC, (1986) 1 SCC 637)] in stating the above, as under:

> *"It is peculiar on the part of the Central Government to urge that these persons took up employment with the Nehru Yuvak Kendras knowing fully well that they will be paid only daily wages and therefore they cannot claim more. This argument lies ill in the mouth of the Central Government for it is an all too familiar argument with the exploiting class and a Welfare State committed to a socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there shall be equality before law and equal protection of*

the law and implicit in it is the further principle that there must be equal pay for work of equal value. These employees who are in the service of the different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV employees, must therefore get the same salary and conditions of service as Class IV employees. It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees.

3. We therefore allow the writ petitions and make the rule absolute and direct the Central Government to accord to these persons who are employed by the Nehru Yuvak Kendras and who are concededly performing the same duties as Class IV employees, the same salary and conditions of service as are being received by Class IV employees, except regularisation which cannot be done since there are no sanctioned posts. But we hope and trust that posts will be sanctioned by the Central Government in die different Nehru Yuvak Kendras, so that these persons can be regularised. It is not at all desirable that any management and particularly the Central, Government should continue to employ persons on casual basis in organisations which have been in existence for over 12 years. The salary and allowances of Class IV employees shall be given to these persons employed in Nehru Yuvak Kendras with effect from the date when they were respectively employed. The Government of India will pay to the petitioners costs of the writ petitions fixed at a lump sum of Rs. 1,000/-."

Though above judgment was in reference to that of the casual labour, the principle laid is comprehensible applicable to the case of the applicant with double reinforcement since contract employment is a shade above that of a casual labour, qualifying for the relief sought in terms of the cited verdict. The decision of the respondents to deny the relief sought is thus against the observation of the Apex Court as held above.

III. Near home, a similar issue fell for consideration before the Hon'ble High Court for the State of Telangana in IA No.1/2019 in/and WP No. 47675/2018 wherein similar relief has been granted. The judgment dt.07.08.2020 exhaustively dealt with the entire length and breadth of the issue from the legal perspective and granted relief as under:

"79. In the result,

(a) The Writ Petition is allowed;

(b) the respondents' action in engaging the petitioners on "outsourcing basis" as Sanitary Supervisors (SFA), Sanitation Workers, Entomology

Field Workers, Entomology Superior Field Workers, Supervisors (EFA), Superior Field Assistants through intermediaries/agencies/contractors is contrary to law, violative of Article 14, 16 and 21 of the Constitution of India and also the law declared by the Supreme Court in Uma Devi (1 supra) mandating periodic regular recruitment to sanctioned posts;

(c) that the "outsourcing" system adopted by the GHMC is only a sham and a ruse to avoid extending to the petitioners their genuine service entitlements; and that the presence of such intermediary/contractor has to be ignored, and the petitioners are held to have been directly engaged by the GHMC and they are also held entitled to be considered for regularisation of their services;

(d) consequently, the respondents, while continuously engaging the services of the petitioners directly henceforth, are directed to consider the case of the petitioners for regularisation of their services, by ignoring the existence of the intermediaries/agencies/contractors in the posts of Sanitary Supervisor (SFA), Sanitation Workers, Entomology Field Workers, Entomology Superior Field Workers, Supervisors (EFA), Superior Field Assistants within two (2) months from the date of receipt of a copy of the order.

(e) the petitioners are entitled to minimum of time scale of pay attached to the posts of Sanitary Supervisor (SFA), Sanitation Workers, Entomology Field Workers, Entomology Superior Field Workers, Supervisors (EFA), Superior Field Assistants in which they are now discharging their functions till their claim for regularisation is considered by the GHMC in accordance with para 53 of the decision in Uma Devi (1 supra); and such payments shall be made by the GHMC directly to the petitioners w.e.f. the date of filing of this Writ petition (after deducting the payments already received by them during this period from the contractor/intermediary) and shall be continued till the cases of the petitioners are considered for regularisation by the GHMC. The arrears upto 31.7.2020 shall be paid on or before 15.9.2020.

(c) I.A.No.1 of 2019 is dismissed. No costs."

The applicant has been engaged on contract basis like those of the GHMC employees. The only difference being, that in GHMC the petitioners in question were employed through intermediaries like contractors, outsourcing agents etc. In the instant case respondents have taken on themselves the role of a contractor in contracting the services of the applicant. The aspect of serious relevance is that though there being continuous work over the years, even then, applicant was continued to be engaged on contract basis for nearly a decade and particularly, in the context of the fact that the applicant was appointed through a regular

recruitment process with no back door entry, which indeed a welcome feature in the case.

IV. True to speak, there was nothing irregular or illegal about applicant's appointment. The moot point then to be delved into, is as to what extent were the respondents correct in engaging the applicant indefinitely on contract basis *albiet* the field was fertile with work being available calling for regular hands to be appointed. In this context, we are of the view that respondents have taken undue advantage of the economic compulsion of the applicant by continuing to engage him on contract basis though there was an Organisational need to absorb him on a regular basis. It was never the case of the respondents that they had no work to be got done and in fact, on the contrary , as admitted by them there was an acute and urgent need to recruit machine operators. That indeed was the cause for the applicant to step into the respondents organisation but alas through the instrument of contract for many years. Indeed, applicant was given a Hobson's choice by repeatedly referring to the contractual terms of appointment letter, which spells out candidly to accept the terms to be in and if not, be out. In practical terms with prevailing high unemployment rates, applicant cannot quit since survival is at stake in the absence of employment. Such helplessness of the applicant has been worked upon to applicant's disadvantage on multiple fronts by the respondents. One such front is contract employees would be paid less with no/less perks when compared with those working on regular basis, which is unquestionably unfair, given the contours of the case. Noting the same, we have no hesitation to observe that when the respondents offer a job with unfair terms and the applicant

accepts it without protest, as claimed by the respondents by brandishing the appointment letter, it cannot be said that the applicant accepted the job as per the spirit of the Constitution. In a way, the applicant has been made to unwillingly undertake forced labour. Admittedly, element of hope in human nature is gloriously precious and it kindles the energy to bear difficulties till they are over come, be it when forced to accept forced labour or for that matter any type of labour. Nevertheless, the lingering undying hope is that after long years of contract labour, there could be the happy end of regularisation. It is this hope, which enabled the applicant to cling on to the respondents organisation despite the danger of being shown the door any time. Besides, there can be no two views about the fact that the legitimate aspirations of the employees are not extinguished and a situation is not created where hopes end in despair to convert it to be deceitful and treacherous. Respondents have snuffed out the hope of regularising the services, by forcing the applicant to work on contract at the will and pleasure of the respondents for several years. A legitimate aspiration of a secure job of the applicant has become the basis to play the game of chess involving the career of the applicant with associated risks of a contractual job. A sense of sincerity should be reflected in every step of the respondents to ensure that the applicant receives his fair share for what all he could do to the organisation. Respondents' responsibility is to create an atmosphere of trust by considering applicant's legitimate needs with fairness and for justifiable reasons. Continuing the applicant on contract is belying the applicant's trust of his future being in the safe hands of a State institution, like the respondents Organisation. Undeniably, respondents organisation, being a wing of the State is a **model employer** with a social

conscience and not an artificial person without soul to be damned or body to be burnt. The Social conscience propels economic justice. Respondents must necessarily conduct themselves with this social conscience with high probity and candour while responding to the expectations of its employees by adopting means and methods, which are fair and in accordance with Articles 14 and 16 of the Constitution of India. Continuing an employee on contract for long years, not required though, would not be to the satisfaction of the theme and spirit of Articles cited. The decision to engage the applicant on contract basis endlessly, in a way, hurts the very soul of the Constitution since it is subtle exploitation in a sophisticated manner. An agreement loaded in favour of the respondents denying the right to claim regularisation, is indubitably against public policy.

V. We take support of the observations made by the Hon'ble Supreme Court and the Hon'ble High Courts, in stating what we did above, as under:

a. ***Punjab-Haryana High Court in Gurwinder Singh And Ors vs State Of Punjab And Ors*** on 13 September, 2018 in CWP No.8922 of 2017 (O&M)

"5. The above conditions have been mentioned in the appointment 3 of 8 order. In the case of Central Inand Water Transport Corporation Ltd. and another versus Brojo Nath Ganguly and another , AIR 1986 SC 1571, the Apex Court declared the terms in the appointment order as unconscionable terms of contract and also held that the State must act as a model employer and cannot take undue advantage of the need of the employee who does not have any choice in the matter of employment due to the economic compulsions.

6. In the present case, we find, upon reading of the above terms, that the State Government has given Hobson's choice to the petitioners. Due to economic compulsions, they did not have any alternative except to accept what the Government put to them. But then the above terms in the appointment order pursuant to the notification in question and the Rules clearly amount to unconscionable terms of contract. The State Government could not have provided for such terms in the appointment orders.

7. We have carefully gone through the Division Bench judgment of the Rajasthan High Court in Gopal Kumawat's case supra and we respectfully agree with the same. Instead of stating in our own words, we would quote the following paragraphs from the said judgment since we also hold the same view as has been taken in the said judgment:-

> *"13. In all these judgments, the Supreme Court and the Rajasthan High Court have held that the State must act as a model employer. It cannot take undue advantage of the need of the employee, who does not have any real choice in the matter of employment due to economic compulsions. The payment of wages less than living wages which are provided by way of allowances, for employees who have been regularly selected and appointed on substantive posts, is unjust, unfair unreasonable and violative of Article 14 of the Constitution of India. The Court acting as sentinel on the qui vive is under an obligation to prevent the contravention of the fundamental rights. Where the State has offered unfair terms of employment and the candidate accepts it taking up the job without demur, he cannot be held to have accepted the employment on such terms, which are unfair and unconstitutional.*
>
> *xxxxxxx 33. We find the practice of payment of fixed remuneration without any allowances and benefit of increments to the probationers, who were appointed after adopting the regular selection process, on substantive posts, or even after following the selection process on ad hoc basis, as well as all those employees who are appointed on substantive posts, to be wholly illegal and arbitrary, and pernicious practice of forced labour.*
>
> *34. We find no justification for the State Government, to adopt the practice of paying fixed remuneration to the probationers, which is not prevalent, either in the Central Government, or in any other States in the country. The Government of Rajasthan has adopted this evil practice of forced labour for its employees, taking advantage of the attraction of the Government service. The Notifications dated 13.03.2006, amending the Rules, are thus, declared to be unconstitutional, being violative of Article 14, 16, 21, 23 and 38 of the Constitution of India, and against the conscience of the Constitution of India."*

b. In Secretary, State of Karnataka And vs. Umadevi And Others [(2006) 4 SCC 1],

> *"53. We have stated the role of the State as a* ***model employer*** *with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. Hope for everyone is gloriously precious and a* ***model employer*** *should no. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair t convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more."*

c. ***State of Jharkhand & Anr vs Harihar Yadav & Ors*** on 22 November, 2013 in CA No.10515 of 2013

"45. Having regard to the position that has emerged, we are compelled to dwell upon the role of the State as a model employer. In Som Prakash Rekhi v. Union of India[15], Krishna Iyer, J., has stated thus: -

> *"Social justice is the conscience of our Constitution, the State is the promoter of economic justice, the founding faith which sustains the Constitution and the country is Indian humanity. The public sector is a model employer with a social conscience not an artificial person without soul to be damned or body to be burnt."*

46. In Gurmail Singh and others v. State of Punjab and others[16] it has been held that the State as a model employer is expected to show fairness in action.

47. In Balram Gupta v. Union of India and Another[17], the Court observed that as a model employer the Government must conduct itself with high probity and candour with its employees.

48. In State of Haryana v. Piara Singh[18] the Court has ruled that the main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16.

49. In Bhupendra Nath Hazarika and another v. State of Assam and others[19], while laying emphasis on the role of the State as a model employer, though in a different context, the Court observed:

> *"It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized."*

50. If the present factual matrix is tested on the anvil of the aforesaid principles, there can be no trace of doubt that both the States and the Corporations have conveniently ostracized the concept of "model employer". It would not be wrong to say that they have done so with Pacific calmness, sans vision, shorn of responsibility and oblivious of their role in such a situation. Their action reflects the attitude of emotionlessness, proclivity of impassivity and deviancy with cruel impassibility. Neither of the States nor the Corporations have even thought for a moment about the livelihood of the employees. They have remained totally alien to the situation to which the employees have been driven to. In a State of good governance the Government cannot act like an alien. It has an active role to play. It has to have a constructive and progressive vision. What would have ordinarily happened had there not been bifurcation of the State and what fate of the employees of BHALCO would have faced is a different matter altogether. The tragedy has fallen solely because of the bifurcation. True it is, under the law there has been bifurcation and the Central Government has been assigned the role to settle the controversies that had to arise between the two States. But the experimentation that has been done with the employees as if they are guinea pigs is legally not permissible and indubitably absolutely unconscionable. It hurts the soul of the Constitution and no one has the right to do so."

(d) Daily Rated Casual Labour v. Union of India, (1988) 1 SCC 122, at page 129:

> *The government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages. It may be that the casual labourer has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that State. The government should be a model employer.*

(e) Secy.-cum-Chief Engineer v. Hari Om Sharma, (1998) 5 SCC 87:

> *8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872.*

(f) Dev Dutt v. Union of India, (2008) 8 SCC 725, at page 737:

> *The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible*

VI. By applying the above principles to the case of the applicant we find that the respondents are not anywhere near to the standards set by the superior judicial fora, by taking a decision to annually renew the contract of the applicant and not regularise his services taking advantage of the fact that the applicant had no choice for economic reasons. The attribute of social conscience is missing in denying what has been a fair expectation of the applicant. In particular, when work exists and requires regular work

force. The very fact that the applicant is being engaged for a decade amply demonstrates the inevitable existence of work to be attended to. As observed by the Hon'ble High Court of Telangana, if the veil is lifted it would be evident that though there is continuous work entailing regular appointments to be made and to obviate such an eventuality, respondents adopted the mode of contracting the applicant on an annual renewal basis which is unfair. To be precise respondents instead of acting as a model employer have enacted the role of a dominant player, which requires deep introspection by the respondents.

VII. One another issue relevance is that the DOPT memo of 1993 cited supra does speak of regularization of casual labour as under:

> *".... the scheme for grant of Temporary Status and Regularization of casual workers issued vide OM No. 51016/2/90-Estt. dated 10.9.1993 of DOP&T clearly indicates as follows:*
>
> *4. Temporary Status*
>
> *(i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).*
>
> *(ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group `D' posts.*
>
> *(iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.*
>
> *(iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group `D' posts.*
>
> *5. Temporary status would entitle the casual labourers to the following benefits:-*
>
> *(i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group `D' official including DA, HRA and CCA*
>
> *(ii) Benefits of increments at the same rate as applicable to a Group `D' employee would be taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for at least 240*

days, 206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.

(iii) Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of work, casual or any other kind of leave, except maternity leave, will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service.

(iv) Maternity leave to lady casual labourers as admissible to regular Group `D' employees will be allowed.

(v) 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularisation.

(vi) After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group `D' employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group `D' employees, provided they furnish two sureties from permanent Government servants of their Department.

(vii) Until they are regularized, they would be entitled to Productivity Linked Bonus/ Adhoc bonus only at the rates as applicable to casual labourers."

If not for the tag of a contract employee the applicant is covered by the said memo, for rendering more than a decade of service as submitted by the Ld. Counsel for the applicant. Whether it is a casual labour or a contract employee, the nature of work of a Machine Operator is unvarying. As is seen in the instant case, applicant has been engaged for more than a decade in order to do the same work as would be done by an employee, if engaged on casual basis. Respondents stand that they have engaged the applicant on a contract basis and therefore, terms of the contract would come into play, ignoring the reality that they belong to the clan of the model employer, which calls for many responsibilities to be discharged as expounded by the superior judicial fora in paras supra. We need to also add that the aspect of crucial importance is the mode of engagement, nature of work and the period of engagement. The nature of work done by the applicant is not seasonal, but regular. It is responsible and sensitive since a Machine

Operator's efficacy defines the life of the machine, its maintenance and therefore, the allied costs inherently important to any organization. Services of the applicant for handling regular work appointed through the regular recruitment process and who has a standing of 10 years and more in the respondents organization, have to be regularized is the essence of ***Uma Devi*** verdict, bereft of the technical tag of a contract employee. What is substantive is the nature and the term of employment and not the misuse of the instrument of contract. Thus, we find in sum and substance that the respondents were found to be wanting in donning the role of model employer by not regularizing the services of the applicant. In the process, they infringed the legal principles postulated, not expected of an organization, which is an organ of the State. Above all, judgment of the Hon'ble High Court for the State of Telangana has stated in as many words as is required that services of employees engaged with elements of contract embedded in appointing them, despite work being available, call for their services regularized.

VIII. Therefore, in the light of the cited judgment of the Hon'ble High Court for the State of Telangana and the inescapable responsibility of the respondents to enact the role of a model employer plus the judgment in ***Dhirendra Chamoli*** supra, they are directed to consider grant of relief of temporary status and regularization sought by the applicant as per his eligibility, in a period of 6 months from the date of receipt of the order. The long time is given so that the respondents can effectively rework their approach to personnel issues from a contractual frame to a normal frame, at

least in jobs where required, like the one of the applicant, keeping in view the intrinsic necessity and nature of work involved. With the above direction, the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

evr