

FROM No. 4.  
( See Rule 42 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 64/06

Misc Petition No. \_\_\_\_\_

Contempt Petition No. \_\_\_\_\_

Review Application No. \_\_\_\_\_

Applicant(S) Sri. Bhagawan Singh

Respondants U.O. 12 018.

Advocate for the Applicant(S) Mr. Asil Ahmed...

Advocate for the Respondant(S) C.G.S.C. ....

Notes of the Registry \_\_\_\_\_  
\_\_\_\_\_ Order of the Tribunal

13.03.2007 Present : Hon'ble Sri K.V. Sachidanandan  
Vice-Chairman.

This application is a form  
is filed/ \_\_\_\_\_

Deposited \_\_\_\_\_  
No. 26 G 350402

Dated 6-2-06

N. S. S.  
1/c Dy. Registrar 10.3.06

Notice & order sent  
to D/Section for  
issuing to resp. nos.  
1, 2 & 3 by regd. A/D  
st. D/No = 360 to 362  
C.G. 20/3/06. D/22/3/06.

Heard Mr. A. Ahmed, learned counsel  
for the applicant and Mr. G. Baishya,  
learned Sr. C.G.S.C. for the respondents.

The claim of the applicant is that he  
has put in 9 years service and he has the  
right to be regularised as temporary  
employee from casual labour. The applicant  
earlier approached this Tribunal by way of  
filing O.A. No. 207 of 2004 and the same  
was disposed with a direction to the  
applicant to file a proper representation  
before the concerned authority, which  
according to him was disposed of without  
due application of mind. The said order has  
been challenged in this application.

Issue notice to the respondents.

Post on 28.04.2006.

Vice-Chairman

28.4.2006

Mr.G.Baishya, learned Sr.C.C. submits that he would like to get instruction from the respondents. Let it be done. Post on 1.6.2006.

Vice-Chairman

bb

01.06.2006

Learned counsel for the respondents ~~response~~ submitted that he has filed reply statement. The Registrar is directed to receive it if otherwise in order. Copy of the same has also been served to the learned counsel for the applicant. Learned counsel for the applicant is at liberty to file rejoinder.

Post on 17.07.2006.

Vice-Chairman

mb

17.7.2006

Learned counsel for the applicant is not present. Applicant seems to have not filed rejoinder. However, further three weeks time is granted to the applicant to file rejoinder, if post on 7.8.2006.

Vice-Chairman

bb

07.08.2006

Learned counsel for the applicant wanted to file rejoinder. Let it be done.

Post on 28.08.2006.

Member

Vice-Chairman

mb

27-4-06

① Service report awaited.

My

31-5-06

Service report awaited.

My

2.6.06

As submitted by the Respondents Nos. 1 to 3.

My

25-8-06

No rejoinder filed.

My

3-  
O.A. 64/2006

28.08.2006 Present: Hon'ble Sri K.V. Sachidanandan  
Vice-Chairman.

Reply statement has been filed by  
the Respondents, wherein legal point has  
been raised. Considering the said legal  
point, the O.A. has to be admitted. Admit.

Post on 20.10.2006. The Applicant  
is given liberty to file rejoinder, if any.

No rejoinder has  
been filed.

Vice-Chairman

/mb/

24  
14.11.06.

15.11.06.

None for the parties. Post the  
matter on 20.12.06.

Vice-Chairman

lm

No rejoinder has  
been filed.

20.12.06

Counsel for the respondents has  
already filed written statement. Applica-  
may file rejoinder, if any within four  
weeks.

post on 23.1.07 for order.

Vice-Chairman

pg

No rejoinder has  
been filed.

24  
22.1.07.

23.1.2007

No rejoinder filed. Further time of  
two weeks is granted for the same.

Post on 14.2.2007.

Vice-Chairman

/bb/

No rejoinder has  
been filed.

24  
13.2.07.

14.2.2007

Let the case be posted for hearing  
on 15.3.2007.

Vice-Chairman

No rejoinder has  
been filed.

24  
5.4.07.

/bb/

No rejoinder has  
been filed.

24  
27.4.07.

-4-  
04.66/2006

30.4.2007

At the instance of the learned  
counsel for the Applicant post the case on  
14.05.2007.

No rejoinder has  
been filed.

By  
11.5.07.

/bb

Vice-Chairman

15.5.07

At the request of learned counsel  
for the applicant case is adjourned to  
24.5.07.

No rejoinder has  
been filed.

By  
23.5.07.

lm

Vice-Chairman

24.5.07

At the request of learned counsel for  
the applicant case is adjourned to 8.6.07.

Vice-Chairman

lm

8.6.07.

Post the matter on 14.6.07.

No rejoinder has  
been filed.

By  
7.5.07.

lm

Vice-Chairman

No rejoinder has  
been filed.

By  
13.6.07.

14.6.2007

Counsel for the applicant wanted to  
take this case on some other date.

Post on 22.6.07 for hearing.

No rejoinder has  
been filed.

By  
21.6.07.

/pg/

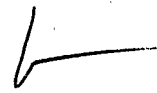
Vice-Chairman



OA-64/2006 -5


22.6.2007

None appeared for the Applicant. Let  
the case be posted on 26.6.2007:



Vice-Chairman

No rejoinder filed

  
25.6.07.

/bb/


26.6.2007

Let this case be posted before the  
next Division Bench.

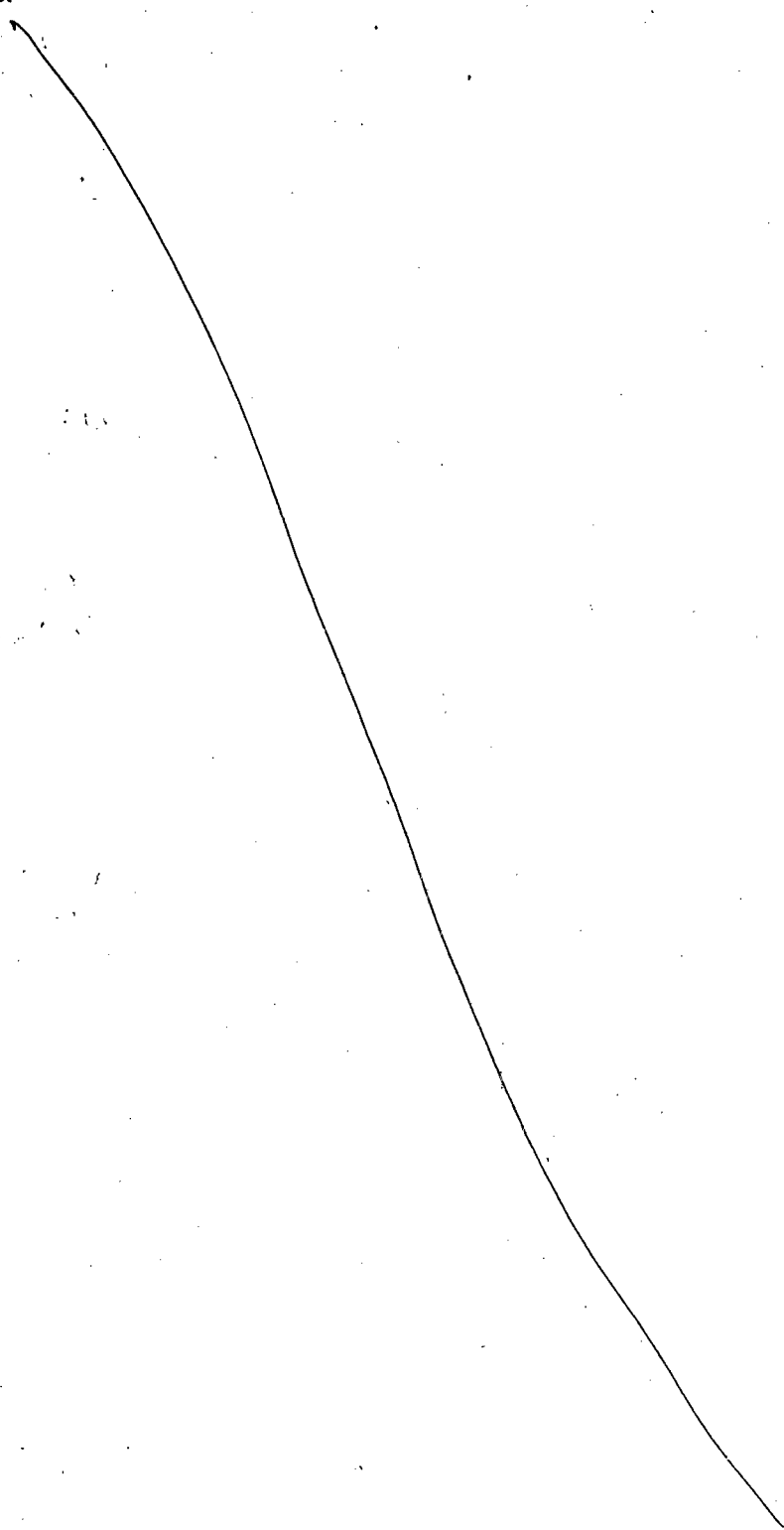


Vice-Chairman

Rejoinder not  
filed.

  
12.5.08

/pg/



04 641-0-0 (7)

13.05.2008

Dr. 13/5/08

Please send copies  
of this order to the  
Applicant and to the  
Respondents.

*[Signature]*

Order dt. 13/5/08  
Send to D/Section  
for issuing to  
applicant and to all  
the respondents by  
post.

*[Signature]*  
21/5/08. D/No-2423 to  
2426  
Dt= 23/5/08.

W/s bikel.

*[Signature]*  
19.6.08

Rejoinder not  
bikel.

*[Signature]*  
22.7.08

copy received  
for  
MR. G. BASHYA  
SR. C & SC, 1st  
27.2.08

Received by  
N. Ahmed  
Associate  
29.03.08

13.05.2008

None appears for the Applicant nor  
the Applicant is present. Mr A. Ahmed,  
learned Counsel appearing for the  
Applicant has sent a leave note. Mr G.  
Baishya, learned Sr. Standing Counsel is  
present on behalf of the Respondents. He  
undertakes to file appearance memo in this  
case.

Call this matter on 20.06.2008 for  
hearing.

Send copies of this order to the  
Applicant and to all the Respondents, so  
that they can come ready for the hearing on  
the date fixed.

*[Signature]*  
(Khushiram)  
Member (A)

nkm

*[Signature]*  
(M.R. Mohanty)  
Vice-Chairman

20.06.2008

Call this matter on 23.7.2008.

*[Signature]*  
(Khushiram)  
Member(A)

Lin

*[Signature]*  
(M.R. Mohanty)  
Vice-Chairman

23.08.2008

Heard. For the reasons recorded  
separately, this case stands dismissed. No  
costs.

*[Signature]*  
(Khushiram)  
Member(A)

nkm

*[Signature]*  
(M.R. Mohanty)  
Vice-Chairman

7

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. No. 64 of 2006

DATE OF DECISION: 23.07.2008

Shri Bhagawan Singh

.....Applicant/s

Mr. A.Ahmed

..... Advocate for the  
Applicant/s.

- Versus -

Union of India & Others

.....Respondent/s

Mr. G. Baishya, Sr. C.G.S.C.

.....Advocate for the  
Respondents

CORAM

THE HON'BLE MR. MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR. KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment? ✓  
Yes/No
2. Whether to be referred to the Reporter or not? ✓  
Yes/No
3. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Vice-Chairman/Member (A)

8

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**

Original Application No. 64 of 2006

Date of Order: This, the 23rd Day of July, 2008

THE HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE SHRI KHUSHIRAM, ADMINISTRATIVE MEMBER

Shri Bhagawan Singh  
Son of Shri Baidyanath Singh  
Casual Worker in the Office of the  
Accountant General (A&E)  
Meghalaya, Shillong  
Resident of Pynthorumkhrah  
Shillong-1.

..... Applicant.

By Advocate Mr. Adil Ahmed.

- Versus -

1. The Union of India  
Represented by the Comptroller &  
Auditor General of India  
10 Bahadur Shah Zafar Marg  
New Delhi-110 003.
2. The Accountant General (A&E)  
Meghalaya, Shillong-1.
3. The Deputy Accountant General (Admn)  
Office of the Accountant General (A&E)  
Meghalaya, Shillong-1.


..... Respondents.

By Mr. G. Baishya, Sr. C.G.S.C.

**O R D E R (ORAL)**  
**23.07.2008**

**KHUSHIRAM, MEMBER(A) :**

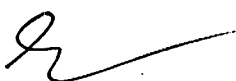
The Applicant has claimed that he worked as casual labour, on daily wage basis under the Respondents since 1995 for more than 9 years but he was deprived of



regular pay scale and service benefits etc. Apprehending termination from service, Applicant filed O.A.207/2004 which was disposed of on 29.06.2005 with direction to the Applicant to file a proper representation before the Respondents, who were also directed to dispose of the same and pass a reasoned order, in accordance with law, within a specified time after affording opportunity to the Applicant of being heard. Applicant, accordingly, filed a representation on 06.07.2005; which was rejected by the Respondents (vide order dated 06.09.2005) without affording the Applicant any personal hearing. Aggrieved by the said action of the Respondents, Applicant filed the present O.A. under Section 19 of the Administrative Tribunals Act, 1985 seeking mainly the following relief:-

"8.1 That the Hon'ble Tribunal may be pleased to direct the Respondents to set aside and quash the impugned order No.Sr.DAG(A)/Con-C/BS/2004-05/97 dated 6<sup>th</sup> September 2005 and also may be pleased to direct the Respondents to consider the applicant's case for grant of temporary status and subsequently regularization in any Group 'D' post."

2. Respondents, who filed a written statement, have stated that casual workers are engaged in the Respondent-Organisation, on a day-to-day basis, for work of casual and intermittent nature; that Annexure A to A-10 of the O.A. are not pay slips, as claimed by the Applicant, but are only extracts of the wage bills prepared for casual workers in the office of the



Respondents and that the Applicant was only engaged intermittently as casual worker (as and when work in the office of the Respondents was available) from 1996 (not from 1995) till 2004 (for a total period of 525 days) as per following break up:-


Year	No. of days
1996	41
1997	97
1998	78
1999	89
2000	41
2001	26
2002	31
2003	53
2004	69
<b>Grand Total</b>	<b>525</b>

It has been stated by the Respondents that the claim of the Applicant that he worked for 9 years as casual labourer is false; that the Applicant was never debarred from applying for any government or semi-government job and, thus, his claim that he is over aged for a government or semi government job<sup>is</sup> only a ploy to mislead this Tribunal; that the question of illegal termination of his service, during the pendency of the O.A.207/2004, does not arise because the Applicant was engaged as a casual worker and not appointed in any regular post which attracts the penalty of termination as per the Rules and that the representation dated 05.07.2005 of the Applicant was duly examined but, for want of rules to support his case, his prayer could not be acceded to. It has also



been stated by the Respondents that personal hearing would not have served any purpose nor would it, in any way, have altered the position of the Applicant's case and that there is no system of maintaining seniority list in respect of casual workers and therefore, the allegation of granting engagement to the juniors of the Applicant is not correct.


3. We have heard Mr. Adil Ahmed, learned counsel appearing for the Applicant and Mr. G. Baishya, learned Sr. Standing counsel appearing for the Respondents and have gone through the records placed before us. Since the Applicant was engaged intermittently on casual basis as and when work was available with the Respondents (between 1996 from 2004) his case cannot be covered under any of instructions (issued by the Govt. of India) pertaining to grant of temporary status or regularization of the casual workers. The Apex Court in the celebrated decision rendered in the case of **Secretary, State of Karnataka and Others vs. Umadevi (3) and Others [reported in (2006) 4 SCC 1]** declared that casual labourer/temporary employee do not have any right to regular or permanent public employment and, further, it is held that temporary, contractual, casual, adhoc or daily-wage public employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it. In the said decision,



interpreting provisions of the Constitution of India the Hon'ble Supreme Court observed as under:-

16. In *B.N.Nagarajan V. State of Karnataka*<sup>8</sup> this Court clearly held that the words "regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This Court emphasised that when rules framed under Article 309 of the Constitution are in force, no regularisation is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason to accept the proposition as enunciated in the above decisions. 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 regularised and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularisation.

19. One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality of the project is also of equal concern for the State. The State works out of the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or






casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counterproductive.

26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent - the distinction between regularisation and making permanent, was not emphasised here - can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of *Piara Singh*<sup>5</sup> is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

47. 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 recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory

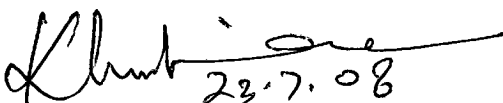


of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief or being made permanent in the post."


The above celebrated decision declares that casual labourer/temporary employee/contract labourer does not have any right to regularisation in permanent public employment.

4. In the conspectus facts and circumstances of the case and the legal position as discussed above, we are of the considered opinion that the relief, as prayed for in the O.A., cannot be granted to the Applicant and the O.A. is liable to be dismissed.

5. Accordingly, the present case is dismissed. In the circumstances, however, there is no order as to costs.

  
22.7.08  
(KHUSHIRAM)  
MEMBER (A)

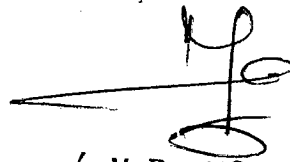
/bb/

  
22/07/08  
(MANORANJAN MOHANTY)  
VICE-CHAIRMAN

✓ OA/CP/RA/ME No. 64 /200 6

Order dated 25.3.2008

Call the matter for hearing  
on 13.5.08.



( M.R. MOHANTY )  
Vice-Chairman

10

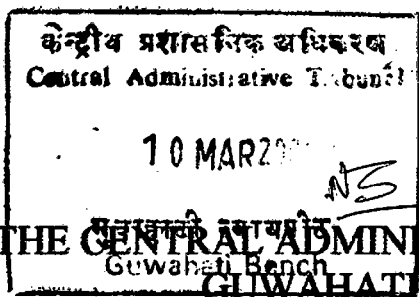
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

Original Application No. 64/06

1. a) Name of the Applicant: B. Singh  
b) Respondants: Union of India & Ors.  
c) No. of Applicant(S): one
2. Is the application in the proper form: Yes/No.
3. Whether name & description and address of the all the papers been furnished in cause title: Yes/No.
4. Has the application been duly signed and verified: Yes/No.
5. Have the copies duly signed: Yes/No.
6. Have sufficient number of copies of the application been filed: Yes/No.
7. Whether all the annexure parties are impleaded: Yes/No.
8. Whether English translation of documents in the Language: Yes/No.
9. Has the application is in time: Yes/No.
10. Has the Vakalatnama/Memo of appearance /Authorisation is filed: Yes/No.
11. Is the application by IPO/ED/for Rs.50/- 266 350402 chd 6.2.06
12. Has the application is maintainable: Yes/No.
13. Has the Impugned order original duly attested been filed: Yes/No.
14. Has the legible copies of the annexure duly attested filed: Yes/No.
15. Has the Index of the documents been filed all available: Yes/No.
16. Has the required number of enveloped bearing full address of the respondents been filed: Yes/No.
17. Has the declaration as required by item 17 of the form: Yes/No.
18. Whether the relief sought for arises out of the Single: Yes/No.
19. Whether interim relief is prayed for: Yes/No.
20. Is case of Condonation of delay is filed is it Supported: Yes/No.
21. Whether this Case can be heard by Single Bench/Division Bench:
22. Any other points:
23. Result of the Scrutiny with initial of the Scrutiny Clerk:

SECTION OFFICER(J)

DEPUTY REGISTRAR



Original Application No. 64 /2006

Sri Bhagawan Singh

... Applicant

- Versus -

The Union of India & Others

... Respondents

INDEX

<u>SL NO.</u>	<u>PARTICULARS</u>	<u>PAGE NO.</u>
1	Original Application	1-8
2	Verification	9
3	Annexure - A to A <sub>10</sub>	10 to 20
4	Annexure - B	<del>21 to 23</del>
5	Annexure - C	21
6	Annexure - D	22-24
		25

Filed By  
(ADIL AHMED)  
ADVOCATE

Bhagawan Singh

105

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH :..... GUWAHATI.**

(An Application Under Section 19 Of The Administrative Tribunals Act 1985)

**ORIGINAL APPLICATION NO. 64 OF 2006.**

**Shri Bhagawan Singh**

**... Applicant**

- Versus -

**The Union of India & Others**

**... Respondents**

**LIST OF DATES AND SYNOPSIS**

**Annexure - A to A**                      Some of the photocopies of Pay-Slip of the Applicant.

**Annexure - B**                      The photocopy of experience Certificate dated 19.01.2000 issued by the Accounts Officer Office of the Accountant General (A&E), Shillong.

**Annexure - C**                      The photocopy of the Judgment and order dated 29th June 2005 impugned order dated 06.09.2005.

ANNEXURE-D                      The photocopy of rejection letter dated 6.9.2005 issued by respondent No 2. L7  
The applicant was appointed as Casual Worker in daily wages basis under the respondent in the year 1995. He was continuously working for more than 9 years as Causal Worker. But, the applicant was deprived from the regular pay scale, service benefits, dearness allowance, house rent, medical allowance and minimum pay scale. The applicant is now over aged for the other government or semi government jobs. The Accounts Officer, Office of the Respondent No. 2 had issued a certificate on 19.01.2000 regarding his service as Casual Worker under the Respondents. Apprehending the termination from service, the applicant filed an Original Application No. 207 of 2005. The Tribunal after hearing the parties directed the applicant to file a proper

Bhagawan Singh

19

representation with all factual details before the respondents within one month. The representation will be considered by the respondents and pass reasoned order in accordance with law and also affording an opportunity of being heard to the applicant within a period of four months. The applicant filed representation on 06.07.2005 in accordance with the Hon'ble Tribunal's order. The Respondents on 06.09.2005 passed an one line order rejecting the applicant's claim without affording any personal hearing.

Being aggrieved by this, the applicant is compelled to approach this Hon'ble Tribunal for seeking justice in the matter.

Bhagwan SINGH

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH :..... GUWAHATI.

(An Application Under Section 19 Of The Administrative Tribunals Act 1985)

ORIGINAL APPLICATION NO. 64 OF 2006.

BETWEEN

Shri Bhagawan Singh  
Son of Shri Baidyanath Singh  
Casual Worker in the Office  
of the Accountant General (A&E),  
Meghalaya, Shillong  
Resident of Pynthorumkhrah,  
Shillong-1.

...Applicant

AND -

1. The Union of India represented by the Comptroller General & Auditor General Of India, 10 Bahadur Shah Zafar Marg, New Delhi-110003.
2. The Accountant General (A&E), Meghalaya, Shillong-1.
3. The Deputy Accountant General (Admn.), Office of the Accountant General (A&E), Meghalaya, Shillong-1.

...Respondents

DETAILS OF THE APPLICATIONS

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

This application is made against the impugned Office Order No. DAG(A)/Con-C/BS/2004-05/97 dated 6th September 2005 issued by the Respondent No. 3 by which the representation of the applicant submitted as per direction of this Hon'ble Tribunal

Bhagwan Singh

filed by  
Shri Bhagawan Singh  
Applicant  
through  
C. An. A.H. 17/80  
Advocate



passed in O.A. 207/2004 dated 29.06.2005 prying for absorption in any group 'D' posts, was rejected by the Respondents.

2. **JURISDICTION OF THE TRIBUNAL:**

The Applicant declares that the subject matter of the instant application is within the jurisdiction of this Hon'ble Tribunal.

3. **LIMITATION :**

The Applicant further declares that the subject matter of the instant application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. **FACTS OF THE CASE :**

Facts of the case in brief are given below:

4.1 That your humble Applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges guaranteed under the Constitution of India.

4.2 That your applicant begs to state that he was engaged as a Casual worker in daily wages basis under the Respondents in the year 1995. He had worked as a Casual Worker under the Office of the Respondent No.3 upto 2004.

Annexure-A to No. .... are some of the photocopies of Pay-Slip of the Applicant.

4.3 That your applicant begs to state that he had worked continuously for more than 9 years as Casual worker, but he has been deprived from regular pay scale, service benefits, dearness allowance, house rent, medical allowance and even minimum pay scale was not granted to him. He had already served a considerable long period of 9 years under the respondents and he is now over aged for other government or semi government jobs.

Bhagwan Singh

4.4 That your applicant begs to state that the Accounts Officer, Office of the Respondent No.2 has issued a Certificate on 19.01.2000 regarding his service as Casual Worker under the Respondents.

Annexure - B is the photocopy of such Certificate dated 19.01.2000.

4.5 That your applicant begs to state that he has acquired a legal right for grant of temporary status, regularization with regular pay scale and other service benefits. He made several request to the authority concerned for grant of temporary status and other service benefits. But, the respondents did not take any interest in this matter. As such, finding no other alternative, the applicant was compelled to approach this Hon'ble Tribunal by way of filing Original Application No. 207 of 2004 for seeking justice in this matter. During the pendency of the said Original Application, the respondents illegally terminated the service of the applicant. The Original Application was finally heard on 29.06.2005 by this Hon'ble Tribunal and was pleased to direct the applicant to make a proper representation with all details both factual and legal before the competent authority within a period of one month from the date of order. The respondents were also directed that in case of such representation is filed by the applicant, then the respondents will consider the same and pass orders in accordance with law after affording an opportunity of being heard to the applicant within a period of four months thereafter.

Annexure - C is the photocopy of Judgment & Order passed by this Hon'ble Tribunal in O.A.No.207 of 2004 dated 29<sup>th</sup> June 2005.

4.6 That your applicant begs to state that he filed a representation on 5<sup>th</sup> July 2005 before the Respondent No.2 with reference to the direction dated 29<sup>th</sup> June 2005 issued by this Hon'ble Tribunal in O.A. No.207 of 2004. The Office of the Respondent No.2 vide their Order No. Sr. DAG (A)/Con-

Bhagwan Singh

C/BS/2004-05/97 dated 6<sup>th</sup> September 2005 rejected the request of the applicant for his absorption in any Group-D post in their office.

Annexure - D is the photocopy of Order No. Sr. DAG (A)/Con-C/BS/2004-05/97 dated 6<sup>th</sup> September 2005 issued by the Office Of the Respondent No. 2.

4.7 That your applicant begs to state that the Office of the Respondent No. 2 had issued the Order dated 6<sup>th</sup> September 2005 in a very cryptic and mechanical manner. In the one line rejection letter dated 6<sup>th</sup> September 2005, the Office of the Respondent No.2 has stated that the applicant's case has been examined by the Accountant General (A&E), Meghalaya etc. but was found to be devoid of any merit. Hence, the request of the applicant for absorption in any Group - D post is rejected. Most interestingly, the respondents have not stated any single ground or cause for rejection of the representation submitted by the applicant Apart from this, as per direction of this Hon'ble Tribunal in O.A. No. 207 of 2005, the respondents also did not conduct personal hearing of the applicant. From this, it is very clear that the respondents have rejected the representation of the applicant in a whimsical, arbitrary, illegal manner and also without proper application of mind. The actions of the respondents are malafide and also colourable exercise of power. As such, finding no other alternative your applicant is compelled to approach this Hon'ble Tribunal again for seeking justice in this matter.

4.8 That your applicant begs to state that the similarly situated persons have already been guaranteed temporary status and other service benefits by the Respondents. But the case of the applicant was not considered by the respondents in spite of his long service as Casual Worker.

4.9 That your applicant begs to state that there are large numbers of vacancies lying in Group 'D' posts under the respondents. It may be noted that due to filing of earlier Original

*Bhagwan Singh*

Application by the applicant, the respondents are engaging other junior persons as casual labour under them by terminating the casual service of the applicant. As such, the action of the respondents is malafide, illegal, whimsical, bad in law and also not sustainable before the eye of law.

4.90 That your applicant begs to state that the respondents have acted in an unfair manner in discriminating the applicant in the matter of employment and subsequent regularization. As per the procedure prescribed, the respondents ought to have maintained a Master Seniority List of all Casual Workers working under them and thereafter, their services should be reregularised in order to seniority without discriminating or without any super session.

4.10 That your applicant begs to state that apart from the illegality of the respondents for non granting the temporary status to the applicant and other service benefits entitled to him, the respondents have denied the benefit of equal pay to equal work to the applicant. The work, which was performed by the applicant, was similar to the work of the regular Group-D employees, but those Group-D employees are getting higher pay scale and other service benefits than the applicant.

4.11 That your applicant begs to state that the respondents have violated the fundamental rights guaranteed under the Constitution of India and also the Principle of natural justice

4.12 That your applicant demands justice and the same has been denied by the Respondents.

4.13 That this application is filed bonafide for the ends of justice.

**5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:**

5.1 For that the reasons and facts, which are narrated above, the action of the Respondents is prima facie illegal and without jurisdiction and as such, the impugned order dated 6<sup>th</sup> September

Bhagwan Singh

25

2005 issued by the Respondents is liable to be set aside and quashed.

5.2 For that the action of the Respondents are malafide and illegal and with a motive behind. and as such the impugned order dated 6<sup>th</sup> September 2005 issued by the Respondents is liable to be set aside and quashed.

5.3 For that, the applicants having worked for a considerable long period, therefore, he is entitled to be regularised in Group-D posts and as such the impugned order dated 6<sup>th</sup> September 2005 issued by the Respondents is liable to be set aside and quashed.

5.4 For that the fresh recruitment of Group-D post in super session of the claim of the applicant are hostile discrimination and violative of Articles 14, 16 & 21 of the Constitution of India.

5.5 For that the applicant has become over aged for other employment.

5.6 For that it is not just and fair to terminate the service of the applicant only because he was initially recruited on casual basis.

5.7 For that he has gathered experience of different works in the establishment.

5.8 For that the nature of work entrusted to the Applicant is of permanent nature and therefore, he is entitled to be regularised in his post.

5.9 For that the applicant has got no alternative means of livelihood.

5.10 For that the Central Government being a model employer cannot be allowed to adopt a differential treatment as regard payment of wages to the applicant.

*Brugwan Singh*

5.11 For that there are existing vacancies of Group-D post under the Respondents.

5.12 For that in any view of the matter, the actions of the Respondents are not sustainable in the eye of law as well as in facts of the case.

The applicant craves leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of the instant application.

6. **DETAILS OF REMEDIES EXHAUSTED:**

That there is no other alternative efficacious remedy available to the applicant except the invoking the jurisdiction of this Hon'ble Tribunal.

7. **MATTER NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:**

The Applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority, nor any such application, writ petition or suit is pending before any of them.

8. **RELIEF SOUGHT FOR:**

Under the facts and circumstances stated above, the applicant most respectfully prayed that Your Lordships may be pleased to admit this application, call for the records of the case and issue notices to the Respondents as to why the relief or relieves sought for may not be granted and after hearing the parties Your Lordship may be pleased to direct the Respondents to give the following reliefs.

8.1 That the Hon'ble Tribunal may be pleased to direct the Respondents to set aside and quash the impugned order No. Sr.

*Bhagwan Singh*

DAG (A)/Con-C/BS/2004-05/97 dated 6th September 2005 and also may be pleased to direct the Respondents to consider the applicant's case for grant of temporary status and subsequently regularization in any Group 'D' post.

8.2 That the Hon'ble Tribunal may be pleased to pass any other appropriate order or orders to which the applicant may be entitled and as may deem fit and proper.

8.3 To pay the cost of the application.

**9. INTERIM ORDER PRAYED FOR:**

Pending final decision of this application the applicant seeks for the following interim order:

That the Respondents may be directed by this Hon'ble Tribunal to re-engage the applicant in the available vacant Group 'D' post.

**10. THIS APPLICATION IS FILED THROUGH ADVOCATE.**

**11. PARTICULARS OF I.P.O.**

I.P.O. No. : 266350402  
 Date of Issue : 6.2.2006  
 Issued from : Guwahati  
 Payable at : Guwahati

**12. LIST OF ENCLOSURES:**

As stated above.

Verification.....

Bhugwan Singh

## VERIFICATION

I, Shri Bhagawan Singh, Son of Shri Baidyanath Singh,  
Casual Worker in the Office, of the Accountant General (A&E),  
Meghalaya, Shillong, Resident of Pynthorumkhrah, Shillong-1.

do hereby solemnly verify that the statements made in paragraph nos. 4.1,  
4.3, 4.5, 4.7, 4.8, 4.9 to 4.11 are true to my knowledge, those made in  
paragraph nos. 4.2, 4.4, 4.6 \_\_\_\_\_  
are being matter of records are true to my information derived there  
from which I believe to be true and those made in paragraph 5 are true  
to my legal advice and rests are my humble submissions before this  
Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 10th day of March  
2006 at Guwahati.

*Bhagawan Singh*



# ANNEXURE-A

-10-  
-Feb 77- June 77-

29

1. Rupa K. Kumar	19x35	=	R. 665/-
2. Ashut. Bhatnagar	13x35	=	R. 455/-
3. Ashut. B. B. Bhatnagar	6x35	=	R. 210/-
4. Bhatnagar. D. J.	12x35	=	R. 420/-
5. Sanyal K. Sanyal	10x35	=	R. 350/-
6. Nandan K. Nandan	19x35	=	R. 665/-
7. Bhattacharya S. S.	15x35	=	R. 525/-
8. Mah. S. S. S.	15x35	=	R. 525/-
9. Nandan D. S.	19x35	=	R. 665/-
10. Nandan D. S.	19x35	=	R. 665/-
11. Nandan D. S.	19x35	=	R. 665/-
12. Nandan D. S.	19x35	=	R. 665/-
13. Nandan D. S.	19x35	=	R. 665/-
14. Nandan D. S.	19x35	=	R. 665/-
15. Nandan D. S.	19x35	=	R. 665/-
16. Nandan D. S.	19x35	=	R. 665/-

R. 7870/-

PAID FOR PAYMENT FOR NO 7870/-  
DUPLICATE

CANOT-ON-EXIST-AT-PAGE 224/24M  
CHITRE NO Rec. 1/14/4-6/6/78-79.

Asst. Accounts Officer  
O/o The Accounts General (A&E)  
Meghalaya, Luv. Shillong

Br. Accounts Officer  
Office of the A.G. (A&E)  
Meghalaya Bto, Shillong

Attch  
21  
21

9  
11-

# ANNEXURE - A<sup>90</sup>

Nw 98 - Dec '98.

(1)	Ganbar	Phykef	18x35	R. (36)
(2)	Toel	Minghai	18x35	R. (36)
(3)	Mimol	DPS	18x35	R. (36)
(4)	Mingstun	Mawlong	18x35	R. (36)
(5)	Mahan	Rai	18x35	R. (36)
(6)	Bhayaan	Singh	11x35	R. 385
(7)	Kalita		16x35	R. 350
(8)	Mahindan	DAS	12x35	R. 420
(9)	Sungaj	Singh	12x35	R. 420
(10)	Mawol		4x35	R. 140
(11)	Rupesh		18x35	R. 636
(12)	Ashok		4x35	R. 140
(13)	Mahesh		3x35	R. 280
(14)	Mingal		13x35	R. 455
(15)	Manoj	Ran	9x35	R. 315
(16)	Bishan	Dorje	6x35	R. 210
(17)	Sankish		3x35	R. 105

R. 7000/-

7000/-  
PAID FOR PAYMENT FOR  
SUN CHANDRA

CANET CO INST A/PAGE 154  
DATE 11/4-67C-1/88-2

Asstt. Accounts Officer  
O/o The Accountant General (A.G.)  
Machalaya, Etc, Shillong

Br. Accounts Officer  
Office of the A.G. (A.G.)  
Machalaya Etc, Shillong.

Attended  
Sante

-12- ANNEURE-A2  
Jan 99 - Feb 99

(1)	Shankar Khatke	17 x 35	Rs 575
(2)	Jai. Harpal	17 x 35	Rs 575
(3)	Nawal Kishore	17 x 35	Rs 575
(4)	Amarendra Kulita	15 x 35	Rs 525
(5)	Rupesh Balmiki	16 x 35	Rs 560
(6)	Ashoke Balmiki	8 x 35	Rs 280
(7)	M. Manoj	16 x 35	Rs 560
(8)	N. DAS	14 x 35	Rs 490
(9)	Bhagawan Singh	10 x 35	Rs 350
(10)	Manish Kumar	7 x 35	Rs 245
(11)	Bihari Dange	10 x 35	Rs 350
(12)	Amad Ray	10 x 35	Rs 350
(13)	Mohan Ray	14 x 35	Rs 490
(14)	Manoj Kumar	5 x 35	Rs 175
(15)	Sunay K. Singh	14 x 35	Rs 490
(16)	Mahendra Datta	10 x 35	Rs 350
<hr/>			
			7000

PAID FOR PAYMENT FOR RS 7000

AMOUNT ON EXIST AT PAGE 217

BUNDLE NO. 114-6/2/98-99

*[Signature]*

Sr. Accounts Officer

Office of the L.O. (ACE)

Madhya Pradesh, Bhopal

Amad  
S/L  
Aug 6



19 -

# ANNEXURE A

374

July 39 - Aug 39

1. N. N. D. Das	Rs. 25/-	16 days	- R. 560/-
2. N. N. D. Das	- do -	16 days	- R. 560/-
3. N. N. D. Das	- do -	16 days	- R. 560/-
4. N. N. D. Das	- do -	16 days	- R. 560/-
5. N. N. D. Das	- do -	16 days	- R. 560/-
6. N. N. D. Das	- do -	16 days	- R. 560/-
7. N. N. D. Das	- do -	16 days	- R. 560/-
8. N. N. D. Das	- do -	16 days	- R. 560/-
9. N. N. D. Das	- do -	16 days	- R. 560/-
10. N. N. D. Das	- do -	16 days	- R. 560/-
11. N. N. D. Das	- do -	16 days	- R. 560/-
12. N. N. D. Das	- do -	16 days	- R. 560/-
13. N. N. D. Das	- do -	16 days	- R. 560/-
14. N. N. D. Das	- do -	16 days	- R. 560/-
15. N. N. D. Das	- do -	16 days	- R. 560/-
16. N. N. D. Das	- do -	16 days	- R. 560/-
17. N. N. D. Das	- do -	16 days	- R. 560/-
18. N. N. D. Das	- do -	16 days	- R. 560/-
19. N. N. D. Das	- do -	16 days	- R. 560/-
20. N. N. D. Das	- do -	16 days	- R. 560/-
21. N. N. D. Das	- do -	16 days	- R. 560/-
22. N. N. D. Das	- do -	16 days	- R. 560/-
23. N. N. D. Das	- do -	16 days	- R. 560/-
24. N. N. D. Das	- do -	16 days	- R. 560/-
25. N. N. D. Das	- do -	16 days	- R. 560/-
Rs. 25/-		293 days	- R. 10,255/-

PAID FOR PAYMENT FOR RS 10,255/-

13/11/39

13/11/39

Asst. Accounts Officer  
Office of the Assistant General  
Meghalaya, Etc, Shillong.

Asst. Accounts Officer General  
Office of the Assistant General (Acct)  
Meghalaya, M. u. and  
Assam, Pradash, Shillong.

Attended  
11/11/39



JANUARY 2000

(1)	Shankar Khajol	Rs. 50x16 =	800/-
(2)	Jorl Nongbri	Rs. 50x16 =	800/-
(3)	Bishen Dazie	Rs. 50x13 =	650/-
(4)	Anand Roy	Rs. 50x14 =	700/-
(5)	Manoj. K. Roy	Rs. 50x7 =	350/-
(6)	Korkha Dr. Nanda	Rs. 50x14 =	700/-
(7)	Phodine. Nongbri	Rs. 50x4 =	200/-
(8)	Panta Nongbri	Rs. 50x7 =	350/-
(9)	Ender Dzungli	Rs. 50x16 =	800/-
(10)	Sanjay K. Singh	Rs. 50x16 =	800/-
(11)	Mahesh. K. Roy	Rs. 50x15 =	750/-
(12)	Sunil Singh	Rs. 50x2 =	100/-
(13)	Mahesh. K. Singh	Rs. 50x16 =	800/-
(14)	Bhajan Singh	Rs. 50x12 =	600/-
(15)	Bernard. Khumol	Rs. 50x3 =	150/-
(16)	M. K. Mawlong	Rs. 50x12 =	600/-
(17)	Mahesh. Das	Rs. 50x16 =	800/-
(18)	Mahesh. Das	Rs. 50x16 =	800/-
(19)	Newel Kishore Roy	Rs. 50x16 =	800/-
(20)	Pankaj. K. Khumol	Rs. 50x16 =	800/-
(21)	Raj. K. Poo. S.	Rs. 50x11 =	550/-

Total = 13,550/-

PASSED FOR PAYMENT FOR RS 13,550/-

By [Signature]  
The Accountant General (A.G.)

CHARTERED ACCOUNTANTS PAGE 28  
EXHIBIT NO. 100-11/17-37/99-2.000

Asst. Accounts Officer  
Office of the Accountant General (A.G.)  
Meghalaya, Eto, Shillong

[Signature]  
Asst. Accounts Officer  
Office of the A.G. (A&E)  
Meghalaya Eto, Shillong

Attended  
[Signature]  
[Signature]

#16-

ANNEXURE-A-6

DECEMBER, 2000.

25

1. Sankar, Khyatp 10x50 = Rs 500/-
2. Manoj, N. N. 10x50 = Rs 500/-
3. Manoj, N. N. 10x50 = Rs 500/-
4. Jyoti, N. N. 10x50 = Rs 500/-
5. Bhagwati, Singh 1x50 = Rs 50/-
6. B. N. Singh 15x50 = Rs 750/-
7. Tanya, Singh (B.N.) 25x54 = Rs 1350/-
8. Nitya, Kumar 22x50 = Rs 1100/-
9. Kanchan, P. N. 10x50 = Rs 500/-
10. Sankar, N. N. 13x50 = Rs 650/-
11. M. K. Mahaling 1x50 = Rs 50/-
12. Ravi, P. N. 10x50 = Rs 500/-
13. Ravi, P. N. 10x50 = Rs 500/-
14. Anand, Ravi 2x50 = Rs 100/-
15. Sankar, Singh 1x50 = Rs 50/-

Total = 9250/-

SANCTION LIST AT PAGE 19

BURLE NO. 12

AMOUNT BY PAYMENT FOR Rs 9250/-

AMOUNT BY PAYMENT FOR Rs 9250/-

Asstt. Accountant General (A.G.)  
C/o The Accountant General (A.G.)  
Mughalaya, Etar, Shillong.

Asstt. Accountant General (A.G.)  
Office of C. A. G. (A.G.)  
Mughalaya, Etar, Shillong.

9/11/01

Attn:  
Sd/-  
A.G.

- 17 -

ANNEXURE - A<sup>34</sup><sub>17</sub>

2001-02

MARCH - 2002

Since  
April  
6

- |                            |                                    |      |
|----------------------------|------------------------------------|------|
| (1) Tinspring Singh (C.R.) | 12 x 63.83 = Rs 765.96 or Rs 766/- | 2370 |
| (2) Shri K. M. Lalita      | 12 x 52 = Rs 624/-                 | 204  |
| (3) Shri Bhagwan Singh     | 11 x 50 = Rs 550/-                 | 32   |
| (4) Shri M. R. Maculung    | 16 x 50 = Rs 800/-                 | 75   |
| (5) Shri Vijay Kumar       | 15 x 50 = Rs 750/-                 | 170  |
| (6) Shri Ramesh Kumar      | 15 x 50 = Rs 750/-                 | 173  |
| (7) Shri Samir Das         | 15 x 50 = Rs 750/-                 | 170  |
| (8) Shri Harp. Bdr. Vener  | 15 x 50 = Rs 750/-                 | 164  |

"26.16 A - Wages" Total → Rs 6,316/-

PASSED FOR PAYMENT FOR RS

6,316/-

Supd. Secy. Hqs. & Hqs.  
Moulmein, etc. Shillong.

GRANT THE TOTAL AT PAGE

QUICKLE (P.O.) 14-11-01/1000

25/3/02

8/2/02

Acct. Accounts Officer  
C/o The Accounts General (Adms)  
Moulmein, etc. Shillong.

Co. Deputy Accounts General (Adms)  
Moulmein etc. Shillong.

Attn:  
Jil 1  
Date





JANUARY 2004

Sl. No.		
1.	Shankar Kalita - 20x50 = ₹ 1000/-	207 days
2.	Rajni Parvathi Sharma - 20x50 = ₹ 1000/-	186 "
3.	Vijai Kumar - 20x50 = ₹ 1000/-	186 "
4.	M.K. Maibong - 15x50 = ₹ 750/-	146 "
5.	Jai Kharathi Kumar - 20x50 = ₹ 1000/-	89 "
6.	Bhagawan Singh - 08x50 = ₹ 400/-	58 "
7.	Rakesh Budhni Ki - 17x50 = ₹ 850/-	17 "
Total = ₹ 6,000/-		
(Rupees Six thousand only)		
42016-11-12/2004		
<div> <div> <p>APPROVED FOR PAYMENT FOR RS. 6000/-</p> <p>4/2/04</p> <p>4/2/04</p> </div> <div> <p>AMOUNT PAID AT FROM</p> <p>4/2/04</p> <p>4/2/04</p> </div> </div>		
<div> <div> <p>Asst. Accounts Officer</p> <p>4/2/04</p> </div> <div> <p>Asst. Accounts Officer</p> <p>4/2/04</p> </div> </div>		

Attended  
Sl. 1  
4/2/04

~~13~~  
- 20 -

ANNEXURE - A<sup>10</sup>  
39

10/1/

February 2009

Sl. No.	Particulars	Amount
1.	Saravada Kalita - 20x50 = Rs 1000/-	20
2.	Bhagawan Singh - 20x50 = Rs 1000/-	20
3.	Dr. P. S. Sharma - 20x50 = Rs 1000/-	20
4.	Jai Murli Kumar - 20x50 = Rs 1000/-	20
5.	Ranjit Kumar - 18x50 = Rs 900/-	18
6.	Sanjay Kumar - 20x50 = Rs 1000/-	20
7.	Mr. K. S. Singh - 16x50 = Rs 800/-	16

Total = Rs 6000/-  
(Rupees Six Thousand) only.  
"2016 (A) - 1000"

PAID FOR PAYMENT FOR AN  
RECEIVED

PAID FOR PAYMENT FOR AN

10/1/09

10/1/09

Accounts Officer  
Office of the Director, Madhya Pradesh (Accounts)  
Bhopal

Accounts Officer  
Office of the Director, Madhya Pradesh (Accounts)  
Bhopal

Alka  
1/10/09

OFFICE OF  
THE ACCOUNTANT GENERAL (A&E) ASSAM

Date: 19.01.2000

This is to certify that Shri Bhagwan  
Singh son of Shri B. Singh is serving as  
Casual worker in this office for the last  
14 years. He is very obedient, energetic and  
dependable worker.

I wish his success.

Tukhi M. Choudhary

Sr. Accounts Officer

Office No. 40 (A&E) 21st Floor

Shillong

Life Record & Welfare

Attn:  
Sd/-  
Date

22 -

ANNEXURE-C

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 207 of 2004.

Date of Order: This, the 29th Day of June, 2005.

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

Shri Bhagawan Singh  
Son of Shri Baldyanath Singh  
Casual Worker in the office  
of the Accountant General (A&E)  
Meghalaya, Shillong  
Resident of Pynthorumkhrah, Shillong-1.

... Applicant.

By Advocate Mr. A. Ahmed.

- Versus -

1. The Union of India represented by the  
Comptroller General & Auditor General of India  
10 Bahadur Shah Zafar Marg  
New Delhi - 110 003.

The Accountant General (A&E)  
Meghalaya, Shillong-1.

The Deputy Accountant General (Admn.)  
Office of the Accountant General (A&E)  
Meghalaya, Shillong-1.

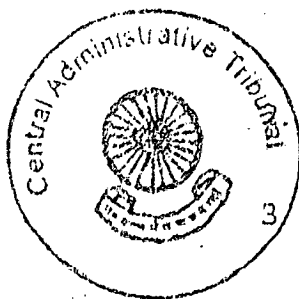
... Respondents.

By Mr. M. U. AHMED, Addl. C.G.S.C.

ORDER (ORAL)

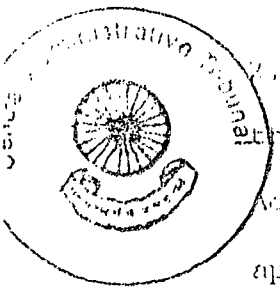
SIVARAJAN, J.(V.C.):

The applicant is engaged as casual worker, according to the applicant since the year 1995, but according to the respondents in the year 1996. The applicant states that he has put in eleven years continuous service under the respondents but the respondents in their written statement have stated that the applicant did not have any continuous service as alleged. The details of his employment as casual



Attended  
by  
[Signature]

labourer was also furnished. The applicant wants regularisation of his service as casual labourer by absorbing him as Group D employee. The applicant has not filed this application against any particular order denying the benefit of regularisation either under any scheme or under law. A general direction is sought for regularisation of the applicant's service from the date of engagement.



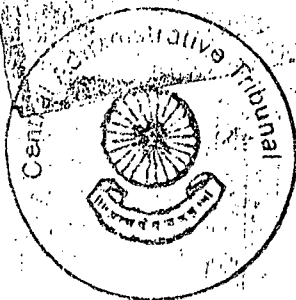
I have heard Mr. A. Ahmed, learned counsel for the applicant and Mr. M. U. Ahmed, learned Addl. C.G.S.C. appearing for the respondents. The applicant has not so far approached the respondents for the reliefs sought for in this application. Disputed question of facts as discernible from the averments made in the application and in the written statement are involved. In the circumstances, appropriate course for the applicant is to file proper representation before the concerned authority seeking for the reliefs sought for herein by referring to any scheme or law. Since this has not been done I direct the applicant to make a proper representation with all details both factual and legal before the competent authority within a period of one month from today. ~~if any such representation is filed, certainly the said authority will consider the same and pass orders in accordance with law after affording an opportunity of~~

Attended  
by  
A. K. S.

being heard to the applicant within a period of four months thereafter.

The application is disposed of as above. The applicant will produce this order along with representation for compliance.

sd/VICE CHAIRMAN



TRUE COPY  
प्रतिलिपि

15.7.05  
अनुभाग अधिकारी  
Section Officer (Jedl)  
Central Administrative Tribunal  
गुवाहाटी-4  
GUWAHATI-5.

15/7

H. H. E. /  
J. H. /  
H. H. E.



Office of the  
Accountant General (A&E),  
Meghalaya, Arunachal Pradesh & Mizoram,  
Shillong-793 001

PABX : 0364-2224880, FAX : 0364-2223103

No. Sr. DA(A)/Hon-C/HIS/2004-05/C/7

Dated 6 September 2005

To

Shri Bhagawan Singh,  
Son of Shri Baidyanath Singh,  
Resident of Pynthorunkhrah,  
Shillong-793001.

Subject: Your representation dated 5 July 2005 addressed to the Accountant General (A&E) Meghalaya, etc., Shillong submitted by you with reference to the direction dated 29 June 2005 issued by the Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A. No. 207 of 2004.

Sir,

This is with reference to your representation dated 5 July 2005 addressed to the Accountant General (A&E) Meghalaya, etc. requesting for absorption in any Group 'D' post in the office of the Accountant General (A&E) Meghalaya, etc, Shillong which was submitted by you pursuant to Central Administrative Tribunal, Guwahati Bench, orders/directions dated 29<sup>th</sup> June, 2005.

2. I am to inform you that your representation dated 5 July 2005 has been examined by the Accountant General (A&E) Meghalaya, etc. but was found to be devoid of any merit. Your request for absorption in any Group 'D' post in this office is hence rejected.

Yours faithfully,

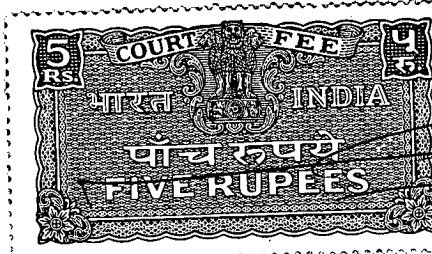
(A.K. Dutt)

Deputy Accountant General  
O/o the Accountant General (A&E),  
Meghalaya, etc.  
Shillong - 793-001

Attest  
Sd/-  
Shubh



DISTRICT:



Bhagawan Singh

## -VAKALATNAMA-

### IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH, GUWAHATI

OA NO.

OF

2006

Shri Bhagawan Singh

APPLICANT

PETITIONER

-Versus-

The union of India & others

Respondents  
Opposite party

Know all men by these presents that above named.....Bhagawan Singh  
do hereby nominate, constitute and appoint Shri.....ADIL AHMED  
Advocate and such of the under mentioned Advocates as shall accept this  
Vakalatnama to be my/our true and lawful Advocates to appeal and act for me/us  
in the matter noted above and in connection therewith and for that purpose to do  
all acts whatsoever in that connection including depositing of drawing money,  
filing in or taking out deeds of composition, etc. for me/us and on my/our behalf  
and I /We agree to ratify and confirm all acts so done by the Advocates as  
mine/ours to all intents and purpose. In case of non-payment of the stipulated fee  
in full, no Advocate will be bound to appear and on my/our behalf.

In witness whereof I/We hereunto set my/our hand this the 10th day March.  
2006.

#### ADVOCATES

A.R.Barooah

J.M.Choudhry

A.S.Bhattacharjee

N.M.Lahiri

G.K.Joshi

Adil Ahmed

A.K.Chaudhuri

R.P.Sharma

P.Sarma

S.A.Laskar

M.H.Choudhry

Sanjoy Mudoj

Sukumar Sarma

S.Jain

A.J.Atia

Received from the executants and accepted.

Advocate

(Adil Ahmed)

ADIL AHMED

ADVOCATE  
GUWAHATI

40  
Noted

10.3.2006

To

Sr. Central Govt Standing Counsel.

Central Administrative Tribunal.

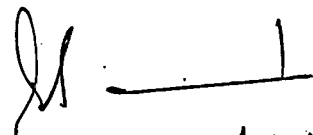
Guwahati Bench Guwahati.

Subject - Supply of Copy of original Application.

Sir,

Please find herewith Copy of a original Application  
filed by Shri Bhagawan Singh through me which will  
be move before the Hon'ble Tribunal. Kindly acknowledge  
the receipt of the same. Thanking You.

Yours faithfully

  
(Adil AHMED)  
Advocate

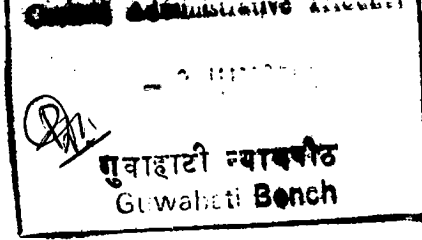
Received Copy

Alsha Das

Addl CHSC.

For. G. Baishya  
Sr. CHSC.

10.3.06



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:  
GUWAHATI BENCH, GUWAHATI

IN THE MATTER OF

IN OA NO. 64 OF 2006

SHRI BHAGWAN SINGH

-Vs-

1. THE UNION OF INDIA REPRESENTED BY THE  
COMPTROLLER AND AUDITOR GENERAL OF INDIA,  
NEW DELHI
2. ACCOUNTANT GENERAL (A&E), MEGHALAYA ETC.  
SHILLONG.
3. DEPUTY ACCOUNTANT GENERAL (ADMN),  
O/O THE ACCOUNTANT GENERAL (A&E), MEGHALAYA  
ETC.  
SHILLONG.

WRITTEN STATEMENT SUBMITTED BY THE RESPONDENT  
NUMBERS 1 TO 3

The Respondents submit as follows :-

1. That with regard to the statement made in paras 1 to 3 of the application, the Respondents submit that they have no comments to offer.
2. That with regard to the statement made in para 4.1 of the application, the Respondents humbly submit that they have no comments to offer.
3. That with regard to the statement made in para 4.2 of the application, the Respondents humbly submit that casual workers are engaged by the office on a day-to-day basis for work of a casual and intermittent nature. The Annexures A to A10 are not pay slips as claimed by the Applicant but only extracts of the wage bills prepared for casual workers in the office of the Respondents. Further the Applicant was engaged intermittently as a casual worker in the Respondents' office only from July 1996 and not from 1995 as claimed by him.
4. That with regard to the para 4.3 of the application the Respondents humbly submit that the Applicant's claim that he worked continuously for more than 9 years as a casual worker is false. The Applicant was only engaged intermittently as a casual worker as and when work in the office was available from July 1996 till July 2004 for a total of 525 days as shown in the table below. It is pertinent

42  
Filed by  
the respondents  
through  
Gautam Bhatia

2

to mention that the Petitioner in his OA 207 of 2004 filed earlier before the Hon'ble Tribunal had claimed that he had worked continuously for more than 11 years as a casual worker in the office of the Respondents. The break up of the period for which the Applicant was engaged year-wise in the office was as below :-

Year	Month	No. of days	Year	Month	No. of days
1996	July	11	2000	January	12
	August	12		February	06
	September	17		March	05
	October	01		April	05
	Total	41		May	01
1997	February	06		July	04
	March	14		October	02
	April	01		November	03
	May	12		December	03
	June	21		Total	41
	July	15	2001	May	10
	August	11		October	13
	September	08		November	03
	November	03		Total	26
	December	06	2002	March	10
	Total	97		April	10
1998	January	07		May	11
	February	07		Total	31
	March	05	2003	January	07
	April	18		February	05
	May	03		March	02
	June	04		August	03
	July	04		October	07
	August	06		November	12
	September	06		December	17
	October	04		Total	53
	November	12	2004	January	15
	December	02		February	06
	Total	78		March	11
1999	January	10		April	04
	February	15		May	04
	March	14		June	09
	April	12		July	20
	May	04		Total	69
	July	08		Grand Total	525
	August	05			
	October	05			
	November	12			
	December	04			
	Total	89			

The Applicant's claim to a regular pay scale, service benefits, dearness allowance, house rent and medical allowance while occasionally engaged as a casual worker as detailed above is not admissible under any rules or orders of the Central Government/Comptroller & Auditor General of India. As a casual worker he was not entitled to these benefits claimed by him.

Further the Respondents humbly state that at no point in time was the Applicant ever debarred from applying for any government or semi-government job and thus his claim that he is over aged for a government or semi government job is specious and only a ploy to mislead the Hon'ble Tribunal.

5. That with regard to the statement in para 4.4 of the application, the Respondents humbly submit that the Certificate issued by an Accounts Officer was of a general nature regarding his service as a casual worker in the office.

6. That with regard to the statement made in para 4.5 of the Application, the Respondents humbly submit that there are no rules or orders of the Central Government/Comptroller & Auditor General of India which confers a right or privilege to the Applicant for grant of temporary status, regularization with regular pay scale and other service benefits by virtue of his having worked as a casual worker from time to time. In Secretary, State of Karnataka and others Vs Uma Devi, Supreme Court has held that merely because a temporary employee or a Casual wage worker was continued for a time beyond the term of his appointment he would not be entitled to be absorbed in regular service or made permanent. (copy enclosed as Annexure "A") It is admitted that the Applicant filed an OA No. 207 of 2004 before the Hon'ble tribunal in this matter. The question of illegally terminating his service during the pendency of the aforesaid application does not arise because the applicant was engaged as a casual worker and not appointed in any regular post which attracts the penalty of termination as per the Rules. The Applicant's contention therefore, that the Respondents terminated his services is false.

The Respondents further submit that following the directions of the Hon'ble Tribunal in OA No. 207 of 2004, the Applicant's submitted a representation dated 05-07-2005 to Respondent No.2 which was received in the office of Respondent No. 2 on 13-07-2005. Respondent No.2 duly examined the representation. It was found that the Applicant's prayer for appointment to a Group 'D' post could not be considered as the Rules do not provide for such an appointment simply on the strength of his having been engaged as a casual worker in the office from time to

time. All Group 'D' posts, as per rules, are required to be filled up by calling for names from the local employment exchange and through open advertisement. Respondent No.2 also therefore, under the circumstances, did not consider it necessary to hold a personal hearing in the case as this would not have served any purpose nor would it in any way have altered the position of the Applicant's case. The order passed by the Respondent No.2 in this regard on 06-09-2005 is submitted before the Hon'ble Tribunal as Annexure 'B'.

*The copies of the orders dated 10.4.06 & 6.9.05 are annexed as Annexure A and B.*

7. That with regard to para 4.6 of the application, it is admitted that the Applicant filed a representation dated 05-07-2005 with reference to the Hon'ble Tribunal's direction dated 29-06-2005 which was received in the office of Respondent No.2 on 13-07-2005. As submitted in para 6, the representation of the Applicant was given due consideration by Respondent No.2. The Respondents further submit that the letter (not Order as stated by the Applicant) No. Sr.DAG(A)/Con-C/BS//2004-05//97 dated 06-09-2005 was issued by Respondent No.3 to communicate the decision of Respondent No. 2 on the Applicant's petition dated 05-07-2005.
8. That with regard to para 4.7 of the application, the Respondents submit that as stated in para 6 above, the petition dated 05-07-2005 of the Applicant was examined with due application of mind by Respondent No.2. The letter No.Sr.DAG(A)/Con-C/BS/2004-05/97 dated 06-09-2005 issued by Respondent No.3 to the Applicant was a mere communication of the decision of Respondent No.2.  
It is therefore, denied that the petition of the Applicant was rejected in a whimsical, arbitrary, illegal manner and without application of mind. As stated in para 6, Respondent No.2 did not consider a personal hearing necessary as the Applicant's petition to a Group 'D' post under the circumstances was not covered under the rules and a personal hearing would not have served any purpose or altered the position of the Applicant's case.
9. That with regard to para 4.8 of the application, the Respondents humbly submit that the contention of the Applicant that other similarly situated persons have been granted temporary status and other service benefits by the Respondents is not correct. As per Government of India, Department of Personnel and Training O.M.No.51016/2/90-Estt(C) dated 10-09-1993 (Annexure 'C') read with Comptroller and Auditor General of India, Circular No.20/NGE/200 dated 11-04-2000 (Annexure 'D'), the grant of temporary status was one time affair and covered only

those casual employees who were in service on 10-09-1993 and had completed one year of continuous service with 240 or 206 days as the case may be on 10-09-1993. The case of the Applicant was not covered under the above orders as he was engaged as a casual worker from July 1996 only.

The Hon'ble Supreme Court in decision reported in (2002) 4 SCC 573 UOI Vs Mohan Pal have held that the scheme of 1.9.93 is not an ongoing scheme.

*The copies of the O.M & Circular dated 10.9.93 & 11.4.00 are annexed as Annexure's - C & D.*

10. That with regard to the para 4.9 of the application the Respondents humbly submit that the statement of the Applicant that there are a large number vacant group 'D' posts under the Respondents is a mere conjecture. As stated in para 6, there is no question of terminating the casual service of the Applicant. The Applicant's contention that his casual service was terminated due to his filing of an application (OA No.207/04) before the Hon'ble Tribunal is therefore, without any basis. Casual workers are engaged on a day- to- day basis as and when there is a need for their services. On any given working day, a number of outsiders visit the office in the morning in search of work. As and when work is available, these persons are engaged as casual workers for the specific task. The Applicant was never prevented from visiting the office and offering his services in like manner. Maintenance of a seniority list in respect of casual workers is not prescribed under any Rules or orders of the Government and therefore, question of engaging persons junior to the Applicant as casual workers as stated by the Applicant does not arise. It is denied that the Respondents acted in a malafide, illegal and whimsical manner or that their action was bad in law.
11. That with regard to para 4.10 of the application the Respondents humbly submit that the Applicant is not eligible for temporary status in terms of Government of India Department of Personnel and Training O.M.No.51016/2/90-Estt(C) dated 10-09-1993 read with Comptroller and Auditor General of India, Circular No.20/NGE/200 dated 11-04-2000. The Applicant was engaged to perform work of a casual and intermittent nature from time to time and was paid wages at the rates prescribed by the Labour Department of the Government of Meghalaya. At no time was the Applicant entrusted with work performed by regular Group 'D' staff of the office.
12. That with regard to para 4.11 and 4.12 the Respondents humbly submit that they have no comments to offer.

13. That with regard to para 5.1 of the application the Respondents submit that no action of theirs could be termed as illegal and without jurisdiction, because the Respondents' actions with reference to the Applicant's case was in accordance with the rules/orders on the subject issued by the Government of India and the Comptroller and Auditor General of India.
14. That with regard to para 5.2 of the application the Respondents deny that their actions were malafide, illegal and motivated and therefore, the decision/action taken by the Respondents with respect to the petition dated 05-07-2005 of the Applicant should be upheld.
15. That with regard to para 5.3 of the application, the Respondents submit that the Applicant worked intermittently during the period July 1996 to July 2004 as a casual worker and as per the rules and orders in force, this does not confer any entitlement on the Applicant to be regularised in a Group 'D' post.
16. That with regard to para 5.4 of the application the Respondents humbly submit that as per rules recruitment to Group 'D' posts are only carried out by getting names sponsored from the local employment exchange and through open advertisement. The question of superseding the claim of the Applicant for appointment to a Group 'D' post is a figment of the Applicant's imagination. Recruitments to Group 'D' posts are done only after getting the prior clearance from the Office of the Comptroller & Auditor General of India and carried out strictly in accordance with the prescribed procedure.
17. That with regard to the para 5.5 of the application the Respondents submit that at no point in time was the Applicant ever debarred from applying for any government or semi-government job. His claim that he is overaged for other employment is a false argument with the intention of misleading the Hon'ble Tribunal.
18. That with regard to the para 5.6 of the application the Respondents humbly submit that the termination of service is applicable only to officials who are appointed to a regular post. The termination of service of the Applicant does not arise because he was a casual worker and not holding any regular post.
19. That with regard to paras 5.7 and 5.8 of the application the Respondents submits that a passing familiarity with the working of the office gained from his working as a



casual worker is not a legitimate ground for his appointment to a Group 'D' post nor is it permissible under the rules. It is also affirmed that the work for which he was intermittently engaged was of a casual and intermittent nature and not of a permanent nature as stated by him. The Applicant is misleading the Hon'ble Tribunal by distorting facts.

20. That with regard to paras 5.9 and 5.10 of the application the Respondents have no comments to offer.
21. That with regard to the para 5.11 of the application the Respondents humbly submit before the Hon'ble Tribunal that vacancies in the Group 'D' cadre are filled up only after obtaining prior approval of the Office of the Comptroller & Auditor General of India and in the manner as prescribed by the Government of India/ Comptroller & Auditor General of India.
22. That with regard to para 5.12 of the application the Respondents humbly submit that all their actions are governed by rules and orders in force which they were duty bound to follow.

**Relief(s) sought for**

That with regard to the Statement made in para 8.1 of the application the Respondents humbly submit that the prayer of the Applicant for regularising his service to any group "D" post is without merit and not governed by any existing rules or orders and thus may be quashed by the Hon'ble Tribunal. That the Applicant's petition of 05-07-2005 was duly considered by the Respondents with due application of mind but could not be acceded to as the rules/orders in force do not provide any scope for appointing the applicant to a Group 'D' post on the ground that he had worked as a casual worker in the Respondents' office. Thus it is prayed that the present application be dismissed with cost in favour of the respondents.

Verification

I Shri A-R Das son  
of Late J. R. Rabha working as a  
Deputy Accountant General (Admn) Office of the Accountant General (A&E), Meghalaya,  
Arunachal Pradesh and Mizoram Shillong do hereby solemnly declare that the statements are  
true to my knowledge, belief and information and I sign the verification on 24-5-2006  
of May 2006 at Shillong.

Amr  
Deponent

- 9 -

Print this page || Email this page

Annexure - A  
Causal Labour

U/SC/1918/2006

## IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 3595-3612 of 1999, 1861-2063 and 3849/2001, 3520-3524/2002 and 1968 of 2006 (Arising out of SLP (C) 9103-9105 of 2001)

Decided On: 10.04.2006

Appellants: **Secretary, State of Karnataka and Ors.**  
**Vs.**Respondent: **Umadevi and Ors.****Hon'ble Judges:**

Y.K. Sabharwal, C.J., Arun Kumar, G.P. Mathur, C.K. Thakker and P.K. Balasubramanyan, JJ.

**Counsels:**

For appearing parties: Mukul Rohtagi, M.C. Bhandare and Raju Ramachandrah, Sr. Advs., Sanjay R. Hegde, Saurabh Kirpal, Anil K. Mishra, A. Rohen Singh, Mohan V. Katarki, M.A. Limbikai, Ashok Kumar Sharma, Naveen R. Nath, Ranganath Jois, Anitha Shenoy, Lalit Mohini Bhat, Pooja Dhar, Saurabh Sinha, Joseph Pookkatt, Arvind Kamath, Simanti Chakrabarti, Basava Prabhu S. Patil, A.S. Bhasme, B. Subrahmanya Prasad, V. Laxinarayana, Kashi Vishweshwar, Nikhil Majithia, Prashant Kumar, Rajesh Mahale and S. Manjunath, Advs.

**Subject: Service****Subject: Constitution****Catch Words****Acts/Rules/Orders:**

National Rural Employment Guarantee Act, 2005; Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; Constitution of India - Articles 12, 14, 15 to 18, 21, 23, 32, 39, 141, 142, 162, 226, 309, 315, 320 and 335

**Cases Referred:**

Dharwad District Public Works Department v. State of Karnataka MANU/SC/0164/1990; Ashwani Kumar and Ors. v. State of Bihar and Ors. MANU/SC/0379/1997; State of Haryana and Ors. v. Piara Singh and Ors. MANU/SC/0417/1992; State of Himachal Pradesh v. Suresh Kumar Verma and Anr. MANU/SC/0406/1996; B.N. Nagarajan and Ors. v. State of Karnataka and Ors. MANU/SC/0450/1979; State of Karnataka v. H. Ganesh Rao 2001 (4) Karnataka Law Journal 466; State of Punjab v. Jagdip Singh and Ors. MANU/SC/0273/1963; State of Mysore v. S.V. Narayanappa MANU/SC/0232/1966; R.N. Nanjundappa v. T. Thimmiah and Anr. MANU/SC/0680/1971; Daily Rated Casual Labour v. Union of India and Ors. MANU/SC/0434/1987; Bhagwati Prasad v. Delhi State Mineral Development Corporation 1989 Suppl. (2) SCR 513; State of Punjab and Ors. v. Surinder Kumar and Ors. MANU/SC/0306/1992; Director, Institute of Management Development, U.P. v. Pushpa Srivastava (Smt.) MANU/SC/0409/1992; Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra and Ors. MANU/SC/0390/1994; A. Umarani v. Registrar, Cooperative Societies and Ors. MANU/SC/0571/2004; Latham v. Richard Johnson &amp; Nephew Ltd. 1913 (1) KB 398; Teri Oat Estates (P) Ltd. v. U.T., Chandigarh MANU/SC/1098/2003; State of U.P. v. Niraj Awasthi and Ors. 2006 (1) SCC 667; State of Karnataka v. KGSD Canteen Employees Welfare Association JT 2006 (1) SC 84; Union Public Service Commission v. Girish

From 609  
G.P. Mathur  
SC Case

- 10 -

Jayanti Lal Vaghela and Ors. 2006 (2) SCALE 115; B.S. Minhas v. Indian Statistical Institute and Ors. MANU/SC/0320/1983; Workmen of Bhurkunda Colliery of Central Coalfields Ltd. v. The Management of Bhurkunda Colliery of Central Coalfields Ltd. JT 2006 (2) SC 1; Kesayananda Bharati v. State of Kerala 1973 Supp. S.C.R. 1; Indira Sawhney v. Union of India 1999 Suppl. (5) S.C.R. 229 : 1992 Supp. (2) S.C.R. 454; Dr. D.C. Wadhwa and Ors. v. State of Bihar and Ors. MANU/SC/0072/1986; Council of Civil Service Unions v. Minister for the Civil Service 1985 Appeal Cases 374; National Buildings Construction Corporation v. S. Raghunathan MANU/SC/0550/1998; Dr. Chanchal Goyal v. State of Rajasthan MANU/SC/0133/2003; Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College (1962) Supp. 2 SCR 144

### Prior History:

Form the Judgment and Order dated 11.9.1998 of the High Court of Karnataka at Bangalore in W.P. Nos. 3190-3207/1998

### Mentioned IN

### Case Note:

**Constitution — Validity — Articles 32, 142 and 226 of the Constitution of India — Held, it would not be just or proper to pass an order in exercise of jurisdiction under Article 32 or 226 of Constitution of India or in exercise of power under Article 142 of the Constitution of India permitting the persons engaged, to be regularized, based on long period of their service or engagements — Complete justice would be justice according to law — Court should not grant a relief which would amount to perpetuating an illegality**

**Service — Regularization — Courts must be careful in ensuring that they did not interfere unduly with the economic arrangement of its affairs by the State or lend themselves the instruments to facilitate the bypassing of the Constitutional and statutory mandates**

**Service — Regularization — Respondents were appointed by state government on ad hoc basis — Respondents claimed regularization of service that they should be paid equal salary and other allowances as being paid to the other employees appointed on regular basis — State government refused to regularize their services — Respondents filed application before administrative tribunal — Administrative tribunal dismissed this application on the grounds that no right could be proved by respondents — Aggrieved, respondents approached the High Court — High court issued directions that respondents be regularized — Hence, present appeal — Held, unless the appointment was in terms of the relevant rules, the same would not confer any right on the appointee — In case of contractual appointment, appointment comes to an end at the end of the contract — Temporary employee could not claim to be made permanent on the expiry of his term of appointment — Merely because a temporary employee or a casual wage worker was continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent — Due to long service, an ad hoc employee did not acquire any right to permanent appointment — Appeal allowed**

### JUDGMENT

P.K. Balasubramanyan, J.

Page 1924

Leave granted in SLP(C) Nos. 9103-9105 of 2001

1. Public employment in a sovereign socialist secular democratic republic, has to be as set down by

- 11 -

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.

2. A sovereign government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages. Going by a law newly enacted, The National Rural Employment Guarantee Act, 2005, *Page 1925* the object is to give employment to at least one member of a family for hundred days in an year, on paying wages as fixed under that Act. But, a 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 those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule.

3. But, sometimes this process is not adhered to and the Constitutional scheme of public employment is by-passed. The Union, the States, their departments 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 procedure or even through the backdoor 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 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 directions 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 directions which could not be said to be consistent with the Constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, 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 *Page 1926* employment and seeking a fair opportunity for competing for employment? When one side 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 tend 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 a State as an employer is more limited than that of a private employer inasmuch

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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 the 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 a 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.

6. These two sets of appeals reflect the cleavage of opinion in the High Court of Karnataka based on the difference in approach in two sets of decisions of this Court leading to a reference of these appeals to the Constitution Bench for decision. The conflict relates to the right, if any, of employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, to approach the High Court for the issue of a writ of mandamus directing that they be made permanent in appropriate posts, the work of which they were otherwise doing. The claim is essentially based on the fact that they having continued in employment or engaged in the work for a significant length of time, they are entitled to **Page 1927** be absorbed in the posts in which they had worked in the department concerned or the authority concerned. There are also more ambitious claims that even if they were not working against a sanctioned post, even if they do not possess the requisite qualification, even if they were not appointed in terms of the procedure prescribed for appointment, and had only recently been engaged, they are entitled to continue and should be directed to be absorbed.

7. In Civil Appeal Nos. 3595-3612 of 1999 the respondents therein who were temporarily engaged on daily wages in the Commercial Taxes Department in some of the districts of the State of Karnataka claim that they worked in the department based on such engagement for more than 10 years and hence they are entitled to be made permanent employees of the department, entitled to all the benefits of regular employees. They were engaged for the first time in the years 1985-86 and in the teeth of orders not to make such appointments issued on 3.7.1984. Though the Director of Commercial Taxes recommended that they be absorbed, the Government did not accede to that recommendation. These respondents thereupon approached the Administrative Tribunal in the year 1997 with their claim. The Administrative Tribunal rejected their claim finding that they have not made out a right either to get wages equal to that of others regularly employed or for regularization. Thus, the applications filed were dismissed. The respondents approached the High Court of Karnataka challenging the decision of the Administrative Tribunal. It is seen that the High Court without really coming to grips with the question falling for decision in the light of the findings of the Administrative Tribunal and the decisions of this Court, proceeded to order that they are entitled to wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service with effect from the dates from which they were respectively appointed. It may be noted that this gave retrospective effect to the judgment of the High Court by more than 12 years. The High Court also issued a command to the State to consider their cases for

13

regularization within a period of four months from the date of receipt of that order. The High Court seems to have proceeded on the basis that, whether they were appointed before 01.07.1984, a situation covered by the decision of this Court in **Dharwad District Public Works Department v. State of Karnataka** MANU/SC/0164/1990 and the scheme framed pursuant to the direction thereunder, or subsequently, since they have worked for a period of 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages and were also entitled to be considered for regularization in their posts.

8. Civil Appeal Nos. 1861-2063 of 2001 reflects the other side of the coin. The appellant association with indefinite number of members approached the High Court with a writ petition under Article 226 of the Constitution of India challenging the order of the government directing cancellation of **Page 1928** appointments of all casual workers/daily rated workers made after 01.07.1984 and further seeking a direction for the regularization of all the daily wagers engaged by the government of Karnataka and its local bodies. A learned Single Judge of the High Court disposed of the writ petition by granting permission to the petitioners before him, to approach their employers for absorption and regularization of their services and also for payment of their salaries on par with the regular workers, by making appropriate representations within the time fixed therein and directing the employers to consider the cases of the claimants for absorption and regularization in accordance with the observations made by the Supreme Court in similar cases. The State of Karnataka filed appeals against the decision of the learned Single Judge. A Division Bench of the High Court allowed the appeals. It held that the daily wage employees, employed or engaged either in government departments or other statutory bodies after 01.07.1984, were not entitled to the benefit of the scheme framed by this Court in **Dharwad District Public Works Department** case, referred to earlier. The High Court considered various orders and directions issued by the government interdicting such engagements or employment and the manner of entry of the various employees. Feeling aggrieved by the dismissal of their claim, the members of the associations have filed these appeals.

9. When these matters came up before a Bench of two Judges, the learned Judges referred the cases to a Bench of three Judges. The order of reference is reported in 2003 (9) SCALE 187. This Court noticed that in the matter of regularization of ad hoc employees, there were conflicting decisions by three Judge Benches of this Court and by two Judge Benches and hence the question required to be considered by a larger Bench. When the matters came up before a three Judge Bench, the Bench in turn felt that the matter required consideration by a Constitution Bench in view of the conflict and in the light of the arguments raised by the Additional Solicitor General. The order of reference is reported in 2003 (10) SCALE 388. It appears to be proper to quote that order of reference at this stage. It reads:

1. Apart from the conflicting opinions between the three Judges' Bench decisions in **Ashwani Kumar and Ors. v. State of Bihar and Ors.** reported in MANU/SC/0379/1997, **State of Haryana and Ors. v. Piara Singh and Ors.** Reported in MANU/SC/0417/1992 and **Dharwad Distt. P.W.D. Literate Daily Wage Employees Association and Ors. v. State of Karnataka and Ors.** Reported in MANU/SC/0164/1990, on the one hand and **State of Himachal Pradesh v. Suresh Kumar Verma and Anr.** reported in MANU/SC/0406/1996, **State of Punjab v. Surinder Kumar and Ors.** Reported in MANU/SC/0306/1992, and **B.N. Nagarajan and Ors. v. State of Karnataka and Ors.** reported in MANU/SC/0450/1979 on the other, which has been brought out in one of the judgments under appeal of Karnataka High Court in **State of Karnataka v. H. Ganesh Rao** decided on 1.6.2000, reported in 2001 (4) Karnataka Law Journal 466, learned Additional Solicitor General urged that the scheme for regularization is repugnant to Articles 16(4), 309, 320 and 335 of the Constitution of India and, therefore, these cases are required to be heard by a Bench of Five learned Judges (Constitution Bench).

2. On the other hand, Mr. M.C. Bhandare, learned senior counsel, appearing for the

14

employees urged that such a scheme for regularization is consistent with the provision of Articles 14 and 21 of the Constitution.

3. Mr. V. Lakshmi Narayan, learned counsel, appearing in CC Nos. 109-498 of 2003, has filed the G.O. dated 19.7.2002 and submitted that orders have already been implemented.

4. After having found that there is conflict of opinion between three Judges Bench decisions of this Court, we are of the view that these cases are required to be heard by a Bench of five learned Judges.

5. Let these matters be placed before Hon'ble the Chief Justice for appropriate orders.

We are, therefore, called upon to resolve this issue here. We have to lay down the law. We have to approach the question as a constitutional court should.

10. In addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the 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 a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and Public Service Commissions for the States. Article 320 deals with the functions of Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. *Page 1930* As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment. The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

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 needs 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.

12. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play,



15

when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. 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 based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in **State of Punjab v. Jagdip Singh and Ors.** Page 1931 MANU/SC/0273/1963. It was held therein, "In our opinion, where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status."

13. During the course of the arguments, various orders of courts either interim or final were brought to our notice. The purport of those orders more or less was the issue of directions for continuation or absorption without referring to the legal position obtaining. Learned counsel for the State of Karnataka submitted that chaos has been created by such orders without reference to legal principles and it is time that this Court settled the law once for all so that in case the court finds that such orders should not be made, the courts, especially, the High Courts would be precluded from issuing such directions or passing such orders. 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.

14. Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence. In **State of Mysore v. S.V. Narayanappa** MANU/SC/0232/1966, Page 1932 this Court stated that it was a mis-conception to consider that regularization meant permanence. In **R.N. Nanjundappa v. T. Thimmiah and Anr.** MANU/SC/0680/1971, this Court dealt with an argument that regularization would mean conferring the quality of permanence on the appointment. This Court stated:-

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

16

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.

In **B.N. Nagarajan and Ors. v. State of Karnataka and Ors.** MANU/SC/0450/1979, this court clearly 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. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This court emphasized that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. 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.

15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the **Page 1933** executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

16. Without keeping the above distinction in mind and without discussion of the law on the question or the effect of the directions on the constitutional scheme of appointment, this Court in **Daily Rated Casual Labour v. Union of India and Ors.** MANU/SC/0434/1987 directed the Government to frame a scheme for absorption of daily rated casual labourers continuously working in the Posts and Telegraphs Department for more than one year. 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 v. Delhi State Mineral Development Corporation** 1989 Suppl. (2) SCR 513 where this Court directed regularization of daily rated workers in phases and in accordance with seniority.

17. One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality or of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy

17

53

by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counter-productive.

18. The Decision in **Dharwad Distt. P.W.D. Literate Daily Wage Employees Association and Ors. v. State of Karnataka and Ors.** MANU/SC/0164/1990 dealt *Page 1934* with a scheme framed by the State of Karnataka, though at the instance of the court. The scheme was essentially relating to the application of the concept of equal pay for equal work but it also provided for making permanent, or what it called regularization, without keeping the distinction in mind, of employees who had been appointed ad hoc, casually, temporarily or on daily wage basis. In other words, employees who had been appointed without following the procedure established by law for such appointments. This Court, at the threshold, stated that it should individualize justice to suit a given situation. With respect, it is not possible to accept the statement, unqualified as it appears to be. 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. Its main role is to interpret the constitutional and other statutory provisions bearing in mind the fundamental philosophy of the Constitution. We have given unto ourselves a system of governance by rule of law. The role of the Supreme Court is to render justice according to law. As one jurist put it, the Supreme Court is expected to decide questions of law for the country and not to decide individual cases without reference to such principles of law. Consistency is a virtue. Passing orders not consistent with its own decisions on law, is bound to send out confusing signals and usher in judicial chaos. Its role, therefore, is really to interpret the law and decide cases coming before it, according to law. Orders which are inconsistent with the legal conclusions arrived at by the court in the self same judgment not only create confusion but also tend to usher in arbitrariness highlighting the statement, that equity tends to vary with the Chancellor's foot.

19. In **Dharwad** case, this 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 paragraph 17 of the judgment, this Court stated that the precedents obliged the State of Karnataka to regularize the services of the casual or daily/monthly rated employees and to make them the same payment as regular employees were getting. Actually, this Court took note of the argument of counsel for the State that in reality and as a matter of statecraft, implementation of such a direction was an economic impossibility and at best only a scheme could be framed. Thus a scheme for absorption of casual/daily rated employees appointed on or before 1.7.1984 was framed and accepted. The economic consequences of its direction were taken note of by this Court in the following words.

We are alive to the position that the scheme which we have finalized is not the ideal one but as we have already stated, it is the obligation of the court to individualize justice to suit a given situation in a set of facts that are placed before it. Under the scheme of the Constitution, the purse remains in the hands of the executive. The legislature of the State controls the Consolidated Fund out of which the expenditure to be *Page 1935* incurred, in giving effect to the scheme, will have to be met. The flow into the Consolidated Fund depends upon the policy of taxation depending perhaps on the capacity of the payer. Therefore, unduly burdening the State for implementing the constitutional obligation forthwith would create problems which the State may not be able to stand. We have, therefore, made our directions with judicious restraint with the hope and trust that both parties would appreciate and understand the situation. The instrumentality of the State must realize that it is charged with a big trust. The money that flows into the Consolidated Fund and constitutes the resources of the State comes from the people and the welfare expenditure that is meted out goes from the same Fund back to the people. May be that in every situation the same tax payer is not the beneficiary. That is an incident of taxation and a necessary concomitant of living within a welfare society.

18

29

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. Nanjundappa v. T. Thimmiah and 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.

20. We may now consider, **State of Haryana v. Piara Singh and Ors.** MANU/SC/0417/1992. There, the court was considering the sustainability of certain directions issued by the High Court in the light of various orders passed by the State for the absorption of its ad hoc or temporary employees and daily wagers or casual labour. This Court started by saying:

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 issued 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.

Page 1936

This Court then referred to some of the earlier decisions of this Court while stating:

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 for 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.

This Court then concluded in paragraphs 45 to 50:

The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc 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 not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization *Page 1937* provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent -- the distinction between regularization and making permanent, was not emphasized here -- can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 of **Piara Singh** (supra) are to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

21. We shall now refer to the other decisions. In **State of Punjab and Ors. v. Surinder Kumar and Ors.** 1991 Suppl. (3) SCR 553, a three judge bench of this Court 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 of India, similar orders could not be issued by the High Courts. The bench 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. This Court noticed that the jurisdiction of the High Court while dealing with a Writ Petition was circumscribed by the limitations discussed and declared by judicial decisions and the High Court cannot transgress the limits on the basis of the whims or subjective sense of justice varying from judge to judge. Though the High Court is entitled to exercise its judicial discretion in deciding Writ Petitions or Civil Revision Applications coming before it, the discretion had to be confined in declining to entertain petitions and refusing to grant reliefs asked for by the petitioners on adequate considerations and it did not permit the High Court to grant relief on such a consideration alone. This Court set aside the directions *Page 1938* given by the High Court for regularization of persons appointed temporarily to the post of lecturers. The Court also emphasized that specific terms on which appointments were made should be normally enforced. Of course, this decision is more on the absence of power in the High Court to pass orders against the constitutional scheme

- 20 -

of appointment.

22. In **Director, Institute of Management Development, U.P. v. Pushpa Srivastava (Smt.)** MANU/SC/0409/1992, this Court held that since the appointment was on purely contractual and ad hoc 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. A limited relief of directing that the appointee be permitted on sympathetic consideration to be continued in service till the end of the concerned calendar year was issued. This Court noticed that when the appointment was purely on ad hoc and contractual basis for a limited period, on the expiry of the period, the right to remain in the post came to an end. This Court stated that the view they were taking was the only view possible and set aside the judgment of the High Court which had given relief to the appointee.

23. In **Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra and Ors.** MANU/SC/0390/1994, a three judge bench of this Court held that ad hoc appointees/temporary employees engaged on ad hoc 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. This decision indicates that if the engagement was made in a particular work or in connection with particular project, on completion of that work or of that project, those who were temporarily engaged or employed in that work or project could not claim any right to continue in service and the High Court cannot direct that they be continued or absorbed elsewhere.

24. In **State of Himachal Pradesh v. Suresh Kumar Verma** MANU/SC/0406/1996, a three Judge Bench of this Court held that a person appointed on daily wage 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. This 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 **Page 1939** 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.

Their Lordships cautioned that if directions are 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.

25. In **Ashwani Kumar and Ors. v. State of Bihar and Ors.** 1996 Supp. (10) SCR 120, this Court was considering the validity of confirmation of the irregularly employed. It was stated:

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 ad hoc 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.

This Court further stated:



- 21 -

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 ad hoc 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 employs them, a time may come in the service career of such employees who are continued on ad hoc 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 the 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 recruitment and has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by a competent authority and the *Page 1940* 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 regulations governing such recruitment.

The Court noticed that in that case all constitutional requirements were thrown to the wind while making the appointments. It was stated,

On the contrary all efforts were made to bypass the recruitment procedure known to law which resulted in clear violation of Articles 14 and 16(1) of the Constitution of India, both at the initial stage as well as at the stage of confirmation of these illegal entrants. The so called regularizations and confirmations could not be relied on as shields to cover up initial illegal and void actions or to perpetuate the corrupt methods by which these 6000 initial entrants were drafted in the scheme.

26. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency an ad hoc 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.

27. In **A. Umarani v. Registrar, Cooperative Societies and Ors.** MANU/SC/0571/2004, a three judge bench 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 regularized by the State. The State could not invoke its power under Article 162 of the Constitution to regularize such appointments. This Court also held 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 or any body or authority governed by a statutory Act or the Rules framed thereunder. Regularization furthermore cannot give permanence to an employee whose services are ad hoc in nature. It was also 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.

28. Incidentally, the Bench also referred to the nature of the orders to be passed in exercise of this Court's jurisdiction under Article 142 of the Constitution. This Court stated that jurisdiction under

Article 142 of the Constitution could not be exercised on misplaced sympathy. This Court quoted Page 1941 with approval the observations of Farewell, L.J. in **Latham v. Richard Johnson & Nephew Ltd.** 1913 (1) KB 398"

We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o' the wisp to take as a guide in the search for legal principles.

This Court also quoted with approval the observations of this Court in **Teri Oat Estates (P) Ltd. v. U.T., Chandigarh** MANU/SC/1098/2003 to the effect:

We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.

This decision kept in mind the distinction between 'regularization' and 'permanency' and laid down that regularization is not and cannot be the mode of recruitment by any State. It also held that regularization cannot give permanence to an employee whose services are ad hoc in nature.

29. It is not necessary to multiply authorities on this aspect. It is only necessary to refer to one or two of the recent decisions in this context. In **State of U.P. v. Niraj Awasthi and Ors.** 2006 (1) SCC 667 this Court after referring to a number of prior decisions held that there was no power in the State under Art. 162 of the Constitution of India to make appointments and even if there was any such power, no appointment could be made in contravention of statutory rules. This Court also held that past alleged regularisation or appointment does not connote entitlement to further regularization or appointment. It was further held that the High Court has no jurisdiction to frame a scheme by itself or direct the framing of a scheme for regularization. This view was reiterated in **State of Karnataka v. KGSD Canteen Employees Welfare Association** JT 2006 (1) SC 84.

30. In **Union Public Service Commission v. Girish Jayanti Lal Vaghela and Ors.** 2006 (2) SCALE 115, this Court answered the question, who was a Government servant and stated:-

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 offices. 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 Page 1942 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 (See B.S. Minhas v. Indian Statistical Institute and Ors. MANU/SC/0320/1983).



23

31. There have been decisions which have taken the cue from the **Dharwad** (supra) case and given directions for regularization, absorption or making permanent, employees engaged or appointed without following the due process or the rules for appointment. The philosophy behind this approach is seen set out in the recent decision in **The Workmen of Bhurkunda Colliery of Central Coalfields Ltd. v. The Management of Bhurkunda Colliery of Central Coalfields Ltd.** JT 2006 (2) SC 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.

32. At this stage, it is relevant to notice two aspects. In **Kesavananda Bharati v. State of Kerala** 1973 Supp. S.C.R. 1, this Court held that Article 14, and Article 16, which was described as a facet of Article 14, is part of the basic structure of the Constitution of India. The position emerging from **Kesavananda Bharati** (supra) was summed up by Jagannatha Rao, J., speaking for a Bench of three Judges in **Indira Sawhney v. Union of India** 1999 Suppl. (5) S.C.R. 229. That decision also reiterated how neither the Parliament nor the Legislature could transgress the basic feature of the Constitution, namely, the principle of equality enshrined in Article 14 of which Article 16(1) is a facet. This Court stated, "

The preamble to the Constitution of India emphasises the principle of equality as basic to our constitution. In **Kesavananda Bharati v. State of Kerala**, it was ruled that even constitutional amendments which offended the basic structure of the Constitution would be ultra vires the basic structure. Sikri, C.J. laid stress on the basic features enumerated in the preamble to the Constitution and said that there **Page 1943** were other basic features too which could be gathered from the Constitutional scheme (para 506 A of SCC). Equality was one of the basic features referred to in the Preamble to our Constitution. Shelat and Grover, JJ. also referred to the basic rights referred to in the Preamble. They specifically referred to equality (paras 520 and 535A of SCC). Hegde & Shelat, JJ. also referred to the Preamble (paras 648, 652). Ray, J. (as he then was) also did so (para 886). Jaganmohan Reddy, J. too referred to the Preamble and the equality doctrine (para 1159). Khanna, J. accepted this position (para 1471). Mathew, J. referred to equality as a basic feature (para 1621). Dwivedi, J. (paras 1882, 1883) and Chandrachud, J. (as he then was) (see para 2086) accepted this position.

What we mean to say is that Parliament and the legislatures in this Country cannot transgress the basic feature of the Constitution, namely, the principle of equality enshrined in Article 14 of which Article 16(1) is a facet.

33. In the earlier decision in **Indira Sawhney v. Union of India** 1992 Supp. (2) S.C.R. 454, B.P. Jeevan Reddy, J. speaking for the majority, while acknowledging that equality and equal opportunity is a basic feature of our Constitution, has explained the exultant position of Articles 14 and 16 of the Constitution of India in the scheme of things. His Lordship stated:-

6. The significance attached by the founding fathers to the right to equality is evident not only from the fact that they employed both the expressions 'equality before the law' and 'equal protection of the laws' in Article 14 but proceeded further to state the same rule in positive and affirmative terms in Articles 15 to 18....

7. Inasmuch as public employment always gave a certain status and power --- it has always been the repository of State power --- besides the means of livelihood, special care was taken to declare equality of opportunity in the matter of public employment by Article 16. Clause (1), expressly declares that in the matter of public employment or appointment to any office under the state, citizens of this country shall have equal opportunity while clause (2) declares that no citizen shall be discriminated in the said matter on the grounds only of religion, race, caste, sex, descent, place of birth,

residence or any of them. At the same time, care was taken to, declare in clause (4) that nothing in the said Article shall prevent the state from making any provision for reservation of appointments or posts in favour of any backward class of citizen which in the opinion of the state, is not adequately represented in the services under the state...

(See paragraphs 6 and 7 at pages 544 and 545)

These binding decisions are clear imperatives that adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment.

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, *Page 1944* 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 Ors. v. State of Bihar and Ors.** MANU/SC/0072/1986 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 term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. 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 their 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 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 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 *Page 1945* 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, whereas 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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35. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the Dharwad decision, the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the Page 1946 constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

26

37. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in **Dharwad** (supra), **Piara Singh** (supra), **Jacob**, and **Gujarat Agricultural University** and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received **Page 1947** assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn {See **Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service** 1985 Appeal Cases 374, **National Buildings Construction Corporation v. S. Raghunathan** MANU/SC/0550/1998 and **Dr. Chanchal Goyal v. State of Rajasthan** MANU/SC/0133/2003. There is no case that any assurance was given by the Government or the concerned department while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after the **Dharwad** decision. Though, there is a case that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some case by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. 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. The argument in that behalf has therefore to be rejected.

38. 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 recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

**Page 1948**

39. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The 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

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employee should be treated on a par with a regularly 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 argument 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.

41. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action *Page 1949* of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

42. The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their

28

right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, *Page 1950* the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in **Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College** (1962) Supp. 2 SCR

144. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in **S.V. Narayanappa** (supra), **R.N. Nanjundappa** (supra), and **B.N. Nagarajan** (supra), and referred to in paragraph 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 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 require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

45. 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.

46. In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages *Page 1951* equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in



29

directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. No. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them.

47. Coming to Civil Appeal Nos. 1861-2063 of 2001, in view of our conclusion on the questions referred to, no relief can be granted, that too to an indeterminate number of members of the association. These appointments or engagements were also made in the teeth of directions of the Government not to make such appointments and it is impermissible to recognize such appointments made in the teeth of directions issued by the Government in that regard. We have also held that they are not legally entitled to any such relief. Granting of the relief claimed would mean paying a premium for defiance and insubordination by those concerned who engaged these persons against the interdict in that behalf. Thus, on the whole, the appellants in these appeals are found to be not entitled to any relief. These appeals have, therefore, to be dismissed.

Page 1952

48. C.A. Nos. 3520-24 of 2002 have also to be allowed since the decision of the Zilla Parishads to make permanent the employees cannot be accepted as legal. Nor can the employees be directed to be treated as employees of the Government, in the circumstances. The direction of the High Court is found unsustainable.

49. In the result, Civil Appeal Nos. 3595-3612 of 1999, Civil Appeal No. 3849 of 2001, Civil Appeal Nos. 3520-3524 of 2002 and Civil appeal arising out of Special Leave Petition (Civil) Nos. 9103-9105 of 2001 are allowed subject to the direction issued under Article 142 of the Constitution in paragraph 46 and the general directions contained in paragraph 44 of the judgment and Civil Appeal Nos. 1861-2063 of 2001 are dismissed. There will be no order as to costs.

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6/9/2005

Annexure - B

1. Shri Bhagawan Singh, son of Shri Baidyanath Singh, a permanent resident of Pynthorumkhrah, Shillong pursuant to Central Administrative Tribunal, Guwahati Bench orders/directions dated 29<sup>th</sup> June 2005 has sent a representation dated 5<sup>th</sup> July 2005 by post addressed to the Accountant General (A&E) Meghalaya, etc, Shillong praying for regularisation in any Group 'D' post from the date of his engagement as a casual worker in the Office of the AG (A&E) Meghalaya, etc, Shillong. The representation was received in this office on 12<sup>th</sup> July 2005.
2. I have gone through the representation. Shri Singh's prayer for regularization is primarily based on his claim that he was engaged as casual worker in this office for an extended period of time. To buttress his claim, he has also cited a number of court judgments in his petition.
3. Shri Singh in his representation claims that that he had worked as a casual worker on daily wage basis continuously for more than 11 years since 1995 but was not granted a regular pay scale, service benefits, dearness allowance, house rent and medical allowance payable to a Group 'D' employee. Shri Singh has also enclosed a certificate dated 11.05.2001 issued by an Accounts Officer of this office regarding his employment as a casual worker for the last 07 (as claimed by Shri Singh) years. My findings/observations on these are as below:
  - 3.1 On the basis of the information tabulated and furnished to me by Record Section concerning Shri Singh's engagement as a casual worker in this office, I find that his claim that he had worked in this office continuously as a casual worker for more than 11 years since 1995 is not true. Shri Singh was engaged as casual worker off-and-on from July 1996 till July 2004 as below:

Year	Month	No. of days	Year	Month	No. of days
1996	July	11	2000	January	12
	August	12		February	06
	September	17		March	05
	October	01		April	05
	Total	41		May	01
1997	February	06		July	04
	March	14		October	02
	April	01		November	03
	May	12		December	03
	June	21		Total	41
	July	15	2001	May	10
	August	11		October	13
	September	08		November	03
	November	03		Total	26
	December	06	2002	March	10
	Total	97		April	10

True Copy  
G. B. Singh  
5.7.2005

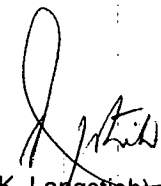


1998	January	07	2003	May	11
	February	07		<b>Total</b>	<b>31</b>
	March	05		January	07
	April	18		February	05
	May	03		March	02
	June	04		August	03
	July	04		October	07
	August	06		November	12
	September	06		December	17
	October	04		<b>Total</b>	<b>53</b>
	November	12	2004	January	15
	December	02		February	06
1999	<b>Total</b>	<b>78</b>		March	11
	January	10		April	04
	February	15		May	04
	March	14		June	09
	April	12		July	20
	May	04		<b>Total</b>	<b>69</b>
	July	08		<b>Grand Total</b>	<b>525</b>
	August	05			
	October	05			
	November	12			
	December	04			
	<b>Total</b>	<b>89</b>			

- 3.2 I find Shri Singh's grouse about not being granted a regular pay scale, service benefits, dearness allowance, house rent and medical allowance payable to a Group 'D' employee on the ostensible ground that he had worked continuously for 11 years (which as it turns out, is not correct) as a casual worker in this office, inexplicable. Surely, during the 525 days between July 1996 and July 2004 when he was engaged as a casual worker by this office, he would have acquired at least a passing acquaintance with the procedures/rules governing recruitment matters which this office has to abide by. He would have come to know (or learnt from the fairly sizeable number of fellow casual workers employed by this office around the same time that Shri Singh also was) that there are no rules or orders either of the Central Government or the Comptroller & Auditor General of India under which a casual worker can be granted the pay scale and attendant benefits of a regular Group 'D' employee even if that person had been engaged as a casual worker continuously for an extended period of time. He would have also surely learnt that as per the orders/instructions of government of India/CA&AG of India which this office is duty bound to scrupulously adhere to, all Group 'D' post as filled up by calling for names from the local employment exchange and through open advertisement. Therefore, I am of the view that his claim of being deprived a regular pay scale, service benefits, dearness allowance, house rent and medical allowance payable to a Group 'D' employee is totally without any foundation.

- 3.3 As far as the certificate dated 11<sup>th</sup> May 2001 given by Shri S.K. Sharma then an Accounts Officer in this office to Shri Singh is concerned, my hunch is that the officer may have made out this certificate to Shri Singh in good faith. The document is more in the nature of a "character certificate" and I doubt whether Shri Sharma would have imagined that it would be twisted out of context and used for the present purpose. Given the general nature of the certificate I also don't think Shri Sharma literally meant what he put down, namely, that Shri Singh had been working as a casual worker in this office "for the last 7 years". In any case this statement is not borne out by the actual facts as seen from the table in paragraph 3.1 above. Under the given circumstances I am therefore, not giving much credence to the certificate enclosed with the representation submitted by Shri Singh.
4. Shri Singh in his representation has cited two judgments of the Hon'ble Supreme Court in support of his contention that he should be regularized in a Group 'D' post. While I certainly do not doubt the validity of these pronouncements, it is not within my authority to unilaterally implement the decisions of the Hon'ble Court. I am sure that the two cited judgments of no less than the Hon'ble Supreme Court of India would have engaged the attention of the concerned Departments of the Central Government (Department of Personnel, Dept. of Law, etc.) who deal with this subject and who would have, should these agencies have thought it necessary to do so, in turn issued appropriate instructions/orders to all Central Government establishments (including the C&AG of India) as a follow up to the directions of the Hon'ble Court. I have checked up in the office and I find that no such instructions/orders have been received from the Government of India or the office of the C&AG of India. Thus, while granting that Shri Singh may even be correct in citing the two decisions of the Hon'ble Court in the context of his case, I on my own, am powerless to implement them in the absence of any instructions/orders from Government of India/C&AG of India emanating from these two decisions.
- 4.1 The only instructions/orders of Government of India/C&AG of India which to my mind may have some connection with Shri Singh's representation is the GOI Department of Personnel & Training O.M. No. 51016/2/90-Estt(C) dated 10<sup>th</sup> September 1993 read with C&AG's of India Circular No. 20/NGE/200 dated 11<sup>th</sup> April 2000 concerning the grant of temporary status as a one-time affair to those casual employees who were in service on 10<sup>th</sup> October 1993 and who had completed one year of continuous service with 240 or 206 days as the case may be on 10<sup>th</sup> September 1993. However, Shri Singh's case is not covered under these instructions/orders as he was engaged as a casual worker only from July 1996.

5. Based on my above findings/observations, there is simply no way Shri Singh's request can be acceded to. There are no orders/instructions of Government of India/C&AG of India under which this office can appoint/regularize Shri Singh in any Group 'D' post in the office.
6. I have noted that the Hon'ble Tribunal in its order dated 29<sup>th</sup> June 2005 had while directing Shri Singh to file a representation also asked the competent authority to consider the same and pass orders within four months after affording Shri Singh the opportunity of being heard. Given the position of the case as I have laid out in the preceding paragraph, I do not see how giving a personal hearing to Shri Singh will change the facts of the case or increase Shri Singh's prospects of getting regularized in a Group 'D' post in this office. I am therefore, dispensing with the personal hearing as this would serve no purpose.
7. Communicate my decision to Shri Singh suitably.

  
(A.W.K. Langsten)  
Accountant General

DAG (A)

New Delhi, the 10th Sept. 1993

OFFICE MEMORANDUM

Grant of temporary status and regularisation of casual workers - Formulation of a scheme in pursuance of the CAT, Principal Bench, New Delhi, judgement dated 16th Feb 1990 in the case of Shri Raj Kamal & others Vs. UOI.

Guidelines in the matter of recruitment of persons on a basis in Central Government offices were issued by Department's O.M. No. 4901/2/UG-Estt(C) dated 7.6.88. It has further been reviewed in the light of the order of the CAT, Principal Bench, New Delhi delivered on 16th Feb 1990 in the writ petition filed by Shri Raj Kamal and others in the matter of India and it has been decided that while the guidelines contained in O.M. dated 7.6.88 may continue to be followed, the grant of temporary status to the casual employees, who are presently employed and have rendered one year continuous service in Central Government offices other than Ministry of Telecom, Posts and Railways may be regulated by a scheme as appended.

Ministry of Finance etc. are requested to bring the scheme to the notice of appointing authorities under their administrative control and ensure that recruitment of casual employees is done in accordance with the guidelines containing O.M. dated 7.6.88. Cases of negligence should be viewed seriously and brought to the notice of appropriate authorities for taking prompt and suitable action.

Sd/-  
(Y.G. Parando)  
Director

Ministries/Departments/Offices of the Government of India as per the standard list.

- Copy to:
- (1) All attached and subordinate offices of:
    - (i) Ministry of Personnel, PG and Pensions
    - (ii) Ministry of Home Affairs
  - (2) All officers and sections in the MHA and Ministry of Personnel, PG and Pensions.

Sd/-  
(Y.G. Parando)  
Director

APPENDIX

Department of Personnel & Training, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993.

1. This scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993".
2. This scheme will come into force w.e.f. 1.9.1993.
3. This scheme is applicable to casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own scheme.
4. Temporary status

- i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).
- ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.
- iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.
- iv) Such casual labourers who acquire temporary status will not however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

5. Temporary status would entitle the casual labourers to the following benefits:-

- i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA.
- ii) Benefits of increments at the same rate as applicable to a Group 'D' employee would be taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for at least 240 days (206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.
- iii) Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of work, casual or any other kind of leave, except maternity leave, will not be admissible. They will be allowed

In case forward the leave at their credit on their regularisation. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service.

- iv) Maternity leave to lady casual labourers as admissible to regular Group D employees will be allowed.
- v) 50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits after their regularisation.

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

- vii) Until they are regularised, they would be entitled to productivity Linked Bonus/Ad.hoc bonus only at the rates as applicable to casual labourers.

6. No benefits other than those specified above will be admissible to casual labourers with temporary status. However, if any additional benefits are admissible to casual workmen working in Industrial establishments in view of provisions of Industrial Dispute Act, they shall continue to be admissible to such casual labourers.

7. Despite conferment of temporary status, the services of a casual labourer may be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual worker is engaged on work.

8. Procedure for filling up of Group D posts

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

13/03/80  
13/03/80

or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer.

9. On regularisation of casual worker with temporary status, no substitute in his place will be appointed as he ~~was not holding any post.~~ Violation of this should be viewed very seriously and attention of the appropriate authorities should be drawn to such cases for suitable disciplinary action against the officers violating these instructions.

10. In future, the guidelines as contained in this Department's O.M. dated 7.6.80 should be followed strictly in the matter of engagement of casual employees in Central Government Offices.

11. Department of Personnel & Training will have the power to make amendments or relax any of the provisions in the scheme that may be considered necessary from time to time.

324  
OFFICE OF THE COMPTROLLER & AUDITOR GENERAL OF INDIA,  
NEW DELHI - 110 002

Annexure-D  
84

CIRCULAR NO. 20/NGE/200  
NO. 389/NGE (APP) /15-2000  
Dated:- 11.04.2000

To

The Heads of offices in I.A. & A.D.,  
(Except overseas offices).

Subject:

Grant of Temporary Status and regularisation of casual labourer.

Sir,

I am directed to invite a reference to the Government of India, Department of Personnel & Training, New Delhi's O.M. No. 51016/2/90-Estt. (C) dated 10.9.1993 (circulated vide Headquarters circular No. 19/NGE/94, issued under No. 1024/NGE(App)/3-94 Vol. II dated 9.8.1994) on the subject

cited above and to state that it has come to the notice of this office that some of the field offices are still granting Temporary Status to those casual labourers who were engaged as a casual labourer after the issue of Government of India's O.M. dated 10.9.1993.

In this connection, it is clarified that the grant of temporary status was a one time affair and covered only those casual employees who were in service on 10.9.1993 and had completed one year of continuous service with 240 or 206 days as the case may be on that date.

Cases of granting of temporary status to casual labourers may please be regulated accordingly.

Yours faithfully,

(A.K. SINHA)  
ADMINISTRATIVE OFFICER (APP)



OFFICE OF THE COMPTROLLER & AUDITOR GENERAL OF INDIA  
NEW DELHI - 110 002.

Circular No. 36/NGE/98

No. 728/NGE(App)/7-98

Dated : 10-07-1998.

23 जुलाई 1998

To

1. All Heads of Department in the I.A. & A.D.  
(as per mailing list)
2. AC(C) \ AC(P) \ Director (P)
3. GE.I \ GE.II \ CA.I \ OE&Bills \ NGE(Entt.) \ NGE(JCM)  
Audit (Rules)

Subject : Recruitment of Staff through Employment Exchanges.

Sir/Madam,

Circular No. 36/44-1-98

I am directed to forward herewith a copy of Department of

Personnel & Training O.M. No.-14024/2/96-Estt.(D) dated 18-05-1998 on

the above subject for information and necessary action.

1. All Heads of Department in the I.A. & A.D.

(as per mailing list)

2. AC(C) \ AC(P) \ Director (P)

3. GE.I \ GE.II \ CA.I \ OE&Bills \ NGE(Entt.) \ NGE(JCM)

Yours faithfully,

Encl. As above

(A.K. SINHA)

ADMINISTRATIVE OFFICER (APP)

18/7/98

18/7/98

18/7/98

18/7/98

No. 14024/2/77-Estt(D)  
Government of India  
Ministry of Personnel, P.G. & Pensions  
Department of Personnel & Training  
\*\*\*\*\*

New Delhi-110001.  
May 18, 1998

OFFICE MEMORANDUM

Subject:- Recruitment of staff through Employment Exchanges.

The undersigned is directed to invite a reference to this Department's Office Memorandum No. 14024/2/77-Estt(D) dt. 13.4.1977. These instructions, inter-alia, provide that all vacancies arising under Central Government offices/establishments (including quasi-Government institutions and statutory organisations) irrespective of the nature and duration (other than those filled through UPSC), are not only to be notified to, but also to be filled through the Employment Exchanges alone and other permissible sources of recruitment can be tapped only if the Employment Exchange concerned issues a Non-availability Certificate. There can be no departure from this recruitment procedure unless a different arrangement in this regard has been previously agreed to in consultation with this Department and the Ministry of Labour (Directorate General, Employment & Training). Similar instructions are also in force requiring vacancies against posts carrying a basic salary of less than Rs. 500/- per month in Central Public Sector Undertakings to be filled only through Employment Exchanges.

2. The Scheme of Employment Exchange Procedure came under the judicial scrutiny of the Supreme Court in the matter of Excise Superintendent, Malkapatnam, Krishan District, Andhra Pradesh v/s. K.B.N. Visweshwara Rao & Ors (1996 (6) SCALE 676). The Supreme Court, inter-alia, directed as follows:-

" It should be mandatory for the requisitioning authority/establishment to intimate the employment exchange and employment exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or undertaking or establishment, should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins.

-41- 60-

-2-

and then consider the cases of all the candidates who have applied."

3. Accordingly, it is clarified that in addition to notifying the vacancies for the relevant categories (excluding those filled through the Union Public Service Commission / the Staff Selection Commission) to the Employment Exchange, the requisitioning authority / establishment may keeping in view administrative / budgetary convenience, arrange for the publication of the recruitment notice for such categories in the "Employment News" published by the Publications Division of the Ministry of Information and Broadcasting, Government of India and then consider the cases of all the candidates who have applied. In addition to the above, such recruitment notices should be displayed on the office notice boards also for wider publicity.

4. These orders will take effect from the date of issue and will not apply to such cases where process of recruitment through employment exchanges / open advertisement has been initiated before the said date.

5. All Ministries / Departments are requested to strictly adhere to the aforesaid instructions and also bring to the notice of their attached and sub-ordinate offices for information and compliance.

Harinder Singh  
(HARINDER SINGH)  
JOINT SECRETARY

To:-

All Ministries/Departments of Government of India

Copy to:-

- 1) The Director General, Employment and Training-  
Ministry of Labour, Rafi Marg, New Delhi.
- 2) The Bureau of Public Enterprises, New Delhi.
- 3) Lok Sabha Secretariat.
- 4) Rajya Sabha Secretariat.
- 5) Union Public Service Commission
- 6) Staff Selection Commission
- 7) Chief Secretaries, All State Governments
- 8) All Union Territory Governments/  
Administrations
- 9) All attached & Subordinate Offices of the  
Department of Personnel & Training
- 10) The Editor, Employment News, East Block-IV,  
Level 5-7, R.K. Puram, New Delhi 110066

NOTICE

From - Mr. G. Baishya  
Sr. CG SC, CAT

To, Mr. A. Ahmed  
Advocate, GHL

O.A. No. 64 of 2006

Sri Bhagwan Singh  
— Applicant

— VS —

Union of India & Ors  
— Respondent

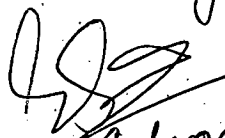
Please find here with a copy of written statement with annexures which is going to be filed on behalf of the respondents above named in connection with the above noted case.

Kindly acknowledge the receipt thereof. Thanking you.

Yours faithfully

Ramesh Gogoi  
Advocate

Received Copy

  
Advocate 1.6.2006