



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA.709/2012

Date of Order: 14th May 2012

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Sk. Boktiar Hossain, S/o Sk. Abdur Rasid,
Vill +P.O. Kashmali, Dist- Howrah, aged
about 42 years..
2. Harendra Nath Bhowmik, S/o Late Pratap
Ch. Bhowmik, aged about 40 years, residing
At Vill- Sohhaage, P.O. Kashmali, P.S. Jaypur,
Dist- Howrah.
3. Abdul Halim, S/o Late Jashed Ali, aged about
38 years, residing at Ajangachi, P.O. Kashmali,
P.S. Jaypur, Dist- Howrah.
4. Sri Kinkar Mondal, S/o Late Sajit Kr. Mondal,
aged about 32 years, residing at Vill+P.O.
Kashmali, P.S. Joypur, Dist- Howrah.
5. Shyamapada Das, S/o Abhimanya Das, aged about
35 years, residing at Vill+P.O. Karat Beria, P.S. Uluberia,
Dist- Howrah,
6. Srikanta Mondal, S/o Late Asit Mondal, aged about
30 years, residing at Vill.Ashria, P.O- Barunda, P.S.
Bagnan, Dist- Howrah.
7. Debabrata Mondal, S/o Sri Narahari Mondal, aged
about 29 years, residing at Vill+P.O.Kashmali, P.S.
Jaypur, Dist- Howrah.
8. Sk. Altab Ali, S/o Sk. Sawkat Ali, aged about 32 years,
Residing at Beral, P.O. Chitman, P.S. Jaypur, Dist-
Howrah.
9. Tapan Mondal, S/o Late Gunadhar Mondal, aged
About 38 years, residing at Vill+P.O. Kashmali,

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P.S. Jaypur, Dist. Howrah.

10. Sk. Ashapur Rahaman,

S/o. Sk. Mahimuddin, aged about 27 years,
residing at Vill. Kancharipara, P.O.+P.S.-
Bagnam, Dist. - Howrah.

11. Narayan Ch. Mondal,

S/o Sri Mahadev Mondal, aged about 39
years, residing at Vill.+P.O. - Khanyadiki,
P.S. - Kolaghat, Dist. Purba Midnapur.

12. Manik Ratan Bhownick,

S/o Late Pratap Ch. Bhownick, aged about
years, residing at Vill. - Sodhoaga,
P.O. Kashmali, P.S. Jaypur, Dist.-Howrah.

13. Sk. Mijanur Rahaman,

S/o. Sk. Mahimuddin, aged about 25 years,
residing at Vill. Kancharipara, P.O. -
Bagnam, P.S. Bagnam, Dist. Howrah.

14. Dipak Kr. Mondal

S/o. Sri Prafulla Mondal, aged about 35 years
residing at

Arsh

residing at Vill. + P.O. - Kashmali,

P.S. - Jaypur, Dist. - Howrah.

15. Sk. Matahar Hossain,

S/o. Rajala Ali, aged about 28 years,

residing at Vill. - Deuli, P.O.- Deuli,

P.S. - Shyampur, Dist. - Howrah.

16. Ganesh Malik,

S/o. Late Hirulal Malik, aged about 38

years, residing at Vill. - Rautara, P.O.-

Jhikira, P.S.-Jaypur, Dist. - Howrah.

17. Rabin Dhara,

S/o. Late Bhakti Dhara, aged about 35

years, residing at Vill. + P.O. - Jamtia,

P.S. - Jaypur, Dist. : Howrah.

18. Bhudela Malik,

S/o. Late Hirulal Malik, aged about 34

years, residing at Rautara, P.O.-Jhikira,

P.S. - Jaypur, Dist. : Howrah.

19. Sushil Bera,

S/o. Late Raghunath Bera, aged about 52

40 years, residing at Vill.+P.O. - Jashora,

P.S. - Panskura, Dist. : Purba Medinipur.

20. Mamindra Jana,

S/o Late Prafulla Jana, aged about 38

years, residing at Vill. + P.O. - Jerosa,

P.S. Panskura, Dist. : Purba Midnapur.

21. Pulak Kumar Pal,

S/o. Sadhan Chandra Pal, aged about 28

years, residing at Vill.+P.O. - Ghukurdaha,

P.S. Daspur, Dist. : Paschim Medinipur.

22. Gaurhari Malik,

S/o Late Chandi Malik, aged about 35 years,

residing at Vill.+P.O. - Jerosa, P.S. -

Panskura, Dist. : Purba Medinipur.

23. Gopal Dandapatnak,

S/o Late Debendra Dandapatnak, aged

about 32 years, residing at Vill.+P.O. -

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Josora, P.S. Paskura, Dist. : Purba

Medinipur.

24. Sanatan Mondal,

S/o. Sri Sadhan Mondal, aged about 38

years, residing at Vill. + P.O. - Baksi,

P.S. Bagnan, Dist. : Howrah.

25. Ghanashyam Kanrar,

S/o Jagendra Kanrar, aged about 38 years,

residing at Vill. - Baksi, P.O. - Baksi,

P.S. Bagnan, Dist. : Howrah.

26. Alok Mondal,

S/o Late Shidesadhan Mondal, aged about 37

years, residing at Vill.+P.O. Bakshik,

P.S. - Bagnan, Dist: Howrah.

27. Biswanath Samanta,

S/o Late Prafulla Samanta, aged about

36 years, residing at Vill.+P.O. - Josora,

P.S. Paskura, Dist. : Purba Medinipur.

28. Radhanath Bera,

S/o Sri Sushil Bera, aged about 22 years,

residing at Vill. Josora, Post - Josora,

P.S. Panskura, Dist. : Purba Medinipur.

29. Gauranga Paul

S/o Late Nanda Paul, aged about 23 years,

Residing at Vill. Jatarpur, P.O.-Hatsar-

beria, P.S. Daspur, Dist.: Paschim

Medinipur.

30. Sri Subrata Mondal,

S/o Late Siskir Mondal, aged about 35

years, residing at Vill. Dakhin Deora,

P.O. - Nakala, P.S. Shyampur, Dist. -

Howrah.

31. Siddhainath Mondal,

S/o. Late Amulya Chandra Mondal,

aged about 42 years, residing at Vill. +

P.O. Kashimali, P.S. - Jaypur, District -

Howrah.

32. Shri Jayanta Kanrar,
S/o Ghanashyam Kanrar, aged about
years, residing at Vill. Hariharpur,
P.O. Benapur, P.S. - Bagnan, Dist. - Howrah.

33. Niranjan Dolui,
S/o. Purna Dolui, aged about 35 years,
residing at Vill. - Phutikberia, P.O. -
Khalna, P.S. Jaypur, Dist. : Howrah.

..... APPENDIX

From No. 1 to 33 above are working in the
Engineering Department of Permanent way
under the different subordinates of Kharagpur
Division as labourers under Contractor.

..... APPLICANTS.

- :: Versus :: -

1. Union of India through the General
Manager, S.E.Rly., Garden Reach, Kolkata-
700 033.

Contd. P/9.

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2. The Divisional Railway Manager,

S.E. Rly., Kharagpur, P.O. & P.S. -

Kharagpur, District : Paschim Medinipur.

3. The Sr. Divisional Personnel Officer,

S.E.Rly., Kharagpur, P.O. & P.S. - Kharagpur

District : Paschim Midnapore.

4. The Sr. D.E.N. (Co-ordination),

S.E.Rly., Kharagpur, P.O. & P.S. - Kharagpur

District : Paschim Midnapore.

..... RESPONDENTS.

6a/

For the Applicant : None

For the Respondents : Mr. A.K. Banerjee, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved by non-absorption in Kharagpur Division, S.E. Railway, the following specific relief have been sought for by the applicants in the instant application:

"8(a) An order do issue directing the respondents to absorb the applicants in Group-D post under different subordinates of permanent way of Kharagpur Division of S.E. Railway.

(b) Leave may be granted to file this original application jointly under rule 4(5)(a) of the CAT Procedure rule, 1987."

2. None appeared for the applicants during final hearing. Ld. counsel for respondents is present. As this matter has been filed in 2012, the same is taken up for disposal. Examined the pleadings and documents on record.

It is noted that although the reply had been filed on 03.10.2013, the applicant has not filed any rejoinder to the same. Though liberty was granted, no written notes of arguments have been filed.

3. The applicant's submission, as inferred from their pleadings and in a brief compass, is as follows:

That the applicants were engaged as contractors' labourers by different Railway Contractors to perform a variety of permanent way works in the Kharagpur Division of S.E. Railway. That though the applicants were appointed through the contractors, they had to perform the following types of work under the supervision of different P.W.I.s of Kharagpur Division of S.E. Railway:

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- (i) Renewal of sleeper;
- (ii) Renewal of rail;
- (iii) Renewal of points and crossing;
- (iv) Packing;
- (v) Rail joint welding;
- (vi) Formation treatment.

That the contractors' labourers who had rendered their services in Metro Railway had been regularized by the Metro Railway Authorities vide Office order dated 23.03.2010.

That the present applicants are similarly circumstanced as the contractors' labourers of Metro Railway and hence as they cannot be discriminated, the applicants have claimed absorption in the Kharagpur Division of S.E. Railway.

The applicants have advanced the following grounds in support of their claims:

- (i) That their claim for regularization is similar to Coal and Ash contractor labourers as they are serving for more than 10 years in Kharagpur Division.
- (ii) The work performed by contractor labourers is perennial in nature and
- (iii) That the contractors labourers who had rendered their service in Metro Railway had been regularized in Metro Railway vide order dated 23.03.2010.

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4. Per contra, the respondents in their pleadings as well as their oral submission, argued as follows:

That the applicants have been engaged by contractors selected through a bidding process and that it is the responsibility of the contractors to supervise the labourers employed by the contractors and under no circumstances does the Railway Authority supervise the work of labourers engaged by the contractors.

That the applicants are neither Coal and Ash handling workers engaged by the contractors nor are the applicants engaged by the Railway Administration through contractual agreements between the Railways and the applicants. The only responsibility of the Railway Administration is to pay the contractors' bill following the extant rules on the subject. Thus, the applicants, being labourers of the contractors, cannot claim for regularization under any circumstances and their prayer is not maintainable either in law or in fact.

That the applicants have annexed individual job certificates which have been issued by the contractors and not by the respondent authority.

That the Coal and Ash handling labourers who were engaged by the contractors for picking up coal and ash cinders of Stream Locomotive were regularized as because Stream Locos were wound up due to permanent closing down of Stream Locos in early 1990s and hence, being a model employer, the Railways regularized the coal and ash labourers as work allotted to them had come to an end.

That the applicants have not cited any statutory rules which entitle them to be regularized in the Railway.

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The respondents strongly denied that the applicants are similarly placed as contract labourers in Metro Railway and in their support, the respondents have referred to the ratio held by the Hon'ble Apex Court in the case of **State of Karnataka vs. Uma Devi, AIR 2006 SC 1806, Post Master General, Kolkata & Ors. Vs. Tutu Das reported in 2007 (L&S) 179 and Mahendra L. Jain vs. Indore Development Authority reported in 2005(1) SCSLJ.**

The respondents have further cited OA.119 of 2007, OA. 118 of 2009 and OA. 94 of 2009, filed on similar cause of action which had been dismissed by the Central Administrative Tribunal, Calcutta Bench on 21.04.2011.

Issue

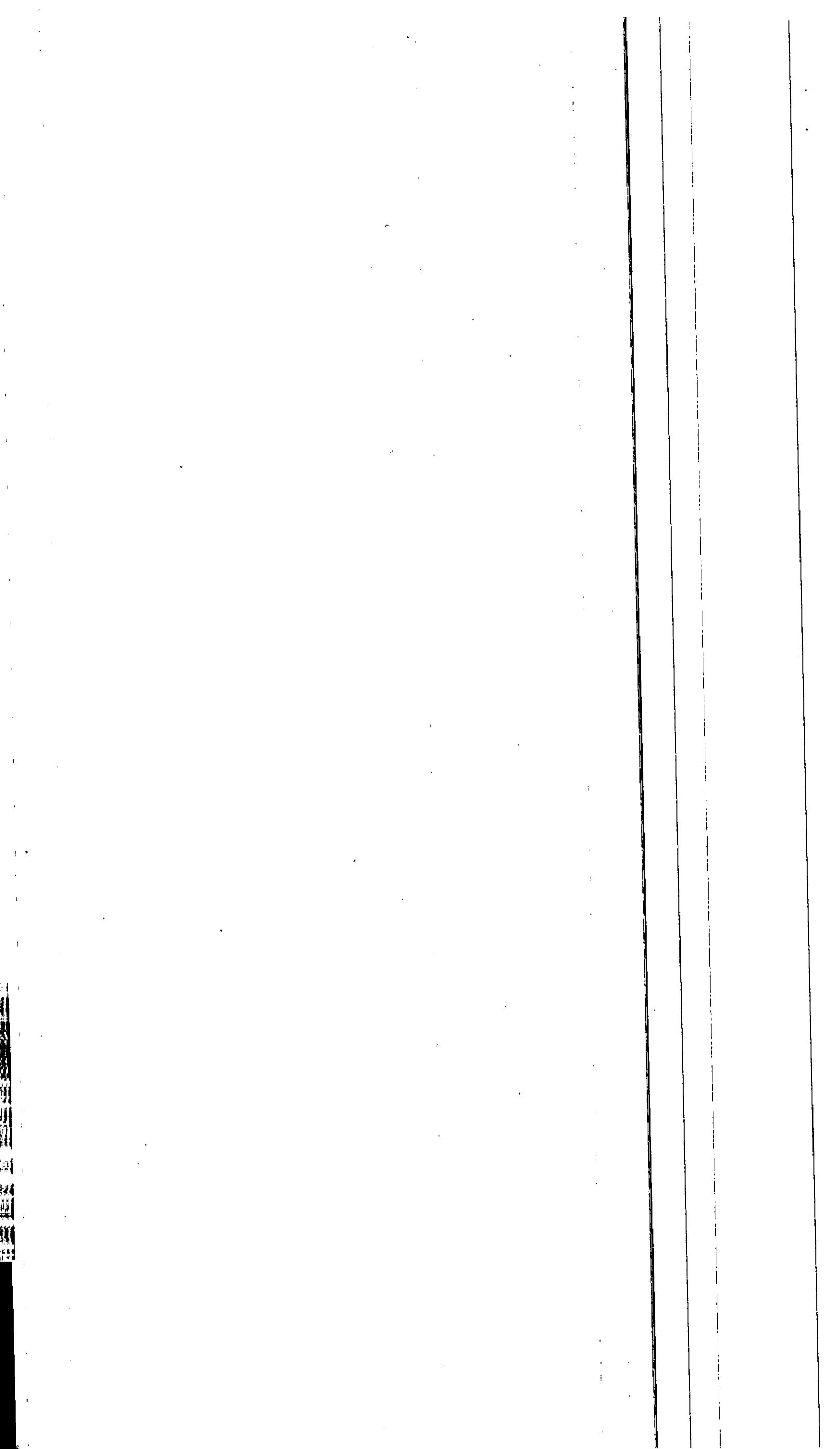
5. The issue to be resolved in the context of the instant application is whether the labourers engaged by the contractors (who have been selected through a bidding process) are entitled for regularization.

Findings

6. The only ground advanced by the applicants is that as the applicants have been working as trackmen for more than 10 years, their claim for regularization is based on absorption order issued by Metro Railway dated 23.03.2010 (Annexure A-4 to the OA collectively).

The applicants, however, have not placed in their pleadings any evidence to prove that they are similarly circumstanced as the contractors' laborers in Metro Railway. On the other hand, the respondents have robustly denied that the applicants are similarly circumstanced as the contractors' labourers in Metro Railway.

[Signature]



The next question that is to be answered is whether the statement of law as contained in Para 53 in **Secretary, State of Karnataka v. Uma Devi**(2006) 3 SCC 1 and the general ratio laid down by the Constitution Bench will be applicable and whether the exceptions made in Para 53 are attracted in this case.

"**Uma Devi**(supra) has been applied in the following situations viz:

- (1) where appointments were made in the teeth of a policy decision that there should not be any further recruitment [**National Fertilizers Ltd. v. Somvir Singh**, (2006) 5 SCC 493];
- (2) where the appointments were made on temporary basis for transitory work, on work charged basis[**State of Gujarat v. Karshanbhai K.Rabari** (2006) 6 SCC 21];
- (3) where ample materials existed showing that the temporary or contingent employees were doing the work of permanent nature and were required to do work which were used to be done by skilled employees[**Mineral Exploration Corpn. Employees' Union v. Mineral Exploration Corpn Ltd.**, (2006) 6 SCC 310];
- (4) where at the relevant point of time statutory rules provided for selection through Public Service Commission which was not done[**R.S. Garg v. State of U.P.**, (2006) 6 SCC 430];
- (5) where a direction was given by the High Court that part time tube well operators are to be treated as permanent employees[**U.P. Gram Panchayat Adhikari Sangh v. Daya Ram Saraj**, (2007) 2 SCC 138];
- (6) where a circular had been issued containing guidelines to engage the existing contract labour, such as piecemeal rated labour against sanctioned vacancies as that would violate Art. 16[**Accounts Officer (A&I), AP STRC v. K.V. Ramana**, (2007) 2 SCC 324];
- (7) where regularization was sought to be made on the basis of a policy decision contained in a circular letter and even if it was one adopted in terms of Art. 162 of the Constitution emphasizing primacy of statutory rules and rules under Art. 309[**Punjab Water Supply & Sewerage Board v. Ranjodh Singh**, (2007) 2 SCC 491];

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(8) where an industrial dispute was raised by a temporary employee or an university claiming regularization on the basis of working continuously over 14 years [Chandra Shekhar Azad Krishi Evam Prodyogiki Vishwavidyalaya v. United Trades Congress, (2008) 2 SCC 552];

In the instant application, it is not the case of the applicants that they are casual workmen engaged by the respondent authority on daily wages basis, nor are they temporary or contingent employees of the Railway.

The right to regularization of a person appointed on a purely contractual basis would depend on express and/or implied terms of the contract. The applicants have not been engaged on contract basis by the Railways but by the contractors and their terms of services would depend on the contracts executed between them/engagement letter issued by contractors to individual applicants.

Applicability of **Uma Devi (supra)** with reference to contexts 1 to 8 prepage hence do not hold good in case of the applicants. The applicants have not been appointed in temporary basis against any temporary scheme and therefore following the principle in **Bhagwan Dass & Ors. vs. State of Haryana (1987) 4 SCC 634**, they cannot claim any right to be absorbed as regular employees on permanent basis.

The applicants are not employees of any work charge establishment. It has not been established by the applicants that while accepting the engagement from the contractors, the applicants had been given any understanding that such engagement will mature into any kind of permanence and in this context their plea or claim for regularization cannot be entertained.

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In A.Umarani vs. Registrar, Cooperative Societies & Ors. (2004) 7 SCC 112,

the Hon'ble Apex Court held as follows:

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

In this application, no reference has been made to any statutory rules which are applicable to the applicants and hence, the respondent authority cannot be directed to make any such appointments, in contravention of their statutory rules.

The applicants have claimed that they have worked continuously for more than 10 years. We are guided herein by the ratio held by the Hon'ble Apex Court in **Madhyamik Shiksha Parishad, U.P. vs. Anil Kumar Mishra & Ors. (2005) 5 SCC 122** wherein it is clearly laid down that completion of 240 days of continuous service in a year will be attracted only in a case where reinstatement had been effected without completing with the provisions contained in Section 25F of Industrial Dispute Act but would not be relevant for regularization of service. Herein also, the applicants have failed to furnish any statutory rules which entitle them for regularization of completion of 10 years of engagement by the contractors.

In **Post Master General vs. Tutu Das (2007) 2 SCC (L&S) 179**, the Hon'ble Apex Court had held that "equality is a positive concept". Therefore, it cannot be invoked where no legal right is established.

The applicants have claimed for regularization on the basis of similar circumstanced status with the contractors' labourers absorbed by Metro Railway.

In **State of Haryana & Another vs. Tilak Raj & Ors., 2003(6) SCC 123** it has been

hence

held that "it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination.

No material was placed before us as to the nature of engagement or duties of the applicants vis-à-vis contractual labourers in Metro Railway and hence the principle of equivalence cannot be applicable in this case.

From the records (Tribunal's order dated 04.10.2012), it appears that Id. counsel for applicant had referred to OA. 742/11 mentioning that the issue therein is similar to that in the present case. While OA. 742/2011 has been disposed of on 05.09.2012, the cause of action therein was challenge to a transfer order dated 18.07.2011 whereby the applicant was transferred from GRC to SRC. The cause of action in the instant application is a claim for regularization. Hence, the decision in OA. 742/2011 appears to have no relevance with respect to the instant application.

We refer herein to OA. 118/2009 and OA. 94/2009, both of which had been filed by certain other applicants aggrieved with non-absorption in S.E. Railway. The applicants therein had also worked as contractors' labourers engaged by Railway Contractors to perform different permanent works. The Tribunal, while relying on the ratio laid down by the Hon'ble Apex Court in *Uma Devi (supra)* and as reiterated in *Official Liquidator vs. Dayanand and Ors.* 2008(10) SCC 1, had dismissed the applications on merit.

The present application, although filed on same cause of action, does not furnish additional grounds to support their claim for regularization beyond

hence

submissions made in the earlier OAs. Hence, we find no reason to differ with the findings of the Tribunal in OA. 118/2009 and OA. 94/2009.

Further, in the case of **State of Uttar Pradesh & Another vs. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti 2008(12) SCC 675**, the Hon'ble Apex Court has held that where the rules of absorption were in existence, absorption could be considered subject to terms and conditions of those rules only and that too if the employee showed a subsisting and enforceable right to this effect. The applicants had not been able to support their claim with any enforceable right as contained in any statutory provisions. Hence, we are of the considered view that the applicants' application is liable to be dismissed on merit.

7. Hence, the OA does not succeed.

There will be no order as to costs.

(Dr. Nandita Chatterjee)
Member (A)

(Manjula Das)
Member (J)

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