IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

201 **CWP-15912-2022**

Judgment Reserved on 31.08.2024
Judgement Pronounced on 06.09.2024

BOARD OF GOVERNORS, NATIONAL INSTITUTE OF TECHNOLOGY, KURUKSHETRA AND ORS ….PETITIONERS

Vs.

MESS KALYAN EMPLOYEES UNION AND ANR ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Amarjit Singh Virk, Advocate
for the petitioners.

Mr. Dinesh Kumar, Advocate
for respondent No. 1.

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JAGMOHAN BANSAL, J (ORAL)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of Award dated 12.01.2022 (Annexure P-6) whereby Labour Court has answered the reference in favour of the workmen.

2. The petitioner is a Central Institute constituted in terms of National Institute Technology Act, 2007. The petitioner was initially an Engineering College which has now been declared as Central University. It is imparting education in the Engineering stream. It has various hostels for the stay of students. Every hostel is having an independent Co-operative mess. The respondent No. 1 is Union of workmen who are working in the hostel messes. The members of the Union, time to time, on temporary basis, have been appointed by Mess Committees. The hostel messes are managed by the

Committee of Students. Every year Committee changes, however, mess employees continue to work.

3. The Union made a representation to Labour Authorities and matter came up before Labour Court by way of reference. The following question was referred to the Labour Court:-

> "*Whether the action of the management of National Institute of Technology(NIT), Kurukshetra in not accepting the demands of the Union Mess Kalyan Employees Union(Mess Kalyan Karamchari Sangh), National Institute of Technology, Kurukshetra is legal and justified? If not, what relief the workmen is entitled to and from which date?*"

4. The Union preferred claim petition wherein it raised a demand for regularization of services of its members on regular pay scale at par with State/Central Government employees.

5. The Members of the Union are working on various posts known as Supervisor, Head Cook, Assistant Cook, Cook, Counterman, Lady Attendant, Waiter, Common Room Attendant, Chapati Man, Kitchen Man, Sweeper, Pantry Man etc. They are working in different hostels of the petitioners for last 12 to 35 years. They were appointed by Hostel Committee with the approval of Chief Warden, however, without any appointment letter of the University.

6. The Labour Court considering the evidence led by workmen as well as University came to a conclusion that there is Master-Servant relation between University and Members of Union. They have been working for quite a long time with the Management. Thus, for all intent and purposes, the workers are employees of University-Management. The Management by not regularizing them is adopting unfair trade practice.

7. The Labour Court with the aforesaid observations ordered to regularize 250 workers and pay them regular pay scale from the date of

completion of 10 years service from their joining with all consequential benefits. The operative portion of the Award is reproduced as below:-

> "*24. In our opinion, the ratio of above noted judgment is clearly applicable to the case of claimants-union. It is undisputed position that as on the date of filing of the claim petition, they have completed more than 10 to 30 years of services as Supervisor, Head Cook, Assistant Cook, Cook, Counterman, Lady Attendant, Waiter, Common Room Attendant, Chapati Man, Kitchen Man, Sweeper, Pantry Man etc. Therefore, there could be no justification to deny them the benefit of the policy of regularization on the ground that they were paid out of the student's fund.*
>
> *25. In view of the above factual and legal preposition and evidence on record and in view of my aforesaid finding, claimants/workmen numbering 250 as mentioned in the list attached with the claim petition deserve regularization. Hence, management of NIT-Kurukshetra is directed to regularize the workmen/claimants to the grade of lowest-rank-employees of the NIT-Kurukshetra in the regular pay scale from the date of completion of 10 years from their joining, with all consequential benefits. The award is passed accordingly*."

8. Mr. Amarjit Singh Virk, Advocate submits that mess workers were never appointed against regular post. Their appointment was temporary. Though, the appointment was made by Mess Committee under the signature of Warden/Chief Warden, yet, no appointment letter was issued by the University. The appointment was purely temporary. Every year, new set of students join hostels and accordingly, new Managing Committees are constituted. The said Committees collect funds from the students and pay salary to the mess workers. For the purpose of continuity and maintaining discipline, a worker once appointed is permitted to continue till he leaves or is removed on account of his bad act and conduct. The University had never paid CPF for the mess workers. Contribution towards CPF or EPF, if any, was made by Managing Committees

of the hostels. The University has no concern with the workmen. The University has provided space for the mess and for the purpose of discipline, continuity and harmony, Warden/Chief Warden and other officials of the University had supervised activities of the mess staff.

9. Per contra, Mr. Dinesh Kumar, Advocate submits that workers were appointed by Warden/Chief Warden and at the time of appointment, a letter was issued under the signature of Warden. The University Management from time to time terminated services of mess workers, thus, there was deep and pervasive control of University Management over the mess workers. They had worked for more than 3 decades without any interruption. They deserve regularization as well as regular pay scale as are payable to the permanent employees of the University. As per judgment of Hon'ble Supreme Court in '***Oil and Natural Gas Corporation Limited Vs. Petroleum Coal Labour Union and others (2015) 6 SCC 494'***, the Labour Court has power to regularize workers. In view of judgment of Supreme Court in '***State of Punjab Vs. Jagjit Singh and others, (2016) 4 SCT 641*,** the workers are entitled to minimum of regular pay scale, whereas management is paying a meager amount of salary.

10. The conceded position emerging from record, arguments of both sides and judicial precedents is:-

(i) Petitioner is a National Institute of Technology and governed by NIT Act, 2007.

(ii) It is fully funded by Government of India. It is not engaged in any business or minting profit whereas imparting education in the stream of Engineering.

(iii) It has no independent source of income whereas getting funds from Central Government.

(iv) All the appointments in the institute are made in accordance with statutory Rules as well as Rules applicable to public employment.

(v) No appointment can be made in the institute contrary to statutory and constitutional provisions.

(vi) The respondent-Mess workers were never appointed by Institute-University.

(vii) They were never paid out of funds of the University or consolidated fund of Government of India.

(viii) They were paid from the funds contributed by students who are member of co-operative mess.

(ix) There is no permanent post against which respondents were appointed.

(x) No prescribed procedure meant for appointment of regular employees was followed at the time of their appointment.

(xi) The University officials never prepared Annual Confidential Reports of mess workers.

(xii) A fund for the welfare of mess workers was created wherein contribution was made by workers and students.

(xiii) The workers are entitled to leave, free food, uniform, accommodation etc.

11. The impugned Award is primarily based upon judgment of Supreme Court in ***Maharashtra State Road Transport Corporation Ltd. Vs. Casteribe Rajya Parivahan Karamchari Sanghalana, (2009) 8 SCC 556.***

In the said case, workers of Road Transport Corporation alleged that Corporation has indulged in unfair labour practice in terms of items 5, 6, 9 and 10 of Schedule 4 to Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices, 1971 (for short '**MRTU and PULP Act'**). The workers were working every day for at least 8 hours, however, they were paid a paltry amount. The post of sweepers/cleaners were available, yet, these employees had been kept on casual and temporary basis for years

altogether denying them the benefit of permanency. The matter travelled from Industrial Tribunal to High Court and reached to Supreme Court. The Supreme Court noticed power of Industrial and Labour Court under Section 30 of MRTU and PULP Act and held that Constitution Bench in ***State of Karnataka v. Umadevi (2006) 4 SCC 1*** had not considered provision of MRTU and PULP Act and powers of Industrial and Labour Courts provided therein. The issue of unfair labour practice was not at all referred or considered or decided in ***Umadevi (Supra)***. Unfair labour practice, on the part of employer in engaging employees as badlis, casuals or temporaries and continue them as such for years with the object of depriving them status and privileges of permanent employees and power of Industrial and Labour Courts under Section 30 of MRTU and PULP Act did not fall for adjudication or consideration of Constitution Bench. The Supreme Court in ***Umadevi (Supra)*** did not denude the Industrial and Labour Courts' statutory powers under Section 30 read with Section 32 of MRTU and PULP Act. The relevant extracts of said judgment are reproduced as below:-

> "*26. The question that arises for consideration is: have the provisions of the MRTU and PULP Act been denuded of the statutory status by the Constitution Bench decision in Umadevi (3)? In our judgment, it is not. The purpose and object of the MRTU and PULP Act, inter alia, is to define and provide for prevention of certain unfair labour practices as listed in Schedules II, III and IV. The MRTU and PULP Act empowers the Industrial and Labour Courts to decide that the person named in the complaint has engaged in or is engaged in unfair labour practice and if the unfair labour practice is proved, to declare that an unfair labour practice has been engaged in or is being engaged in by that person and direct such person to cease and desist from such unfair labour practice and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of*

reasonable compensation), as may in the opinion of the court be necessary to effectuate the policy of the Act. The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer. The provisions of the MRTU and PULP Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi (3). As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred to, considered or decided in Umadevi (3). Unfair labour practice on the part of the employer in engaging employees as badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of the Industrial and Labour Courts under Section 30 of the Act did not fall for adjudication or consideration before the Constitution Bench. It is true that Dharwad Distt. PWD Literate Daily Wages Employees' Assn. arising out of industrial adjudication has been considered in Umadevi (3) and that decision has been held to be not laying down the correct law but a careful and complete reading of the decision in Umadevi (3) leaves no manner of doubt that what this Court was concerned in Umadevi (3) was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognised by the rules or procedure and yet orders of their regularisation and conferring them status of permanency have been passed. Umadevi (3) is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High

Courts (Article 226) should not issue directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme. Umadevi (3) does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

34. The question now remains to be seen is whether the recruitment of these workers is in conformity with Standing Order 503 and, if not, what is its effect. No doubt, Standing Order 503 prescribes the procedure for recruitment of Class IV employees of the Corporation which is to the effect that such posts shall be filled up after receiving the recommendations from the Service Selection Board and this exercise does not seem to have been done but Standing Orders cannot be elevated to the (sic status of) statutory rules. These are not statutory in nature. We find merit in the submission of Mr Shekhar Naphade, learned Senior Counsel for the employees that Standing Orders are contractual in nature and do not have a statutory force and breach of Standing Orders by the Corporation is itself an unfair labour practice. The employees concerned having been exploited by the Corporation for years together by engaging them on piece-rate basis, it is too late in the day for them to urge that procedure laid down in Standing Order 503 having not been followed, these employees could not be given status and privileges of permanency. The argument of the Corporation, if accepted, would tantamount to putting premium on their unlawful act of engaging in unfair labour practice. It was strenuously urged by the learned Senior Counsel for the Corporation that the Industrial Court having found that the

> *Corporation indulged in unfair labour practice in employing the complainants as casuals on piece-rate basis, the only direction that could have been given to the Corporation was to cease and desist from indulging in such unfair labour practice and no direction of according permanency to these employees could have been given. We are afraid, the argument ignores and overlooks the specific power given to the Industrial/Labour Court under Section 30(1)(b) to take affirmative action against the erring employer which as noticed above is of wide amplitude and comprehends within its fold a direction to the employer to accord permanency to the employees affected by such unfair labour practice."*

12. In the case in hand, Industrial Tribunal has held that engaging workmen as badlis, casuals or temporaries and continue them as such for years, with the object of depriving them of status and privileges of permanent workmen amounts to unfair trade practice as contemplated by **entry 10 of 5th schedule** of ID Act. The said entry is reproduced as below:-

> "*10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.*"

The Labour Court has held that item 6 of Schedule 4 of MRTU and PULP Act is *pari materia* with entry 10 of 5th schedule to ID Act, thus, both would suffer common interpretation. The expression "unfair labour practice" has been defined under Section 2(ra) of ID Act. Section 25-T and 25-U of ID Act provide for prohibition and penalty for committing offence of unfair labour practice. The Labour Court is not barred to exercise its power of declaring and issuing directions where a *prima-facie* case is made out of violation of entry 10 of 5th schedule of ID Act. The University-Management has engaged workmen as temporary or casual and continued them for years with the object of depriving

them benefit of regular workmen, thus, its act constitutes 'unfair labour practice' under Section 2(ra) read with item 10 of 5th Schedule to ID Act.

13. Before adverting with findings of Labour Court with respect to its power to declare impugned practice as unfair labour practice and order regularization, it would be appropriate to look at Section 2 (ra), 25-T, 25-U and 34 of ID Act which are reproduced as below:-

> *"**2(ra). "unfair labour practice"** means any of the practices specified in the Fifth Schedule;*
>
> ***25T. Prohibition of unfair labour practice**.—No employer or workman or a trade union, whether registered under the Trader Unions Act, 1926 (16 of 1926), or not, shall commit any unfair labour practice.*
>
> ***25U. Penalty for committing unfair labour practices**.—Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.*
>
> ***34. Cognizance of offences**.—(1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.*
>
> *(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class, shall try any offence punishable under this Act.*"

14. From the perusal of afore-cited sections and entry 10 of 5th schedule, it is evident that to employ workmen as badlis, casual or temporary and continue for years with the object of depriving them of status and privileges of permanent workmen amounts to unfair labour practice. Section 25-T prohibits unfair labour practices and 25-U prescribes punishment in the form of imprisonment. Section 34 provides for cognizance of offence. From the conjoint reading of these sections, it is evident that if an employer or workman or a trade

union commits any unfair labour practice, it amounts to an offence punishable with imprisonment for a term which may extend to 6 months. Court can take cognizance of the offence on the complaint made by or under the Authority of Appropriate Government.

15. In the case in hand, the reference was made to Labour Court by Central Government under Clause-(d) of sub-section (1) and sub-section (2-A) of Section 10 of ID Act. The relevant extracts of Section 10 of ID Act are reproduced as below:-

> ***"10. Reference of disputes to Boards, Courts or Tribunals****.—(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,—*
>
> *(a) refer the dispute to a Board for promoting a settlement thereof; or*
>
> *(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or*
>
> *(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or*
>
> *(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:*
>
> *Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):*
>
> *Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section*

notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

(1A) xxx xxx xxx

(2) xxx xxx xxx

(2A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government:

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months:

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit: Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed."

16. The reference to Labour Court was made by Central Government in terms of Section 10 (1)(d) of ID Act. As per aforesaid Clause, matter specified in the second schedule or third schedule are referred to a Tribunal for adjudication. For the ready reference, second schedule and third schedule of ID Act are reproduced as below:-

> *"THE SECOND SCHEDULE*
> *(See section 7)*
> *MATTERS WITHIN THE JURISDICTION OF LABOUR COURTS*
> *1. The propriety or legality of an order passed by an employer under the standing orders;*
> *2. application and interpretation of standing orders;*
> *3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;*
> *4. Withdrawal of any customary concession or privilege;*
> *5. Illegality or otherwise of a strike or lock-out; and*
> *6. All matters other than those specified in the Third Schedule."*
>
> *"THE THIRD SCHEDULE*
> *(See section 7A)*
> *MATTERS WITHIN THE JURISDICTION OF INDUSTRIAL TRIBUNALS*
>
> *1. Wages, including the period and mode of payment;*
> *2. Compensatory and other allowances;*
> *3. Hours of work and rest intervals;*
> *4. Leave with wages and holidays;*
> *5. Bonus, profit sharing, provident fund and gratuity;*
> *6. Shift working otherwise than in accordance with standing orders;*
> *7. Classification by grades;*
> *8. Rules of discipline;*
> *9. Rationalisation;*
> *10. Retrenchment of workmen and closure of establishment; and*
> *11. Any other matter that may be prescribed."*

17. The mode and manner of redressal of issues referred in second and third schedule are entirely different from issues under 5th schedule. The items listed in second and third schedule directly relate to wages of employees, changes of terms and conditions of employment, rules of discipline, retrenchment, discharge or dismissal of workmen etc. The 5th schedule prescribes different items which are termed as unfair labour practices. The

Labour Court/Tribunal is empowered to adjudicate issues relating to second and third schedule whereas issues relating to unfair trade practice are adjudicated by a Court which cannot be inferior to a Court of Metropolitan Magistrate or Judicial Magistrate 1st Class.

18. The Labour Court, in the case in hand, has exercised power which is vested in a Court under Section 30 of MRTU and PULP Act. Section 30 of MRTU and PULP Act sets out powers of Industrial and Labour Courts. Under the said Section, Industrial and Labour Court has power to declare any practice as 'unfair labour practice' and pass affirmative orders. Section 30 of MRTU and PULP Act is reproduced as below:-

> *"30. Powers of Industrial and Labour Courts.-*
> *(1) Where a court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order -*
>
> *(a) declare that an unfair labour practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;*
>
> *(b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;*
>
> *(c) where a recognised union has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all or any of its rights under sub-section (1) of Section 20 or its right under Section 23 shall be suspended.*

(2) In any proceeding before it under this Act, the Court may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision:

Provided that, the Court may, on an application in that behalf, review any interim order passed by it.

(3) For the purpose of holding an enquiry or proceeding under this Act, the Court shall have the same powers as are vested in Courts in respect of -

(a) proof of facts by affidavit;

(b) summoning and enforcing the attendance of any person, and examining him on oath;

(c) compelling the production of documents; and

(d) issuing commissions for the examination of witnesses.

(4) The Court shall also have powers to call upon any of the parties to proceedings before it to furnish in writing, and in such forms as it may think proper, any information, which is considered relevant for the purpose of any proceedings before it, and the party so called upon shall thereupon furnish the information to the best of its knowledge and belief, and if so required by the Court to do so, verify the same in such manner as may be prescribed."

19. The Central Government Industrial Tribunal-cum-Labour Court constituted under ID Act has no power as vested by Section 30 of MRTU and PULP Act in the Industrial and Labour Court. The Supreme Court in ***Casteribe Rajya Parivahan Karmchari Sangathana (supra)*** has primarily relied upon Section 30 and 32 of MRTU and PULP Act and distinguished judgment of Constitution Bench in ***Umadevi (supra)***. The Labour Court constituted under ID Act while answering reference made under Section 10 of ID Act could not exercise powers vested by Section 30 of MRTU and PULP Act on Industrial and

Labour Courts, thus, Labour Court has wrongly invoked power to declare any practice as unfair labour practice and pass consequential orders.

20. The Labour Court has declared that continuation of any worker as casual or temporary, in terms of entry 10 of 5th schedule of ID Act is unfair labour practice. **Entry 6 of 4th schedule** of MRTU and PULP Act adverts with unfair labour practice. The Labour Court has held that item 6 of 4th schedule of MRTU and PULP Act is *pari materia* with entry 10 of 5th schedule of ID Act, thus, common interpretation should be made. Indubitably, language of item 6 of 4th schedule of MRTU and PULP Act is *pari materia* with entry 10 of 5th schedule of ID Act, however, scheme of ID Act is entirely different from MRTU and PULP Act. There is no power vested in Labour Court to advert with unfair labour practice under ID Act as vested in Labour Court constituted under MRTU and PULP Act. The Labour Court has transgressed its power while holding that absence of specific provision like Section 30 of MRTU and PULP Act would not denude Tribunal to remove unfair discrimination in the light of ***Casteribe* (Supra)** judgment. The Labour Court is bound to pass order within metes and bounds of ID Act. The Labour Court cannot travel beyond the banks of river of ID Act. Evey Court as well quasi-judicial authorities to do complete justice, carries ancillary powers while exercising substantive powers bestowed on it. However, a Court or quasi-judicial authority constituted under a particular Act cannot travel beyond the Act. The power which is not bestowed upon the Court or authority cannot be exercised by it.

21. The petitioner-University has been created by Government of India, thus, it is an instrumentality of Government of India. It is fully funded by Central Government and it has no source of income except paltry amount of fee collected from students. The University cannot create posts. The posts are created by Central Government. There is admittedly no sanctioned post against

which either mess workers were appointed or could be adjusted. It is case of neither side that despite availability of permanent post, the mess workers were appointed on temporary or casual basis. The University cannot create posts and Central Government has not created any post for mess workers. The Labour Court has ordered to regularize the mess workers. In the absence of permanent post, there was no question of making mess workers permanent or regular employees.

In ***Mahatma Phule Agricultural University Vs. Nasik Zilla Sheth Kamga (2001) 7 SCC 346,*** Supreme Court while dealing with item 6 of 4th Schedule of MRTU and PULP Act has held that inaction on the part of State Government to create post would not mean that an unfair labour practice has been committed by the Universities. The reasoning given by High Court to conclude that the case was squarely covered by item 6 of schedule 4 of MRTU and PULP Act cannot be sustained. The employees cannot be given status of permanency. The relevant extracts of the judgment are reproduced as below:-

> ***"13.*** *To be seen that, in the impugned judgment, the High Court notes that, as per the law laid down by this Court, status of permanency could not be granted. In spite of this the High Court indirectly does what it could not do directly. The High Court, without granting the status of permanency, grants wages and other benefits applicable to permanent employees on the specious reasoning that inaction on the part of the Government in not creating posts amounted to unfair labour practice under Item 6 of Schedule IV of the MRTU & PULP Act. In so doing the High Court erroneously ignores the fact that approximately 2000 workmen had not even made a claim for permanency before it. Their claim for permanency had been rejected by the award dated 20-2-1985. These workmen were only seeking quantification of amounts as per this award. The challenge, before the High Court, was only to the quantification of the amounts. Yet by this sweeping order the High*

Court grants, even to these workmen, the wages and benefits payable to other permanent workmen.

14. *Further, Item 6 of Schedule IV of the MRTU & PULP Act reads as follows:*

"6. To employ employees as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees."

The complaint was against the Universities. The High Court notes that as there were no posts the employees could not be made permanent. Once it comes to the conclusion that for lack of posts the employees could not be made permanent, how could it then go on to hold that they were continued as "badlis", casuals or temporaries with the object of depriving them of the status and privileges of permanent employees? To be noted that the complaint was not against the State Government. The complaint was against the Universities. The inaction on the part of the State Government to create posts would not mean that an unfair labour practice had been committed by the Universities. The reasoning given by the High Court to conclude that the case was squarely covered by Item 6 of Schedule IV of the MRTU & PULP Act cannot be sustained at all and the impugned judgment has to be and is set aside. It is however clarified that the High Court was right in concluding that, as per the law laid down by this Court, status of permanency could not be granted. Thus all orders wherein permanency has been granted (except award dated 1-4-1985 in IT No. 27 of 1984) also stand set aside."

22. A three Judge Bench of Court in ***Official Liquidator v. Dayanand and Others, (2008) 10 SCC 1*** has adverted with this issue. The court has held that courts cannot ask State to create posts to absorb employees. The findings of the court read as:

"59. The creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source

and mode of recruitment and qualifications and criteria of selection, etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and laying down the qualification, etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides.

60. In ***State of Haryana v. Navneet Verma [(2008) 2 SCC 65 : (2008) 1 SCC (L&S) 373]****, a Division Bench of two Judges referred to* ***M. Ramanatha Pillai v. State of Kerala [(1973) 2 SCC 650 : 1973 SCC (L&S) 560]****,* ***Kedar Nath Bahl v. State of Punjab [(1974) 3 SCC 21]****,* ***State of Haryana v. Des Raj Sangar [(1976) 2 SCC 844 : 1976 SCC (L&S) 336]****,* ***N.C. Singhal (Dr.) v. Union of India [(1980) 3 SCC 29 : 1980 SCC (L&S) 269]*** *and* ***Avas Vikas Sanghathan v. Engineers Assn. [(2006) 4 SCC 132 : 2006 SCC (L&S) 613]*** *and culled out the following principles: (****Navneet Verma case [(2008) 2 SCC 65 : (2008) 1 SCC (L&S) 373]****, SCC p. 70, para 14)*

"(a) the power to create or abolish a post rests with the Government;

(b) whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity;

(c) creation and abolition of posts is a matter of government policy and every sovereign Government has this power in the interest and necessity of internal administration;

(d) creation, continuance and abolition of posts are all decided by the Government in the interest of administration

and general public; (e) the court would be the least competent in the face of scanty material to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fides, legal or factual;

(f) as long as the decision to abolish the post is taken in good faith in the absence of material, interference by the court is not warranted. "

61. In ***State of Karnataka v. Umadevi [(2006) 4 SCC 1 : 2006 SCC (L&S) 753]*** *the Constitution Bench adverted its attention to financial implications of creation of extra posts and held that the courts should not pass orders which impose unwarranted burden on the State and its instrumentalities by directing creation of particular number of posts for absorption of employees appointed on ad hoc or temporary basis or as daily wagers.*

62. In ***Aravali Golf Club v. Chander Hass [(2008) 1 SCC 683 : (2008) 1 SCC (L&S) 289]*** *also, a two-Judge Bench considered the issue relating to creation of posts and held: (SCC p. 688, para 15)*

"15. The court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organisation. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the courts cannot take upon themselves the power of creation of a post. Therefore, the directions given by the High Court and the first appellate court to create the posts of tractor driver and regularise the services of the respondents against the said posts cannot be sustained and are hereby set aside. "

23. From the above cited judgments, it can be concluded that Courts cannot ask the State to create/abolish posts or formulate/structure/re-structure a cadre. It is within domain of the executive which as per its financial resources, workload, need of manpower, availability of resources etc. decides.

24. In the present case, concededly there is no regular/permanent post against which mess workers were appointed. It is not a case where sanctioned posts were available but management made appointments on casual/contractual/temporary basis. It is a case where there are no permanent/sanctioned posts. By impugned order, Labour Court has ordered to regularize mess workers which can be implemented after creation of posts. Even Constitutional Courts cannot ask the State to create posts, therefore, there is no question of creation of posts on the directions of Labour Court, thus, order of Labour Court directing regularization/permanency of mess workers is patently bad in the eye of law and beyond the jurisdiction.

25. Different High Courts as well as Supreme Court prior to 2006 in many cases directed to States/Union of India to regularize part time/work charged/ad-hoc/contractual/daily wage employees. The foundation of all the judgments was length of service. In 2006, Constitution Bench in ***Umadevi (Supra)*** adverted with the question of regularization of temporary/part time/adhoc/daily wage employees. The Apex Court deprecated practice of employing temporary/part time or contractual employees though it held that in exigency, State can make appointment on contract basis. The Court held that regularization of contractual or part time employees would amount to legalization of back door entrants. The regularization of part time employees is violative of Articles 14, 16 & 309 of Constitution of India. The employees who are working on daily wage cannot claim discrimination on the ground that they have been paid lesser than regularly recruited employees. The High Court

should not ordinarily issue directions for absorption, regularization or continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. High Court is not justified in issuing interim orders in such cases. There is no fundamental or vested right in those who have been employed on daily wages or temporary or contract basis to claim that they have a right to be absorbed in service. The relevant extracts of the judgment read as*:*

> *"43. 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 16of 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. The High Courts acting under Article 226of the Constitution, should not ordinarily issue directions for absorption,*

regularisation, 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 the 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 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.

44. 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 ***Dharwad decision***

[(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] *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 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.*

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned 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 open eyes. It may be true that he is not in a position to bargain-not at arm's 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 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 succour 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.

46. 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 regularised since the decisions in ***Dharwad [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544]****,* ***Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826]****, [****Jacob M. Puthuparambil v. Kerala Water Authority, (1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697****] and [****Gujarat Agricultural University v. Rathod Labhu Bechar, (2001) 3 SCC 574 : 2001 SCC (L&S) 613****] and the like, have given rise to an expectation in them that their services would also be regularised. 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 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 for Civil Services Union v. Minister of Civil Service [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)]****,* ***National Buildings Construction Corpn. v. S. Raghunathan [(1998) 7 SCC 66 : 1998 SCC (L&S) 1770]*** *and* ***Chanchal Goyal (Dr.) v. State of Rajasthan [(2003) 3 SCC 485 : 2003 SCC (L&S) 322]****.] There is no case that any assurance was given by the Government or the department concerned 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* ***Dharwad decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544]****. Though, there is a case that the State had made regularisations in the past of similarly situated employees, the fact remains that such regularisations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases 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 regularised 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 regularisation 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.

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 of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14and 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 department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily

wages to claim that such employee should be treated on a par with 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 aright 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.

49. It is contended that the State action in not regularising 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. "

26. From the reading of different paragraphs of judgment of the Constitution Bench in ***Uma Devi (supra)***, it can be gleaned that plea of regularization was rejected because they were not recruited in accordance with prescribed procedure as contemplated by Article 14 and 16 of the Constitution. The Court formed an opinion that executive has made appointment of these employees without following procedure prescribed for regular appointment. On account of contractual/daily/ad hoc appointment, meritorious candidates do not participate and mediocre come forward. The executive in violation of procedure ensures backdoor entry of favourite and less meritorious candidates. The regularization of these backdoor entrants would encourage executive and jettison of rule of law as well as mandate of Articles 14 and 16 of the Constitution. At the cost of repetition, relevant extracts from the operative part of the judgment are reproduced as below:

i) 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.

ii) The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.

iii) 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.

iv) 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 open eyes. It may be true that he is not in a position to bargain-not at arm's 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 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.

v) 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 succour to them.

vi) 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.

vii) When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature.

viii) 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.

ix) It is contended that the State action in not regularising 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. "

27. A common thread running through observations and findings of the Apex Court, made in different paragraphs, is that State had made appointment without following procedure prescribed for regular recruitment which amounts to violation of Article 14 and 16 of the Constitution of India.

28. A two Judge Bench of Supreme Court in **Union of India and others v. Vartak Labour Union, (2011) 4 SCC 200** rejected claim of regularization of contractual employees who had worked for more than 30 years with Border Roads Organization. The relevant extracts of the judgment are reproduced as below:-

> ***"17.*** *We are of the opinion that the respondent Union's claim for regularisation of its members merely because they have been working for the BRO for a considerable period of time cannot be granted in light of several decisions of this Court, wherein it has been consistently held that casual employment terminates when the same is discontinued, and merely because a temporary or casual worker has been engaged beyond the period of his employment, he would not be entitled to be absorbed in regular service or made permanent, if the original appointment was not in terms of the process envisaged by the relevant rules. [**See** State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] ; Official Liquidator v. Dayanand [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] ; State of Karnataka v. Ganapathi Chaya Nayak [(2010) 3 SCC 115 : (2010) 1 SCC (L&S) 804] ; Union of India v. Kartick Chandra Mondal [(2010) 2 SCC 422 : (2010) 1 SCC (L&S) 385] ; Satya Prakash v. State of Bihar [(2010) 4 SCC 179 : (2010) 2 SCC*

(L&S) 353] and Rameshwar Dayal v. Indian Railway Construction Co. Ltd. [(2010) 11 SCC 733]"

29. A two Judge Bench of Supreme Court in ***Union of India and others v. All India Trade Union Congress and others, (2019) 5 SCC 773***, following ***Vartak Labour Union (supra),*** has held that no contractual employee can claim regularization. High Courts cannot direct authorities to frame policy and regularize the contractual employees.

30. A Division Bench of this Court vide judgment dated 31.05.2018 in ***Yogesh Tyagi and another v. State of Haryana and others, CWP No.17206 of 2014***, set aside policy of regularization made by the State. The Court has set aside policy on the ground that regularization of contractual employees who have been appointed without following prescribed procedure amounts to back door entry and it amounts to violation of Articles 14, 16 & 309 of Constitution of India.

31. A two Judge Bench of Apex Court in ***Union of India v. Ilmo Devi, (2021) 20 SCC 290*** considered question of regularization of part time employees of Union of India. The Court while setting aside judgment of this Court has held that High Court in exercise of its writ jurisdiction cannot ask State to regularize part time employees. The Court has further held that part time employees cannot claim pay parity with regular employees. The Court has noticed judgment of this Court in Para 3.4 and returned findings in Para 16-19 which are reproduced as below:

*"3.4. By the impugned common judgment and order [**Union of India v. Ilmo Devi, 2015 SCCOnLine P&H 5144**], the High Court has disposed of the aforesaid writ petitions with thefollowing directions : (Ilmo Devi case [**Union of India v. Ilmo Devi, 2015 SCC OnLine P&H5144**], SCC OnLine P&H paras 22-23)*

"22. We, thus, direct the petitioner authorities to revisit the whole issue in its right perspectiveand complete the exercise to reformulate their policy and take a decision to sanction the postsin phased manner within a specified time schedule. Let such a decision be taken within a period of six months from the date of receiving a certified copy of this order.

23. Till the exercise as directed above, is undertaken, the respondents shall continue in service with their current status but those of them who have completed 20 years as part-time daily wagers, shall be granted "minimum" basic pay of Group "D" post(s) w.e.f. 1-42015 and/or the date of completion of 20 years contractual service, whichever is later. "

xxxx xxxx xxxx xxxx

16. Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularisation as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.

*17. Applying the law laid down by this Court in the aforesaid decisions, the directions issued by the High Court in the impugned judgment and order [**Union of India v. Ilmo Devi, 2015 SCCOnLine P&H 5144**], more particularly, directions in paras 22 and 23 are unsustainable and beyond the power of the judicial review of the High Court in exercise of the power under Article 226 of the Constitution. Even otherwise, it is required to be noted that in the present case, the Union of India/Department subsequently came out with a regularisation policy dated30-6-2014, which is absolutely in consonance with the law laid down by this Court in Umadevi [**State of Karnataka v. Umadevi, (2006) 4 SCC 1 : 2006 SCC (L&S) 753**], which does not apply to the part-time workers who do not work on the sanctioned post. As per the settled preposition of law, the regularisation can be only as per the regularisation policy declared by the State/Government and nobody*

can claim the regularisation as a matter of right dehors the regularisation policy. Therefore, in absence of any sanctioned post and considering the fact that the respondents were serving as a contingent paid part-time Safai-Karamcharies, even otherwise, they were not entitled for the benefit of regularisation under the regularization policy dated 30-6-2014.

18. Though, we are of the opinion that even the direction contained in para 23 for granting minimum basic pay of Group D' posts from a particular date to those, who have completed 20years of part-time daily wage service also is unsustainable as the part-time wagers, who are working for four to five hours a day and cannot claim the parity with other Group 'D ' posts. However, in view of the order passed by this Court ***dated 22-7-2016 [Union of India v. Ilmo Devi, 2016 SCC OnLine SC 1933]*** *while issuing notice in the present appeals, we are not quashing and setting aside the directions contained in para 23 in the impugned judgment and order [****Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144****] so far as the respondents' employees are concerned.*

*19. In view of the above and for the reasons stated above, both the appeals succeed. The impugned judgment and order [****Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144****]passed by the High Court and, more particularly, the directions contained in paras 22 and 23in the impugned judgment and order [****Union of India v. Ilmo Devi, 2015 SCC OnLine P&H5144****] are hereby quashed and set aside. However, it is observed that quashing and settingaside the directions issued in terms of para 23 in the impugned judgment and order [****Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144****] shall not affect the case of the respondents and they shall be entitled to the reliefs as per para 23 of the impugned judgment and order[****Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144****] passed by the High Court.* "

32. From the above cited judgments, it is crystal clear that employees who have not been appointed after following procedure prescribed for regular appointment cannot be regularized. It amounts to backdoor entry. It violates

Articles 14 and 16 of the Constitution of India. No part time or casual worker can claim regularization on the ground of long period of service. He cannot claim violation of Article 21 of the Constitution of India.

33. The petitioner is a Government instrumentality and falls within the definition of 'State' as contemplated by Article 12 of the Constriction of India. It can make appointments as per statutory and Constitutional provisions. The mess workers were not appointed after following procedure meant for appointment of regular employees. There was no advertisement, no interview and no written test. The appointment was made, though, under the signature of Warden/Chief Warden, however, by Mess/Food Committee which comprised of students. A Constitutional Bench as well as afore-cited Benches of Supreme Court have repeatedly held that employees appointed without following prescribed procedure or appointed in the absence of permanent post cannot claim regularization. They cannot be regularized by High Court or Supreme Court. Their regularization would amount to legalization of backdoor entry and violation of Articles 14 and 16 of the Constitution of India. The Labour Court ignoring the mandate of Constitution Bench in ***Umadevi (Supra)*** and afore-cited other judgments of Supreme Court has passed the impugned order. The Labour Cout has heavily relied upon judgment of Supreme Court in ***Casteribe (Supra)*****,** the foundation of which was Section 30 and 32 of PULP Act.

34. The Labour Court has held that mess workers are employees of petitioner-University. There is Employer/Employee relationship between University and mess workers. The Court has relied upon the fact that appointment was made with the consent of Warden and Chief Warden and officials of the University had supervisory control over mess workers. The workers on few occasions were terminated by Warden.

The Tribunal has ignored the fact the petitioner-University is engaged in imparting education. It is a Government University and its motive is not making profit whereas its motive is to produce high quality of engineers who may become asset of the country and serve the nation. The University is bound to provide hostels to its students. Food is served in the hostels. The mess is managed by a Committee of students. Discipline is paramount in every educational institution especially when young students are involved. For the purpose of harmony and discipline, a Warden is appointed who controls day to day activities of the hostel including its mess. The appointment of mess staff was made by Committee and salary was paid by said Committee. The Committee can remove any employee, however, removal is approved by Warden. The workers are not paid out of funds of the University. The mess workers indubitably fall within the definition of 'workmen' as provided under Section 2(s) of ID Act and they can claim rights contemplated by ID Act, however, on account of continuity of service do not become employee of the University. The University is neither paying salary nor contributing in ESI/Provident Fund, thus, findings of the Tribunal that there is Master-Servant relation between University and mess workers is misconceived.

35. In the wake of above discussion and findings, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The impugned order is hereby set-aside.

06.09.2024 **[JAGMOHAN BANSAL]**
manoj **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No