State of Karnataka and ors. Vs. the Karnataka Casual and Daily Rated Workers Union, Hubli

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Court : Karnataka

Decided On : Feb-01-2001

Reported in : 2002(3)KarLJ518

Judge : G.C. Bharuka and ;Manjula Chellur, JJ.

Acts : Constitution of India - Articles 14, 16 and 226; Karnataka Panchayat Raj Act, 1993 - Sections 196(3) and 196(5)

Appeal No. : Writ Appeal Nos. 120 and 128 to 329 of 1999

Appellant : State of Karnataka and ors.

Respondent : The Karnataka Casual and Daily Rated Workers Union, Hubli

Advocate for Def. : R.N. Narasimha Murthy, Sr. Adv. and ;Vighneswara S. Shastry, Adv.

Advocate for Pet/Ap. : A.N. Jayaram, Adv. General, ;Sudesh Pai and ;B. Manohar, Additional Government Advs.

Disposition : Appeals allowed

Judgement :

G.C. Bharuka, J.

1. These writ appeals arise out of the order dated 22-9-1998 passed by the learned Single Judge in writ petitions filed by respondent-'Karnataka Casual and Daily Rated Workers Union' (in short the 'Employees Union'), who had sought for quashing of the Government Order dated 6-8-1990, wherein the Government had ordered that the appointments of all the casual/daily rated employees made after 1-7-1984 shall automatically stand cancelled. They had also sought for a writ of mandamus directing the State Government, the Zilla Parishads and other Local Bodies to confer permanent status to all the daily rated employees who had been recruited after 1-7-1984.

2. By the impugned order, the learned Single Judge, on the basis of the judgment of the Supreme Court in the case of Dharwad District P.W.D. Literate Daily Wages Employees Association and Ors. v. State of Karnataka and Ors., : (1990)IILLJ318SC , has taken a view that 'to restrict the regularization of the services of the daily rated employees only to those employees who were employed prior to 1-7-1984 is wholly contrary to the observations made by the Supreme Court in Dharwad District P.W.D. Literate Daily Wages Employees Association's case, supra and terminate their services'.

3. After holding as above, the learned Single Judge has granted a whole hog relief as claimed by the Employees Union by setting liberty to the daily wage employees to approach their employers/respondents herein for absorption and regularisation of their services and also for payment of salary on par with regularly appointed persons by making appropriate representations. At the same time, the learned Single Judge has directed the State Government and other statutory bodies that 'if such a representation is made by the petitioners within the time granted by this Court, respondents shall consider the cases of these petitioners for absorption and regularisation in accordance with law and in accordance with the observations made by the Supreme Court in more or less similar cases'.

4. Aggrieved by the laying of the above law by the learned Single Judge and issuance of the consequent directions, the State of Karnataka along with 19 Zilla Parishads of the State, have preferred these writ appeals questioning the

correctness of the impugned order.

5. The respondent-Employees Union had stated in the writ petition that it is a registered trade union consisting of daily rated employees working in various departments of the Government of Karnataka, Zilla Parishads and other local bodies functioning under the Government of Karnataka. According to the Union, at the time writ petition was filed in the year 1993, the total number of daily rated workmen were nearly 10,000 in the State. The Government after disposal of Dharwad District P. W.D. Literate Daily Wages Employees Association's case, supra, issued Government Order dated 6-8-1990 wherein it was inter alia decided that all appointments of casual daily rated workers made after 1-7-1984 shall stand automatically cancelled subject to certain exceptions like the judicial orders passed in some individual cases etc.

6. On having learnt about the above Government Order, the respondent-Employees Union filed writ petition under Article 32 of the Constitution of India before the Supreme Court in Writ Petition (Civil) No. 562 of 1991, assailing the validity of the above Government Order. But the Supreme Court disposed off the writ petition by an order dated 1-9-1992 (Annexure-F) setting liberty to the Employees Union to move the High Court at the first instance. The order passed by the Supreme Court reads as under:

'We are not inclined to interfere in this writ petition under Article 32 of the Constitution of India. It is open to the petitioner to either move the State Administrative Tribunal or the High Court for relief and reliance may be placed on the judgment of this Court in Dharwad District P. W.D, Literate Daily Wages Employees Association's case, supra. The High Court would do well to go into the merits of the matter and dispose off the same after hearing parties. The writ petition is disposed off accordingly'.

7. Keeping with the above order of the Supreme Court, the Employees Union filed Writ Petition No. 12610 of 1993 which has been disposed off by the learned Single Judge's impugned order dated 22-9-1998 setting out directions as noticed above. It may be important to notice here that in the writ petitions filed by the respondent-Union, none of the material facts pertaining to any of its members like their

qualification, age, date of securing employment, the post on which they had been employed, person who gave them the employment, and the procedure by which such employment was given nor the department or local body under which they had secured employment, had been disclosed. The relief sought for was in a blanket form and the same has been granted by the learned Single Judge with the same sweep.

8. Sri A.N. Jayaram, learned Advocate General, appearing for the State of Karnataka and the local bodies, who owe their existence and are governed by the provisions contained in the respective Enactments and the Rules framed thereunder, has submitted that in view of the very scheme framed by the Supreme Court in Dharwad District P.W.D. Literate Daily Wages Employees Association's case, supra, the persons who had obtained appointment as daily wage after the cut off date i.e., 1-7-1984 cannot claim any right of regularisation as permanent employees in the respective services and therefore the directions given by the learned Single Judge is to be held as contrary to law. According to him, if the members of the Employees Union are held to be not covered by the scheme framed by the Supreme Court in Dharwad District P.W.D. Literate Daily Wages Employees Association's case, supra, then as per the rules of recruitment, which are applicable to Government employment and the statutory local bodies, as also the law declared by the Supreme Court, no relief as granted by the learned Single Judge could have been admissible to the Employees Union. According to him, if on the very face of it, the members of the Union are not in law entitled to regularisation on the posts on which they are continuing, then there was no occasion on the part of the learned Single Judge to permit them to file representations for considering their case for regularisation and on their so filing, to direct appellants to consider and dispose off the same keeping in view the scheme framed in Dharwad District P.W.D. Literate Daily Wages Employees Association's case, supra.

9. Sri A.N. Jayaram, learned Advocate General, has further submitted that giving of such a direction, which in law, was unwarranted, would lead to enormous administrative problems, because the Appointing Authorities have to consider individual representations and the merits of the claims made by each of the daily

wage employee and will have to pass appropriate orders after hearing the parties in order to comply with the principles of natural justice though, according to him, their services cannot be regularised. According to him, this will again spurt into thousands of litigations either before the Administrative Tribunal or this Court and all these are to be attended at the cost of other public duties which may need to be attended with due expedition. According to him, the directions given by the learned Single Judge, though on its face seems innocuous, but in reality and practice, it will lead to administrative chaos, which needs to be avoided in laying down the correct law with regard to obligations of the State Government and the statutory bodies for regularisation of daily wage employees to ensure transparency, objectivity and predictability in public employment.

10. On the other hand, Sri R.N. Narasimha Murthy, learned Senior Counsel appearing for the respondents, submitted that a fair reading of the judgment in Dharwad District P. W.D. Literate Daily Wages Employees Association's case, supra, would show that the Supreme Court never intended to restrict the obligation of the State Government to regularise the services of Daily Wage Employees employed only prior to 1-7-1984. According to him, the Supreme Court had desired that persons employed on daily wages even after 1-7-1984 should be given the benefit of regularisation on completion of certain period of service. According to him, the State Government has passed the impugned order dated 6-8- 1990 for automatic discharge of daily wage employees in complete discard of the scheme framed by the Supreme Court and therefore it is unsustainable in law. His further submission was that persons who are employed on daily wages acquired certain rights for being retained in service since otherwise it will adversely affect the right of livelihood of such employees and their dependents, thereby violating the fundamental rights enshrined under Article 21 of the Constitution of India. He also submitted that the law laid down by the Supreme Court in the case of Ashwani Kumar and Ors. v. State of Bihar and Ors., : (1997)IILLJ856SC , should be treated as per incuriam since in that judgment, the Apex Court has failed to take notice of the law laid down in its earlier larger Bench judgments.

11. In view of the submissions made by the learned Counsel appearing for the contesting parties and observations and directions given in the impugned

judgment by the learned Single Judge, in our opinion, the following questions arise for our consideration.--

'(i) Whether the Scheme framed by the Supreme Court in Dharwad District P.W.D. Literate Daily Wages Employees Association's case, supra, can have any application to the daily wage employees employed subsequent to 1-7-1984?

(ii) Whether the daily wage employees can as of legal right claim regularisation?

(iii) Can a person, who has no legal right to assert, approach and solicit from this Court any direction by way of writ of mandamus against his employer to consider his case for permanent employment and pass orders thereon in order to give rise to cause of action for future litigation?'

Re: Question No. (i)

12. In order to weigh the rival contentions raised at the Bar, we need to first trace out the background in the context of which the Supreme Court had framed the scheme for regularisation in Dharwad District P.W.D. Literate Daily Wages Employees Association's case, supra, and then try to delve upon the real import and purport of the scheme and the extent of its applicability to the daily wage employees employed subsequent to 1-7-1984.

13. The affidavit dated 24-8-2000, filed by the Secretary to Government, Department of Personnel and Administrative Reforms, at our direction to have full facts on record, reveals that there was a practice for long of appointing local candidates in Government establishments on a consolidated salary as daily wages, which pursuant to some order of this Court was stopped under Government Order dated 5-7-1983 (Annexure-1 to the affidavit). Subsequently, the Government issued official memorandum on 3-7-1984 (Annexure-3) for absorption of daily rated workers in several departments of the Government with a specific stipulation that 'the practice of making appointments of any person on daily wages should be stopped forthwith in all departments except in Public Works Department. Appointments to be made thereafter except in Public Works Department should be only against the sanctioned posts in that department. But, in the meantime, a

society was formed by law students of the University College and two individuals who moved the Supreme Court by filling Dharwad District P.W.D. Literate Daily Wages Employees Association's case, supra, under Article 32 of the Constitution of India for a direction to confirm the daily rated and monthly rated employees as regular Government servants and for payment of salary at the rates prescribed for the appropriate categories of the Government servants and other service benefits. They pleaded before the Supreme Court that there were about 50,000 such workers in employment in different Government establishments with 16 to 20 years of continuous service.

14. Considering the above facts, the Supreme Court under its order dated 14-7-1988 directed the Government to frame a rational scheme for absorbing as many casual workers and monthly rated Gangmen and Sowdies as possible in regular cadres. Pursuant to this direction, the State Government filed a draft scheme, copy whereof was served on all interested parties to file their objections and suggestions for drawing of the final scheme.

15. The Supreme Court heard the matter at great length and after referring to its earlier judgments, finalised the scheme regarding regularisation of daily wage employees with certain observations as contained in para 23 of the judgment, which reads as under.--

'We can well realise the anxiety of the petitioners who have waited too long to share the equal benefits mandated by Part IV of the Constitution in respect of their employment. At the same time, we cannot overlook the constraints arising out of or connected with availability of State resources. Keeping both in view and reposing our trust in the relevant instrumentalities of the State that may be connected with the implementation of the scheme to act with a sense of fairness, anxiety to meet the demands of the human requirements and also anxious to fulfil the constitutional obligations of the State, the directions which we give below will give a final shape to the scheme thus:

(i) The casual/daily rated employees appointed on or before 1-7-1984 shall be treated as monthly rated establishment employees at the fixed pay of Rs. 780/- per month without any allowances with effect from 1-1-1990. They would be entitled to

an annual increment of Rs. 15/- till their services are regularised. On regularisation they shall be put in the minimum of the time scale of pay applicable to the lowest Group 'D' cadre under the Government but would be entitled to all other benefits available to regular Government servants of the corresponding grade. Those belonging to the 13' or 'C' Group upon regularisation shall similarly be placed at the minimum of the time scale of pay applicable to their respective groups under Government service, and shall be entitled to all other benefits available to regular Government servants of these grades;

(ii) From amongst the casual and daily rated employees who have completed ten years of service by 31-12-1989, 18,600 shall immediately be regularised with effect from 1-1-1990 on the basis of seniority-cum-suitability. There shall be no examination but physical infirmity shall mainly be the test of suitability;

(iii) The remaining monthly rated employees covered by the paragraph 1 who have completed ten years of service as on 31st December, 1989, shall be regularised before 31st December, 1990, in a phased manner on the basis of seniority-cum-suitability, suitability being understood in the same way as above;

(iv) The balance of casual or daily rated employees who become entitled to absorption on the basis of completing ten years of service shall be absorbed/regularized in a phased manner on the same principle as above on or before December 31, 1997;

(v) At the point of regularisation, credit shall be given for every unit of five years of service in excess of ten years and one additional increment in the time scale of pay shall be allowed by way of weightage. There was a direction that the claims on other heads would be considered at the time of final disposal. We have come to the conclusion that apart from these reliefs no other would be admissible'.

16. A reading of the above scheme, makes it clear that the Supreme Court had intended to make the said scheme of regularisation applicable only to casual and daily rated employees appointed on or before 1-7-1984. The first paragraph of the scheme provides for treating such employees as monthly rated establishment employees on the fixed pay of Rs. 780/- per month with certain additional benefits

set out in the said paragraph. The 2nd, 3rd and 4th paragraphs of the scheme provide for absorption of such employees in regular cadres in a phased manner. Out of the total number of employees, which was stated to be Rs. 50,000, 18,600 who had completed 10 years of service on 31-12-1989 were to be regularised with effect from 1-1-1990 on the basis of seniority-cum-suit-ability. Out of the remaining monthly rated employees, employed on or before 1-7-1984 and who had completed 10 years as on 31-12-1989 were to be regularised before 31-12-1990 in a phased manner again on the basis of seniority-cum-suitability. The balance of such employees on their completion of 10 years of service were to be absorbed/regularized again in a phased manner on or before 31-12-1997.

17. In substance, the scheme formulated by the Supreme Court was that out of those daily wage employees who had completed 10 years of service by 31-12-1989, 18,600 were to be regularised with effect from 1-1-1990 on seniority-cum-suitability basis and the services of the remaining such employees were to be regularised in a phased manner before 31-12-1990. The remaining daily wage employees, on their completion of 10 years of service were to be regularised thereafter, again in a phased manner on or before 31-12-1997. Therefore, the scheme formulated by the Supreme Court was meant for regularisation of casual/daily wage employees appointed only on or before 1-7-1984. The reason for restricting the scheme only for those class of employees is quite understandable and there was a rational for the same, as has been explained by the Supreme Court in paras 23 and 24 of the judgment.

18. We have already noticed above that there was a practice in vogue in the State Government to make appointments, as casual or daily rated employees, but the same was stopped under Government Order dated 3-7-1984. Therefore, there could not have been any occasion for framing of any scheme for regularisation of casual/daily rated employees employed on or after 3-7-1984. We may mention here that 2-7-1984 was holiday. Therefore, the Supreme Court has very clearly stated that the scheme will apply to casual/daily rated employees appointed on or before 1-7-1984.

19. It may also be noticed here that Mr. Bhandare appearing for the daily wage employees had specifically pleaded before the Supreme Court (see para 21) that the services of all the daily wage employees who have completed service with effect from 1-1-1990 should be regularised. But this proposal was not found to be acceptable by the Supreme Court for the reasons contained in para 23 of the judgment which we have already extracted above.

20. Accordingly, we hold that the scheme formulated by the Supreme Court in Dharwad District P.W.D. Literate Daily Wages Employees Association's case, supra, is of no avail to the employees represented by the Employees Union and they are not entitled to claim any benefit under the said scheme.

Re: Question Nos. (ii) and (iii)

21. The recruitment to all civil posts under the Government of Karnataka are governed by the Karnataka Civil Services (General Recruitment) Rules, 1977 which were earlier framed under Article 309 of the Constitution of India and have now acquired status of statutory rules under the Karnataka Civil Services Act, 1978. Elaborate provisions have been made under the Rules regarding method of recruitment, authorities who can make appointments, cadre and its strength and ancillary provisions regarding reservations. The rules do not provide for making appointment on casual or daily rated basis. Similarly, different local bodies and other statutory institutions like the Municipalities, Municipal Corporations, B.W.S.S.B. and the Universities which are creatures of different enactments are governed by the rules of recruitment framed under such enactments or the said civil service rules in case those have been adopted by such bodies. These rules also do not permit any authority to make the appointments on casual or daily rated basis. Under these rules, appointments are required to be made strictly in accordance with the procedure laid down therein. This aspect has been emphatically stated in his affidavit filed by the Secretary to Government, Department of Personnel and Administrative Reforms, Government of Karnataka. Mr. R.N. Narasimha Murthy, learned Senior Counsel appearing for the respondent-Employees Union, could not place before us any provision under any of those recruitment rules authorising any Appointing Authority to make

recruitment on casual or daily rated basis.

22. Since, despite provisions contained in the recruitment rules, appointments on daily rated basis were still being made by some unscrupulous officers, the Government under its official memorandum dated 3-7-1984 (Annexure-3 to the affidavit) specifically directed for stoppage of the practice of making appointments on daily wages. It appears that despite this specific direction, the practice of appointing persons on daily wages was being continued with all impunity.

23. Accordingly, the Government issued another circular dated 29-1-1990 (Annexure-4), once again clearly stating that.--

'In spite of these instructions, it has come to the notice of the Government that the Heads of Departments are continuing to take persons on daily wage basis. A large number of persons have been employed on daily wage basis in Departments like Horticulture, Sericulture and Social Welfare after the ban was imposed As it is, there are large number of daily rated workers who have been continued on the directions of the Supreme Court, even though their services are not required. It is therefore, impressed on all concerned that there should be no appointment of persons on daily wage basis under any circumstances whatsoever. Officers who contravene these instructions shall render themselves liable for disciplinary action'.

24. The Government came out with another circular dated 9-5-1990 (Annexure-5) again reminding the Appointing Authorities of the previous circulars with an emphasis that.--

'Government has decided that there should be no appointment of persons on daily wage basis in public sector undertakings/statutory or non-statutory bodies/corporations/Government companies which are owned or controlled by Government or in which Government have major financial interest. Accordingly, Government hereby direct once more that no Department of Government or other institution mentioned above should employ hereafter persons on daily wage basis under any circumstances.

Contravention of these instructions will be viewed very seriously and the authorities concerned would be liable to make good the wages paid to the persons appointed on daily wages hereafter, any violations of the Government directions since 3-7-1984 may also be intimated to Government immediately'.

25. It appears that since the audacity on the part of some of the officers in making appointments on daily wage basis continued, the Government came out with one more circular dated 18-8-1990 (Annexure-6) giving stern warning to all concerned to deter from committing illegalities in appointments with a direction that the delinquency of this nature would be proceeded with appropriate disciplinary proceedings. This circular reads thus.--

'Instructions were issued in the afforested official memorandum not to make appointment of Casual Daily Rated Employees. In spite of this, it has come to the notice of the Government that certain departments have appointed Daily Wage Employees violating the instructions.

After examining this, the Cabinet has directed to initiate disciplinary action against the officers concerned for making appointments of Daily Wage Employees after 1-7-1984.

In the light of the said decision, it is hereby instructed to initiate disciplinary proceedings against the concerned officers for making daily wage appointments violating the instructions contained in the Official Memorandum No. DPAR 10 SLC 83, dated 3-7-1984.

Secretaries to Government are directed to take action in this behalf and to report the action taken to the Secretary to Government, DPAR'.

26. The learned Advocate General has placed before us a tabulated statement which shows that despite the fact that the recruitment rules did not permit of making appointments on daily wage basis and that the Government had in unambiguous terms with stern warning had asked the Appointing Authorities not to make any appointment de hors the recruitment rules, still as per the information received by the Government, 17,219 appointments had been made on daily wage

basis after 3-7-1984 by various Appointing Authorities out of whom 263 have been subjected to disciplinary action and 193 have already been appropriately penalised.

27. It cannot be seriously disputed that of late, giving of appointments on daily wage basis has acquired the proportion of a scandal for wrongful gain or for benefiting the kiths and kins or favourites. Though at one point of time, it was found permissible to make appointment on daily wage basis to meet the administrative exigencies but subsequently considering its evil aspects and detriments caused to administration and public exchequer, the legislature as well as policy makers discarded this mode of recruitment. Even though, more than once the Supreme Court declared this process of recruitment to be constitutionally invalid but nonetheless it was unscrupulously continued in a planned manner with the hope and confidence that the beneficiaries will always be able to secure blessings from certain sections of judiciary in legalising the illegal appointments. Though the Supreme Court, in eighties, had in several cases directed for framing of schemes to absorb the services of daily wage employees in regular cadres considering it to be one of the human problems since such persons had remained in the service on ad hoc basis for long, but subsequently sensing the evils spurting out of the process of regularisation, disapproved judicial exercise of giving directions in this regard.

28. In the case of State of Haryana and Ors. v. Piara Singh and Ors., : (1993)IILLJ937SC , it has been held that.--

'As would be evident from the observations made and directions given in the above two cases, the Court must, while giving such directions, act with due care and caution. It must first ascertain the relevant facts, and must be cognizant of the several situations and eventualities that may arise on account of such directions. A practical and pragmatic view has to be taken, inasmuch as every such direction not only tells upon the public exchequer but also has the effect of increasing the cadre strength of a particular service, class or category. Now, take the directions given in the judgment under appeal. Apart from the fact that the High Court was not right -- as we shall presently demonstrate in holding that the several conditions

imposed by the two Governments in their respective orders relating to regularisation are arbitrary not valid and justified -- the High Court acted rather hastily in directing wholesome regularisation of all such persons who have put in one year's service, and that too unconditionally. We may venture to point out the several problems that will arise if such directions become the norm:

(a) Take a case where certain vacancies are existing or expected and steps are taken for regular recruitment either through Public Service Commission or other such body, as the case may be. A large number of persons apply. Inevitably there is bound to be some delay in finalising the selections and making the appointments. Very often the process of selection is stayed or has to be redone for one or the other reason. Meanwhile, the exigencies of administration may require appointment of temporary hands. It may happen that these temporary hands are continued for more than one year because the regular selection has not yet been finalised. Now, according to the impugned direction the temporary hands completing one year's service will have to be regularised in those posts which means frustrating the regular selection. There would be no post left for regularly selected persons even if they are selected. Such cases have indeed come to this Court from these very two States;

(b) In some situations, the permanent incumbent of a post may be absent for more than a year. Examples of this are not wanting. He may go on deputation, he may go on Faculty Improvement Programme IF.I.P.), or he may be suspended pending enquiry into charges against him and so on. There may be any number of such situations. If a person is appointed temporarily in his place and after one year he is made permanent where will the permanent incumbent be placed on his return? Two persons cannot hold the same post on a regular or permanent basis;

(c) It may also happen that for a particular post a qualified person is not available at a given point of time. Pending another attempt at selection later on an unqualified person is appointed temporarily. He may continue for more than one year. If he is to be regularised, it would not only mean foreclosing appointment of a regular qualified person, it would also mean appointment of an unqualified person;

(d) Such directions have also the effect of disregarding and violating the rule relating to reservation in favour of backward class of citizens made under Article 16(4). What cannot be done directly cannot be allowed to be done in such indirect manner;

(e) Many appointments may have been made irregularly -- as in this case -- in the sense that the candidates were neither sponsored by the Employment Exchange nor were they appointed after issuing a proper advertisement calling for applications. In short, it may be a backdoor entry. A direction to regularise such appointments would only result in encouragement to suck unhealthy practices'.

29. In the case of Dr. M.A. Haqwe v. Union of India, : (1993)ILLJ 1139 SC it has been held that--

'... we cannot lose sight of the fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the by-passing of the Public Service Commissions are permitted, it will open a backdoor for illegal recruitment without limit. In fact, this Court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional provisions requiring recruitment to the services through the Public Service Commission. It appeal's that since this Court has in some cases permitted regularisation of the irregularly recruited employees, some Governments and authorities have been increasingly resorting to irregular recruitments. The result has been that the recruitment rules and the Public Service Commissions have been kept in cold storage and candidates dictated by various considerations are being recruited as a matter of course'.

30. The case of Jammu and Kashmir Public Service Commission v. Dr. Narinder Mohan, : (1994)ILLJ780SC is a clear illustration of the change that has taken in the judicial approach. In this case, ad hoc employees approaching the Court had remained on ad hoc basis for over 7 years but still the Supreme Court did not approve the view taken by the Division Bench of the High Court directing regularisation. In para 10 of the judgment, the Apex Court has held that.--

'The mode of recruitment suggested by the High Court, namely, regularisation by placing the service record of the respondents before the Public Service Commission and consideration thereof and PSC's recommendation in that behalf is only a hybrid procedure not contemplated by the rules. Moreover, when the rules prescribe direct recruitment, every eligible candidate is entitled to be considered and recruitment by open advertisement which is one of the well-accepted modes of recruitment. Inviting applications for recruitment to fill in notified vacancies is consistent with the right to apply for by qualified and eligible persons and consideration of their claim to an office or post under the State is a guaranteed right given under Articles 14 and 16 of the Constitution. The direction, therefore, issued by the Division Bench is in negation of Articles 14 and 16 and in violation to the statutory rules. The PSC cannot be directed to devise a third mode of selection, as directed by the High Court, nor be mandated to disobey the Constitution and the law'.

31. In the case of Dr. Surinder Singh Jamwal v. State of Jammu and Kashmir, : (1996)IILLJ795SC it has been found and held that.--

'It is not in dispute that the appellants were recruited on ad hoc basis and have been continuing as such. It is their contention that since they had put in more than 13 years of service they are entitled to regularisation of service and approached the High Court for direction to regularise their services. The High Court has followed the ratio in the above judgment of this Court the settled legal position now is that the recruitment to the service should be governed by the appropriate statutory rules. Under the rules, the regular recruitment to the posts shall be made by the Public Service Commission. Consequently, the ad hoc appointments would be only temporary appointments de hors the rules, pending regular appointments without conferring any right to regularisation of service'.

32. In the case of State of Himachal Pradesh v. Suresh Kumar Verma, : [1996]1SCR972 it has been held that.--

'The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise be eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to

the rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduit pipe for regular appointments which would be a backdoor entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists'.

33. Recently, in the case of Ashwani Kumar, supra, the three Judges Bench of the Supreme Court had once again laid down the law regarding regularisation in any service. In para 13 of the judgment, it has been held that.--

'In this connection it is pertinent to note that question of regularisation in any service including any Government service may arise stly, 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 if it is found that the concerned incumbents 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 regularise them so that the concerned employees can give their best by being assured security of tenure. But this would require one pre-condition 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 regularisation 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 Competent Authority and the irregular initial appointment may be regularised and security of tenure may be made available to the concerned incumbent. 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. In any case backdoor entries for filling up such vacancies have got to be strictly avoided. However, there would never arise any occasion for regularising the appointment of an employee whose initial entry itself is tainted and is in total breach of the requisite procedure of recruitment and especially when there is no vacancy on which such an initial entry of the candidate could even be effected. Such an entry of an employee would remain tainted from the very beginning and no question of regularising such an illegal entrant would ever survive for consideration, however competent the recruiting agency may be'.

34. Examined in the light of the law laid down by the Supreme Court in Ashwani Kumar's case, supra, neither the respondent-Employees Union had anywhere stated in the writ petition that any of its members, whose cause it was espousing, had been appointed by any Competent Authority against any existing sanctioned vacancy by following the procedure laid down for such recruitment nor the learned Single Judge, before issuing directions of the nature impugned herein to the appellant-State Government and the local bodies, had tried to find out as to whether their appointment on daily wage basis can be said to be legal or valid. Even before us, Mr. Narasimha Murthy, learned Senior Counsel appearing for the respondent-Employees Union, could not place on record the eligibility of any of the members of the Employees Union to claim regularisation in terms of the law laid down by the Supreme Court in Ashwani Kumar's case, supra.

35. Independent of the above facts, even in law, on a bare reading of the statutory provisions contained in the Karnataka Panchayat Raj Act, 1993 {in short the 'Panchayat Raj Act'), the respondent-Employees Union or any of its members cannot be said to have acquired any right of regularisation for the reasons set out hereinafter.

36. It may be noticed here that the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983, under which the Zilla Parishads were constituted has been repealed by Section 318 of the Panchayat Raj Act, which has come into force on 10-5-1993.

37. Section 196 of the Panchayat Raj Act provides for staff of Zilla Panchayat. Under sub-sections (1) and (2) of this section, the Chief Executive Officer, the Chief Accounts Officer, the Chief Planning Officer and one or more Deputy Secretaries for each Zilla Panchayat has to be appointed by the State Government. So far as the other staff are concerned, sub-sections (3) and (5) of Section 196 of the Panchayat Raj Act are material for the present purpose. These sub-sections read as under.--

'196. Chief Executive Officer and other officers.--

(1) XXX XXX XXX

(2)xxx xxx xxx

(3) The Government shall post from time to time to work under every Zilla Panchayat such number of other officers and officials of the State Government (including any officers and officials appointed to such services from amongst person employed by existing local authorities) and officers of the All India Services as the Government considers necessary.

(4) xxx xxx xxx

(5) The Government may as from the specified day constitute such services for each Zilla Panchayat as may be prescribed'.

38. From the above provisions, it is clear that Zilla Parishads or Zilla Panchayats had no power to make appointments of its staff, It was only for the State Government to post such number of its officers and officials to work under every Zilla Panchayat as it was found expedient by it. It is also clear that the State officers, who are to be sent on deputation to the Zilla Panchayats, should have been the officers, who have been regularly appointed in a given service cadre of the Government by following the statutory rules of recruitment. As we already noticed above, neither under the Karnataka Civil Service (General Recruitment) Rules, 1977 or any other recruitment rules framed under Karnataka State Civil Service Act, the appointment of daily wage employees has been made permissible.

39. Rule 3 of the Karnataka Civil Service (General Recruitment) Rules, 1977 provides for method of recruitment to the State Civil Service. Sub-rule (1) of this rule is material for the present purpose. It reads thus.--

'3. Method of recruitment.--(1) Except as otherwise provided in these rules or any other rules specially made in this behalf, recruitment to any service or post shall be made by direct recruitment which may be either by competitive examination or by selection, or by promotion which may be either by selection or on the basis of seniority-cum-merit. The methods of recruitment and qualifications shall be as specified in the rules of recruitment specially made in that behalf:

Provided that in respect of direct recruitment to any service or post when the method of recruitment is not specified in the rules of recruitment specially made, the method of recruitment shall be by selection after an interview by the Commission, the Advisory or Selection Committee or the Appointing Authority as the case may be:

Provided xxx xxx xxx'.

40. From the above provisions contained in the Rules of Recruitment and appointments, it is clear that there was complete lack of legislative sanction behind the making of appointments on casual/daily wage basis. Moreover, as already noticed above, since 3-7-1984 the State Government had been repeatedly issuing circulars reminding all the concerned heads of the departments not to indulge in illegal acts of giving appointments to any one on daily wage basis with stern warning that any violation in this regard may result in initiation of the disciplinary proceedings against them and they may be held liable to make good the wages paid to persons appointed on daily wage basis. But, the illegalities continued with all impunity and obviously quite daringly. Persons getting illegal appointment could also manage to remain in service by approaching the judicial forums and enjoying interim orders. In these situations, neither the State Government can be faulted for not taking effective steps for stopping the illegal appointments made on the basis of the daily wages nor the equitable principle of estoppel can be invoked against it in order to benefit the illegal appointees by way of allowing them to reap the fruits of illegal appointments thereby conferring permanent status in public services, that

too, at the cost of equality clause contained in Articles 14 and 16 of the Constitution of India.

41. As of fact, as noticed by the Supreme Court in the case of State of Haryana, supra, any directions for regularisation of illegal appointments issued by the Court will not only tell upon the public exchequer but will have the effect of increasing cadre strength of particular service, class, or category. It may be noticed here that for an effective administration what should be the cadre strength of service is essentially a matter of policy and that has to be determined only by Government and not by the Courts.

42. It has been submitted on behalf of the respondent-Employees Union that under sub-section (5) of Section 196 of the Panchayat Raj Act, it was incumbent on the part of the State Government to constitute services for each Zilla Panchayat by framing appropriate rules but the Government has failed to do so despite lapse of almost seven years and therefore a direction should be given by this Court to constitute such services and absorb all daily wage employees who are in service of different Zilla Panchayats irrespective of the fact that whether their appointment on daily wage basis were legal or illegal. We find it difficult to accede to any such request.

43. The Supreme Court relying on Narender Chand Hem Raj and Ors. v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Ors. : [1972]1SCR940 and State of Himachal Pradesh v. A Parent of a Student of Medical College, Shimla, : [1985]3SCR676 , held in Asif Hameed and Ors. v. State of Jammu and Kashmir and Ors., : [1989]3SCR19 , that 'when a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the Court must strike down the action. While doing so the Court must remain within its self-imposed limits. The Court sits in judgment on the action of a co-ordinate branch of the Government. While exercising power of judicial review of administrative action, the Court is not an Appellate Authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any

matter which under the Constitution lies within the sphere of legislature or executive'.

44. The Supreme Court in its later judgment in the case of Mallikarjuna Rao and Ors. v. State of Andhra Pradesh and Ors., : [1990]2SCR418 after noticing its earlier judgments, as above, has held that.--

'It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution. We are bound to react scowling to any such advice'.

45. Paragraph 12 of the judgment in Mallikarjuna Rao's case, supra, is relevant for the present purpose. It reads as under:

'The Special Rules have been framed under Article 309 of the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution'.

46. Keeping in view the law laid down by the Supreme Court in the above cases, in our opinion, it is not within the jurisdiction of this Court to issue direction to the State Government to constitute services for the Zilla Panchayats in terms of Section 196(5) of the Panchayat Raj Act, more so, when the Government has sufficient officials in it cadres to be posted in Zilla Panchayats as provided under Section 196(3) of the said Act. It is nobody's case that non-constitution of services for each of Zilla Panchayats under the enabling provision contained under sub-section (5) of Section 196 of the Panchayat Raj Act, has in any way adversely

affected the working of the Zilla Panchayats or it has led to frustration of the object of the Panchayat Raj Act in any manner. The provisions made under sub-section (5) of Section 196 of the Panchayat Raj Act speaks of merely an alternative staffing pattern for the Zilla Panchayats which is required to be resorted to by the State Government as and when the situation so warrants. The High Court cannot taken upon itself to decide such policy matters unless the actions or inactions of the State Government are found to be grossly arbitrary or unreasonable in any given facts situation. There is neither any pleading to this effect nor any material has been placed before us to come to such a conclusion necessitating issuance of writ of mandamus directing the State Government to constitute independent services for each Zilla Panchayat by framing appropriate rules. Therefore, prayer made for directing the State Government to constitute services for Zilla Panchayats is rejected.

47. Yesterday, when these matters were listed for pronouncement of this reserved judgment, learned Counsel appearing for the respondents brought to our notice a judgment of this Court in Raghupathi Gowda's case, W.A. Nos. 2765 to 2905 of 2000, DD: 23-1-2001 (Kar.), which is in relation to 141 daily wage employees of some of the local bodies, wherein another Bench of this Court has held that.--

'We are entirely in agreement with the order passed by the learned Single Judge. The very fact that the respondents have worked for 10 years continuously show that the need is permanent. The claim for regularisation of their services has to be considered after framing the scheme. The learned Single Judge has rightly issued directions in these terms'.

48. In our considered opinion, the above view taken by the other Bench of this Court is clearly per incuriam in view of the judgments of the Supreme Court in the cases of State of Punjab and Ors. v. Surinder Kumar and Ors., : [1992]194ITR434(SC) and Jammu and Kashmir Public Service Commission, supra.

49. In Surinder Kumar's case, supra, it was found by the Supreme Court that' certain persons who had been appointed temporarily on hourly basis had approached the High Court contending that they were entitled to be regularised in

their posts as lecturers with salary on regular pay-scale, which was accepted by the High Court. In an appeal to the Supreme Court by the State Government, it was urged on behalf of the employees before the Supreme Court that the Apex Court had issued direction of absorption of temporary or ad hoc Government servants in several cases and if this could be done by the Apex Court, it was certainly open for the High Courts as well to allow writ petitions in similar terms. The Supreme Court expressly repelled this contention by holding that.--

'A decision is available as a precedent only if it decides a question of law. The respondents are, therefore, not entitled to rely upon an order of this Court which directs a temporary employee to be regularised in his service without assigning reasons. It has to be presumed that for special reasons which must have been available to the temporary employees in those cases, they were entitled to the relief granted.

XXX XXX XXX

There is still another reason why the High Court cannot be equated with this Court. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary 'for doing complete justice in any case or matter pending before it', which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by the judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge'.

50. Again, in the case of Dr. Narinder Mohan, supra, it has been held that--

'Article 142-power is confided only to this Court. The ratio in Dr. P.P.C. Rawani and Ors. v. Union of India and Ors., : (1992)1SCC331 is also not an authority under Article 141'.

51. The judgment in Raghupathi Gowda's case, supra, has been delivered by this Court by clearly remaining oblivious to the above law laid down by the Supreme Court in relation to the jurisdiction of the High Court under Constitution of India, as

such it cannot be taken to be a binding precedent. Even otherwise. Article 141 of the Constitution of India makes it obligatory on the part of all the Courts of this country to follow the law laid down by the Supreme Court of India in preference to the decision of any other Court including this Court.

52. In the backdrop of the facts found in the present appeals, the legislative provisions and the law of the land declared by the Supreme Court, it has to be held that.--

(a) The daily wage employees employed either in Government Departments or other statutory bodies after 1-7-1984 are not entitled to the benefit of the scheme framed by the Supreme Court in Dharwad District P. W.D. Literate Daily Wages Employees Association's case, supra, for regularisation of their services;

(b) The appointment secured by such daily wage employees subsequent to 1-7-1984 are totally illegal having been obtained in blatant disregard of the statutory recruitment rules, regulations and specific directions of the State Government under its warning circulars dated 3-7-1984, 29-1-1990, 9-5-1990 and 8-8-1990;

(c) Conceding to the request made by the respondent-Employees Union for wholesome regularisation would amount to directing the State Government and other statutory bodies to act in disobedience to the law and would only result in encouragement of backdoor entries, corruption, nepotism, favoritism and unhealthy practices. Unwarranted and misplaced judicial sympathy cannot have any place in a polity governed by rule of law;

(d) Even if the State Government could be found to be guilty of regularising any illegal appointment of any section of daily wage employees pursuant to any misconceived policy decision by exercising its alleged executive powers in derogation of statutory provisions on any occasion in the past, that cannot form a basis for claiming equality under Article 14 of the Constitution of India since equality can be claimed only vis-a-vis legal acts and not illegal acts, as explained by the Supreme Court in the case of Style (Dress Land) v. Union Territory, Chandigarh, : AIR 1999 SC3678 , and

(e) Since the initial entry in service of daily wage employees-employed after 1-7-1984 was tainted with illegalities right from the inception, this Court has no jurisdiction to direct for their regularisation in view of clear and unambiguous declaration of law by the Supreme Court in this regard as noticed above.

53. For the aforesaid reasons, we find it difficult to uphold the impugned order of the learned Single Judge, which is accordingly set aside. The State's writ appeals are accordingly allowed. But in the facts and circumstances of the case, parties are to bear their own costs.