

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 20th DAY OF Nov, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Original Application No. 840 of 2003
(U/S 19, Administrative Tribunal Act, 1985)

1. Yogendra Kumar Tyagi S/o Shri Satya Veer Singh Tyagi.
2. Naresh Kumar Chauhan S/o Shri Hukum Singh Chauhan.
3. Sunil Kumar Sharma S/o Shri Dariyao Singh
4. Sukh Dev Singh Negi S/o Shri Dilawar Singh Negi
5. Arun Kumr Tyagi S/o Shri Ram Chandra Tyagi
6. Narendra Pal Singh S/o Shri Om Prakash
7. Rakesh Kumar Sharma S/o Shri Shankar Lal Sharma
8. Ram Gopal S/o Shri Prakash Chandra
9. Subodh Kumar Tyagi S/o Shri Chaman Singh Tyagi
10. Mahavir Singh S/o Shri Tangi Singh

All applicants serving in Project Directorate for Cropping Systems Research, Modipuram, District Meerut, U.P.

..... Applicants

By Advocate: Shri D.B.Kausar

Versus

1. Union of India through its Secretary, Ministry of Personnel, PG & Pensions, Depart of Personnel & Training North Block, New Delhi- 110001
2. Secretary, Indian Council for Agricultural Research, Krishi Bhawan, New Delhi-110001

3. Project Director, Project Directorate for Cropping Systems Research (PDCSR) Modipuram, District-Meerut (U.P.)
..... Respondents

By Advocate: Shri Manoj Kumar

ORDER


(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

1. The question involved in this case is whether the Tribunal could direct the respondents to create additional posts and grant regular appointment to the applicants as Motor Vehicle/Tractor Drivers/Pump Operators/Watchman etc, which are claimed to be lawfully due to them since the date they had been discharging the functions attached to the respective posts.

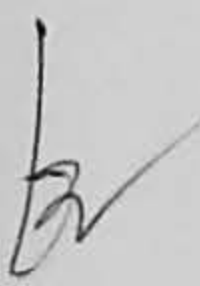
2. The brief facts of the case as per the applicants are as under:-

(a) The applicants in this O.A. are serving in Project Directorate for Cropping Systems Research, Modipuram in U.P., under the administrative control of the Indian Council for Agricultural Research (for short ICAR), an autonomous authority.

(b) The Technical Services Rules of ICAR came into force on 01.10.1975, whereby certain posts have been declared as Technical Services Grade T-I as for example, the post of Pump Operator. Two of the



applicants (Applicant No.4 and 10) joined the Project Directorate for Cropping Systems Research (for short PDCSR), Modipuram as Casual Labourer as early as on 06.06.1989 and 13.06.1989 respectively. The rest of the applicants joined as Casual Labourers on various dates in 1990. It was on 30.03.1990, that the ICAR New Delhi sanctioned four posts of Watchman/Beldar and 03 posts of Messengers in Pay Scale of Rs.750 - 940 and 02 posts of Motor Vehicle Driver in Grade T-1 in the scale of Rs.975 - 1500.

- (c) One of the applicants filed O.A. No.201 of 1993 before this Bench claiming regularization of appointment as Pump Operator while some other applicants along with certain others filed O.A. No. 515 of 1993 for a similar relief. Yet another O.A. No. 1091 of 1993 praying for an identical relief had been filed by certain other persons including one of the applicants herein.
- (d) In 1994, the ICAR sanctioned two posts of Pump Operator for PDCSR, Modipuram in the pay scale of Rs.750 - 940 as against the 975 - 1540, which was the pay scale for Pump Operator as per Technical Service Rules, 1975.
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(e) The ICAR adopted the casual labourers (grant of temporary status and regularization) scheme of Government of India, 1993 in respect of its organization vide order dated 23.11.1994. Accordingly, on 24.06.1996, the ICAR directed all the units under its Administrative Controller to fill up all the vacancies in the SS Grade-I from Casual Labours, who were afforded temporary status. Similarly, on 12.12.1996, the ICAR directed all the units under its Administrative Controller that vacancies in SS Grade-I in the year 1997-98 should also be filled up from out of Casual Labour granted temporary status and if need be by seeking approval for creation of additional posts.

(e) The PDCSR by its order dated 18.03.1997 and subsequent order dated 05.08.1997 afforded temporary status to a few Casual Labourers including the applicants herein.

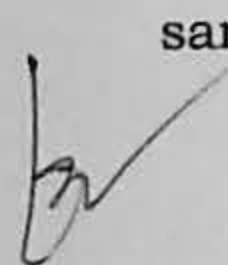
(f) O.A. No. 515 of 1993, 201 of 1993 as well as 1091 of 1993 have all been disposed of taking note of the subsequent developments as cited above.

(g) On 26.03.2002, 12 temporary status employees submitted representation to Respondent No. 3 seeking regular appointment. Similarly, the

applicants in the present O.A. having temporary status preferred their representation to the respondent No. 3 for regular appointment. And, since there has been no favourable response, through this O.A. the applicants are seeking following relief/s:-

- (i) *Issue an order commanding the Respondents to create additional posts and grant regular appointment to the applicants as Motor Vehicle Driver/Tractor Drivers/Pump Operators/ Watchman etc. as lawfully due to them from the date(s) they have been discharging the functions/duties of the respective posts.*
- (ii) *To issue an order commanding the Respondent to pay arrears of salary/allowances lawfully due from 1st September, 1993 as per the pre-revised/revised scales of pay obtaining upto 31.12.1995 and w.e.f. 1st January, 1996 onwards after fixing the pay as per the CCS (Revised Pay) Rules, 1986/1997.*
- (iii) *To issue any other suitable order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
- (iv) *To award cost of the petition in favour of the applicants.*

3. Respondents have contested the O.A.. According to them, in the absence of sanctioned of the posts, the Applicants would not be regularized against any SS Grade post even after grant of temporary status. They have indicated the number of sanctioned posts which already stood filled up.



4. The applicants have filed their Rejoinder Affidavit reiterating the contentions made in the Original Application.

5. In the Supplementary Counter Affidavit, the Respondents stated that even after 10 years of Casual Labour with temporary status regularization could not be made due to non availability of sanctioned posts. As and when the post will be sanctioned or created by the Planning Commission or Ministry of Finance, the case of regularization of the Casual Labourers would be considered in accordance with Rules. They have also referred to an order dated 05.08.1999 relating to filling of vacant posts. It has also been indicated in the Supplementary Counter Affidavit that as per Ministry of Finance and Department of personnel, a review has to be conducted and till the review is completed no vacant posts should be filled up except with the approval of the Ministry of Finance. Vide Annexure SCA-1, the Department of Personnel and Training have stated that as regards creation of posts are concerned, the post can be created on the basis of functional justification which have been to be furnished by the concerned organization, where the applicants have been working. In the instant case, as the Applicants are Casual Labourers under the Administrative Control of the ICAR, it is entirely for the organization to furnish parawise comments with regard to creation of posts for regularization of applicants and other issues raised in the O.A. and the Department of Personnel have no role to play in the

matter of creation of posts in the office where the applicants have been working.

6. The applicants have filed Supplementary Rejoinder Affidavit brining in various Rules and decision and stated that creation of post to accommodate the applicants is fully justified. **They have also relied upon the order dated 24.06.1996 of the ICAR which states that no post of supporting staff Grade-I under direct recruitment be filled up without accommodating the Casual Labourers (Temporary Status). Annexure SRA-I refers.**

7. In the Supplementary Counter Affidavit, Respondents have highlighted various restrictions by the Ministry of Finance with regard to reduction of 10% posts in direct recruitment and filling up of vacancies.

8. The applicants have filed written submission in support of their cases, raising various constitutional issues such as right of equality and direct Principles of State Policy etc. They have also relied upon a number of Apex Court judgments.

9. Counsel for the Applicant succinctly and systematically referred to various orders relating to Casual Labour temporary status. He had focussed our attention to an anatomy of rules and regulations relating to casual labourers including the

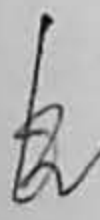
Casual Labour (grant of temporary status and regularization) Scheme, 1993 and submitted as under;-

- (a) The case of the applicants has to be considered under the aforesaid Casual Labour (Grant of Temporary Status and regularization) Scheme 1993 and other attendant circulars and office memoranda issued by the DOPT from time to time. Dismissing the case of the applicant on the basis of the decision of the Apex court in the case of Umadevi (2006) 4 SCC 1 which does not apply to the case is thoroughly illegal. In fact, Umadevi and subsequent decisions of the Apex Court do appreciate that such of the casual labourers other than the 'back door entrants' with more than ten years of service, are to be regularized by drawing a proper scheme.
- (b) Malafide stalling of regularization under the garb of non availability of vacancies. The Counsel also questioned, as to when the services of the applicants are advantageously utilized for the past nearly score of years, how can one accept that there is no justification for creation of post and if there is justification why such posts are not being created.
- (c) A person who had been engaged continuously for more than 17 years cannot be branded as Casual

Labour. Similarly, the term of Casual Labourer has also been criticized on the ground that these are the persons, who are allowed their salary on a regular pay scale though they may not be in the pay roll as other regular employees but enjoy the prescribed time of scale pay with attendant allowances etc.

- (d) Though the scheme talks of regularization it is unfortunate that for 18 years the Applicants are to languishing in the same status of temporary status.
- (e) He has also submitted that an artificial division is created between regular employees and the applicants, on the basis of the Sub Head under which they are being paid their salary/wages. The applicants are stated to have been paid through the office contingency while others are paid from the Head Salary. There is no magic in the words Salary (to treat the salaried employees as regular) or constraint in the word of 'contingent paid' (to treat those receiving their wages through the head 'contingent expenses' as Casual Labour) as both are paid only by the Government of India."

8. The Advocate has also taken individual pain to draw the statement of men power requirement during the period from 2002-03 in PDCSR, Modipuram, which reads as under:-



Man power requirement during 8th Plan (2002-03)
PDCSR, Modipuram

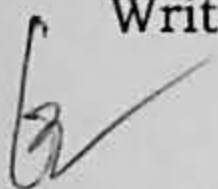
Category	Posts in Position 31.03.2002	Total requiremen	Additional Posts
Scientific	40	38	+2 Excess
Technician	25	53+1	28+1
Administrative	21	42	21
S....., staff Grade	18	45	27s

9. Counsel for the Applicant highlighted the various draw back in either not granting regularization or delay in grant of regularization as these would result in depriving the such applicants and other similarly situated from the benefits of pension and other terminal benefits, which are based upon the length of qualifying service as well as last pay drawn. . The artificial division thus encroaches upon the fundamental right of equality and right to life enshrined in the Constitution of India.

10. Counsel for the Respondents submitted that it is no doubt, true that the applicants have been functioning as temporary status Casual Labourers for a substantial period but the question is one of creation of post which was not in the hand of Respondent No.3.

11. Arguments were heard documents perused.

Written submission has also been scanned.



12. As initially mentioned, the question is as to whether the Tribunal could direct the respondents to 'create' posts to accommodate the applicants. The Apex Court has in many a decision held that creation of posts that courts cannot direct creation of posts. In this regard in a comparatively recent decision in the case of **Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana**, (2009) 8 SCC 556 the Apex Court has held as under:-

37. There cannot be any quarrel with the proposition that courts cannot direct creation of posts. In *Mahatma Phule Agricultural University v. Nasik Zilla Sheth Kamgar Union*² this Court held: (SCC pp. 352-53, paras 12-14)

"12. Mrs Jaising, in support of Civil Appeals Nos. 4461-70 and 4457-60 arising out of SLPs (C) Nos. 418-21 of 1999 and SLPs (C) Nos. 9023-32 of 1998 submitted that the workmen were entitled to be made permanent. She however fairly conceded that there were no sanctioned posts available to absorb all the workmen. In view of the law laid down by this Court the status of permanency cannot be granted when there are no posts. She however submitted that this Court should direct the Universities and the State Governments to frame a scheme by which, over a course of time, posts are created and the workmen employed on permanent basis. It was however fairly pointed out to the Court that many of these workmen have died and that the Universities have by now retrenched most of these workmen. In this view of the matter no useful purpose would be served in undergoing any such exercise.

13. To be seen that, in the impugned judgment, the High Court notes that, as per the law laid down by this Court, status of permanency could not be granted. In spite of this the High Court indirectly does what it could not do directly. The High Court, without granting the status of permanency, grants wages and other benefits applicable to permanent ⁵⁷⁵employees on the specious reasoning that inaction on the part of the Government in not creating posts amounted to unfair labour practice under Item 6 of Schedule IV of the MRTU and PULP Act. In so doing the High Court erroneously ignores the fact that approximately 2000 workmen had not even made a claim for permanency before it. Their claim for permanency had been rejected by the award dated 20-2-1985. These workmen were only seeking quantification of amounts as per this award. The challenge, before the

High Court, was only to the quantification of the amounts. Yet by this sweeping order the High Court grants, even to these workmen, the wages and benefits payable to other permanent workmen.

14. Further, Item 6 of Schedule IV of the MRTU and PULP Act reads as follows:

'6. To employ employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.'

The complaint was against the Universities. The High Court notes that as there were no posts the employees could not be made permanent. Once it comes to the conclusion that for lack of posts the employees could not be made permanent, how could it then go on to hold that they were continued as 'badlis', casuals or temporaries with the object of depriving them of the status and privileges of permanent employees? To be noted that the complaint was not against the State Government. The complaint was against the Universities. The inaction on the part of the State Government to create posts would not mean that an unfair labour practice had been committed by the Universities. The reasoning given by the High Court to conclude that the case was squarely covered by Item 6 of Schedule IV of the MRTU and PULP Act cannot be sustained at all and the impugned judgment has to be and is set aside. It is however clarified that the High Court was right in concluding that, as per the law laid down by this Court, status of permanency could not be granted. Thus all orders wherein permanency has been granted (except award dated 1-4-1985 in IT No. 27 of 1984) also stand set aside."

38. In *State of Maharashtra v. R.S. Bhonde*¹⁵ this Court relied upon an earlier judgment in *Mahatma Phule Agricultural University* and reiterated the legal position thus:

"7. Additionally, as observed by this Court in *Mahatma Phule Agricultural University v. Nasik Zilla Sheth Kamgar Union*² the status of permanency cannot be granted when there is no post. Again in *Gram Sevak Prashikshan Kendra v. Workmen*¹⁶, it was held that mere continuance every year of seasonal work obviously during the period when the work was available does not constitute a permanent status unless there exists post and regularisation is done."

39. In *Indian Drugs & Pharmaceuticals Ltd. v. Workmen* this Court stated that courts cannot create a post where none exists. In para 37 of the Report, this Court held:

"37. Creation and abolition of posts and regularisation are purely executive functions vide P.U. Joshi v. Accountant General . Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. This Court cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the Constitution, and the judiciary, too, must know its limits."

40. In yet another case, *Aravali Golf Club v. Chander Hass*, this Court said:

"15. The court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organisation. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the courts cannot take upon themselves the power of creation of a post. Therefore, the directions given by the High Court and the first appellate court to create the posts of tractor driver and regularise the services of the respondents against the said posts cannot be sustained and are hereby set aside."

41. Thus, there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive. It is also true that the status of permanency cannot be granted by the Court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the courts.

13. The case laws discussed by the learned counsel for the applicants in respect of the obligation of the Government to create posts would all have to be read in consonance with the above decision and as such, it has to be made clear at the very outset that there is no question of any positive direction to the respondents to create post with a view to accommodate the applicants.

14. Nevertheless, if vested rights so far accrued to the applicants are kept in mind, the same would go to show that this OA cannot be dismissed holding that the Tribunal has no

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power to direct the respondents to create posts. What is to be seen is the best way to ensure that the vested interests of the applicants are kept in tact and the benefits arising out of such rights are made available to the applicant. Attempt through this order is only towards this goal.

15. Earlier, in *Piara Singh*, the Apex Court has held that persons with a substantial period of service as casual employees could be regularized deeming that posts are available as without such necessity, persons for long years could not be kept in service. With the pronouncement of the Constitution Bench judgment in the case of **State of Karnataka vs Umadevi (2006) 4 SCC 1**, any law laid down by the Apex Court prior to *Umadevi* has to be read in consonance with the law laid down in *Umadevi* and subsequent decisions passed on the same lines as of *Umadevi*. In case of any conflict between the two i.e. decisions anterior and posterior to *Umadevi*, obviously the latter would prevail, save when the former is either not discussed or of a larger Bench. The Apex Court in the case of **Official Liquidator vs Dayanand (2008) 10 SCC 1**, which has profusely referred to the decision in *Umadevi*, has in unequivocal term and with a strong dose of emphasis stated that **while the courts issue directions the same should not result in virtual abrogation of the statutory rules relating to recruitment.** (Para 116 of the judgment refers). Thus, we have to refer to the decisions relating to regularization of the casual labour service of the applicants.

16. In a very recent case of **State of Rajasthan vs Daya Lal (2011) 2 SCC 429**, the Apex court has emphatically state as under:-

12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

- (i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.
- (ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". **Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right. (emphasis supplied)**
- (iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by

extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.


(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

17. The matter has, therefore, to be dealt with strictly within the four walls of the Rules on the subject and on the basis of the decisions of the Apex Court. Nothing less; nothing else!

18. The scheme of regularization of the temporary status employees provides for the following:-

Two out of every three vacancies in Group D cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel and Training from amongst casual workers with temporary status. However, regular Group D staff rendered surplus for any reason will have prior claim of absorption against existing / future vacancies. In case of illiterate casual labourers or those who fail to fulfill the minimum qualifications prescribed for posts,



regularisation will be considered only against those posts in respect of which literacy or lack of minimum qualifications will not be a requisite qualifications. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer.

19. It may be true that the applicants have been languishing for years together without being regularized. That cannot be helped. The Apex Court has, in the case of **Chanchal Goyal (Dr) vs State of Rajasthan (2003) 3 SCC 485** had elaborately discussed the issue of regularization of ad hoc or temporary employees with long years of service and the same is as under:-

10. *In J&K Public Service Commission v. Dr Narinder Mohan it was, inter alia, observed that it cannot be laid down as a general rule that in every category of ad hoc appointment if the ad hoc appointee continued for a longer period, rules of recruitment should be relaxed and the appointment by regularization be made. In the said case in para 11 the position was summed up as under:*

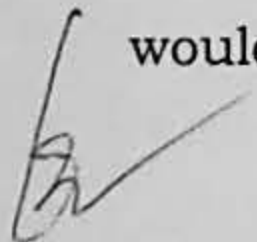
"11. This Court in A.K. Jain (Dr) v. Union of India gave directions under Article 142 to regularize the services of the ad hoc doctors appointed on or before 1-10-1984. It is a direction under Article 142 on the peculiar facts and circumstances therein. Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 power is confided only to this Court. The ratio in P.P.C. Rawani (Dr) v. Union of India is also not an authority under Article 141. Therein the orders issued by this Court under Article 32 of the Constitution to regularize the ad hoc appointments had become final. When contempt petition was filed for non-implementation, the Union had come forward with an application expressing its difficulty to give effect to the orders of this Court. In that behalf, while

appreciating the difficulties expressed by the Union in implementation, this Court gave further direction to implement the order issued under Article 32 of the Constitution. Therefore, it is more in the nature of an execution and not a ratio under Article 141. In *Union of India v. Dr Gyan Prakash Singh* this Court by a Bench of three Judges considered the effect of the order in *A.K. Jain case*⁸ and held that the doctors appointed on ad hoc basis and taken charge after 1-10-1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment. In *H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka High Court*¹¹ this Court while holding that the appointment to the posts of clerk etc. in the subordinate courts in Karnataka State without consultation of the PSC are not valid appointments, exercising the power under Article 142, directed that their appointments as a regular, on humanitarian grounds, since they have put in more than 10 years' service. It is to be noted that the recruitment was only for clerical grade (Class III post) and it is not a ratio under Article 141. In *State of Haryana v. Piara Singh* this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary employees by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. Ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee. He must be replaced only by regularly selected employee. The ad hoc appointment should not be a device to circumvent the rule of reservation. If a temporary or ad hoc employee continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. It is to be remembered that in that case, the appointments are only to Class III or Class IV posts and the selection made was by subordinate selection committee. Therefore, this Court did not appear to have intended to lay down as a general

rule that in every category of ad hoc appointment, if the ad hoc appointee continued for long period, the rules of recruitment should be relaxed and the appointment by regularization be made. Thus considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned Single Judge is right in directing the State Government to notify the vacancies to the PSC and the PSC should advertise and make recruitment of the candidates in accordance with the rules."

11. *In Union of India v. Harish Balkrishna Mahajan the position was again reiterated with reference to Dr Narain case. Therefore, the challenge to the order of dismissal on the ground of long continuance as ad hoc/temporary employee is without substance.*


20. In view of the above, all that could be stated is that the applicants have to wait for their turn to be accommodated against the vacancies that may fall due. Since the Department of Personnel have stated the post can be created on the basis of functional justification which have been to be furnished by the concerned organization, where the applicants have been working the respondents could well take up a case for creation of posts, every sincere attempt should be made by the respondents for necessary sanction from the Government or other competent authority, for creation of additional posts. All the vacancies that are available in the respective posts shall be filled up strictly in accordance with the rules, earmarking the percentage of vacancies for accommodating the applicants in accordance with their seniority in the Temporary Status roll. Certainly, the respondents could consider creation of post on the basis of functional necessities and if any new posts are created these would also be guided by the same percentage (two out of every



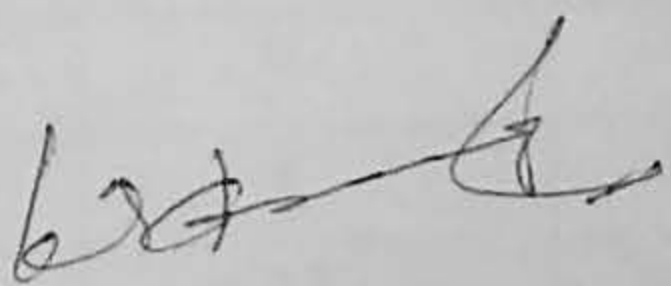
three vacancies) against which the applicants and similarly situated would be accommodated.

21. On regularization, 50% of the temporary service rendered under the Temporary Status Scheme would be counted for the purpose of retirement benefits as per para 5 (v) of the Scheme. This would thus mean that since all the applicants have put in more than 17 years of service on their regularization, 50% of the temporary service would account for more than 8 years and their initial date of appointment would then reckon from a date anterior to 01-01-2004. In that event, their entitlement to pension as per the earlier pension rules shall apply. Revised pension scheme would be applicable to such regularized individuals only in such cases where even after reckoning 50% of temporary service, the period of service for pension purposes falls after 01-01-2004.

22. **The O.A. is disposed of** on the above terms vide para 20 and 21 above. Under the circumstances, there shall be no orders as to costs.


(D.C. Lakha)
Member-A

Sushil


(Dr. K.B.S. Rajan)
Member-J