CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

[Patna, this , the 16 Day of October, 2006]

.....

C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.
HON'BLE SHRI S.N.P.N.SINHA, MEMBER [ADMN].

.....

1. OA 521 of 2000
[M.A. 145 of 2003]

Md. Hanif, son of Md. Alijan, aged 41 years, resident of Darbhanga, PO/PS/District : Darbhanga [Bihar] & 34 [Thirty Four] Ors.

.....APPLICANTS.

By Advocate :- Shri S.A.Alam.

Vs.

The Union of India through the General Manager, North-East Frontier Railway, Maligaon Railway, Hqrs. Guwahati-11 [Assam] & 3 [Three] Ors.

.....RESPONDENTS.

By Advocate :- Shri Mukund Jee, SC.

2. OA 435 of 2001

Raju Kumar, son of Late Sheo Tahal Mandal, aged about 37 years, resident of mohalla – Daldali Road, Post Office – Kadamkuan, PS – Gandhi Maidan, District – Patna & 12 [Twelve] Ors.

.....APPLICANTS.

By Advocate :- Shri J.K.Karn.
Shri H.K.Karn.

Vs.

The Union of India through Chief Postmaster General, Bihar Circle, Patna & 2 [Two] Ors.

.....RESPONDENTS.

By Advocate :- Shri G.K.Agarwal, ASC.

3. OA 338 of 2003

Smt. Arpita Goswami, C/o Shri Shyamal Kumar Goswami, Radha Kunj, near old post office, Nagar Udyan Path, Sitamarhi – 843 302, Ex-Waterman-cum-Frash, under Officer Incharge, CTO, Sitamarhi.

.....APPLICANT.

By Advocate :- Shri M.P.Dixit.
Shri S.K.Dixit.

Vs.

The Union of India through Chief General Manager, Telecom, Bihar Circle, Patna & 3 [Three] Ors. .....RESPONDENTS.
By Advocate :- Shri S.C.Jha, ASC.

4. OA 651 of 2003

Manoj Kumar Singh, son of Shri Chandeshwar Prasad Singh, Casual Labourer, Archaelogical Survey of India, At Antchak, District – Bhagalpur, resident of village and PO – Phulalpur Via. Athmalgola, District – Patna.
.....APPLICANT.
By Advocate :- Shri S.N.Tiwary.

Vs.

The Union of India through the Director General, Archaeological Survey of India, Govt. of India, Janpath, New Delhi-110 011 & 1 [One] Other.
.....RESPONDENTS.
By Advocate :- Shri Dwivedi Surendra, ASC.

5. OA 748 of 2003

Naresh Prasad, S/o Late Rameshwar Singh, resident of mohalla – Nandu Tola, PO & PS – Khagaul, District – Patna, at present working on the post of Casual Motor Driver.
.....APPLICANT.
By Advocate :- Shri J.K.Karn.
Shri H.K.Karn.

Vs.

The Union of India through the D.G.-cum-Secretary, Department of Posts, Dak Bhavan, New Delhi & 4 [Four] Ors. .....RESPONDENTS.
By Advocate :- Shri S.K.Tiwary, ASC.

6. OA 1034 of 2003

Sheo Muni Ram, son of Laldhari Ram, T.S.Waterman, Sasaram H.O., District Rohtas & 6 [Six] Ors. .....APPLICANTS.
By Advocate :- Shri S.N.Tiwary.

Vs.

The Union of India through the Secretary, Govt. of India, Department of Posts, New Delhi-cum-The Director General, Department of Posts, Dak Bhavan, New Delhi-110 001 & 2 [Two] Ors. .....RESPONDENTS
By Advocate :- Shri Dwivedi Surendra, ASC.

7. OA 17 of 2004

Sandeo Hari, S/o of Shri Sarju Hari, resident of mohalla – J.P.Verma Lane, Gararia Mundichak, District – Bhagalpur. .....APPLICANT.
By Advocate :- Shri S.K.Bariar.

Vs.

Director, The Union of India through Secretary, Ministry of Information and Broadcasting, Shastri Bhavan, New Delhi & 4 [Four] Ors.
.....RESPONDENTS.
By Advocate :- Shri M.K.Mishra, SSC.

8. OA 217 of 2004

Ram Kumar Singh, S/o Shri Ram Badan Singh, Generator Operator, Ara Head Post at Ara, Dis-Bhojpur & 2 [Two] Ors. .....APPLICANTS.
By Advocate :- Shri S.N.Tiwary.

Vs.

The Union of India through the Secretary, Government of India, Ministry of Communication, Department of Posts, New Delhi-cum-The Director General, Department of Posts, India, Dak Bhavan, New Delhi-110 001 & 3[Three] Ors.
.....RESPONDENTS.
By Advocate :- Shri R.K.Choubey, ASC.

9. OA 391 of 2004

Chandrika Rai, son of Late Bhagwat Rai, Casual Labour, Sonpur Railway Division, resident of village/PO- Nayagaon, District-Saran [Bihar]
.....APPLICANT.
By Advocate :- Shri Sudama Pandey.

Vs.

The Union of India through General Manager, E.C.Railway, Hajipur [Vaishali] & 5 [Five] Ors. .....RESPONDENTS.
By Advocate :- Shri M.N.Parbat, ASC.

10. OA 502 of 2004

Shri Busad, son of Late Abdul Mazid, Ex-Casual Labour [Gangman] under PWI, Thakurganj, N.F.Railway, Katihar Division [Bihar] ..... APPLICANT.
By Advocate :- Shri M.P.Dixit

Vs.

Union of India through Secretary, Railway Board, Rail Bhavan, New Delhi & 3[Three] Ors. .....RESPONDENTS.
By Advocate :- Shri R.N.Choudhary, ASC.

11. OA 615 of 2004

Md. Sadre Alam, son of Md. Nezamuddin, resident of village & PO – Belhi, PS- Darbhanga Sadar, District-Darbhanga. .....APPLICANT.
By Advocate :- Shri J.K.Karn.

Vs.

The Union of India through the D.G.-cum-Secretary, Department of Posts, Dak Bhavan, New Delhi & 5 [Five] Ors. .....RESPONDENTS.
By Advocate :- Shri S.K.Tiwary, ASC.

12. OA 616 of 2004

Dharamveer Sah, S/o Late Sri Jai Kishun Sah, resident of village – Choti Baliya, PO – Lakhminiya, District-Begusarai & 4 [Four] Ors.
.....APPLICANTS.
By Advocate :- Shri Shashi Kant Singh.

Vs.

The Union of India through the Secretary, Ministry of Railway, Rail Bhavan, New Delhi & 5 [Five] Ors. .....RESPONDENTS.
By Advocate :- Shri M.N.Parbat, ASC.

13. OA 116 of 2005

Ram Bilash Rai, son of Late Jangi Rai, Substitute Khalasi at Samastipur Loco, at Samastipur, P.O. and District- Samastipur. .....APPLICANT.
By Advocate :- Shri Abdul Hakeem.

Vs.

The Union of India through the General Manager, E.C.Railway, Hajipur, At & P.O.: Hajipur, District :- Vaishali.& 5 [Five] Ors. .....RESPONDENTS.
By Advocate :- Shri R.N.Choudhary, ASC.

14. OA 281 of 2005

Dharmendra Kumar, S/o Late R.K.Lal, resident of village – Sohan Bigha, PO – Pandey Parsama, PS-ANMCH Gaya, District-Gaya. .....APPLICANT.
By Advocate :- Shri J.K.Karn.

Vs.

The Union of India through the Secretary, Ministry of Labour, Shrma Shakti Bhavan, New Delhi & 2 [Two] Ors. .....RESPONDENTS.
By Advocate :- Shri J.P.Verma, ASC.

15. OA 390 of 2005
[M.A. No.: 392 of 2006]

Girja, son of Bardho, resident of village-Mundipur, PO-Wazirganj, District-Gaya & 14 [Fourteen] Ors. .....APPLICANTS.
By Advocate :- Shri R.K.Priyadarshi.

Vs.

The Union of India through the General Manager, East Central Railway, Hajipur, District-Vaishali & 4 [Four] Ors. .....RESPONDENTS.
By Advocate :- Shri R.N.Choudhary, ASC.

16. OA 597 of 2005

Mithilesh Kumar Singh, S/o Late Ram Kripal Singh, T.S.Casual Labourer [Generator Operator], HRO, RMS 'U' Division, Muzaffarpur & 6 [Six] Ors. .....APPLICANTS.
By Advocate :- Shri Manoj Kumar.

Vs.

The Union of India through the Secretary-cum-Director General, Department of Posts, Dak Bhavan, New Delhi & 3[Three] Ors. .....RESPONDENTS.
By Advocate :- Shri B.K.Prasad, ASC.

17. OA 642 of 2005

Krishnajee Prasad, S/o Late Bhim Prasad, resident of village-Adhivakla Nagar, PS&PO-Gopalganj, District-Gopalganj, at present working as S.B.Packer in Gopalganj H.O. And 2 [Two] Ors. .....APPLICANTS.
By Advocate :- Shri A.K.Sharma,
Shri H.K.Karn.

Vs.

The Union of India through the Chief Postmaster General, Bihar Circle, Patna & 3[Three] Ors. .....RESPONDENTS.
By Advocate :- Shri R.K.Choubey, ASC.

18. OA 668 of 2005

Rampravesh Sah, son of Late Shiv Mangal Sah, Village-Damodarpur, Post-Sonpur, District-Saran [Bihar] & 5 [Five] Ors. .....APPLICANTS.
By Advocate :- Shri M.P.Dixit.
Shri S.K.Dixit.

Vs.

The Union of India through General Manager, E.C.Railway, Hazipur & 5 [Five] Ors. .....RESPONDENTS.
By Advocate :- Shri R.Griyaghey, ASC.

19. OA 686 of 2005

Arun Kumar, son of Shri Ram Govind Sah, Ex.Casual Labour under DRM [OPTG], Samastipur and A.E.N. [East], Barauni Junction, resident of village-Masumganj, PO-Mahmadpur, PS-Barh, District-Patna. .....APPLICANT.
By Advocate :- Shri Sudama Pandey.

Vs.

The Union of India through the General Manager, E.C.Railway, Hazipur & 2 [Two]Ors. .....RESPONDENTS.
By Advocate :- Shri B.K.Sinha, ASC.

20. OA 740 of 2005

Krishna Kumar Rai, son of Shri Ram Chandra Rai, resident of At & PO-Jitwarpur Nizamat, Near Prabhat Library, Samastipur, District-Samastipur. .....APPLICANT.
By Advocate :- Shri M.P.Dixit.

Vs.

The Union of India through the General Manager, E.C.Railway, Hazipur & 4 [Four] Ors. .....RESPONDENTS
By Advocate :- Shri N.K.Sinha, ASC.

21. OA 757 of 2005

Sagar Ram, S/o Shri Mahesh Ram, resident of mohalla-Chhajubagh, PO-GPO, PS- Gandhi Maidan, Town and District-Patna. .....APPLICANT.
By Advocate :- Shri B.B.Singh.

Vs.

The Union of India through Deputy Director General, Bhartiya Bhu Vigyan Survey Department, Lohiya Nagar, Kankarbagh, Patna-20 & 3 [Three] Ors. .....RESPONDENTS
By Advocate :- Shri M.K.Mishra, SSC.

22. OA 778 of 2005
[M.A. No.: 28 of 2006]

Ambika Sah, S/o Late Briksha Sah, resident of village & PO-Parsa, PS-Majhulia, District-West Champaran & 35 [Thirty Five] Ors.....APPLICANTS.
By Advocate :- Shri J.K.Karn.
Shri H.K.Karn.

Vs.

The Union of India through the General manager, E.C.Railway, Hajipur & 3 [Three] Ors. .....RESPONDENTS.
By Advocate :- Shri A.K.K.Sahay, ASC.

23. OA 806 of 2005

Mahendra Paswan, son of Munshi Paswan, resident of village-Asurari, PS-Barauni, District-Begusarai & 25 [Twenty Five] Ors. .....APPLICANTS.
By Advocate :- Shri S.K.Mishra.

Vs.

The Union of India through the Secretary, Ministry of Railway, Rail Mantralaya, Rail Bhavan, New Delhi & 9 [Nine] Ors. .....RESPONDENTS.
By Advocate :- Shri B.B.Kumar, ASC.

24. OA 8 of 2006
[MAs 38 & 289 of 2006]

Sulinder Kumar, S/o Shri Srichand Prasad, resident of mohalla-station Road, PO&PS-Nawada, Dist-Nawada & 3 [Three] Ors. .....APPLICANTS.
By Advocate :- Shri S.K.Bariar.
Shri R.K.Bariar.

Vs.

The Union of India through Chief Postmaster General, Bihar Circle, Patna & 5 [Five] Ors. .....RESPONDENTS.
By Advocate :- Shri R.K.Choubey, ASC.

25. OA 9 of 2006
[MAs 37 & 290 of 2006]

Shri Krishna Gopal, S/o Ram Tawakiya Singh, resident of mohall-Chanda, PS&PO-Manpura Chanda, District-Jehanabad & 1 [One] Other. .....APPLICANTS.
By Advocate :- Shri S.K.Bariar.
Shri R.K.Bariar.

Vs.

The Union of India through Chief Postmaster General, Bihar Circle, Patna & 5 [Five] Ors. .....RESPONDENTS.
By Advocate :- Shri R.K.Choubey, ASC.

26. OA 110 of 2006

Kumar Birendra Prasad, S/o Shri Devi Prasad, resident of village-Brahampur, PO-Phulwari Sharif, District-Patna. .....APPLICANT.
By Advocate :- Shri J.K.Karn.
Shri H.K.Karn.

Vs.

The Union of India through the Secretary-cum-Chairman, Central Board of Direct Taxes, New Delhi & 4 [Four] Ors. .....RESPONDENTS.
By Advocate :- Shri M.K.Mishra, SSC.

27. OA 156 of 2006

Mithilesh Kumar, S/o Rajendra Prasad, resident of village-Rasalpur Gol Bagicha, PO-Gaya, PS-Kotwali, District-Gaya. .....APPLICANT.
By Advocate :- Shri S.K.Bariar.
Shri R.K.Bariar.

Vs.

The Union of India through Chief Postmaster General, Bihar Circle, Patna & 5 [Five] Ors. .....RESPONDENTS.
By Advocate :- Shri B.K.Prasad, ASC.

28. OA 177 of 2006

Shiv Charan Pandit, Son of Jangali Pandit, Ex-Casual Labour under N.F.Railway, Katihar Division, P.S.: Katihar, District-Katihar & 64 [Sixty Four] Ors. .....APPLICANTS.
By Advocate :- Shri M.P.Dixit.
Shri S.K.Dixit.

Vs.

The Union of India through G.M., N.F.Railway, Maligaon, Gauhati & 3 [Three] Ors. .....RESPONDENTS.
By Advocate :- Shri R.N.Choudhary, ASC.

29. OA 178 of 2006

Ashish Bhushan Prasad, son of Girdhar Prasad, Ex-Casual Labour under N.F.Railway, Katihar Division, PS-Katihar, District-Katihar & 60 [Sixty] Ors. .....APPLICANTS.
By Advocate :- Shri M.P.Dixit.
Shri S.K.Dixit.

Vs.

The Union of India through G.M., N.F.Railway, Maligaon, Gauhati & 3 [Three] Ors. .....RESPONDENTS.
By Advocate :- Shri R.N.Choudhary, ASC.

30. OA 189 of 2006

Dinesh Tiwary, S/o Late Danpat Tiwary, resident of village – Tetri, PO-Memraypur Gaya, PS-Chenari, District-Sasaram. .....APPLICANT.
By Advocate :- Shri S.K.Bariar.
Shri R.K.Bariar.

Vs.

The Union of India through Chief Postmaster General, Bihar Circle, Patna & 5 [Five] Ors. .....RESPONDENTS.
By Advocate :- Shri Sanjay Kumar, ASC.

31. OA 257 of 2006
[MA 333 of 2006]

Ram Badan, son of Sadhu Sharan Gope, resident of village/PO-Hathidah, District-Patna, working as Substitute Health Attendant under Medical Superintendent, E.C.Railway, Garhara. .....APPLICANT.
By Advocate :- Shri Sudama Pandey.

Vs.

The Union of India through General Manager, E.C.Railway, Hajipur & 3 [Three] Ors. .....RESPONDENTS.
By Advocate :- Shri Mukund Jee, SC.

32. OA 263 of 2006

Santosh Kumar, son of Shri Kishundeo Paswan, resident of mohalla -Sehwan Tola, Akashwani Road, Purnea, Police Station-K.Hatt, District-Purnea. .....APPLICANT.
By Advocate :- Shri R.K.Singh.

Vs.

The Union of India through the Director General, Prasar Bharti [Broadcasting Corporation of India], All India Radio, Akashwani Bhavan, Parliament Street, New Delhi-110 011 & 3 [Three] Ors. .....RESPONDENTS.
By Advocate :- Shri M.K.Mishra, SSC.

33. OA 272 of 2006

Maya Devi, W/o Late Gorakh Nath Sahu, at present working as Casual Labour at par with Temporary Group 'D' employee at Postal Store Depot, Patna & 9 [Nine] Ors. .....APPLICANTS.
By Advocate :- Shri J.K.Karn.
Shri H.K.Karn.

Vs.

The Union of India through the D.G.-cum-Secretary, Department of Posts,Dak Bhavan, New Delhi & 4 [Four] Ors. .....RESPONDENTS.
By Advocate :- Shri Sarvesh Kr.Singh, ASC.

34. OA 377 of 2005

Raj Kishore Tanti, son of Nand Lal Tanti, resident of village-Chandda, PS&District-Katihar & 1 [One] Other. .....APPLICANTS.
By Advocate :- Shri S.K.Bariar.

Vs.

The Union of India through Secretary, Ministry of Railway,Rail Bhavan, New Delhi & 2 [Two] Ors. .....RESPONDENTS.
By Advocate :- Shri R.Griyaghey, ASC.

O R D E R

Justice P. K. Sinha, V.C.:- The main point for determination in the OAs noted above being the same, with slight variations in the matter of reliefs sought as would be mentioned later in the order, all these cases have been heard together and will be disposed of by this common order.

2. The separate applications in the cases having more than one applicant, to be allowed to prosecute the case jointly, also stand allowed.

3. The main relief sought is to order the respondents to regularize, or to absorb them in regular posts either in group 'D' or group 'C'. In some cases prayer has also been made to direct the respondents to take work from the applicants as casual labourer, till their regularization/absorption.

4. In OA 597 of 2005 there is also prayer, besides regularization

in a Group 'D' post, that the pension and retiral benefits be not curtailed by the respondents who had acquired temporary status since long and to continue to obtain deduction from the GPF treating them at par with group 'D' employees. However, the prayer to absorb them in permanent posts on the one hand and the prayer for grant of pensionary benefits being casual labourers, or to allow the casual labourers to contribute to GPF are separate reliefs, not consequential to the main relief hence is prohibited under Rule 10 of the CAT [Procedure]Rules, 1987. Therefore, the main prayer for regularization is being considered but the applicants would be free to take legal recourse for other reliefs.

In some cases like OAs 686/05, 740/05, 806/05, 177/06 & 178/06 besides absorption in regular posts, there is also prayer to direct the respondents to re-engage the applicants as casual labourers and continue taking work from them.

There are also some OAs like bearing no. 9, 156 & 189 of 2006 in which prayer also has been made, besides regularization, to direct the respondents to increase their working hours as they were engaged as casual labourers, part-time.

Some of the applicants who are working in the Postal Department like in OAs 8, 9, 156 & 189 of 2006, also had filed Misc. Applications for addition in the relief portion seeking also direction to appoint them against 25% of the vacancies in Group 'D' posts [Postman] as per the Revised Recruitment Rules, 2002 and for posting them, while working as casual labourers, against the post of Extra Departmental agents.

There are some OAs with further reliefs. Applicants in OA 338 of 2003, besides the prayer for regularization also have prayed for conferring temporary status and for payment of wages for eight hours per day though the applicants claim to have been paid only for four hours work per day. OA 651 of 2003 is also for grant of temporary status under the Scheme dated 10.09.2003 of the DOP&T. In OAs 248/03, 17/04, 615/04 & 110/06 the prayer also is for grant of temporary status. In OA 391 of 2004 the prayer is also to include the name of the applicants in the list of ex-casual labourers, to re-engage them as such, besides regularization in service.

5. Different learned counsels have argued their cases on behalf of the applicants as well on behalf of the respondents. However, the learned counsels had projected Shri Gautam Bose, learned counsel, to make common argument on the point of regularization as is the common prayer in the batch cases.

6. Shri Gautam Bose, learned counsel arguing for all submitted that a Constitutional Bench of the Supreme Court though had held, in general, in the case of **Secretary, State of Karnataka Vs. Umadevi; 2006 [2] PLJR 363 = 2006[4] SCC 01** against absorption of a casual labourer in an existing cadre post, or his regularization, the Apex Court had not taken into consideration its own decision, by an earlier Constitutional Bench of five Judges, in the case of **Rudra Kumar Sain Vs. Union of India; AIR 2000 SC 2808**. It is submitted that unless the ratio laid down in the case of Rudra Kumar Sain was overruled by a Larger Bench, in so far as the decision in the case of Umadevi [supra] went contrary to the decision in the earlier case of

Rudra Kumar Sain, that will not be followed over the ratio earlier laid down in the case of Sain.

7. Next argument is that DOP&T as well Railway administration had carved out different Schemes for grant of temporary status and for absorption in the sanctioned posts such as **'Scheme for Grant of Temporary Status & Regularisation of Casual Labourers, 1993'** and the Scheme formulated by the Railway Ministry vide its circular no. E[NG]11/84/CL/41 dated 01.06.1984 for absorption as temporary workmen which was also approved by the Apex Court in the case of Indrapal Yadav Vs. Union of India. Therefore, a casual labourer eligible for grant of temporary status as well for absorption under such Schemes when so absorbed, such absorption could not be said to be in violation of the Constitutional provisions. It is submitted that the judgment of the Apex Court in the case of Umadevi should be seen in this light.

8. Shri Bose also argued that when a casual labourer had worked for a long period and no step was taken for filling up the post against which he did the work, such casual labourer will have to be considered to be absorbed against a regular post, permanently. These arguments were adopted by other learned counsels arguing in particular applications.

Shri Bose and some other counsels also argued that such casual workers who were fit to be absorbed under any Scheme, or any rule made under Article 309 of the Constitution of India, should be so absorbed also under direction issued by the Apex Court in the case of Umadevi in para 44 which runs as follows :-

"One aspect needs to be clarified. There may be cases where irregular appointments [not illegal appointments] as explained in S.V.Narayanappa, R.N.Nanjundappa, and B.N.Nagarjan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of Tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of Courts or of Tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that required to be filled up, in cases where temporary employees or daily wagers are being now employed....."

9. In this context Shri S.A.Alam, learned counsel arguing for the applicants in OA 521 of 2000 did point out Rule 179 of Indian Railway Establishment Manual [Vol. I]. It has been pointed that these rules framed under Article 309 of the Constitution of India provided that the substitutes, casual and temporary workmen will have prior claim over others to have permanent recruitment. This also provided that substitutes and casual workers who acquired temporary status as a result of having worked on other than projects for more than 120 days and for 360 days on projects or other casual labourers with more than 120 days or 360 days service, as the case may be, should be considered for regular appointment without having to go through Employment Exchanges. The rule also provided that such of the workmen as

having joined service before attaining the age of 25 years may be allowed relaxation of maximum age limit prescribed for group 'D' posts to the extent of their total service, which may be either continuous or in broken periods. It is submitted that since casual labourers are to be absorbed in regular vacancies under such rules, those have to be considered under the direction granted by the Apex Court in the case of Umadevi in para 44 [quoted above].

10. Arguments have been advanced in some cases, like in OA 435 of 2001 by Shri J.K.Karn, learned counsel that after having been granted temporary status, and having worked for three years as such, a casual labourer under temporary status has to be given benefits at par with that of Group 'D' employees under 1989 Scheme of the Postal Department. It was submitted that when after working under temporary status for three years the applicant under a Scheme of the department was granted facilities at par with group 'D' employees, he had to be considered for permanent absorption in a group 'D' post in terms of the Scheme in view of the observations of their Lordships of the Supreme Court in para 44 of the judgment in the case of Umadevi.

11. In some cases the learned counsels, such as in OA 867 of 2002 argued by counsel shri M.P.Dixit, submitted that if this Tribunal finds that the order of regularization in the existing vacancies in group 'D' or 'C' posts cannot be allowed, even then if the applicants in any case have worked for a considerable period as casual labourers and have been removed from such work, the Tribunal can always order their reinstatement as casual labourer, grant of temporary status and also to consider their candidature if regular vacancies occur.

Shri Dixit also has argued that Umadevi's case was against regularization of persons engaged by State Governments where such Schemes for regularization or grant of temporary status did not exist but in the case of Central Government departments, they have such on-going Schemes or Rules as per which the applicants were engaged, granted temporary status and had to be considered for their absorption in a regular vacant post, hence the ratio laid down in the case of Umadevi will not be applicable to the cases in which a department of Central Government was involved.

In relation to OA 338 of 2003 Shri Dixit also argued that this was a case in which order of this Tribunal was set aside and the matter was remitted back. However,this submission is not fully correct. In that the Hon'ble Patna High Court had considered only an interim order recorded by a Bench of this Tribunal granting interim relief,which was set-aside.

12. OA 272 of 2006, argued by Shri J.K.Karn, learned Advocate stands on a different footing. Earlier an OA was filed with the same prayer by the same set of applicants which was considered and disposed of by order of this Tribunal but the same set again filed this application with the same prayer in view of the direction of the Apex Court in the case of Umadevi in para 44.

13. As we will see later that direction in para 44 in the case of Umadevi provides for one time regularization, but this direction does not apply to those persons who initially were not so appointed to a duly 'sanctioned' vacant posts. In other words, the direction applies to only such cases in which an irregular appointment, as distinguished from illegal appointments, was made of duly qualified persons, in duly sanctioned vacant

post. Engagements of casual labourers or grant of temporary status as well as grant of facilities at par with group 'D' employees after having worked for three years under temporary status will not amount to an appointment, irregular or otherwise, on a duly sanctioned post. Therefore, though decision of this Tribunal in these batch cases on this point would also apply to OA 272 of 2006, this application would also be hit by the principle of res-judicata.

14. As mentioned earlier, in some cases Shri S.K.Bariar, learned counsel has requested this Tribunal to consider their alternative prayer brought through concerned Misc. Applications to direct the respondents to appoint them to a group 'D' post under revised rules in which 25% of such vacancies were to be filled up from casual labourers. It is also submitted that the applicants in the case were only issued show cause notices for termination of their engagement, but had not been so terminated. In that regard it was submitted that there was a proposal to engage them as coolies instead of casual labourers, which would diminish their income.

Shri Bariar in relation to OA 17 of 2001 argued that though recommendation was sent vide Annexure-A/4 dated 09.08.1991 for grant of temporary status and regularization, no order was passed whereas juniors to the applicants had been given benefit of temporary status as well as regularization against vacant posts. He also admitted that presently work from the applicants was being taken through a contractor.

In so far as OA 116 of 2005 is concerned, in that quashing of Annexure-A/7, order dated 10.01.2005 has been prayed under which the applicant, said to be under temporary status was directed not to be placed in

screening test and kept on the roll for producing fake school certificate. It has been claimed that he was removed without following the procedures. In that view of the matter, this case stands on a separate footing hence is ordered to be excluded from consideration alongwith other batch cases. This OA is directed to be listed separately before appropriate Bench.

15. On the other hand, Shri M.K.Mishra, the learned Sr. Standing Counsel arguing on behalf of the Union of India submitted that direction of the Apex Court in para 44 of the Umadevi's case would not apply to any of the applicants in any of the cases on the ground that none of the applicants could be said to have been appointed to a regular sanctioned post, may be irregularly. The learned counsel also took help of the decision of the Apex Court in the case of **R.Uma Rani Vs. Registrar, Cooperative Societies; 2004[6] Supreme 143** in order to show what exactly the term 'regularization' meant. The learned counsel also argued that in many decisions earlier the Hon'ble Supreme Court had directed for absorption of casual labourers against regular vacancies but the Constitutional Bench of the Apex Court while laying down ratio in the case of Umadevi had also made it clear in para 45 of the order that those decisions which ran counter to the principle laid down in the case of Umadevi, would stand denuded of their status as precedents. It was argued by Shri Mishra that the Supreme Court is the highest judicial body to interpret Constitution of India and the laws made thereunder by the Legislature and when this Court says that a particular law or practice was ultra vires, the Apex Court lays down the law to be followed in the country. It

was argued that when the Apex Court laid down ratio against regularisation or absorption in regular vacancies except in accordance with the provisions laid down under the Constitution of India, all the Schemes or the Rules [the Rules even if made under Article 309 of the Constitution of India] which run counter to the ratio laid down by the Hon'ble Supreme Court would be unenforceable to that extent. It was argued that after decision in the case of Umadevi, the Courts and Tribunals cannot give effect to such Schemes or the Rules which go contrary to the law that has been laid down by the Supreme Court, by circumventing the judgment. If any order is passed in view of such Schemes or Rules by any Court/Tribunal, it was argued, that would not be an order in accordance with law if that order is not in absolute conformity with the decision of the Supreme Court.

16. Such arguments were supported by Shri Mukund Jee, the learned Standing Counsel appearing for the Railways, S/Shri R.K.Choubey, R.Griyaghey, G.K.Agarwal, R.N.Choudhary and Sarvesh Kr. Singh, all Addl. Standing Counsels. Shri Mukund Jee, learned counsel further argued that the decision in Rudra Kumar Sain's case [supra], decided also by a Constitutional Bench, does not run contrary to what has been held in the case of Umadevi, as the facts in that case were altogether on a different footing, in which question of seniority in between the officers promoted to the superior Judicial Service by the State Govt. under the recommendations of the High Court, i.e., in accordance with Rules, and the direct recruits to that post, was considered and resolved.

17. On behalf of the counsels for the State it was also argued that

though this decision does not say that whenever needed, under exigencies, or for a particular project the casual labourers cannot be employed but once the purpose for which they have been employed comes to an end, such casual labourers cannot have any claim for securing an order of the Tribunal directing the respondents to continue engaging them, even if they had been so engaged as casual labourers for a long time.

It is also argued that so far as increase in working hours is concerned, as a casual labourer is engaged only for such working hours which is considered sufficient to get a particular work done, hence the respondents cannot be directed to engage such part-time casual labourer for full time work whether or not the full time work is available.

In so far as grant of temporary status is concerned the learned Standing Counsel argued that if the Scheme granting temporary status was a one time Scheme as held by the Apex Court in the case of Union of India Vs. Mohan Pal; 2002 [4] SCC 573, the casual labourers cannot seek grant of temporary status under such Schemes perpetually.

18. Now we will examine such arguments as advanced by the learned counsels.

First we will take up the main prayer of the applicants which is for their regularization/absorption in regular and sanctioned vacancies. For this we will come back to the decision of the Hon'ble Supreme Court in the case of Umadevi.

19. The matter was referred to the Constitutional Bench in view of divergent decisions of the Apex Court in the matter of

regularization/absorption in regular posts. In course of arguments before the Apex Court, various orders of Courts either interim or final were brought to the notice, the purpose of which more or less was the issuance of direction for continuation or absorption without referring to the legal position as obtaining. It was argued that chaos had been created by such orders without reference to legal principles, hence it was imperative that the Apex Court settled the law once for all so that even in case the courts find that such order should be made, they, specially the High Courts would be precluded from issuing such directions or passing such orders. Their Lordships, thus, observed [in para 13] as follows:-

> "The submission of learned counsel for the respondents based on the various orders passed by the High Court or by the Government pursuant to the directions of Court also highlights the need for settling the law by this Court. The bypassing of the constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the validity of such orders on the touchstone of constitutionality. While approaching the questions falling for our decision, it is necessary to bear this in mind and to bring about certainty in the matter of public employment. The argument on behalf of some of the respondents is that this Court having once directed regularization in the Dharwad case [supra], all those appointed temporarily at any point of time would be entitled to be regularized since otherwise it would be discrimination between those similarly situated and in that view, all appointments made on daily wages, temporarily or contractually, must be directed to be regularized. Acceptance of this argument would mean that appointments made otherwise than by a regular process of selection would become the order of the day completely jettisoning the constitutional scheme of appointment. This argument also highlights the need for this Court to

formally lay down the law on the question and ensure certainty in dealings relating to public employment. The very divergence in approach in this Court, the so-called equitable approach made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by this Court one way or the other. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down."

while considering the matter in its constitutional aspects, their Lordships also made clear the distinction between "regularization" and "conferment of permanence" in service jurisprudence. It was observed that in the case of **State of Mysore Vs. S.V.Narayanappa; 1966 Indlaw SC 70** the Apex Court had stated that it was a misconception to consider that regularization meant permanence. Their Lordships quoted from the decision of the same court in the case of **R.N.Nanjundappa Vs. T.Thimmiah & Anr.; 1971 Indlaw SC 281**, which is as follows :-

"Counsel on behalf of the respondent contended that regularization would mean conferring the quality of permanence on the appointment, whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority, but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may

have the effect of setting at naught the rules."

It was also noticed that the Apex Court in the case of **B.N.Nagarajan & 1Ors. Vs. State of Karnataka & Ors; 1979 Indlaw SC 600** had held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. These are terms calculated to condone any procedural irregularity and are meant to cure only such defects as were attributable to methodology followed in making the appointment. Noting the aforesaid decisions, their Lordships observed - "We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization."

It is in that context that the direction of the Hon'ble Supreme Court in para 44 of the judgment in the case of Umadevi has to be followed. Their Lordships therein have clearly observed that there may be cases where irregular appointments [not illegal appointments] of duly qualified persons in **duly sanctioned vacant posts** [emphasis added] might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of Tribunals. It was in that context that the Apex Court directed the Union of India and the State Governments to take steps to regularize them as one time measure, who have worked for ten years or more **in duly sanctioned posts**, also directing that the

Union of India and the State Governments should further ensure that regular appointments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed.

20. Obviously, a casual labourer, even with temporary status cannot be said to have been employed in a duly sanctioned vacant post. Therefore, by virtue of having been employed, may be for a long time, only as a casual labourer or as a casual labourer under temporary status would not entitle such an employee to claim regularization in service or for being permanently absorbed in a regular vacant post without following the procedure prescribed for direct recruitment to such posts, in accordance with constitutional provisions.

21. In the case of Umadevi, another judgment of the same court in the case of **Daily Rated Casual Labour Vs. Union of India & Ors.; 1987 Indlaw SC 597** was noticed in which the Hon'ble Court had directed the Government to frame a scheme for absorption of daily rated casual labourers continuously working in the Posts & Telegraph Department for more than one year. Noticing that the following was observed :-

> "This Court seems to have been swayed by the idea that India is a socialist republic and that implied the existence of certain important obligations which the State had to discharge. While it might be one thing to say that the daily rated workers, doing the identical work, had to be paid the wages that were being paid to those who are regularly appointed and are doing the same work, it would be quite a different thing to say that a socialist republic and its Executive, is bound to give permanence to all those who are employed as casual labourers or

temporary hands and that too without a process of selection or without following the mandate of the Constitution and the laws made thereunder concerning public employment. The same approach was made in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation; 1989 Indlaw SC 347 where this Court directed regularization of daily rated workers in phases and in accordance with seniority."

22. Some other observations of their Lordships in the case of Umadevi may also be quoted :-

- "But, the regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of these vacancies cannot be done in a haphazard manner or based on patronage or other consideration. Regular appointment must be the rule."
- "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."
- "It cannot also be forgotten that it is not the role of Courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders passed on such schemes or project would result in perpetuating illegalities and in jettisoning the scheme of public employment adopted by us while adopting the Constitution."

23. In so far as continuance of a casual labourer was concerned, the Hon'ble Supreme Court in the case of Umadevi also took note of several other cases including that of **State of Himachal Pradesh Vs. Suresh Kumar**

Verma; 1996 [1] SCR 972 in which it was held that a person appointed on a daily wage basis was not an appointee to a post according to the rules and, on his termination, or the project employing him coming to an end, the court could not issue a direction to re-engage him in any other work and appointing him in existing vacancies.

Having taken note of various other decisions their Lordships in para 26 of the judgment have observed as follows :-

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

In para 31 of the same judgment their Lordships noticed as follows :-

"The philosophy behind this approach is seen set out in the recent decision in The Workmen of Bhurkunda Colliery of M/s Central Coalfields Limited Vs. the Management of Bhurkunda Colliery; 2006 [2] JT 1, though the legality or validity of such an approach has not been independently examined. But on a survey of authorities, the predominant view is seen to be that such appointments did not confer any right on the appointees and that the Court cannot direct their absorption or regularization or re-engagement or making them permanent."

On the ground that a temporary or a casual labourer should be

absorbed in service on account of his long continuation in such a work, the Hon'ble Supreme Court at the end of para 34 of the judgment in the case of Umadevi observed as follows :-

> "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 under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service."

In the same case their Lordships have observed, in para 38, that when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedures, he is aware of the consequences of such appointment. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when appointment to the post could be made only by following the proper procedure for selection. It was noted by their Lordships that in the case of **Dr. Ray Shivendra Bahadur Vs. Governing Body of Nalanda College; 1961 Indlaw SC 58**, the Court had held that mandamus may be issued to compel the authorities to do something but for that it must be shown that the statute imposed a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it.

The Scheme framed by the State of Karnataka, at the instance of the court for regularizing the services of temporary or casual labourers,

which was approved in its decision in the case of **Dharwad Distt. PWD Literate Daily Wage Employees Association & Ors. Vs. State of Karnataka & Ors.; 1990 Indlaw SC 723** was also taken note of by their Lordships while holding that in Dharwad case the Supreme Court was actually dealing with the question of "equal pay for equal work" and had directed the State of Karnataka to frame a Scheme in that behalf. In that judgment the Court had stated that the precedents obliged the State of Karnataka to regularize the service of the casual or daily/monthly rated employees and to make them the same payment as the regular employees were getting. In that regard following was observed in the case of Umadevi :-

> "With respect, it appears to us that the question whether the jettisoning of the constitutional scheme of appointment can be approved, was not considered or decided. The distinction emphasized in R.N.Nanjundapa Vs. T.Thimmiah & Anr. [Supra], was also not kept in mind. The Court appears to have been dealing with a scheme for 'equal pay for equal work' and in the process, without an actual discussion of the question, had approved a scheme put forward by the State, prepared obviously at the direction of the Court, to order permanent absorption of such daily rated workers. With respect to the learned judges, the decision cannot be said to lay down any law, that all those engaged on daily wages, casually, temporarily, or when no sanctioned post or vacancy existed and without following the rules of selection, should be absorbed or made permanent though not at a stretch, but gradually. If that were the ratio, with respect, we have to disagree with it."

In the same way their Lordships have referred to the judgment of the Apex Court in the case of **State of Haryana Vs. Piara Singh & Ors.; 1992 Indlaw SC 777**. Their Lordships observed [in conclusion] - "Really, it

cannot be said that this decision has laid down the law that all adhoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent."

24. In the case of Umadevi, certain other decisions were also discussed which briefly be mentioned here.

- It was noticed that in the **State of Punjab & Ors. Vs. Surinder Kumar & Ors.; 1991 Indlaw SC 952**, the Apex Court had held that High Courts had no power, like the power available to the Supreme Court under Article 142 of the Constitution of India, and merely because the Supreme Court granted certain reliefs in exercise of its power under Article 142 of the Constitution, similar orders could not be issued by the High Courts. It was pointed out that a decision is available as a precedent only if it decides a question of law. The temporary employees would not be entitled to rely in a Writ Petition they filed before the High Court upon an order of the Supreme Court which directs a temporary employee to be regularized in his service without assigning reasons and ask the High Court to pass an order of a similar nature. In that case the Supreme Court set-aside the directions given by the High Court for regularization of persons appointed temporarily to the post of Lecturers.

- In **Director, Institute of Management Development, U.P. Vs. Pushpa Srivastava [Smt.] 1992 [3] SCR 712** the Supreme Court had held that since the appointment was on purely contractual and adhoc basis on consolidated pay for a fixed period and terminable without

notice, when the appointment came to an end by efflux of time, the appointee had no right to continue in the post and to claim regularization in service in the absence of any rule providing for regularization after the period of service.

- In **Madhyamik Shiksha Parishad, U.P. Vs. Anil Kumar Mishra & Ors.; 1992 Indlaw SC 1292** the Apex Court had held that adhoc appointees/temporary employees engaged on adhoc basis and paid on piece-rate basis for certain clerical work and discontinued on completion of their task, were not entitled to reinstatement or regularization of their services even if their working period ranged from one to two years.

- As already noticed in the case of **State of Himachal Pradesh** [supra] their Lordships had held that if directions were given to re-engage such persons in any other work or appoint them against existing vacancies, the judicial process would become another mode of recruitment dehors the rules.

Hon'ble Supreme Court in the case of Umadevi came to the conclusion that by and large what emerges is that regular recruitment should be insisted upon, only in a contingency an adhoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular appointment and that appointments to non-available posts should not be taken note of for regularization.

In this decision the Hon'ble Supreme Court also took note of the decision in the case of **A.Umarani Vs. Registrar, Cooperative**

Societies & Ors.; 2004 [7] SCC 112 [supra] which has also been relied upon by the learned Sr. Standing Counsel, and observed that a three Judge Bench of the Supreme Court had made a survey of the authorities and held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointments would be illegal and cannot be regularised by the State. It was also held in the case of A. Umarani that regularization is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution of India, also observing that regularization cannot give permanence to an employee whose services are adhoc in nature. It was held that the fact that some persons had been working for a long time would not mean that they had acquired a right for regularization. Taking note of the judgments of the Supreme Court in the case of **Kesavananada Bharati Vs. State of Kerala; 1973 Indlaw SC 537** and in the case of **Indira Sawhney Vs. Union of India ; 1999 [55] SCR 229** their Lordships stated that those were binding decisions which held that Articles 14 & 16 of the Constitution were one of the basic features of the Constitution of India and adherence to those provisions was a must in the process of public employment.

25. On the basis of the aforesaid the Supreme Court held 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 appointments come to an end at the end of the contract; if it were an engagement or appointment on daily wage basis or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee can not claim to be made permanent on the expiry of his term of appointment. It was also clarified that merely because a temporary employee or a casual worker has continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance.

26. It was also observed that the fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate.

27. As already noticed, in the context of Umadevi's case their Lordships observed in para 45 of the judgment - "It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

28. Now coming to the arguments of Shri Gautam Bose, learned counsel and other learned counsels appearing for the applicants in different cases that another constitutional Bench decision of the Apex Court in the case of Rudra Kumar Sain [supra] has not been considered in the case of Umadevi, hence the decision in Umadevi does not displace the ratio laid down in the case of Rudra Kumar Sain, we have already noted the arguments of the

learned Standing Counsel for the Railways who submitted that since in the two cases similar question of law and facts were not considered, the decision in the case of Rudra Kumar Sain would stand on a quite different footing and will not affect the decision of the Apex Court in the case of Umadevi. We find this argument acceptable. In the Sain's case the question that was considered was inter-se seniority amongst the officers promoted to superior judicial service and the direct recruits. That was considered in relation to the relevant rules framed for promotion, and for direct recruitment. On perusal of the judgment of the Hon'ble Supreme Court in the case of Rudra Kumar Sain and in the case of Umadevi would make it obvious that different facts and the law involved were considered in these two cases hence the decision in the case of Rudra Kumar Sain will not effect the law laid down in the case of Umadevi.

29. The law laid down by the Supreme Court while interpreting constitutional provisions and the laws made thereunder is the law of the land to be followed by all concerned. If there had been any Scheme in the past, may be at the instance of some judgments of a High Court or of the Supreme Court or following an order of this Tribunal directing for regularization or absorption of a temporary or adhoc employee, which comes against the ratio laid down in the case of Umadevi, relief for regularization in accordance with such an Scheme now cannot be allowed. If any rule has been framed which is contrary to the ratio of Umadevi's case, then now granting relief under such a rule would amount to circumventing the ratio laid down in this case. Concerned Ministries/Departments of the Union of India would do well to reconsider and recast or withdraw such rules or orders, at the earliest, which go against the

ratio laid down in the case of Umadevi.

30. A person employed as a casual worker under any Scheme or under a Rule, even if granted temporary status can have no claim to be absorbed permanently in a regular post, or by creating a regular post, as that would be against the constitutional scheme for public appointments. As noted by their Lordships in the case of Umadevi, a person coming from the back door should go from the back door.

[i] Therefore, so far the prayer in the aforesaid applications for regularization/permanent absorption of the applicants in a regular post is concerned, that prayer cannot be allowed, hence is rejected.

[ii] So far the prayer for re-engagement of such casual labourers who stand relieved of work is concerned, in view of the fact that a casual labourer is employed for a particular purpose or period and such engagement is not meant to be a permanent one, the respondents cannot be directed to re-absorb them and provide them work wherever available. This prayer also has to be rejected.

[iii] The prayer in some applications for enhancing the working hours of the casual labourers has also to be rejected in view of the fact that it is for employer to decide as to what work he wants to take from a casual labourer and for what period. This Tribunal cannot force an employer to engage a casual labourer full time if the employer needs to employ him part time only. This prayer also, therefore, has to be rejected.

31. In some of the OAs, as already mentioned, Misc. Applications

were filed to substitute the relief which are on the record. In course of hearing we had assured the learned counsels that the relief as sought in the Misc. Applications would also be considered as an alternative relief sought by the applicants in such cases. The applicants who are in the Department of Posts, working as casual labourers seek benefit of the Rules called "Department of Posts [Group 'D' posts] Recruitment Rules, 2002" issued under notification by the Ministry of Communication dated 23.01.2002. These rules were framed under proviso to Article 309 of the Constitution.

32. It has been pointed out that as per Schedule II to the Rules the posts of Peons, Letter Box Peons, etc. in sub-ordinate offices are to be filled up in accordance with the method prescribed therein. This prescribes following method :-

"The method of recruitment shall be in the manner specified below, namely -

A test shall be held to determine the working eligibility of the candidates holding the post specified against Sl.No.2 for filling up the posts. In case the suitable candidates are not found to fill up the posts by such test, the remaining posts shall be filled up by the method as specified below :-

[i] 75% of the vacancies remaining unfilled after recruitment from employees mentioned at Sl.No.2 shall be filled by Gramin Dak Sevaks of the Recruiting Division or Unit where such vacancies occur failing which by Gramin Dak Sevaks of the neighbouring Division or Unit by selection-cum-seniority.

[ii] 25% of the vacancies remaining unfilled after recruitment of employees mentioned at Sl.No.2, such vacancies shall be filled up by selection-cum-seniority in the following

order :-

[a] by casual labourers with temporary status of the recruiting division or unit failing which,

[b] by full-time casual labourers of the recruiting division or unit failing which,

[c] by full-time casual labourers of the neighbouring division or unit failing which,

[d] by part-time Casual Labourers of the recruiting division or unit failing which

[iii] by direct recruitment."

From perusal of this, it is clear that after holding test to determine the working eligibility of the candidates holding the post specified in Sl.No.2 for filling up the posts, if suitable candidates are not found to fill up the posts in such tests, the remaining posts shall be filled up in the manner provided therein, i.e., 75% of vacancies remaining unfilled after recruitment from employees mentioned at Sl.no.2, shall be filled up by Gramin Dak Sevaks and remaining 25% of vacancies of such unfilled posts shall be filled up by selection-cum-seniority in the order as given therein. Here also casual labourers with temporary status have to be given priority whereafter full time casual labourers of the recruiting division of the unit would be considered for filling up the vacant posts.

It is clear from this methodology that only a few posts would be available to be filled up firstly by casual labourers with temporary status and if those were not found in sufficient number, then by full time casual labourers.

33. The learned counsels have made no claim in these cases that the applicants had become ripe for consideration under such a procedure and had not been so selected. Unless the applicants are ripe for being so selected

or have not been considered according to their seniority, then alone they will have a cause of action to come to the Tribunal to secure an order. Since it has not been claimed that they were within the zone of consideration but have not been considered for promotion and posting to a group 'D' post, the relief in this regard cannot be granted to the applicants at this stage. However, as stated earlier in the order that all such rules and schemes will have to be recast, amended or withdrawn if those do not conform to the ratio laid down in the case of Umadevi.

34. Now, coming to the cases in which the applicants have claimed that they are ripe to be granted temporary status but have not been so granted and in which cases, besides the prayer for regularization/absorption, the prayer is also for grant of temporary status, it may be stated that even in the case of Umadevi the need to employ casual labourers whenever necessity so arises has been recognised. For a particular work or for a particular project which is for a limited period, the concerned department may employ casual labourer. Grant of temporary status is neither their absorption in the regular posts nor regularization, but this status is granted to such employees who are likely to continue in projects or works for a long period, in order to safeguard their financial position. If a person has been employed as casual or temporarily or on adhoc basis for doing a particular project work, then on completion of the project which might have run for a long period, such engagement would not entitle that person to claim regularization/absorption. Even if such a worker has been granted temporary status in the meantime, he will not have any right to regularization/absorption. By granting temporary status to an

employee, he is granted certain benefits enjoyed by a temporary group 'D' employee. This however, does not and cannot make him a temporary group 'D' employee. If a particular work or a project which needs to be performed by employment of persons on casual basis, and after working for a particular period even if they are granted temporary status, that will not grant them any right to be continued in work simply because they had been granted temporary status, on completion of work/project. The very nomenclature denotes the temporary nature of engagement. Temporary status if granted to a casual labourer who has continued for a longer period would only mean that so long work is being taken from him he would have certain benefits, including of leave, etc. granted to the temporary group 'D' employee but only till the work/project on which he has been engaged continues.

35. A Division Bench of this Tribunal had considered the question of grant of temporary status to casual labourers also keeping in view the decision of the Apex Court in the case of Union of India Vs. Mohan Pal; 2002 [4] SCC 573 [supra] in OA 192 of 2004 & 2 other OAs [Ajay Kumar Raut Vs. Union of India & Ors.] which was disposed of by an order dated 16.08.2005. In that order, considering a number of decisions of the Apex Court including that of Mohan Pal's case, this Tribunal reached at the following conclusions :-

> "[i] 1993 Scheme was one time Scheme and a casual worker not covered by that Scheme could not claim grant of temporary status under the Scheme, though the principles enunciated therein could be applied in future individual cases also, whenever appropriate.
>
> [ii] Even after expiry of the 1993 Scheme the law does not prohibit an aggrieved casual worker to seek temporary status or regularization in proper cases, if the employer fails to grant that, from the

Courts/Tribunals.

[iii] Based on various judicial pronouncements discussed above as well the stipulations as made out in the 1993 Scheme, it would be just to hold that a casual worker who has worked continuously for a period of two years, ignoring temporary stoppages of engagement, and has worked for 240 full days in any particular year [206 days in a five days a week office], he should ordinarily be entitled to grant of temporary status.

[iv] So far as regularization in service is concerned, that would depend upon availability of vacancies, also keeping in view that all the available vacancies cannot be filled-up regularizing the services of casual workers rather, in order to maintain efficiency in service, a number of such available posts have to be filled up from open market, as well keeping in view eligibility criteria for the post as also age factor, though the authority concerned could relax the age in favour of casual worker who had put in a number of years in service if at the time of initial engagement he was within prescribed age limit.

[v] the claim should not have become too stale at the time of filing of the application.

[vi] The departments having existing rules for grant of temporary status, those will be applied to the casual workers of that department."

36. While recording that order this Tribunal had taken into consideration many cases including judgments of the Apex Court. However, some of those cases now stand denuded of their status as precedence vice para 45 of the judgment in the case of Umadevi. The judgment in the case of Umadevi does not deal with the question of grant of temporary status. Therefore, the prayer in some of the cases which may be made in some other cases also in the times to come, for grant of temporary status, may be considered. But in view of the law now laid down in the case of

Umadevi, the conclusions as arrived at by this Tribunal in OA 192 of 2004 needs to be clarified further.

Now conclusion in sub-para [iv] as reproduced above, obviously has lost its force in view of the decision in the case of Umadevi. Likewise, the words "or regularisation" as in sub-para [ii] will not have no application.

In so far as the conclusion in sub-para [v] is concerned, it is better now to prescribe a time limit beyond which such a claim would be treated as stale. The claim not to have become stale an application should, therefore, be filed within the period of limitation as prescribed under Section 21 of the A.T.Act. In exceptional cases extension of the period may be considered.

It may also be mentioned here that conclusions in paragraphs [i] & [ii] are concerned, similar view was taken by Hon'ble Patna High Court in the case of the Union of India and others Vs. Central Administrative Tribunal, Patna and others [in CWJC No. 2905 of 2005, disposed of by order dated 21.09.2005.

37. Besides that, it is also clarified that grant of temporary status will not bring forth a claim to continue as casual labourer under temporary status even if employment in such work/project of the person concerned is no longer required. If the services in a particular work/project, of a casual labourer with temporary status is not required, his services can be dispensed with in accordance with law.

38. Keeping in view these parameters the applicants in the cases in

which prayer includes grant of temporary status, may file a representation before the respondents within two months of this order, for grant of temporary status in accordance with the parameters laid down in OA 192 of 2004 [supra] as further clarified in this order. It will be for the applicants to establish their claim before the respondents who will consider grant of temporary status to them if they are required to be engaged on the work/project for a further period and have already worked for the period as per the parameters prescribed by this Tribunal.

39. We finally come to the following conclusions :-

[i] Order for regularization/absorption, in sanctioned vacant posts, cannot be ordered in favour of casual labourers with or without temporary status, or of a temporary worker appointed on adhoc basis without following the rules and law prescribed for regular appointment to such post from open market in accordance with the constitutional scheme. Such prayers are rejected.

[ii] If the services of a casual labourer have been terminated as no longer required, a direction for his re-engagement cannot be granted. Such prayers are refused. However, the departments concerned should not terminate services of a casual labourer even if the work he is doing is further required to be done, with a view to appoint another casual labourer for the same work, unless the working casual labourer, for some reason, is rendered, or considered, incapable to do the work.

[iii] Prayer for enhancement of hours of work, i.e., making a part time casual labourer to be a full time casual labourer also cannot be

allowed on the ground as already discussed earlier. Such prayers are also refused.

[iv] The claim of the casual labourers of the Postal Department to be appointed to a group 'D' post under the "2002 Rules", is presently refused as being premature as nothing has been shown, in course of arguments also, to claim that such casual labourers, with or without temporary status, had become ripe for consideration to be so appointed but had not been so considered.

[v] Grant of temporary status to a worker who has been working continuously on a work/project and whose engagement is required for more period, may be considered by the respondents under the parameters laid down in OA 192 of 2004, as further clarified in this order. The grant of temporary status however, will not entitle a casual labourer to claim absorption/regularisation to a sanctioned post nor in future, could he claim further engagement on completion of the work/project for which he has been employed and in which temporary status has been granted to him. The services of a casual labourer under temporary status may be terminated, when no longer required to be engaged on such work/project either on its completion or regular appointment to the post having been made to carry out the same work/project or on account of incapacity of the casual labourer to do the work. This however, should be done in accordance with law.

[vi] The respondents are directed to consider cases of such casual labourers in a concerned Application who have been continuing to

work as such. In case the prayer is by a casual labourer whose services have been terminated, such prayer should be considered by the respondents in the concerned Application if such termination had been within a period of 1 ½ years of the filing of the Application. In exceptional and deserving cases the respondents may consider such prayer with a further grace period of one year, but not beyond that. The prayer for such relief in any application would be considered to be too stale to be considered beyond the aforesaid period.

40. With the aforesaid directions, all the applications stand disposed of [except OA 116 of 2005 hearing of which has been separated].

No costs.

[S.N.P.N.Sinha]M[A] [P.K.Sinha]/VC

skj

"True Copy"

Certified that this is a true and accurate copy of the document order as in the case file (OA/RA/TA/CP/MA/PT No. 27/2005) and that all the matter appearing thereon have been legibly and faithfully copied with no modifications."

15/11/06

Section Officer (Judl.)
CENTRAL ADMN. TRIBUNAL
PATNA BENCH, PATNA

15/11/06