

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 619/05, O.A. No. 640/05, O.A. No. 641/05
O.A.No. 645/05, O.A.No. 665/05, O.A.No. 232/06
O.A.No. 442/2006, O.A. No. 551/2006 &
RA.No.21/05 in OA 824/2000

Friday this the 22nd day of December, 2006

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

O.A.619/05:

- 1 Sheela Kurien, aged 37 years,
W/o M.K.Joy, ManavalanHouse,
Karayamparambu,Kurumassry PO.
- 2 Lekha P.A., aged 36 eyars
W/o Jose A.P.
Edakkaravayalil,Airapuram,
Perumbavoor.Applicants

(By Advocate Mr. P.Ramakrishnan)

V.

- 1 Union of India, represented by
Secretary to Government,
Ministry of External Affairs,
New Delhi-110 001.
- 2 The Joint Secretary & Chief Passport Officer,
Ministry of External Affairs,
New Delhi.
- 3 The Passport Officer, Regional Passport Office,
Cochin.
- 4 The Passport Officer, Regional Passport Office,
Thiruvananthapuram.
- 5 A.P.Sudheer, aged 36 years, S/o Lakshmanan,
Peon, Passport Office,Calicut residing at Ayanikathu
Parambath, Malaparambu PO, Calicut .5.

6 G.K.Santhosh, aged 34 years S/o T.A.Gopalakrishnan
 Peon, Passport Office, Calicut, residing at
 Gopal, Near Puthur Temple, Puthanangadi PO
 Calicut.21.

...Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC for R.1to4
 Mr. TC Govindaswamy for R.5&6)

O.A.640/2005:

1 Kunjumon M.T. Aged 38 years
 S/o M.J.Thomas, residing at
 Karayamparambu, Karukutty PO
 Ernakulam.

2 Rekha K. Nair, aged 37 eyars
 W/o Dileepkumar TV
 Pulluvelikkal House
 Thazhappu,Challka.

...Applicants

(By Advocate Mr.S.Radhakrishnan)

V.

1 Union of India, represented by
 Secretary to Government,
 Ministry of External Affairs,
 New Delhi-110 001.

2 The Joint Secretary & Chief Passport Officer,
 Ministry of External Affairs,
 New Delhi.

3 The Passport Officer, Regional Passport Office,
 Cochin.

4 The Passport Officer, Regional Passport Office,
 Thiruvananthapuram.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

OA 641/2005:

Hila Henry, aged 38 years,
 W/o George T.S.
 Ex.Casual Labour
 Passport Department,
 residing at Thayyil House,
 Janatha Road, Palarivattom
 Kochi.25.

...Applicant

(By Advocate Mr.N.Nagaresh)

V.

- 1 Union of India, represented by
Secretary to Government,
Ministry of External Affairs,
New Delhi.
- 2 The Joint Secretary & Chief Passport Officer,
Ministry of External Affairs,
New Delhi.
- 3 The Passport Officer, Regional Passport Office,
Cochin.
- 4 The Passport Officer, Regional Passport Office,
Kozhikode.

(By Advocate Mr. S. Abhilash, ACGSC)

O.A.645/2005:

- 1 A.P.Sudheer, aged 36 eyars
S/o Lakshmanan, Peon, Passport office,
Calicut residing at Ayanikathu Parambathu,
Malapramabu PO,Calicut.
- 2 G.K.Santhosh, aged 34 years
S/o late T.A.Gopalakrishnan, Peon,
Passport Office, Calicut
residing at Gopal, Near Puthur Temple,
Puthanagadi PO, Calicut.21.Applicants

(By Advocate Mr. T.C.Govindaswamy)

V.

- 1 Union of India, represented by
Secretary to the Government of India,
Ministry of External Affairs,
New Delhi.
- 2 The Deputy Secretary (PV)
Government of India, Ministry of
External Affairs, New Delhi.
- 3 The Passport Officer,
Government of India,
Ministry of External Affairs,
Kozhikode.
- 4 C.Rajesh, aged 32 years

S/o C.Ramachandran, Ex Casual labourer,
 Passport office, Kozhikode residign at
 Chirakkal House, Edacheri Meethal Paramba,
 Chevarambalam PO,Kozhikode.17.

5 Anoop Babu K, aged 32 years
 S/o K.Sahadevan, Ex Casual
 labourer, Passport Office, Kozhikode
 residing at Sangeeth, II/599,Eranhipalam,
 Kozhikode.6.

6 K.P.Bindu, aged 31 years
 W/o Sreesh, Ex-Casual labourer,
 Passport Office, Kozhikode,
 residing at Shanthi Near Muttappnkavu
 Kozhikode.6.

7 Sheeja T.aged 31 years
 D/o C.Raman, Ex Casual labourer,
 Passport office, Kozhikode residing at
 Narayana Vihar, Edakkad
 West Hill, Kozhikode.5.Respondents

(By Advocates Mr.TPM Ibrahim Khan, SCGSC for R.1to3)
 Mr.Shafik M.A. For R.4-7)

O.A. 665/2005:

Shailaja K.P., Aged 37 years
 W/o P.V.Sethunat,
 residing at Puthenparambil House,
 Erayilkadavu, Kottayam.1.Applicant

(By Advocate Mr.S.Radhakrishnan)

V.

1 Union of India, represented by
 Secretary to Government,
 Ministry of External Affairs,
 New Delhi.110 001

2 The Joint Secretary & Chief Passport Officer,
 Ministry of External Affairs,
 New Delhi.

3 The Passport Officer, Regional Passport Office,
 Cochin.

4 The Passport Officer, Regional Passport Office,
 Trivandrum.

(By Advocate Mr. T.P.M Ibrahim Khan, SCGSC)

O.A. 232/2006:

Hila Henry,
W/o George T.S, aged 38 years
Ex.Casual Labourer
Passport Office, Kozhikode
residing at Theyyil House,
Janatha Road, Palarivattom
Kochi.25.

...Applicant

(By Advocate Mr.N.Nagaresh)

V.

- 1 Union of India, represented by
Secretary to the Government,
Ministry of External Affairs,
New Delhi.
- 2 The Joint Secretary & Chief Passport Officer,
Ministry of External Affairs,
New Delhi.
- 3 The Regional Passport Officer, Regional Passport Office,
Cochin.
- 4 The Regional Passport Officer, Regional Passport Office,
Kozhikode.

....Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

O.A.442/2006:

- 1 Kunjumon M.T S/o M.J. Thomas,
residing at Karayamparambu,
Karukutty PO, Emakulam.
- 2 Rekha K.Nair W/o Dileep Kumar T.S.
Pulluvelickal House, Thazhuppu,
Parayakad PO, Cherthala,
Alleppey District.
- 3 Shailaja K.P. W/o P.V.Sethunath,
residing at Puthenparambil House,
Erayilkadavu, Kottayam-686 001.

....Applicants

(By Advocate Mr. S.Radhakrishnan)

 V.

- 1 Union of India, represented by the Secretary, Ministry of External Affairs, New Delhi-110 001.
- 2 The Joint Secretary and Chief Passport officer, Ministry of External Affairs, New Delhi.
- 3 The Passport Officer, Regional Passport Office, Cochin.
- 4 The Passport Officer, Regional Passport Officer Thiruvananthapuram.

(By Advocate Mr. P.A.Aziz, ACGSC)

O.A. 551/2006:

- 1 Udayaraj Janardanan, aged 37 years
S/o V.K.Janardanan,
Previously Casual labourer, Passport office,
Kozhikode residing at Ushanira, 29/2241,
Pipeline Road, PO.Kuthiravattom
Kozhikode.16.
- 2 K.Anilkumar aged 36 years
S/o Raghavan, previously Casual labourer,
Passport office,
Kozhikode residing at Dwaraka,
Kariyeri, Mokavur Po
Eranhikkal, Kozhikode.673 303.Applicants

(By Advocate Mr. Shafik M.A.)

V.

- 1 Union of India, represented by
Secretary to the Government,
Ministry of External Affairs,
New Delhi.
- 2 The Chief Passport Officer& Joint Secretary (CPV)
Ministry of External Affairs,
New Delhi.
- 3 The Passport Officer,
Passport Office, Kozhikode.Respondents

(By Advocate Mr.George Joseph, ACGSC)



R.A. 21/2005 in OA 824/2000:

Hila Henry,
 W/o George T.S
 Ex.Casual Labourer
 Passport Office, Kozhikode
 residing at Theyyil House,
 Janatha Road, Palarivattom
 Kochi.25.

...Review Applicant

(By Advocate Mr.N.Nagaresh)

V.

- 1 Union of India, represented by
 Secretary to the Government,
 Ministry of External Affairs,
 New Delhi.
- 2 The Joint Secretary & Chief Passport Officer,
 Ministry of External Affairs,
 New Delhi.
- 3 Passport Officer,
 Regional Passport Office,
 Kozhikode.

....Respondents

(By Advocate Mr.C.M.Nazar, ACGSC)

These applications having been finally heard jointly on 20.11.2006, the Tribunal on 22.12.2006 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

O.As 619/05, 640/05, 641/05, 645/05 & 665/05: The applicants in these O.As are aggrieved by the Circular No.V.IV/579/1/2003 dated 16.8.2005 issued by the Ministry of External Affairs, Government of India regarding combined departmental examination for educationally qualified regular Group 'D' employees and casual workers in the Central Passport Organization. The said circular reads as under:

 "The competent authority has accorded approval to hold a Combined departmental examination for

consideration of all educationally qualified regular Group 'D' employees and Casual Workers in the Central Passport Organization against the existing vacancies at the level of Lower Division Clerks in the organization on Sunday, the 4th September, 2005 at all Passport Offices.

2 All regular Group 'D' employees and Casual Workers who have passed matriculation examination or above are eligible to appear in this examination. Applications in the enclosed format should reach the undersigned latest by 19.08.2005, duly forwarded by the concerned Passport Officer. All Passport Offices should satisfy themselves about the authenticity of the certificates given by the candidates for educational qualifications, category (Gen/SC/ST) and date of birth before forwarding them to the Ministry along with the applications. The certificates should be duly attested by the concerned Passport officer.

3 The scheme and Syllabus of the Examination are enclosed herewith. Question papers and necessary instructions will be sent to the Passport Offices in due course."

OA 232/06 & 442/06: The applicants in these O.As are aggrieved by the Circular No. V.IV/578/3/2006 dated 17.3.2006 issued by the Government of India, Ministry of External Affairs regarding departmental competitive examination for educationally qualified casual workers who have been working in the Central Passport Organization as on 1.1.2006. The said circular reads as under:

"The Competent Authority has accorded approval to hold a Departmental Competitive examination for consideration of all educationally qualified Casual Workers who have been working in the Central Passport Organization as on 1.1.2006 against the existing vacancies at the level of Lower Division Clerks in the Organization on Sunday, the 16th April, 2006. A list of centers where the Examination will be held and the Passport offices covered by each centers are indicated in the attached Annexure.'A'.

2 All Casual Workers who have passed matriculation examination or above are eligible to appear in this examination. Applications in the enclosed format should reach the undersigned latest by 28th March, 2006, duly forwarded by the concerned Passport officer. All Passport

Offices should satisfy themselves about the authenticity of the certificates given by the candidates for educational qualifications, category (Gen/SC/ST) and date of birth before forwarding them to the Ministry along with the applications. The certificate should be duly attested by the concerned Passport Officer.

3 The scheme and syllabus of the examination are enclosed herewith. Question papers and necessary instructions will be sent to the Passport offices in due course."

OA 551/06: The applicants have filed this O.A not against any particular order but they are aggrieved by the refusal of the respondents to permit them to compete in the examination conducted for the casual labourers for regular appointment.

RA 21/05 in OA 824/2000: The Review Applicant herein is the applicant in OA 641/05 and 232/06 also. The applicant sought to review the order passed way back on 18.10.2001 with a Miscellaneous Application 1209/05 for condonation of delay.

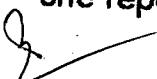
Brief background of the applicants:

OA. 619/05: First and second applicants in OA 619/05 were initially engaged as casual labourers in the Regional Passport Office, Cochin (Respondent No.3) with effect from 14.7.92 and 29.5.92 respectively. They were transferred to the Regional Passport Office, Trivandrum (Respondent No.4) in April, 1996 and worked there till 31.7.97. They were again re-engaged in the Office of the Regional Passport Office at Cochin from 4.8.97 till they were disengaged with effect from 7.4.98. Though the applicant No.1 was re-engaged in the Office of the Regional Passport Office, Trivandrum, she did not join as she was in her advanced pregnancy. The second applicant was again re-engaged from 9.2.2000 to 6.11.2000. Later on on the orders of this Tribunal in OA 671/01 dated

9.8.2002 and OA 396/2000 dated 30.11.2000 respectively both the applicants were granted temporary status with effect from 1.9.1993. Their representations for further re-engagement as causal labourers are yet to be disposed of by the respondents. Meanwhile the respondents issued the aforesaid circular dated 16.8.2005. The applicants were denied the prescribed application form on the ground that the examination was limited only to those in service. Hence they have filed this OA.

OA 640/05: Both the applicants in OA 640/05 were originally recruited through Employment exchange as causal labourers Clerks in the Regional Passport Office, Cochin and have commenced service from April and May, 1992 respectively. They were transferred to the Regional Passport Office, Trivandrum in August, 1996 and worked there till 31.7.97. Again there were reengaged in the Regional Passport Office, Cochin from 4.8.97 to 7.4.98. The first applicant was thereafter re-engaged in the Regional Passport office, Trivandrum from 4.8.98 till 8.9.99. By the direction of this Tribunal in OA 671/01 both of them were granted temporary status with effect from 1.9.93. They have also filed this OA on the denial of the Respondents to supply them the prescribed application form for the test which was to be conducted in terms of the Circular dated 16.8.05.

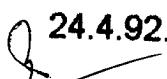
OA 641/05 & OA 232/06: The applicant in both OA 641/05 and OA 232/06 is the same person. As stated in OA 641/05, she was initially engaged as a casual labourer in the office of the Regional Passport Office, Cochin from 21.4.92 to 8.1.95 on being sponsored by the Employment exchange. She was re-engaged on 1.9.99 at the Regional Passport Office, Kozhikode. She submitted an application for maternity leave on 31.1.2000 and when she reported for duty back, she was not permitted to rejoin. She along with



other six have filed OA 793/93 seeking regularization of their service and the same was disposed of vide order dated 6.9.93 with the directions to prepare a seniority list of the casual labourers and to regularize them in accordance with rules. Thereafter, the respondents prepared the Seniority List of Casual Labourers as on 6.12.03 and the applicant's name appeared at Sl.No.144. She had challenged the action of the respondents in not permitting her to rejoin duty after her maternity leave vide OA 824/02 which was disposed of on 16.1.2001 (A1) with the direction to the respondents only to grant her temporary status as she had worked for 206 days in a period of one year prior to 10.9.93 or between 10.9.93 and 6.12.93. Accordingly she was granted temporary status with effect from 1.9.93. She was also denied access to the Circular dated 16.8.2005 and therefore she has approached this Tribunal with this OA. In OA 232/06 her submission is that the exclusion of temporary status attained casual labourers like the applicant from the purview of the departmental examination in pursuance of the circular dated 16.8.05 to the post of LDC is arbitrary and discriminatory.

OA 645/05: The first applicant in OA 645/05 was initially engaged as a causal labour in the Regional Passport Office, Kozhikode. Later she was regularized as a Peon. The second applicant joined as causl labour on 10.6.91 and he was regularized as a Peon with effect from 12.4.2000. They are aggrieved by the Circular dated 16.8.2005 because the casual workers have also made eligible to appear in the limited departmental examination meant for them for promotion to the post of LDCs.

OA 665/05: The applicant in OA 665/05 was originally engaged as a Casual Labour in the Regional Passport Office, Cochin with effect from 24.4.92. She was recruited through the Employment Exchange. She was



transferred to the Regional Passport Office, Trivandrum in August, 1996 and worked there till 31.7.97. She was again re-engaged as a casual labour in the Regional Passport Office, Cochin with effect from 4.8.97 till 7.4.98. In terms of the directions of this Tribunal in OA 671/01 she was granted temporary status with effect from 1.9.93. She also also denied access tot he Circular dated 16.8.05 which prompted her to file this OA.

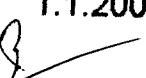
OA 442/06: There are three applicants in OA 442/06. They were initially engaged in the Regional Passport office, Cochin from 20.4.92, 14.5.92 and 24.4.92 respectively. They were dis-engaged on 1.8.96 and deployed at Regional Passport Office, Trivandrum. The applicants were again relieved from the Regional passport Office from 31.7.97 and re-deployed in Regional Passport Office, Cochin. In both the offices the applicants were drawing 1/30th of Group 'C' wages as they were performing the duties of Clerks. When they were re-deployed in the Regional Passport Office, Cochin from 31.7.97 there were no vacancies in Group 'C' and they were offered Group 'D' post and worked as Casual Labourers from 4.8.97 onwards. They had earlier approached this Tribunal vide OA 671/01 with the prayer to grant them the benefit of Casual Labourers (Grant of Temporary Status and Regularization) Scheme 1993 of the Government of India. In terms of the directions of this Tribunal in the said OA, they were granted temporary status with effect from 1.9.93. Finally, all the applicants were disengaged from January, 2000 on the ground that the work allotted to them was complete. They are aggrieved by the Circular dated 17.3.2006 by which the Departmental Competitive Examination for educationally qualified casual workers in the Central Passport Organization against the existing vacancies of Lower Division Clerks has been restricted



to only those who were working in the Organization as on 1.1.2006.

OA 551/06: The applicants in OA 551/06 were initially appointed as a casual labourers in the Regional Passport Office, Kozhikode (R.3) w.e.f 6.12.92 on being sponsored by the Employment Exchange. They have worked for a total period of 1 year and 54 days. When they were about to be disengaged, they approached this Tribunal vide OA 2233/93 which was disposed of later with the direction to the respondents to prepare a seniority list and to engage them in accordance with the seniority list. On the basis of the interim stay granted to them in the said OA they continued till 6.12.93 and later they were disengaged after the OA was disposed of. They were neither regularized nor granted temporary status in spite of their representations. They were also not permitted to appear in the departmental test proposed to be held in terms of Circular dated 16.8.2005.

2 Though in all these OAs the main impugned orders are the Circulars of the Government of India, Ministry of External Affairs dated 16.8.2005 and 17.3.2006 which are extracted in full earlier in this order, the reasons for the challenge are different. By the Circular dated 16.8.2005 the respondents have invited applications to fill up the existing vacancies in the level of Lower Division Clerks in the Passport Office from all educationally qualified regular Group 'D' employees and Casual workers and to hold the combined departmental examination on Sunday 4th September, 2005. The last date of submitting the application was 19.8.2005. The said circular was superseded by the Circular dated 17.3.2006 by which applications were invited from educationally qualified casual workers alone working in the Central Passport Organization as on 1.1.2006 to appear in a departmental competitive examination for



appointment at the level of Lower Division Clerks against the existing vacancies on Sunday the 16th April, 2006. The last date for receipt of the application was 28.3.2006.

3 All the applicants in O.As 619/05, 640/05, 641/05, 232/06 and 665/05 have served with the Regional Passport Offices in Ernakulam, Trivandrum and Kozhikode for different periods from 1992. None of them are on the rolls of these organizations as on the date of issue of the circulars dated 16.8.2005 and 17.3.2006. The applicants in these O.As were not aggrieved by the Circular dated 16.8.2005 as such. Their grievance was that the respondents have neither supplied them with the prescribed application forms nor accepted their application in the prescribed format on the ground that examination was limited only to those in service, though there was no such stipulations in the said Circular dated 16.8.2005. In other words in spite of acquiring temporary status in terms of the Department of Personnel & Training, Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993, the applicants in these O.As have been denied the opportunity to appear in the competitive examination for selection as LDCs, whereas some of the casual labourers who joined much later than them in the respondent organization were permitted to appear in the examination.

4 Though the applicant in OA 645/05 is also aggrieved by the circular dated 16.8.2005, they challenged it for a different reason. The applicants in this OA being regular Group D employees working in the Regional Passport Offices challenged the aforesaid circular on the main ground that in the Recruitment Rules which provides for conduct of the limited competitive examination for filling up the vacancies falling vacant



under the promotion quota, there is no provision to hold a combined departmental examination for both the Group D employees and casual workers. They have therefore challenged the Circular dated 16.8.2005.

5 It was during the pendency of the O.As 619/05, 640/05, 641/05, 645/05 and 665/05, the respondents have issued the second impugned Circular dated 17.3.2006. Though it has not been stated in the said Circular that it was issued in supersession of the earlier Circular dated 16.8.2005, it is clear from it that it is not a combined departmental examination for both Group 'D' regular staff and the casual labourers. Secondly, whereas the earlier circular dated 16.8.2005 did not specify any cut off date for the casual labourers to be working in the Passport Organizations, the second Circular dated 17.3.2006 has made it clear that only the casual workers who have been working in the Passport Organizations on 1.1.2006 would be eligible to participate in the competitive examination. The resultant position is that all the applicants except those in OA 645/05 are now aggrieved only by the Circular dated 17.3.2006. Thus the earlier circular dated 16.8.2005 has become infructuous. For the same reason, the OA 645/05 has also become infructuous. In fact, during the course of the arguments, the applicants' counsel in OA 645/05, Shri Swamy has submitted that since the respondents have already issued circular dated 17.3.2006 to hold a separate examination for the educationally qualified casual labourers who have been working in the Central Passport Organization as on 1.1.2006 to fill up the existing vacancies of LDCs other than the vacancies in that grade earmarked for qualified Group D employees, he wanted to withdraw the said OA as it has become infructuous.



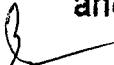
6 When the OA 619/05 was filed before this Tribunal, we have considered the interim prayer and permitted the applicants to submit their application in the prescribed format in terms of the Circular dated 16.8.2005 and also to appear in the combined departmental examination proposed to be held on 4.9.2005. Later on, we were informed by the Sr.CGSC Shri Khan that the examination proposed to be held on 4.9.2005 was indefinitely postponed. Meanwhile, the respondents have issued Circular dated 17.3.2006 removing Group-D employees from the combined departmental competitive examination and limiting the same only to educationally qualified casual workers with the condition that the concerned casual worker should have been working in the Passport Organization as on 1.1.2006. The date for holding the Examination was fixed on 16.4.2006. Immediately the applicant in OA 641/05 Mrs. Hila Henry filed OA 232/06 impugning the said Circular dated 17.3.2006 seeking the following reliefs/interim relief:

Reliefs:

"A. Declare that the exclusion of temporary status attained casual labourers like the applicant from the purview of Departmental examination in pursuance to Annexure.A4 notification, to the post of Lower Division Clerk in the Central Passport Organization is arbitrary and discriminatory and quash Annexure.A4.

B. To declare that the applicant is entitled to be considered for selection in the Departmental Examination scheduled to be held on 16.4.2005 or any other subsequent date as decided by the respondent notwithstanding the restrictive stipulation that Annexure.A4 notification is only for casual labourers in service as on 1.1.2006.

C. To direct the respondent to issue the prescribed application format and permit the applicant to participate in the Departmental examination scheduled to be held on 16.4.2005 and consider her for appointment as Lower Division Clerk."



Interim Relief:

"Pending final decision in the original application the applicant respectfully prays that this Hon'ble Tribunal may be pleased to direct the respondent to allow the applicant to participate in the Departmental competitive Examination scheduled to be held on 16.4.2006 or to any other date as per the Circular No.V.IV/578/3/2006 dated 17.3.2006, as evidenced by Annexure.A4."

Since the examination proposed to be held on 16.4.2006 was indefinitely postponed by the respondents, as reported by the Sr.CGSC, there was no question of granting the aforesaid interim relief and adjourned the case for 23.5.2006. The applicant in O.A 232/06 again moved an MA 426/06 before this Tribunal stating that in spite of the statement of the SCGSC that the examination was postponed indefinitely, the respondents had in fact held the examination on 20.5.2006/21.5.2006 at Bangalore without notice to the applicants and some candidates from Ernakulam also participated in it. In such circumstances, this Tribunal had no option but to direct the respondents not to announce the result of the examination pending disposal of the OA vide order dated 23.5.06. The interim order prayed for in OA 442/06 was also allowed on 16.6.06 restraining the respondents from filling up the existing vacancies of LDCs set apart to be filled up by the Departmental Competitive Examination already held.

7 It is in the above background that all these O.As were heard together with the consent of the counsels for the respective parties.

8 Shri S.Radhakrishnan, learned counsel for the applicants in OA 442/06 led the arguments. The facts in all the O.As except those in OA 645/05 being almost similar, the counsels for the applicants in other O.As have adopted the arguments of Shri Radhakrishnan. The arguments advanced by Shri Radhakrishnn in brief were the following:

(i) Though it was stated in the A1 Circular dated 17.3.2006 issued by the Ministry of External Affairs, Government of India that the proposed Departmental Competitive examination was meant for all educationally qualified casual workers in the Central Passport

Organizations, the Regional Passport Officers refused to permit the applicants to take part in the Examination on the ground that they have already been disengaged irrespective of the fact that most of them were holders of temporary status under "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993".

- (ii) When it was stated in the Circular dated 17.3.2006 that all casual labourers who have passed Class X or above whether holding a Temporary status or not are permitted to appear in the examination, disallowing those who have already been discharged to compete in the departmental Examination is arbitrary, illegal and unjust.
- (iii) The exclusion of the disengaged "temporary status conferred casual employees" from the purview of departmental examination is clearly arbitrary and violative of Article 14 of the Constitution of India as well as the "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993".
- (iv) Once the Temporary status is conferred, it is highly illegal and arbitrary to contend that they are not casual labourers of the organization and to exclude them from the departmental selection test.
- (v) As per the scheme, on conferment of temporary status, they became entitled to the benefit of increments, leave faculties etc. Counting of 50% of the service rendered by them as Temporary Status attained casual labourers for the purpose of retirement benefits, to be treated on par with the Group D employees for the purpose of contribution to the GPF, festival advance etc. apart from

productivity linked bonus adhoc bonus etc. after rendering 3 years continuous service after conferment of temporary status.

(vi) Treating the disengaged Temporary status conferred employees are not part of the organization is patently illegal, arbitrary and violative of Article 14 of the Constitution of India.

vii) The engagements of a new set of casual labourers after the disengagement of the temporary status conferred casual labourer itself was in violation of the judgment of the Apex Court in State of Haryana Vs. Piara Singh, AIR 1992 SC 21 and restricting the Departmental Examination to only those newly engaged casual labourers irrespective of the fact whether they are holders of temporary status or not and insisting on the only condition that they should be in engagement add to the injustice meted out to the applicants.

(viii) It was only when the applicant in OA 640/05 and 665/05 challenged the circular dated 16.8.2005, the respondents have issued the circular dated 17.3.2006 restricting the Departmental examination only to those casual workers on the rolls of the respondents as on 1.1.2006.

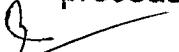
(ix) There is absolutely no sanctity or significance for the date 1.1.2006 as mentioned in the Circular dated 17.3.2006, as this date was fixed after the applicants challenged the Circular dated 16.8.2005 on 24.8.2005 and the reply thereto was filed on 27.9.2005. It is evident that the date was fixed to defeat the legitimate rights of the persons like the applicants and to restrict the benefit of the departmental selection test to certain favoured few of



the department by excluding senior casual labourers by barring them from applying for any post. Therefore the fixing of cut off date as an eligibility condition in the Circular dated 17.3.2006 is patently illegal, arbitrary and violative of Article 14 of the Constitution of India.

9 The applicants in OA 551/06 are also similarly placed as the applicants represented by Shri Radhakrishnan except for the fact that the former were entitled to be conferred with the Temporary status but they were disengaged before such status was conferred upon them. Shri Shafik on their behalf submitted that they are on the same pedestal as the existing casual labourers for the purpose of regularization and the distinction made by the respondents between them are arbitrary and illegal.

10 Basically, the submission of the respondents in all these O.As except OA 645/05 was that holding of Temporary Status was immaterial in the matter as all educationally qualified casual labourers were made eligible for participating in the Departmental Competitive Examination, Provided they are on the rolls of the Passport Organizations as on 1.1.2006. According to them, it is not possible to include all the disengaged casual labourers with or without temporary status in the list of eligible candidates to appear in the Combined Departmental Examination as the same being held as a one time measure. If the disengaged casual labourers are allowed to appear in the examination, it would cause great injustice to those who are working in the Organization at present who are fervently hoping for their regularization after rendering work continuously for the past several years. Besides, it will cause far-reaching administrative problems to the Government as it would create a binding precedent for all similarly situated casual labourers.



11 The respondents have submitted that the very same issue has already been considered and rejected by the Lucknow Bench of this Tribunal in a similar case in OA 436/05 - Upendra Kumar Mishra Vs. Union of India and others decided on 2.9.2005 in which it was held as under:

"9 Annexure.A10 is Circular issued by the Deputy Secretary (PV), Ministry of External Affairs Government of India addressed to all the Passport offices seeking their.....on regular Group D and casual workers who are educationally qualified latest by 19.8.20035 to appear in the Combined Repartees examination scheduled to be held on 4.9.2005 for filling up existing vacancies at the level of LDV in the organization."

10 In the case of the applicant he is not borne on the strength of any Passport Organization even as casual worker even to date. According to the applicant himself he could not attend the duties after 14.10.1992, but when he became fit to resume the duties and reported on 31.3.1993 for the purpose, he was not allowed to do so. We fail to understand as to how he is entitled to participate in the Combined departmental Examination which is meant for only those educationally qualified casual worker who are working with the Passport Officers as on 16.8.2005 when the Circular Annexur.eA10 was issued. From the facts as disclosed by the applicant himself we find hardly any merit in his claim for issuing any direction to the respondents to allow him to take examination in terms at Annexure.A.10.

11 The OA is therefore found without merit and hence is liable to be dismissed at the admission stage. The OA is dismissed without any order as to costs."

12 In the case of some of the individual applicants, the respondents have submitted that they were disengaged long back for their own failure to attend the work. For example, Smt. Hila Henry, the applicant in both OA 641/05 and OA 232/06 was initially appointed at Regional Passport office, Kochi from 21.4.1992 to 8.1.1995 and disengaged on 8.1.1995. She failed in the examination conducted by the Staff Selection Commission during 1993 for regularizing the services of qualified Casual Laborers as LD Clerks in the Central Passport



Organization. She was again given chance to work as Casual Labourer (Group -D) w.e.f 31.8.1999 in terms of her seniority as per the list maintained by the respondents. However, due to long absence from duty, her services were disengaged w.e.f 4.10.1999. The first applicant in OA 442/06, Shri M.T.Kunjumon, was lastly employed as casual labourer from April, 1998 but he was finally terminated w.e.f. 17.1.2001 due to continuous/frequent unauthorized absence. The second applicant, Smt.Rekha K.Nair was continuously absent from duty from 18.3.1999 and she was terminated with the same date vide order dated 30.6.99. The third applicant Smt. K.P.Shailaja was also terminated w.e.f. 2.5.5. 98 due to her continuous absence from that date vide order dated 16.9.98. In reply to OA 551/06, the respondents submitted that some of the applicants left job on their own volition or were disengaged due to certain reasons. The applicants have filed rejoinder justifying their absence stating that they were ill and therefore they could not attend to their duty.

13 Before we advert to the various issues raised in these O.As, we shall first consider the actual rule position which holds the field. The recruitment of Lower Division Clerks in Regional Passport Offices is governed by the Recruitment Rules made by the President under the powers conferred upon him by the provisions of Article 309 of the Constitution called "Ministry of External Affairs, Central Passport Organization (Group C posts) Recruitment Rules, 1996". The method of recruitment is (a) 90% by Direct Recruitment through Staff Selection Commission (b) 10% by Limited Departmental Competitive Examination, failing which by direct recruitment. For the Limited Departmental Competitive Examination "Group D employees of the Central Passport

Organization with 5 years service rendered after appointment thereto on a regular basis possessing educational qualification prescribed for direct recruits are eligible to participate." As is evident from the Circular dated 18.8.2005 the respondents have proposed to fill up existing vacancies at the level of Lower Division Clerk in the Central Passport Organization by holding a combined departmental competitive examination for all the eligible Group - D employees and the educationally qualified casual laborers. This was called in question by the regularly appointed Group -D staff in OA 645/05 on the ground that when the said Recruitment rules are already in existence, any other procedure for recruitment prescribed in terms of a circular would amount to violation of the constitutional guarantees enshrined in Articles 14 and 16 of the Constitution of India. When the respondents realized the illegality committed by them in treating the regularly employed Group -D staff and the educationally qualified casual labourers at par for the purpose of filling the existing vacancies in the grade of Lower Division Clerks, they have issued the Circular dated 17.3.2006 confining the departmental examination only to the educationally qualified casual labourers on the rolls of the Passport Organizations as on 1.1.2006. In both these circulars it was stated that the "competent authority" has accorded approval for holding such an Examination. Since the respondents have not furnished any details of the authority which has been conferred with such powers to hold recruitment by a procedure other than the one prescribed in the Recruitment Rules issued under the provisions of Article 309 of the Constitution and the authority which conferred the power to the "competent authority", on the directions of this Tribunal, respondents filed an additional affidavit in OA 442/06 under the

verification of Shri R.C.Nair, Passport officer, Trivandrum stating that the Departmental Competitive Examination for consideration of all educationally qualified casual workers in the Central Passport Organization against the existing vacancies at the level of Lower Division Clerks was conducted in compliance of the Judgment of the Hon'ble High Court of Madras Judgment in WP No.35179/2005 – P.Dhandayuthapani and others Vs. Union of India and others dated 25.11.2005, a copy of which has been annexed with the said affidavit. They have also furnished copies of the Order of Lucknow Bench of this Tribunal in O.A. 436/2005 – Upendra Kumar Mishra and others Vs. Union of India and others decided on 2.9.2005 and the M/o Personnel D.O. Letter No. 28035/1/2002-Estt(D) dated 9.8.2005 from its Secretary to the Foreign Secretary.

14 The Writ Petition No. W.P.35179/2005 (supra) has arisen from the order of the Madras Bench of this Tribunal in OA 73/2005. All the 32 applicants in the said OA 73/2005 were casual labourers in the office of the Passport Officer, Trichy having the requisite qualifications for the post of Lower Division Clerks. They sought regular promotion/appointment as Clerks with weightage for their past service and age relaxation etc. through a Special Departmental Examination or selection to be conducted by the Respondents. Following were the reliefs sought by them in the O.A.

"(a) to hold that the applicants are entitled to be considered for regular promotion/appointment through special departmental Examination or selection for clerical posts in Group 'C' with weightage for their past service and age relaxation, and

(b) consequently direct the Respondents to consider and promote the applicants as Lower Division Clerks pursuant to Circular No.V, IV. 560/1/2005 dated 7.1.2005, issued by the Deputy Secretary (PV), CPV Division, Ministry of External Affairs, Government of India, without insisting on their being regular grade 'D' staff, with weightage for their past service and relaxation of age requirement."

The Tribunal dismissed the O.A vide order dated 5.10.2005. They had earlier submitted representations to the respondents to permit them also to take part in the departmental test held for Group 'C' post as per notification dated 6.12.96. As their request was not granted they approached the Tribunal vide O.A 487/1996 which was disposed of with a direction that as and when vacancies arise, they should be considered for Group 'D' posts before the respondents go for open market selection. The respondents again notified an examination for 12.12.1998 for the post of LDCs to be appointed from the Group 'D' employees as per the Recruitment Rules. Again they approached the Tribunal vide OA 1096/1998 but without any success. When the next circular dated 7.1.2005 inviting applications for filling up the posts of LDCs from the eligible Group D' staff was issued, the applicants staked their claim once again and filed the O.A 73/2005 (supra). This time the Department of Personnel and Training itself which was respondent No.3 in the case took the earlier stand of the respondents that only the regular Group 'D' employees can be permitted to participate in the proposed Departmental Examination and not by the applicants who are only casual labourers. The applicants in this case have relied upon a common order of the Madras Bench of this Tribunal in O.As 212 to 216 of 2003 dated 5.12.2003 granting the following reliefs:

"In the conspectus of the above facts and circumstances of the case, we direct the respondents to evaluate a policy/scheme as has been done in the Cochin Regional Passport Office and hold a Departmental Competitive examination exclusively for regularization of casual labourers as a one time measure by giving age relaxation and weightage to casual labour service rendered by the applicants and other relaxed standards of qualification as the respondents deem it fit and proper in the circumstances of the case and based on such selection, appoint the applicants in the regular vacancy. However, we make it clear that the intermittent non-engagement of some of the applicants herein

should not stand in the way of their selection. We direct the respondents to process the above said direction as expeditiously as possible and in any case within a period of four months from the date of receipt of a copy of this order."

The High Court of Madras also dismissed the Writ Petition Nos. 16582-16586 of 2004 filed by the respondents against the aforesaid orders of the Tribunal dated 5.12.2003 vide judgment dated 216.2004. Meanwhile, apparently the respondents themselves have issued the Circular dated 16.8.2005 impugned in the present O.A. inviting applications from both educationally qualified Group 'D' employees and the Casual Workers for the proposed Combined Departmental Examination to fill up the vacancies available in the grade of LDCs. It appears that the respondents have not brought the said Circular dated 16.8.2005 to the notice of the Tribunal before the O.A. 73/2005 was dismissed on 5.10.2005. The Madras High Court after considering the orders of the Tribunal dated 5.12.203 (supra) and the High Court Order dated 21.6.2004 "held that by conducting a separate special departmental examination for the petitioners/applicants, the interest of the Department is not going to be effected in any manner."

The operative part of the said judgment of the Madras High Court reads as under:

"6 We have gone through the relief claimed by the petitioner/applicants, the stand taken by the department, earlier orders of the Central Administrative Tribunal dated 5.12.2003 and the Division Bench decision dated 21.6.2004 made in WP No.16582 to 16586 of 2004, conforming the order passed by the Tribunal. On verification of the entire materials available on record, we are satisfied that by conducting a separate special departmental Examination for the petitioners/applicants, the interest of the department is not going to be effected in any manner.

7 It is relevant to note that the 1st respondent/External Affairs Ministry, in its counter affidavit filed in OA No.702 of 2005, justified its action to hold a combined departmental Examination for Group D employees as well as casual workers

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for appointment to the post of Lower Division Clerks. It is also brought to our notice that the eligible Group D employees would in now way be affected by the Examination to be conducted since they would be placed en block senior to the casual workers. It was further pointed out that such Examination had been conducted in the past in 1985, 1993 and 1997 and the casual workers had worked for a long time and contributed for the organization which suffered from shortage of manpower. It was also stated that as a one-time measure, approval had been obtained for such exercise. As said earlier, learned counsel for the petitioner has also stated that Group D employee would be placed in seniority above the casual workers when they are selected. It is pointed out before us that in spite of the clarifications by the Ministry, the Tribunal dismissed the Original Application holding that as per the Recruitment Rules, the petitioners could be considered for Group C posts only through open competition and not by promotion, hence, they were not entitled to be considered for appointment to Group C posts. In this regard, learned counsel for the petitioner points out that they did not ask straight away for absorption as Group C employees but their prayer was that they should be considered and allowed to participate in the special Examination for promotion and appointment to Group C posts, for which they were not considered eligible by the department, despite having worked for long. We are also satisfied that the Tribunal failed to take note of the specific stand of the Department in OA No.702 of 2005, wherein, they had categorically stated that the Ministry had taken a policy decision to permit the casual employees to take the Examination in view of the Administrative necessity. As rightly pointed out by learned counsel for the petitioners, they are being considered only eligible to compete in an Examination and selection and only after such selection, they would be appointed. In such circumstances, the reference made to the judgment of the Supreme Court is not applicable to the case on hand.

8 We have already referred to the order of the very same Administrative Tribunal, dated 5.12.2003, made in OA No.212 to 216 of 2003, wherein similar claims of similarly placed persons were considered and accepted. The said order of the Tribunal was challenged before this Court and by order dated 21.6.2004, in WP Nos.16582 to 16586 of 2004, the Division Bench, after considering all the relevant aspects, held that the casual employees working in the Chennai Passport Office are entitled to be considered for promotion to Group C posts, and by saying so affirmed the order dated 5.12.2003 of the Central Administrative Tribunal in OA Nos.212 to 216 of 2003. As rightly pointed out by the learned counsel for the petitioners, the Tribunal should have followed its earlier order which was affirmed by this Court.

9 There is no serious dispute by the respondents regarding the applicability of the order of the Tribunal dated 5.12.2003 made in OA Nos.212 to 216 of 2003, affirmed by this Court in WP Nos.16582 to 16586 of 2004.

10 In the light of the above discussion, we issue a direction on the liens of the order of the Central Administrative Tribunal dated 5.12.2003 made in OA Nos. 212 to 216 of 2003. We make it clear that the intermittent non-engagement of some of the applicants/petitioners herein should not stand in their way of their selection. Having regard to the fact that the petitioners have been serving the department as causal labourers for more than a decade and that the claims of similarly placed persons have been directed to be considered by the Tribunal, which had become final and conclusive, we are constrained to issue a direction to the Department to conduct competitive Examination exclusively for the regularization of the petitioners herein/applicants in order to render substantial justice to them.

11 Writ Petition is ordered to the extent mentioned above. No costs. Connected Miscellaneous Petitions stand closed."

According to the respondents, though the above direction of the Hon'ble High Court was limited only to the 32 casual labourers working in the Passport Office, Trichy, who were parties to the O.A and the Writ Petition, it was extended to all other similarly placed casual workers in other passport offices also.

15 As regards the order of the Lucknow Bench of the Tribunal in OA 436/05 is concerned, the facts in that case was quite different from those of the present cases. The applicant in the said O.A sought permission to compete with the other casual labourers already on the rolls of the Passport Office in terms of the circular dated 16.8.2005. He was initially engaged as a daily wager in the Passport Office, Lucknow but he could not work after 24.10.92 when he fell ill. When he reported for work on 11.3.93, he was not allowed to work as the employer cannot indefinitely wait for the casual labourers to complete the work for which he has been employed. The Tribunal after noting the above facts dismissed the O.A as

one without any merit. The said order of the Lucknow Bench reads as under:-

"9 Annexure.A10 is Circular issued by the Deputy Secretary (PV), Ministry of External Affairs Government of India addressed to all the Passport offices seeking their.....on regular Group D and casual workers who are educationally qualified latest by 19.8.20035 to appear in the Combined Repartees examination scheduled to be held on 4.9.2005 for filling up existing vacancies at the level of LDV in the organization."

10 In the case of the applicant he is not borne on the strength of any Passport Organization even as casual worker even to date. According to the applicant himself he could not attend the duties after 14.10.1992, but when he became fit to resume the duties and reported on 31.3.1993 for the purpose, he was not allowed to do so. We fail to understand as to how he is entitled to participate in the Combined departmental Examination which is meant for only those educationally qualified casual worker who are working with the Passport Officers as on 16.8.2005 when the Circular Annexur.eA10 was issued. From the facts as disclosed by the applicant himself we find hardly any merit in his claim for issuing any direction tot he respondents to allow him to take examination in terms at Annexure.A.10.

11 The OA is therefore found without merit and hence is liable to be dismissed at the admission stage. The OA is dismissed without any order as to costs."

However, many of the applicants in the present O.As are 'temporary status' holders waiting for regularization of their service under the 1993 Scheme. The grant of temporary status is a step prior to regularization, if the casual labourers with the requisite number of days of work cannot be regularized straight away for want of vacancies in Group-D posts. Some of the applicants, though not holders of 'temporary status' has been waiting for their re-engagement and regularization in due course. Of course, they were also on the rolls of the Passport Organizations as on 16.8.2005.

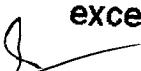
16 Coming to the D.O letter dated 9.8.2005, the Ministry of Personnel, Public Grievances and Pensions have stated that the 1993



Scheme was the last one of such schemes and all direct recruitment vacancies of Clerks/Stenographers etc thereafter was required to be filled only through the normal rules ie., through the Clerks Grade Examination conducted by the Staff Selection Commission and the regularization through the proposed recruitment by the Ministry of External Affairs would amount to back-door entry which will have wide repercussions. The DOPT has also observed that the proposed method of recruitment of LDCs by the educationally qualified casual labourers will not still solve the problem as out of the 300 odd educationally qualified casual labourers, only about 100 could be accommodated and the remaining 200 casual labourers would still persist for holding another Special Qualifying Examination. The DOPT has, however, agreed with the proposal of the Ministry of External Affairs to go ahead with the Departmental Competitive Examination for the educationally qualified casual labourers to fill up the existing vacancies of LDCs, if the problem of regularization of casual labourers could be sorted out. The DOPT has again stated in the said DO letter that it would be the "last such exercise" for which it would give clearance. They also wanted the Ministry of external affairs to consult the Department of Expenditure in this regard. It reads as under:

"The matter has been considered carefully. Similar proposals had been referred by the Ministry of External affairs in the past. However, DOPT could not agree to these proposals on the ground that the Scheme for SQE approved by DOPT in 1993 was the last one and that all direct recruitment vacancies of Clerks/Stenographers etc. thereafter were required to be filled only through the normal Clerks Grade Examination conducted by the Staff Selection Commission and that regularization in this manner would be a case of back-door entry and will have wide repercussions.

It is observed from the details furnished in your letter that even if DOPT were to agree to the proposal as a one time exception, not more than say 100 (out of 300 educationally



qualified casual employees) casual employees would be able to get regularized as many of the educationally qualified Group-D employees would also get selected. Therefore, the problem of regularization of remaining casual employees, including approximately 200 educationally qualified casual workers, would still persist for regularization in Group -C posts by conducting more such SQEs.

It is understood that an SIU study is currently on to assess the requirement of manpower in the Passport offices. If the Ministry of External Affairs can get sufficient number of Group-D sanctioned posts for various Passport offices keeping in view the workload highlighted in your letter, this department would have no objection if all such newly sanctioned Group -D posts are filled from among casual employees. In my view this would be a straightforward and permanent solution to the demand for regularization of the casual employees of the Passport Offices and preferable to any other course of action.

However, if it is the considered view of MEA that the problem can be sorted out by holding SQE, as proposed, MEA may go ahead and conduct the same. This will be only a one time measure and must not be cited as a precedent in future – not surely when similar demand inevitably arises from those 200 casual workers who shall be left out after the SQE. Needless to say, this would be the last such exercise for which DOPT would give clearance. It is for the MEA to decide whether the SQE is the comprehensive solution to the problem they have been working for. Department of Expenditure may also be consulted."

17 The cases of the applicants in these O.As are also different from those in OA 73/2003. The essential difference is that the 32 applicants/petitioners in OA 73 of 2003 / W.P.No.35179 of 2005 (supra) are still on the rolls of the concerned Passport Office. Though the applicants in the present O.A, though worked for a fairly long time from 1992 onwards and most of them were conferred with temporary status under the "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993, they are not on the rolls of any of the Passport Offices in which they were engaged earlier. Some of them were not re-engaged by the respondents for want of work

and some of them were terminated for their continuous absence from duty. The basic argument of the applicants in these O.As is that the action of the respondents in not permitting them to compete in the Departmental Competitive Examination for selection and appointment against the existing vacancies of Lower Division Clerks with the casual labourers on the rolls of the Passport offices on 1.1.2006 is arbitrary, discriminatory and violative of "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993. This argument has to be rejected at the outset itself as the 1993 Scheme does not provide for holding any Departmental Competitive Examination for the educationally qualified casual labourers for selection and appointment as Lower Division Clerks. The only method permitted under the said Scheme for the casual labourers to be brought on the permanent establishment is through the regular selection process for Group 'D' posts. Since the applicants are seeking regular appointment as Lower Division Clerks in terms of the said scheme, we do not find any merit in their contention that they were discriminated against the Casual Labourers still on the rolls of the respective Passport Offices. The Apex Court in Union of India and others Vs. Mohan Pal and others (2002) 4 SCC 573 has made it clear that 1993 Scheme was a one time programme. The benefits as available to casual labourers in the 1993 Scheme and nothing more can be claimed by the applicants as a matter of right. Clause 7 of the Scheme also empowers the Government to dispense with the services of the casual labourers even after conferment of temporary status by giving one month's notice in writing. The employer also could terminate the services of the casual labourers under the provisions of the said clause. The applicants have



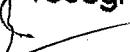
no valid right to appear in the Competitive Examination just because they served as casual labourers at some point of time and they were conferred with temporary status in terms of the relevant Scheme. However, it is altogether a different question whether respondents are right and competent to hold a Departmental Competitive Examination for the educationally qualified casual labourers on the rolls of the Passport Organizations on 1.1.2006 for appointment as Lower Division Clerks in the existing vacancies in violation of the existing Recruitment Rules as raised by the applicants in OA 645/05.

18 The respondents have contended in MA 1032/2006 in OA 442/2006 that the Departmental Competitive Examination for all the educationally qualified Casual Labourers who have been working in the Central Passport Organizations on 1.1.2006 was held 'in compliance of the Hon'ble High Court of Madras's Judgment on the W.P.No.35177/2005 and WMP Nos. 38160 to 38161/2005 (in the case of P.Dhandayuthapani and 31 other Casual Labourers of Passport Office, Trichy.)" They have further submitted that they have conducted the examination for all similarly situated workers on "all India basis" by extending the benefit of the said order of the High Court and any move to permit the ex-casual workers would be in contravention of the said order. As observed earlier, the Hon'ble High Court of Madras while passing its common order in W.P.No.35177/2005, 38160/2005 and 38161/2005 considered an earlier order of the Tribunal in OA 212 to 216 of 2005, when in those cases a direction to hold a Departmental Competitive Examinations exclusively for regularization of casual labourers as a one time measure by giving age relaxation and weightage to casual service rendered by the applicants and

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other relaxed standards of qualification as the respondents deem it fit and proper in the circumstances of the case and based on such selection, appoint the applicants in the regular vacancy. The Hight Court has also observed that the aforesaid order of the Tribunal was challenged and the High Court vide order dated 21.6.2004 in W.P.Nos. 16582 to 16586 of 2004 held that the casual employees working in the Chennai Passport Office are entitled to be considered for promotion to Group 'C' posts. It is not understood whether the respondents have implemented those directions of the Tribunal as well as the Hon'ble High Court by regularizing those casual labourers in Group 'C' posts. The stand taken by the respondents before the Hon'ble High Court of Madras was also in favour of the applicants in OA 73/2005 as the Circular dated 16.8.2005 has already been issued before the High Court pronounced its judgment on 25.11.2005.

19 Now the question before us is whether this Tribunal would confine itself only by passing an order dismissing the present O.As and RA for the reasons already indicated elsewhere in this order and to vacate the interim orders by which the respondents were restrained from announcing the results and filling up the existing vacancies of LDCs on the basis of the Departmental Competitive examination held on 20.5.2006/21.5.2006 as ordered on 23.5.2006and16.6.2006 or to consider the constitutional validity of the Circular dated 16.8.2005 which has since been modified to some extend by the respondents themselves vide their circular dated 17.3.2006. As stated earlier, the applicants in OA 645/05 are regularly appointed Group 'D' officials working with the respondents and have the legally recognized right to be considered for appointment as LDCs in terms of the



Ministry of External Affairs, Central Passport Organization (Group 'C' posts) Recruitment Rules, 1996. According to them, the applicants in other O.As are being allowed to enter into their territory by the respondents by their circular dated 16.8.2005 and to infringe their vested right to be appointed as L.D.Cs against the 10% quota earmarked for them. Of course, the respondents themselves have redressed their grievance in this regard during the pendency of the O.A by issuing the subsequent circular dated 17.3.2006 making the Departmental Competitive Examination exclusively for the existing casual labourers against the vacancies of LDCs which are outside their quota as per the Recruitment Rules. Just because the grievance of the applicants in OA 645/05 got redressed by the subsequent action of the respondents themselves, the question is whether the general issue raised by them in their O.A can be ignored or not by this Tribunal. The issue raised by them can be formulated as under:-

"Whether the respondents have the competence to hold a departmental competitive examination for all the educationally qualified casual workers against the existing vacancies at the level of Lower Division Clerks in contravention of the Recruitment Rules made by the President under the powers conferred upon him by the provisions of Article 309 of the Constitution called Ministry of External Affairs, Central Passport Organization (Group-C posts) Recruitment Rules, 1996?"

20 Before the aforesaid question is considered, we may examine some of the relevant judgments already available in this regard.

21 In State of Haryana Vs. Piara Singh (1992) 4 SCC 118 the Supreme Court held that in the matter of conditions of service, retention and abolition of posts etc., the main concern of the court is to ensure the rule of law and the executive actions are within the scope of Articles 14 and 16 of the Constitution. The power to prescribe condition of service is

to be exercised through the Recruitment Rules or, in their absence, through the administrative instructions. The Apex Court held as under:

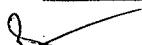
"21 Ordinarily speaking the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service. 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. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given to equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that There is need and warrant for a regular post and accordingly directs regularization. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above".

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45 The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected,well and good, but if he does no, he must give way to the regularly selected candidates. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee".

22 Further in Rai Sahib Ram Jawaya Kapur Vs. State of Punjab,

AIR 1995 SC 549, the Apex Court laid down the law that the executive



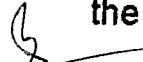
power of the Central Government cannot infringe any provision of any law made by the Parliament. It has been held :

"It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way. The executive government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws."

23 In P.K.Sandhu (Mrs) V.Shiv Raj V. Patil, (1997) 4 SCC 348, it was held by the Apex Court as under:

"It is seen that the statutory rules having been made, one of the methods as provided under Rule 4(1)(b) is, by deputation. It would be obvious that drafting the officers serving in the UOI or States outside the Lok Sabha Secretariat would be inconsistent with, unless suitable amendments are made to the Rules. When we have asked the learned counsel for respondents to place before us any orders that might have been passed by Hon'ble the Speaker in that behalf, he placed the entire record before us. We have perused the record and found that no statutory amendment to the rules came to be made. We find some orders but they do not cover the aforesaid offences. We are assured by the learned counsel that expeditious steps would be taken to have the rules amended as per law and placed before us for further consideration...." (emphasis supplied).

24 In the case in A.B.Krishna and others Vs. State of Karnataka and others, (1998) 3 SCC 495, the Apex Court held:

 "8.....As a matter of fact, under the scheme of Article 309 of the Constitution, once a legislature intervenes to enact a law

regulating the conditions of service, the power of the Executive, including the President or the Governor, as the case may be, is totally displaced on the principle of "doctrine of occupied field". If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a rule under Article 309 in respect of that matter."

25 In Mahendra L. Jain and others Vs. Indore Development Authority and others, 2005 SCC (L&S) 154 the Apex Court categorically held that before the State offers a public service to a person it would comply with the constitutional requirement of Articles 14& 16 of the Constitution. The Hon'ble Court held as under:

"19What can be regularized is an irregularity and not an illegality. The constitutional scheme which the country has adopted does not contemplate any back-door appointment. A State before offering public service to a person must comply with the constitutional requirements of Articles 14 and 16 of the Constitution. All actions of the State must conform to the constitutional requirements. A daily-wager in the absence of a statutory provision in this behalf would not be entitled to regularization." (emphasis supplied)

26 In Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and others, SLJ 2006(3) 28 the Apex Court held as under:

"Article 309 lays own that subject to the provisions of the Constitution, Acts of the appropriate legislature may regulate the Recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of the State. The proviso to this Article confers power upon the President or the Government as the case may be, to make rules regulating the Recruitment and the conditions of service of persons appointed to services and posts in connection with the affairs of the Union or the State..."

27 The Apex Court in Principal, Mehar Chand Polytechnic, Jalandhar City and another Vs. Anu Lamba and others, 2006 AIR (SCW) 4373 held as under;

"16 Public employment is a facet of right to equality envisaged under Article 16 of the Constitution of India. The State although is a model employer, its right to create posts and recruit people therefor emanates from the statutes or statutory rules and/or

Rules framed under the proviso appended to Article 309 of the Constitution of India. The Recruitment Rules are framed with a view to give equal opportunity to all the citizens of India entitled for being considered for recruitment in the vacant posts.

17 The Parliament for giving effect to the provisions of Article 16 of the Constitution enacted the employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. The statutes and the statutory Rules framed by the Union of India and other States also invariably require issuance of a public notice so as to enable all eligible candidates to file application thereof. The constitution and/or statutes or statutory rules do not make any distinction between post and posts. The Recruitment process for all posts is the same.

18 In a large number of cases, this court noticed that the holders of public posts had been making recruitments in total violation of the recruitment process. In regard to the question of regularization also, different orders had been passed by different benches. Some benches pointed out that the equality doctrine enshrined in Articles 14 and 16 of the Constitution of India had been grossly violated by the authorities and the provisions of Recruitment Rules were given a complete go by. Even the beneficent provisions of the reservation applicable to the backward classes of people had not been adhered to.

19 This court also noticed a growing tendency of giving back door appointments to a large section of employees on adhoc basis or on daily wages. (emphasis supplied).

28 In Principal, Mehar Chand Polytechnic, Jalandhar City Vs. Anu Lamba, 2006 AIR SCW 4379 the Apex Court held as under:

"In this case, neither a policy decision was taken by the Central Government nor there existed any rules in this behalf. Although this court is not directly concerned as to whether such a policy decision could have been taken in view of the provisions contained in Article 309 of the Constitution of India, we may notice that in A.Uma Rani V. Registrar, Cooperative Societies and Others (2004) 7 SCC 112, this court opined:

"No regularization is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules."

29 The whole issue received a total review and reconsideration by the Apex Court in Secretary, State of Karnataka and others Vs.

Umadevi. (2006) 4 SCC 1= SLJ 2006(3) 1. Apart from the judgments already discussed above, following are some of the other relevant judgments considered by the Apex Court:-

(i) State of Himachal Pradesh Vs. Suresh Kumar Verma and another, 1996(1) SCR 972: (1996) 7 SCC 562, wherein the Apex Court held that a person appointed on daily wages basis was not an appointee to a post according to Rules. On his termination, on the project employing him coming to an end, the Court could not issue a direction to re-engage him in any other work or appoint him against existing vacancies. The court said:

"....It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment Rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules."

It has also been held that the appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption.

(ii) Aswani Kumar and others Vs. State of Bihar and others, 1996 Sup. (10) SCR 20 wherein the Apex Court has considered the validity of the confirmation of the irregularly employed and regularization in Government service and held as under:

"So far as the question of confirmation of these employees whose entry was illegal and void, is concerned, it is to be noted that question of confirmation or regularization of an irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on adhoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorized and is not against any sanctioned vacancy, question of regularizing the incumbent on such a non-

existing vacancy would never survive for consideration and even if such purported regularization or confirmation is given it would be an exercise in futility."

The court further stated:

"In this connection it is pertinent to note that question of regularization in any service including any Government service may arise in two contingencies. Firstly if on any available clear vacancies which are of a long duration appointments are made on adhoc basis or daily wage basis by a competent authority and are continued from time to time and if it is found that the incumbents concerned have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employed them, a time may come in the service career of such employees who are continued on adhoc basis for a given substantial length of time to regularize them so that the employees concerned can give their best by being assured security of tenure. But this would require one precondition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularization may arise would be when the initial entry of an employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial entry of the employee against an available vacancy is found to have suffered from some flat in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. A need may then arise int eh light of the exigency of administrative requirement for waiting such irregularity in the initial appointment by a competent authority and the irregular initial appointment may be regularized and security of tenure may be made available to the incumbent concerned. But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulation governing such recruitment."

(iii) In Union Public Service Commission V. Girish Jayanti Lal Vaghela and others, 12006(2) Scale 115, the Apex Court considered the appointments made without proper advertisement.

"Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional

right to equality of opportunity and employment in public office. The words "employment" or 'appointment" cover not merely the initial appointment but also other attributes of Service like promotion and age of superannuation etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted Committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter-se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution."

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The Constitution Bench of the Apex Court after having dealt with the case comprehensively, observed as under:-

1 Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional Scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

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3 But, sometimes, this process is not adhered to and the Constitutional Scheme of public employment is by-passed. The Union, the States, their departmental and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular

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procedure or even though the back door or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts. Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitution is intended to be used for a purpose of certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing direction for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the very constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

4 This court has also on occasions issued direction which could not be said to be consistent with the Constitution Scheme of public employment. Such directions are issued presumably on the basis of equitable consideration or individualization of justice. The question arise, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one idea of the coin is considered, the other side of the coin, has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the constitutional scheme, certainly lend to water down the constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

5 The power of State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily (See Basu's Shorter Constitution of India). Article 309 of the

Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedure which specify the necessary qualifications, the mode of appointment etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with Rules. The State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognized that no Government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the Constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.

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11 In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the ends of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a Court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected,

there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

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34 While answering an objection to the locus standi of the Writ Petitioners in challenging the repeated issue of an ordinance by the Governor of Bihar, the exalted position of rule of law in the scheme of things was emphasized. Chief Justice Bhagwati, speaking on behalf of the Constitution Bench in *Dr.D.C.Wadhwa and others Vs. State of Bihar and others, 1987 (1) SCR 798* stated:

"The rule of law constitutes the core of our Constitution of India and it is the essence of the rule of law that the exercise of the power by the State whether it be the Legislature or the Executive or any other authority should be within the constitutional limitations and if any practice is adopted by the Executive which is in flagrant and systematic violation of its constitutional limitations, petitioner No.1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice."

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. 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 terms 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. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of the appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued undercover of the order of Court, which we have described as 'litigious employment' in the earlier part of this judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whether as an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. 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 or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

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39The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regular recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

40 It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and Courts initiated at the instance of the employees. Moreover, accepting an arguments of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the Court is approached for relief by way of a writ, the Court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution".

Conclusion:

31 In the instant case, the main contention of the respondents is that they have conducted the Departmental Competitive Examination for educationally qualified all casual workers who have been working in the Central Passport Organizations as on 1.1.2006 for filling up the existing vacancies at the level of Lower Division Clerks on 20.5.2006/21.5.2006 to comply with the order of the Hon'ble High Court of Madras dated 25.11.2005 in P.Dhandayudhapani and others case (supra). In the said judgment the Hon'ble High Court has noticed the stand of the respondent Department made clear through the Circular dated 16.8.2005 which was undoubtedly contrary to the provisions contained in existing relevant recruitment rules, namely, Ministry of External Affairs, Central Passport Organizations (Group-C Posts) Recruitment Rules, 1996. The directions of the Hon'ble High Court to the respondents was to formulate a

policy/scheme similar to the one ordered by the Tribunal in OA 212 to 216 of 2003 before holding the Departmental Competitive Examination exclusively for regularization of casual labourers as a one time measure by giving age relaxation and weightage to casual labour service rendered by the applicants and other relaxed standards of qualification as the respondents deem fit and proper in the circumstances of the case and based on such selection, to appoint the applicants in regular vacancy. The respondents did not formulate any scheme/policy as ordered by the Hon'ble High Court. The D.O. letter No. 28035/1/2002-Estt(D) dated 9.8.2005 (Annexure.R.18 with OA 442/2006) from the then Secretary, Ministry of Personnel and Public Grievances and Pensions was only reply to another D.O. letter No.8216/PS/05 dated 27.6.2005 from the then Foreign Secretary. Both these D.O. letters were mere correspondence between the two departments prior to the issuance of the judgment of the Hon'ble High Court of Madras in P.Dhandayudhapani's case (supra) on 25.11.2005. The Secretary, Ministry of Personnel, Public Grievances and Pensions in his D.O letter dated 9.8.2005 has specifically pointed out that the DOPT's Scheme of 1993 was the last one and all direct recruitment vacancies of Clerks etc., are henceforth be filled up only through the normal procedure and the regularization of daily wagers in the manner proposed by the Ministry of External Affairs would amount to back-door entry which will have wide repercussions. According to the Ministry of Personnel, Public Grievances and Pensions, proposal of the Ministry of External Affairs to absorb the casual labourers as Lower Division Clerks after subjecting them through a Departmental Competitive Examination would not still solve the problem as only 100 out of the total 300 casual

labourers could only be regularized. The Ministry of External Affairs have no proposal as to how the problem of the remaining 200 educationally qualified casual labourers would be solved. The view of the Secretary, Ministry of Personnel, Public Grievances and Pension itself was different. According to him, the Ministry of External affairs should get sufficient number of Group 'D' posts sanctioned and to appoint the existing casual labourers against those newly sanctioned posts. In any case, before the impugned circulars dated 16.8.2005 and 17.3.2006 were issued, no scheme has been made taking into consideration of the various aspects of the issues involved. Hence the contention of the respondents that they had held the departmental competitive examination for the educationally qualified casual labourers on 20.5.2006/21.5.2006 as per the directions of the Hon'ble High Court of Madras is to be rejected.

32 Another important aspect in these cases also cannot be lost sight of. The judgment/orders of the Hon'ble High Court of Madras in P.Dhandayudhapani's case (supra) is dated 25.11.2005. As noted above, the respondents did not formulate any scheme/policy after the aforesaid judgment of the Hon'ble High Court was pronounced. The first impugned circular dated 16.8.2005 was issued prior to the said judgment and it was not based on any scheme/policy. The second impugned circular dated 17.3.2006 was issued only as a modification to the earlier one. Though the Examination in terms of the circular dated 17.3.2006 was scheduled to be held on 16.4.2006, it was postponed indefinitely as reported by the Senior Central Govt. Standing Counsel. In the meanwhile, the Apex Court has already pronounced the judgment in the

case of Umadevi & others (supra) on 10.4.2006 stating in unequivocal terms that "those who are working on daily wages formed a class by themselves and they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the recruitment rules. It was also made clear that no right can be founded on an employment on daily wages to claim that such employee should be treated on par with a regularly recruited candidate and made permanent in employment, even assuming that the principle could be invoked for claiming equal wage for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service.

In para 18 of the said judgment, the Apex Court again reminded as under:

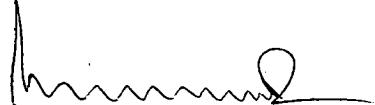
"This Court is not only the Constitutional Court, it is also the highest court in the country, the final court of appeal. By virtue of Article 141 of the Constitution of India, what this court lays down is the law of the land. Its decisions are binding on all the Courts."

When the aforesaid judgment has already been pronounced by the Hon'ble Supreme Court on 10.4.2006, the respondents ought not have conducted the examination for the casual labourers on 20.5.2006/21.5.2006 for their appointment as Lower Division Clerks on regular basis which was admittedly against the existing Recruitment Rules.

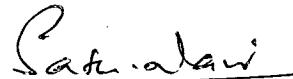
33 In the above facts and circumstances of the case, all the present O.As and the R.A are dismissed as they are devoid of any merit. We quash and set aside the impugned circulars dated 16.8.2005 and 17.3.2006 as they are not based on any scheme sanctioned by any

competent authority. Consequently, we also hereby quash and set aside the Departmental Competitive Examination held by the respondents on 20.5.2006/21.5.2006 for the educationally qualified casual labourers for appointment as Lower Division Clerks in the various Passport Offices under the Ministry of External Affairs, Govt. of India as the same was held in violation of the law laid down by the Apex Court in the case of Umadevi and others (supra). There shall be no order as to costs.

Dated this the 22nd day of December, 2006


GEORGE PARACKEN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN