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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.227/2008

Date of decision: 6.5.2011

Hon'ble Dr. K.B. Suresh, Judicial Member.

Hon'ble Mr. Sudhir Kumar, Administrative Member.

Chiranji Lal Chanda S/o Shri Champa Lal Chanda, aged about 44 years, R/o Hanuman Chowk, Ummedpura, Phalodi, District Jodhpur. Ex. Farrash Contingent in O/o respondent No.5, Superintendent, Custom Range, Phalodi.

: Applicant.

Rep. By: Mr. Manoj Bhandari, counsel for applicant.

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India, North-Block, New Delhi.
2. Commissioner, Central Excise and Custom Department, Statue Circle, Jaipur.
3. Additional Commissioner, Central Excise and Custom Department, Kuchaman House, Ratanada, Jodhpur.
4. Assistant Commissioner, Central Excise and Custom Department, Customs Division, Ratanada, Jodhpur.
5. Superintendent, Central Excise and Custom Department, Custom Range, Phalodi, District Jodhpur.

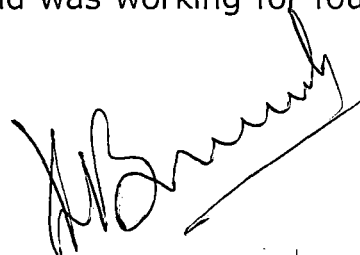
: Respondents.

Rep. By: Mr. M.S. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

Per Dr. K.B. Suresh, Judicial Member.

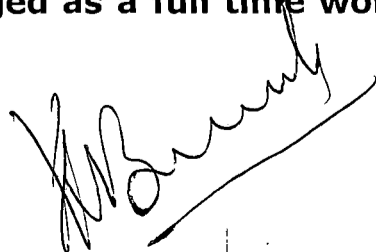
The denied and the deprived must have a champion in the justice delivery system pleads the applicant. The applicant is a part time casual labourer, who was apparently removed from service by an oral termination order in the year 2000. He has appointed on 01.01.1996 and was working for four years when his



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services were terminated. He approached this Tribunal vide O.A. No.275/2000, and vide order dated 22.10.2001, the Tribunal held that based on an Apex Court ruling in **Secretary, Ministry of Communication and others vs. Sakkubai and another** reported in 1998 SCC (L&S) 119, which held that the Tribunal was not right in coming to the conclusion that the scheme for conferring temporary status on full time casual labourers is also applicable to part time casual labourers. On this view, the said original application was dismissed by this Tribunal, which has challenged by the applicant in the D.B. Civil Writ Petition No.266/2004, which was considered by the Hon'ble High Court of Rajasthan on 28.07.2005. In which the Hon'ble Rajasthan High Court held that the Tribunal's order lacked in reason and had been passed in a very casual manner, without noticing the actual issue between the parties and it emphasized that precedent can be applied only on the facts admitted or found, the Tribunal's order was thus set aside and a reconsideration was directed and the Tribunal was directed to decide the matter afresh by including objections to the termination of service after four years of continuous service. It held that if only termination is found to be valid the question of grant of the status of regularization will become germane for consideration. It called for a detailed enquiry of fairness into termination of the service.

2. Thereupon the matter was reconsidered and the Tribunal in its order dated 21.12.2005 held that **(i) even though the photocopies of the attendance register may have indicated that the applicant was engaged as a full time worker but in**

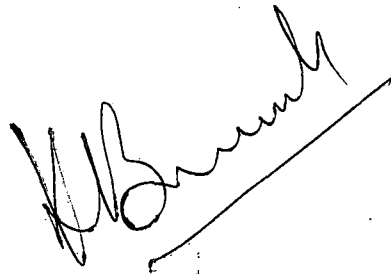


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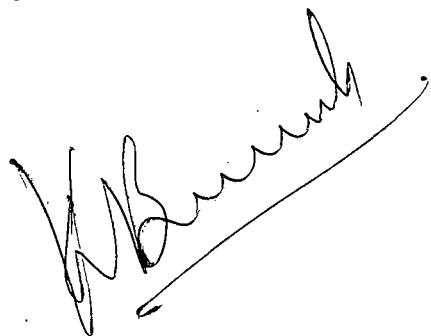
response to Annexure-A/10 filed by the applicant, the applicant is to be treated as a part time worker; (ii) the applicant was on leave from 27.12.1999 to 09.01.2000, therefore, the Tribunal did not accept the abandonment of services as contended by the respondents; (iii) the applicant was terminated through oral order dated 10.01.2000 and there was no reply for representation. Therefore, termination shall have to be construed as illegal and inoperative. The termination order was set aside and the respondents were directed to reinstate the applicant on the job on which he was last employed and that he was declared to be entitled to all consequential benefits except the back wages.

3. This order dated 21.12.2005 was challenged by the respondents in the High Court of Rajasthan vide D.B. Civil Writ Petition No.1814/2006. In which the Hon'ble High Court vide order dated 17.08.2006, held that the finding of the Tribunal that the services of the respondent No.1 (who is applicant herein) has not been validly terminated does not call for interference and the writ petition of the respondents was dismissed.

4. But thereafter since he was not reinstated the applicant had, apparently, filed a contempt petition No.02/2007 before this Tribunal and in which a reply was filed by the respondents that on 15.02.2007, applicant had been reinstated back in service. The Bench after hearing both sides passed order to effect that the reinstatement has taken place on 15.02.2007 after about six



months, the Tribunal held that he ought to have been reinstated by 15.11.2006 i.e. within three months next of the order and, therefore, the applicant is given a liberty to move a representation in regard to his grievance of not having being reinstated within a reasonable time and directed that if any such representation is received, the same must be expeditiously disposed of. The current grievance of the applicant is that even though he is apparently said to be reinstated back in service in fact he would say that his salary is also not paid even though technically he was reinstated back in service on 15.02.2006 as stated by the respondents. He would say that even though he had been denied employment, the respondents have undertaken steps for selection again for Group 'D' post and he relies on Annexure-A/12 advertisement issued by the respondents. It would appear that in the interregnum the respondents have informed the applicant that they have filed an SLP before the Hon'ble Supreme Court. It would appear, according to the applicant, that he has not been taken back in duty actually and his attendance register was being not marked for the reason that SLP is pending before the Hon'ble Supreme Court. Therefore, he claims that the action of the respondents is not only arbitrary, unreasonable, discriminatory but is also violative of Articles 14, 16 & 21 of the Constitution of India and that amounts to begar and thus violative of fundamental principles of Constitution as he is working in the past, but not marking attendance and not drawing a salary.





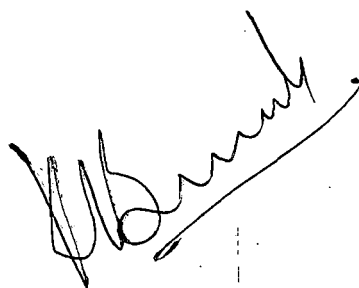
5. The applicant thus challenges the Annexure-A/1 & Annexure-A/2 orders and claims for their quashment. He also claims salary from 01.09.2006 till 28.02.2008.

6. The respondents have filed a detailed reply, in which they submitted that they infact are regularly offering him payment against the work discharged by him at the Phalodi Range Office. Infact payment receivable by the applicant had, therefore, been kept in the Un-Disbursed Account. They feel that for an extraneous consideration the applicant is not accepting the amount. They would also say that for the period of 15.02.2007 to till the month of October 2008, the total amount of Rs.10,250/- is kept in Undisbursed Account, that would mean that monthly amount of Rs.500/- is set apart for the applicant and kept in the Phalodi Range Office. The respondents would aver that the applicant was already taken on duty and he has been continuously working as a part time labour w.e.f. 15.02.2007. Infact the respondents claim that they have informed the applicant vide letter dated 13.03.2008 that the department had filed an SLP before the Hon'ble Supreme Court and, therefore, the reinstatement on duty shall depend on the outcome of the decision of the Hon'ble Apex Court. They would say in paragraph 5.5 of the reply that even though they require Group 'D' employees there is no question of selection of applicant of that Group 'D' posts as he is only a contingent part time worker, he mainly performed the job like cleaning the tables and chairs of the office and arranges the drinking water from the water tap to the water pot of the office.

7. The applicant filed a rejoinder and produced as Annexure-A/13, a copy of the order passed by the Hon'ble Supreme Court in SLP No.7094/2007, which was apparently decided on 17.08.2007 whereby the Hon'ble Apex Court dismissed the SLP. But in the year 2008 also, it is pointed out that the respondents claimed that the work and life of the applicant would depend on the outcome of the decision of the Hon'ble Apex Court. The applicant would say that payment of Rs.500/- per month to him is based exploitation and it is much less than the minimum wages to be payable.

8. It is disheartening to note that a man who would be, even if it is paid to him, is earning only Rs.500/- in a month was dragged before the Hon'ble Apex Court by the respondents, even though they themselves, taken as a persons, are not accountable for the money thus expended by the public exchequer. Such litigational adventures defeat the constitutional matrix of fair and just administration. In this context, it is useful to recall what Pandit Jawaharlal Nehru had said about Directive Principles. Moving the Constitution (First Amendment) Bill he said:

"The Constitution lays down certain Directive Principles of State Policy and after long discussions we agreed to them and they point out the way we have got to travel. The Constitution also lays down certain Fundamental Rights. Both are important. The Directive Principles of State Policy represent a dynamic move towards a certain objective. The Fundamental



Rights represent something static, to preserve certain rights which exist. Both again are right."

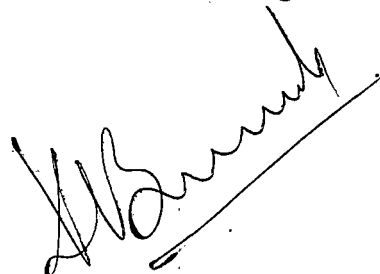
(Proceedings of the Parliament)

Nehru also thought that implementation of the Directive Principles was far more important than the enforcement of Fundamental Rights. Moving the Constitution (Fourth Amendment) Bill, he said:

"I would like to draw the attention of the house to something that is not adequately stressed either in the Parliament or in the Country. We stress greatly and argue in Courts of Law about the Fundamental Rights. Rightly so, but there is such a thing also as the Directive Principles of Constitution.... Those are, as the Constitution says, the fundamentals in the governance of the Country.... if, there is an inherent contradiction in the Constitution between the Fundamental Rights and the Directive Principles of State Policy,.... it is up to this Parliament to remove the contradiction and make the Fundamental Rights subserve the Directive Principles of the State Policy."

(Proceedings of the Parliament)

9. In **Chandra Bhavan v. State of Mysore**, reported in AIR 1970 SC 2042 Justice Hegde says that the provisions of the Constitution are not erected as the barriers to progress. The directive given under Part IV is fundamental in the governance of



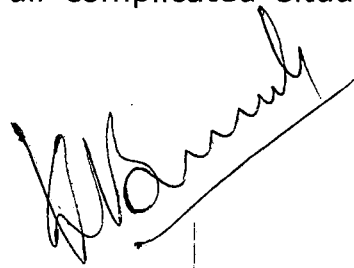
the country. The directive given under Part III and IV are complementary and supplementary to each other. **The hopes and aspiration aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met.**

10. In **Minerva Mills Ltd. v. Union of India** reported in AIR 1980 SC 1789, Justice Chandrachud as Chief Justice observed:

"Part III and Part IV are like two wheels of a chariot, one no less important than the other. In other words, Indian Constitution is founded on the bedrock of the balance between Parts III and IV. This harmony and balance between Fundamental Rights and the Directive Principles is an essential feature of the Basic Structure of the Constitution."

11. In **State of Orissa vs. Dr. Bina Pani Debi** reported in AIR 1967 SC 1279, the Apex Court held that even administrative orders which involved civil consequences must comply with the requirements of principles of natural justice. In **Bhagal Raja vs. Union of India** reported in AIR 1967 SC 295 the constitution Bench of five judges decided that any authority was bound to state its reasons either for allowing or rejecting the plea if such an order involved civil consequences.

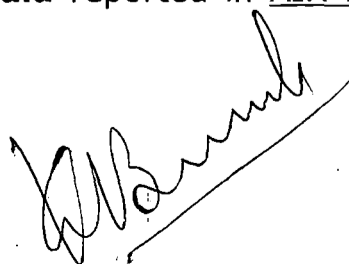
12. In the same context when in the process of adjudication situation may arise to meet with as the legislature concerned had not made any provisions, particularly for such situations for it is often not possible to provide for all complicated situation which



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may arise in the future. Constitution has vested in the higher Courts, the discretionary power to fill the lacunae. The powers issued to various concerned Courts have found that in the innumerable occasions when the aggrieved persons are even unable to move it, the Courts are entitled to take up the matter suo motu and issued prerogative orders in the larger constitutional context.

13. In **Air India Statutory Corporation vs. United Labour Union** reported in AIR 1997 SC 645 the Hon'ble Apex Court upheld the right of the employees. The Hon'ble Apex Court in **Keshavananda Bharati vs. State of Kerala** reported in AIR 1973 SC 1461; **State of Kerala vs. N.M. Thomas** reported in AIR 1976 SC 469; **Fram Naserwanji vs. State of Bombay** reported in AIR 1951 Bom 216; **State of Madras vs. Champakam Dorairajan** reported in AIR 1951 SC 525 and **Deep Chand vs. State of Uttar Pradesh** reported in AIR 1959 SC 648 also had held that on the question of reasonableness the Directive Principles of State Policy is an important question and factor. In the case of **Bhagwati Vs. S.D.M.D.C.** the Hon'ble Apex Court had held that the Court had not only the power was also found to interfere when the fundamental rights of an employee are threatened. The Hon'ble Apex Court in **Grih Kalayan Kendra Workers' Union vs Union of India** reported in AIR 1991 SC 1173 had held that denial of 'equal pay for equal work' is rational classification within Article 14. The Hon'ble Apex Court in **F.C.I. Union vs. Food Corporation of India** reported in AIR 1990 SC



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2178; **Randhir vs. Union of India** reported in AIR 1982 SC 879 and **Ramchandra vs. Union of India** reported in AIR 1984 SC 541 have upheld the cause of equal pay for equal work. It held that **"whether a particular work is same or similar in nature to another work, it can be determined on three considerations:-**

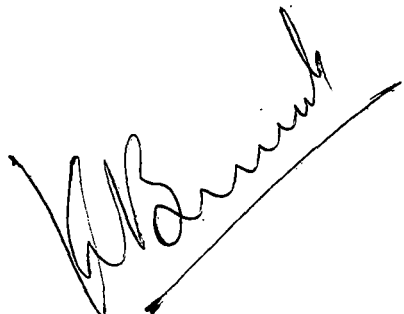
(i) The authority should take a broad view;

(ii) In ascertaining whether any difference are of practical importance, the authority should take an equally broad approach, for the very concept of similar work implies difference in detail. These small difference however, should not defeat a claim of equality on trivial grounds;

(iii) One should look at the duties actually performed, and not at those theoretically possible."

14. Article 42 of the Directive Principles of State Policy makes provision for life security and just and humane conditions of work and state that is shall be obligation of the State to do so. Article 43 the State shall endeavour to secure for living wage to all workers by suitable legislation or economic organization or in any other way. Article 47 raising of the level of nutrition and the reasonable standard of living for the citizens.

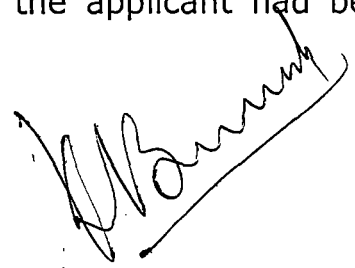
15. **Thus, it is crystal clear that the State have a responsibility of ensuring livelihood of its employees.**



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16. The applicant relies on the judgments of the Hon'ble Apex Court in **Union of India vs. Dinesh K.K.** reported in (2008) 1 SCC 586 which had explained the concept of 'Equal pay for equal work' and directed parity in payment. In **State of Orissa and others vs. Balaram Sahu and other** reported in (2003) 1 SCC 250, the Hon'ble Apex Court held that even there could be differentiation between qualitative, reliability and responsibility and there is fundamental and substantial difference between the employees, even such fractures prescribed for minimum wages. In **State of Orissa and another vs. Shankarasan Mohanty and others** reported in (2003) 1 SCC 258 (1), it agreed that the High Court when it said that the daily wagers should not be given less than what the regulars employees get but then it had to be calculated at the basic minimum. In **State of Orissa and others vs. Upal Krishna Redy and others** reported in (2003) 1 SCC 258 (2), the Hon'ble Apex Court upheld the right of the employees to be paid the same wages as the regular employees on the minimum of the pay scale of belonging to the same category.

17. The applicant also relies on the decision of the Hon'ble Apex Court in **State of Karnataka and others vs. M.L. Kesari and others** reported in (2010) 9 SCC 247, wherein in paragraph (8) their Lordships has canvassed a view that the Umadevi Judgment casts a duty to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years. As the applicant had been

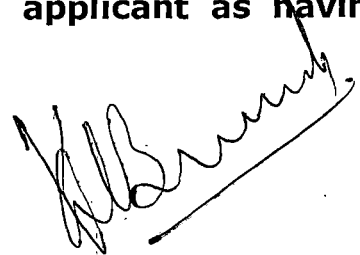


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appointed on 01.01.1996 onwards, and on the basis of continuing employment, which was accepted by adjudication, he would say that this possibility is also open to the administration to consider too.

18. Therefore, the cumulative effect of consideration as above is that:

- (i) The applicant was engaged by the respondents as on 01.01.1996.
- (ii) He was wrongly orally terminated from service on 10.01.2000, and this was set aside by the Tribunal after fresh examination by the direction from the Hon'ble High Court and further directed that all consequences of such reinstatements shall obviously follow except back wages. Therefore, the notional effect of continuance is available to the applicant from 01.01.1996 to till date.
- (iii) This finding of the Tribunal was upheld by the Hon'ble High Court of Rajasthan when it approved by the decision of the Tribunal.
- (iv) This was further corroborated by the Apex Court when it dismissed the SLP filed by the respondents. The claim of the respondents is that the applicant is reinstated on 15.02.2007 even though while dealing with the contempt matter the Tribunal had stated that it is open to the respondents to consider the applicant as having



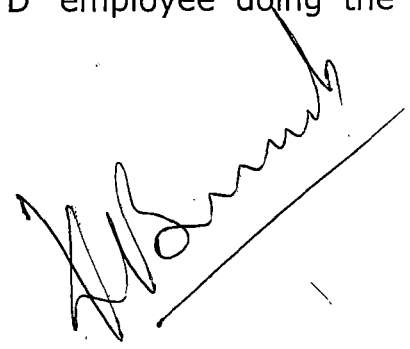
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been reinstated on 15.11.2006 and not on 15.02.2007 taking three months as a reasonable time frame.

- (v) The respondents have stated that they have been depositing in the Phalodi Range Office the salary of the applicant at the rate of Rs.500/- per month.
- (vi) The respondents have stated in the reply that the applicant is working and his nature of work is cleaning the tables and chairs of the office and arranges the drinking water from the water tap to the water pot of the office. He is doing the job of an ordinary Group 'D' employee.
- (vii) The applicant has already become overage and cannot hope to get another government engagement.
- (viii) The best part of his life was spent in the respondent department.

19. Having considered all these findings, which were arising in this matter and in the conspectus of judicial dictum as stated above, we cannot but to come to the finding that the respondents have failed in their just obligations. Therefore, the following directions are issued:-

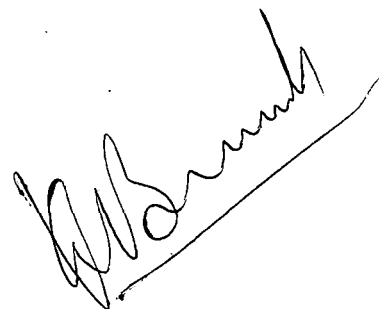
- (i) The applicant shall be paid minimum of pay scale allowable to an ordinary Group 'D' employee doing the similar job.



(ii) The respondents are directed to consider the fitment of the applicant into an appropriate pay level and state of employment within three months next.

(iii) Till effective finalization of applicant's fitment into an appropriate pay level and status of employment, he shall be deemed to have been engaged at a monthly pay of Rs.3,000/- per month and shall be paid all arrears at this rate from 15.02.2007 to till date without any interest, if paid within three months next and with 18% interest if paid beyond that.

20. Thereupon comes to the next question, how is the Court enjoined to act further in such a situation as an uninvolved empire, who adjudicates on what is placed before them alone or to be a purposeful adjudicatory who looks at the entirety of things. The Hon'ble Apex Court had time and again had held that it is a duty of the Court to ensure that the justice is done and in its entirety. It is the duty of the Court to take into consideration the subsequent developments and moved the relief according to the situations which had enured either to the benefit or to detriment of a party before it. By efflux of time, the Umadevi Judgments and further explanation by the Hon'ble Apex Court have come to the rescue of the applicant as in the interregnum period he had completed the 10 years of service and thereby had become the recipient of the beneficial support of the Umadevi judgments. Therefore, there shall be further directions as given below:-



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(i) The applicant shall be considered for regularization as obviously Group 'D' post is still in existence and he is still doing the job of a Group 'D' employee and when this shall be done the Hon'ble Apex Court's judgments relating to administrative fairness of authority shall be kept in mind to the fullest extent.

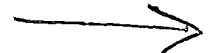
✓ 21. Before parting with the case, we will failing in our duty if we do not comment on the unjustified travails to which a man, who have earned only Rs.500/- per month, was put to by dragging him into the Hon'ble Supreme Court. The Government should have exercised its discretion fairly and the denied must not be further denied, and the deprived must not be further deprived.

✓ 22. With these above directions and observations, the O.A. is allowed and even though cost is justified, we are restraining ourselves, therefore, no order as to costs.

~~[Sudhir Kumar]~~
Administrative Member

[Dr. K.B. Suresh]
Judicial Member

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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 227/2008

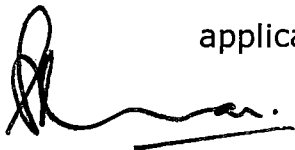
Chiranji Lal Chanda Vs. Union of India & Ors.

I respectfully beg to disagree with the Hon'ble Member (J), who has opined to allow the Original Application with certain directions and observations.

2. The Tribunal had already, on 2.12.2005, while deciding the applicant's earlier O.A. No. 275/2000, arrived at the following conclusions, and had taken judicial notice of them:-

i) In para 6 of the Judgment dated 21.12.2005 it was noted that the counsel for the applicant was at a difficulty to prove that the applicant was engaged as a full time worker like other persons, and not as a part time worker as contended by the respondents, and had finally conceded and submitted that the applicant may be taken as a part time casual labour and his case may be adjudicated upon accordingly.

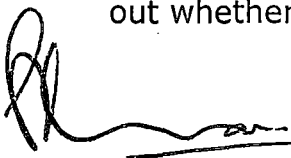
ii) Thereafter the Bench had considered the applicability of the scheme of 1993 in the case of the applicant, and had said that the question as to whether the cases of part time casual labourers are covered by the scheme of 1993 or not would only be of academic interest, since, in the instant case, even if the applicant was full time casual labourer, the scheme of 1993 had



no application to his case, but had left this issue upon for adjudication in an appropriate case.

(iii) In the result, the O.A. had been allowed in part, and the respondents had been directed to reinstate the applicant **on the job on which he was last employed** and had further held that he shall be entitled to all consequential benefits except the back wages, and all other reliefs as prayed for had been declined. (Emphasis supplied).

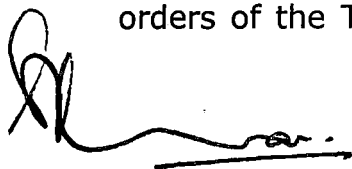
3. The respondents thereafter went in an appeal before the Hon'ble High Court in DB in Civil Writ Petition No. 1814/2006. In the 4th para/ page 2 of the Judgment dated 17.08.2006 itself, the Hon'ble High also Court took judicial notice of the fact that the applicant herein, the respondent-workman, was appointed as a contingent Farrash on 1.1.1986 on monthly wages of Rs. 300/- which was increased to Rs. 500/- p.m. from 18th January, 1987. It was further noted in this Judgment that when the matter had earlier came before the High Court in D.B. Civil Writ Petition No. 266/2004, it had been felt by the Hon'ble High Court as to whether the validity of the termination order needs detailed inquiry into:- i) the fairness of terminating the services; ii) the nature of duties discharged by the petitioner (in order to find out whether he was engaged for discharging duties as part time or was



a whole time employee); iii) whether he was engaged in connection with sovereign functions of the State or otherwise, and iv) if he was not engaged under the Sovereign functions of the State, whether he is entitled to any benefit of the provisions of the Industrial Disputes Act.

4. Thereafter only, after considering the observations of the Hon'ble High Court in DB CWP No. 266/2004, the order dated 21.12.2005 had been passed by the Tribunal when the original applicant had himself admitted to be a part time employee, but there was a finding that there is no provision for oral termination of even such part-time service, and the termination had therefore been found to be invalid. The Hon'ble High Court then held in its order in DB CWP No. 1814/2006 that the finding dated 21.12.2005 of the Tribunal that the services of the original applicant herein had not been validly terminated does not call for any interference, and the Writ Petition filed by the respondents herein was therefore dismissed.

5. The SLA (Civil) CC 7094/2007 was then filed by the respondents herein before the Hon'ble Supreme Court, which was not considered on merits, but was dismissed on 17.8.2007 only on the ground of delay in filing the SLP for which no reasonable explanation had been given. The sum and substance of this litigation is that the following orders of the Tribunal dated 21.12.2005 stood upheld by the Hon'ble



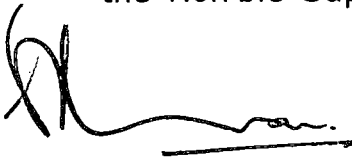
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High Court, and not interfered with by the Hon'ble Supreme Court also:-

"11. The upshot of the aforesaid discussion is that the Original Application merits acceptance in part and the same stands allowed accordingly. The oral termination order dated 10.01.2000 stands set aside. The respondents are directed to reinstate the applicant **on the job on which he was last employed** and he shall be entitled to all consequential benefits except the back wages. Other reliefs stand declined. No order as to costs." (Emphasis supplied)

6. Therefore, the applicant could have been re-employed by the respondents only "**on the job on which he was last employed**", which direction of this Tribunal had been taken judicial notice of by even the Hon'ble High Court of Rajasthan.

7. As has been noted by the Hon'ble High Court also in its Judgment dated 17.08.2006, the applicant's job prior to termination was appointment as a contingent Farrash on 1.1.1996, on the monthly wages of Rs. 300/-, which was increased to Rs. 500/- from 18th January, 1997. Since the finding of this Tribunal in para 6 of the order dated 2.12.2005, that the learned counsel for the applicant had admitted that the applicant was taken as a part time labourer, and his case may be adjudicated upon accordingly, has also been since upheld, first by the Hon'ble High Court on 17.8.2006, while deciding DB Civil Writ Petition on 18.4.2006, and then not interfered with by the Hon'ble Supreme Court while dismissing the SLP on 17.8.2007,



that finding of this Tribunal regarding the status of prior employment of the applicant herein has also become final.

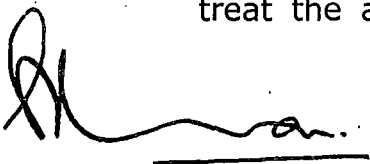
8. The learned counsel for the applicant had himself filed and cited the Judgment and order dated 28.10.2009 of this Tribunal in O.A. No. 71/2006 with O.A. 72/2006 Babu Lal Vs. Union of India & Ors. and Manak Chand & Ors. Vs. UOI & Ors., stating those cases to be parallel. It may be pertinent to cite a few paragraphs from that Judgment cited by the learned counsel for the applicant himself as follows:-

" 7. XXXXXXXXXXXXXXXX

" We shall presently take the first issue, namely whether the applicants are entitled to regularization. In the matter between Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others-2006 SCC (L& S) 753, the Hon'ble Supreme Court has laid the law on this issue. The following extract from para 43 of the said Judgment is relevant:

"43, XXXXXX Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. xxxx"

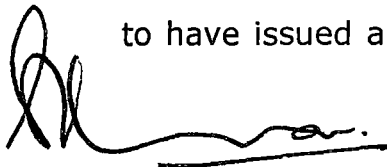
The applicants were not recruited after a due selection of process. No appointment orders were issued to them. They were only engaged on a fixed monthly honorarium. They are also not covered by any scheme of regularization formulated by the respondents. In view of the law laid down by the Hon'ble Supreme Court in Umadevi case, we do not see any merit in the claim of the applicants for regularization. In OA No. 184/04 relied on by the applicants the decision of this Tribunal was to treat the applicant as a full-time casual labourer instead of a



part-time casual labourer. There was no direction for regularization." (Emphasis supplied).

9. The applicant herein also being only a part time casual labourer, who had never been recruited after any due process of selection as per law, and to whom also no order of appointment had been issued, and who had also been engaged only on fixed monthly honorarium basis, he cannot also be conferred the benefit of regularization from back date, as opined by the Hon'ble Member (J) in the draft order above, in view of specific finding of the Hon'ble Supreme Court in Umadevi (3) case. It may also be mentioned that in normal course, the engagement of such work charged part-time contingent employees is only on the basis of work performance, for which they are paid consolidated wages, for their part time work.

10. Further, since the Department of Central Excise and Customs is not an industry, the provisions of Section 25(f), 25(g), 25(h) of Industrial Disputes Act are also not attracted to the case of the applicant, and since no order of appointment was issued for such contingent paid part-time employees, there is also no requirement of issuing them a charge sheet, and then following the procedure as prescribed under CCS (CCA) Rules for dispensing with their services, if not found satisfactory. This Tribunal had earlier in its order dated 21.12.2005 in O.A. 275/2000 noted only that the respondents ought to have issued a show cause notice, or reply to his representation, to



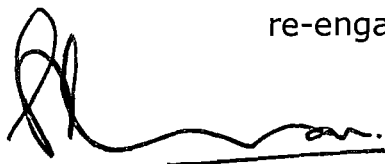
ascertain from him as to why he did not turn up for duties for the period from 27.12.1999 to 9.1.2000, and only on this basis the Tribunal had come to conclusion that his services were wrongly terminated through an oral order on 10.1.2000. The Tribunal had nowhere held that the procedure as prescribed under the CCS (CCA) Rules ought to have been followed in his case, before dispensing with his services.

11. As regards the applicability of the law as arising out of the case in **State of Karnataka Vs. Uma Devi (3): 2006 (4) SCC 1**, the Hon'ble Supreme Court itself has summarized that Judgment in another one of its Judgments in **State of Karnataka and Ors. Vs. M.L. Kesari & Ors. : (2010) 9 SCC 247**, a copy of which also was filed by the learned counsel for the applicant, as follows, reproduced in staccato style:-

Xxxxxxx

"5. The decision in State of Karnataka Vs. Umadevi (3) was rendered on 10.4.2006. In that case a Constitution Bench of this Court held that:-

- Appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees, and
- The Courts cannot direct their absorption, regularization or re-engagement, nor make their service permanent, and



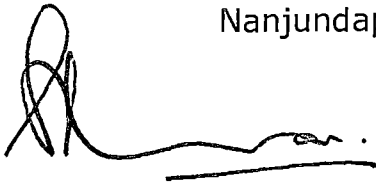
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- The High Court in exercise of jurisdiction under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and
- That the Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates;

6. XXXXX further that

- a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution;
- But the Court however made one exception to the above position-

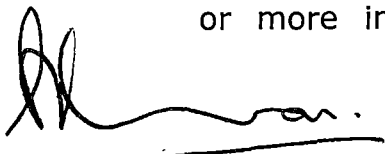
"53. xxxxxxx There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (1967 (1) SCR 128), R.N. Nanjundappa (1972 (1) SCC 409) and B.N. Nagarajan



(1979 (4) SCC 507) 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 regularization of the services of such employee 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 regularize as a one-time measure, the service of such irregular 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.

7. It is evident from the above that there is

- an exception to the general principles against 'regularization' enunciated in Umadevi (3), if the following conditions are fulfilled:
- (i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or



protection of the interim orders of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

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

8. Umadevi (3) casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunal, as a one-time measure."

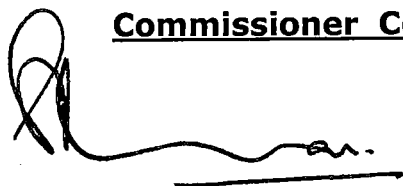
12. This Judgment has further been followed by the Hon'ble Supreme Court in the case of State of **Karnataka Vs. Somashekar Reddy & Ors.** also on 01.04.2011 while disposing of the SLP (C)



No(s). 14892/2006 with SLP © No. 14894 of 2006, 14895 of 2006, 14897 of 2006 and 14899 of 2006.

13. Therefore, it is clear that the directions as proposed and conclusion as arrived at by the Hon'ble Member (J) in para 20, 21 and 22 of the draft order, by citing the Judgment of Hon'ble Supreme Court in Umadevi case (Supra) are not at all on ^{all} ~~of~~ fours with how the ^{hu.} Supreme Court itself has viewed the findings given by its Constitutional Bench in the case of Umadevi (3), as elaborated by it in the State of Karnataka Vs. M.L. Kesari & Ors. (Supra) and State of Karnataka Vs. Somashekar Reddy & Ors. (Supra).

14. It has been held by the Hon'ble Supreme Court in State of U.P. Vs Ajay Kumar:1997 (4) SCC 88 that there must exist a post, and either administrative instructions or statutory Rules must be in operation to appoint a person to the post working on a daily wages basis, otherwise the Court cannot direct for regularization of his services. This Judgment also, though delivered before the Umadevi (3) case (Supra) is also still relevant, and is applicable in the present case. A similar finding of the Hon'ble Supreme Court not to direct the Government to create a post, or change its policy regarding recruitment, was also given by the Hon'ble Supreme Court in Commissioner Corporation of Madras Vs. Madras Corporation



Teachers' Mandram : (1997) 1 SCC 253. In the case of **Tata Cellular Vs. Union ^{of India:} AIR 1996 SC 11**, the Hon'ble Supreme Court pu.

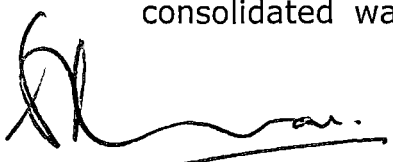
had laid down that since the Court does not sit in appeal over administrative decisions, but merely reviews the manner in which it was made, the Court must exercise utmost restraint while exercising the power of judicial review, else it would be guilty of usurping powers.

Therefore, if the authority takes a decision on the basis of some materials, which a reasonable person could have taken in that case, judicial review is not permissible. On the other hand, if the decision is based on no legitimate reasons, and is actuated by bad faith, then judicial interference would be appropriate remedy to undo the wrong.

15. In the instant case the applicant had absented himself from his work without any intimation, and when he later tried to report back to work on 10.1.2000, the authorities held his unauthorized absence against him, and denied him permission to rejoin his duties. This cannot be stated to be an action actuated by bad faith, and, therefore, no judicial interference is called for in such a case. Still, the applicant has been provided the benefits as available to him by the earlier order

of this Tribunal dated 27.12.2005, of being reinstated "**on the job on which he was last employed**" in his contingent employment on

consolidated wages. But, now no case is made out for any judicial



interference to further the case of the applicant beyond even his own prayers by virtue of judicial activism.

16. As Sir William Wade has written in his Book on " Administrative Law" page 339, "the doctrine that the powers must be exercised reasonably has to be reconciled with no less important doctrine that the Court must not usurp the discretion of the public authority, which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The Court must, therefore, resist the temptation to draw the bounds too tightly, merely according to its own opinion.....If the decision is within the confines of reasonableness, it is no part of the Court's function to look further into its merits.

17. Therefore in my view, this Tribunal is bound by the clear-cut orders of the Hon'ble Supreme Court, and this O.A. deserves to be rejected, as the applicant can only be entitled to re-appointment only **"on the job on which he was last employed"** as a contingent paid Farrash, and cannot claim for his services to be regularized in any manner whatsoever, as has been proposed to be ordered by the Hon'ble Member (J) in sub-para (i) para 20 of the Draft Order above.



18. In view of above observations, I am of the view that the instant O.A. deserves to be dismissed as being not maintainable, and in view of the difference of opinion, the matter may be referred to the Hon'ble Chairman of the Tribunal.


(SUDHIR KUMAR) 06/05/2011.
MEMBER(A)

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