

Suresh Chandra Vs. Vice Chairman, Ghaziabad Development Authority

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Court : Allahabad

Decided On : Aug-05-2004

Reported in : (2004)3UPLBEC2470

Judge : R.B. Misra, J.

Acts : [Constitution of India](#) - Articles 12, 14, 16, 16(1), 38, 38(1), 39, 41, 43, 136, 142, 162, 226, 309, 311; [Industrial Disputes Act, 1947](#) - Sections 2, 10, 25F and 25J; Employment Exchange Act; Uttar Pradesh Industrial Disputes Act; Uttar Pradesh Regularisation of Ad-hoc Appointments (on posts outside purview of the Public Service Commission) Rules, 1979 - Rule 4; Industrial Disputes Rules; Uttar Pradesh Industrial Disputes Rules; Factory Act

Appeal No. : Civil Misc. Writ Petition No. 5356 of 1999

Appellant : Suresh Chandra

Respondent : Vice Chairman, Ghaziabad Development Authority

Advocate for Def. : H.R. Mishra and ;A.K. Mishra, Advs.

Advocate for Pet/Ap. : M.K. Sharma and ;M.P. Sharma, Advs.

Disposition : Petition dismissed

Judgement :

R.B. Misra, J.

1. Heard Sri Manoj Kumar Sharma, learned Counsel for the petitioner and Sri H.R. Mishra, learned Counsel for the respondent, Ghaziabad Development Authority.

2. In this petition prayer has been made to quash the order dated 4.1.99 passed by respondent/Ghaziabad Development Authority and for writ of mandamus directing the respondent authority to regularise service of the petitioner from 1.1.88 to the class IV category i.e., to the post of peon or Security Guard and for payment of arrears of salary in the regular pay scale like other employees since the month of March, 1994.

3. Brief facts necessary for adjudication of the writ petition are that the petitioner was deployed as a daily wager peon since 1.1.88 and had continued to work in the said capacity from time to time with break. He filed Writ Petition No. 34733 of 1992 claiming relief of regularisation and for granting the regular pay scale in view of the Government Order dated 21.10.1989 claiming that some juniors to him stood regularised.

4. According to the petitioner the respondent had stopped the petitioner from putting his signatures and have withheld his salary, however the above writ petition was disposed of by this Court on 7.10.1998 (Annexure-8 to the writ petition) directing the Vice-Chairman, Ghaziabad Development Authority (in short called as 'authority' hereinafter) to decide the representation, of the petitioner. Consequently, the petitioner's representation was considered and decided by a detailed order dated 4.1; 1999 rejecting the same in reference to the regularisation. The order dated 4.1.1999 are reproduced as below:

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1- Jh lqjs'k pUnz izR;kosndxkft;kckn fodkl izkf/kdj.k esā fnukad 4&4&88 ls nSfud ij pijklh ds :iesa dk;Zjr Fkk rFkk muds dk;Z djus gsrq Lohfr 3 ekg gsrq le;? ij yh x;hFkh A

2- Jh lqjs'k pUnz fnukad 11-3-94dks LosPNk ls fcuk dksbZ dkj.k crk;s vpkud dk;Z NksM+dj pys x;s A bl izdkj ;kphdk dksbZ lsok dk nkok ekU; ughaa gks ldrk A bld vfrfjDr izkf/kdj.k esā orZekuesa dk;Z dh ek=k dks n`fVxr j[krs gq, ;g Li'V gS fd iqjkus dk;Z yxHkxiw.kZ gks pqds gSa vkSj fo'ks'k ;kstuk;sa Hkh bl le; fopkjk/khu ugh gSftlds fy, vfrfjDr deZpkfj;ksa dh vko';drk gks A lkFk gh foRrh; Hkkj Hkh izkf/kdj.kij fu;qfDr;ksa ds ifj.kkeLo:i iM+uk LokHkkfod gS tcfd dqN gh le; iwoZ izkf/kdj.kls yXkHkx 600 nSfud osru deZpkfj;ksa dks dk;ZeqDr djuk iM+k gS A orZeku esā izkf/kdj.kdh vkfFkZd fLFkfr Hkh lqn`<+ ugha gS vkSj u gh izkf/kdj.k dks vfrfjDrdeZpkfj;ksa dh vo';drk gS A 'kklu }kjk Hkh ubZ fu;qfDr;ksa ij izfrcU/k gSa A ,slhn'kk esā izR;kosnd dks iqu% lsok esā ysuk lEHko ugha gS A ,r,o ;kph dk izR;kosnufnukad 2&12&1998 fujLr fd;k tkrk gS A izR;kosnd dks rnkuqlkj voxr djkfn;k tk;s A

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5. The petitioner has challenged the above order i.e., 4.1.1999 by saying that the respondent authority had not considered the matter of regularisation of the petitioner in true prospective ignoring the crucial facts and by the mentioning wrongly that the petitioner had left the authority since 11.3.1994. The petitioner had further contended that the relief of regularisation was to be made in reference to the G.O. dated 24. 10. 89. It appears that the Government Order dated 24.10.89 was issued to provide the facilities of payment of salary and for regularisation to the employees who had completed more than 240 days of service.

6. Counter affidavit has been filed. On behalf of the respondents submission has been made in consonance to the counter affidavit that the claim of the petitioner for regularisation stood disposed of in earlier Writ Petition No. 34733 of 1992 and the same was directed by this Court on 7.10.1998 to dispose of the representation which consequently was considered and decided by rejecting the representation of the petitioner, as such the petitioner cannot be permitted to claim relief for regularisation again by means of the present writ petition. According to the respondents, none of the juniors has been named who have been regularised. By merely saying that the juniors to the petitioner have been regularised no strength could be derived in the submission of the petitioner when daily wagers have no right to the post as the appointment of daily wagers are made not according to the observing the procedure prescribed for. Their entries are made by back door and in the present case the deployment of the petitioner was made in exigency of work and on the necessity and the deployments commences in the morning and comes to an end in the evening and contractual deployment was made on each day and the deployment was made for limited period which was renewed in exigency of work for limited and different period. The deployment of the petitioner was not made against any sanctioned vacancy or post and when there was a shortage of work in the authority and there was allocation of the fund as a policy measure the petitioner could not have been deployed on daily wage. However when the petitioner himself had left the job on 11.3.1994 and in respect of deployment the petitioner disputed, as such the dispute of deployment being a disputed question of fact which cannot be gone into or adjudicated upon in the writ jurisdiction. The petitioner at his sweet will voluntarily left the deployment on 11.3.1994, therefore, as contended by the respondents he cannot now come forward to claim his regularisation for the same cause again by the present writ petition when the specific rules of regularisation is not available. To strengthen his claim the petitioner has made following submissions :

(1) The main contention of the learned Counsel for the petitioner is that when the petitioner had been engaged for such a long period and had been working for more than 240 days in each calendar year, then the respondents must regularise his services and that he should not be thrown on roads. In support, he has placed reliance upon : (1997)ILLJ576SC , Central Welfare Board and Ors. v. Ms. Anjali

Bepari and Ors. and : (2001)ILLJ710SC , Gujarat Agricultural University v. Rathod Labhu Bechar and Ors..

(2) The learned Counsel, therefore, contended that the policy decision . adopted by the respondents is unconscionable in nature and the petitioners had to accept the said appointments, as they have no power to bargaining. It was submitted that appointments have been made according to the prevailing norms and services of the petitioners are entitled to be regularised and the petitioners are entitled to the same scale of pay which were being paid to the permanent employees.

(3) In view of the judgment of this Court in (2001) 1 UPLBEC 475, Betu Prasad and Ors. v. State of U.P. and Ors., where long and continuous period of working would be a ground for regularisation or entitled' for consideration of regularisation when others having less seniority as. daily wagers were regularised.

(4) To strengthen the submission of the cause learned Counsel for the petitioners has placed reliance On the judgement of the Supreme Court in State of Haryana v. Piara Singh : (1993)ILLJ937SC ; Khagesh Kumar and Ors. v. I.G. Registration and Ors. : AIR 1996 SC417 and State of U.P. and Ors. v. Putti Lal, (1988) 1 UPLBEC 313. Learned Counsel for the petitioners has submitted that in view of the observations made by the Supreme Court in Khagesh Kumar (supra), the petitioners are entitled to be considered for regularisation under the provisions of the U.P. Regularisation of Ad-hoc. Appointments (On Posts outside the Purview of the Public Service Commission) Rules, 1979 as amended upto date. Learned Counsel for petitioner pressed for regularisation and equal pay for equal work especially on the dint of the decisions of the Supreme Court in the case of Dharwad District P. W. D Literate Daily Employees' Association and Ors. v. State of Karnataka and Ors., (1990) 3 UPLBEC 2151 and the decision of this Court in the case of State of U.P. v. Putti Lal (supra).

(5) It has been contended on behalf of the petitioner that there is an element of public interest created by the Government in matters of appointment on daily wages for or in connection with the affairs of the State and consequently the daily-rated employees get an element of public interest in the performance of their duties. The element of public interest being so pronounced, it cannot be

repudiated, set of rules to be framed in consonance with the imperatives of Articles 14, 16, 38, 39, 41 and 43 of the Constitution and compatible with the reservation policy of the State in the matters governing appointment on daily wages for on in connection with the affairs of the State. The appointments of daily-rated employees might be referable to contingent establishment but payments of wages would nonetheless be the payment charged in the public fund and the State or its authority cannot be allowed to have a carte blanche of lending out favour or bestowing benevolence on a chosen few on extraneous consideration and at the expense of public exchequer. The daily-rated employees engaged in Government Departments, do acquire, in the course of time, a status and certain rights and privileges lending justification to interference by the Courts in order to, protect such rights and privileges qua the provisions contained in Articles 38, 39, 41 and 43 of the Constitution. A constitutional duty/obligation is cast upon this Court to ensure that the laudable objectives sought to be achieved by the constitutional provisions aforesaid are not overreached by those duty it is to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice-social economic and political-informs all the institutions of the National Life; to strive to minimize the inequality in income and endeavour to eliminate inequalities in status, facilities and opportunities amongst individuals; to direct its policy towards securing 'equal pay for equal work, health and strength of workers; and, within the limits of its economic capacity, to make effective provisions for securing the right to work. The Court can take judicial notice of the fact that the practice of appointment of daily-rated employees that is in vogue in Government Departments, cannot be abandoned except on pains of imperiling the public interest. The daily-rated employees if allowed to continue for a considerable length of time, acquire a status and regard being had to directive, principles of state policy enshrined in Part IV of the Constitution, the Courts very often intervene in the matter with a view to doing justice to such employees and granting them full-fledged status of a Government servant. I would not scruple to say that the daily-rated/casual employees constitute themselves a Class of Government servants. In Chief Conservator of Forest v. Jagannath Maruti Kon Bhare, AIR 1996 SC 967, the Supreme Court affirmed the decision of the Industrial Court holding that employment of casual/temporary basis for several years (5 to 6 years in that

case) amounts to unfair labour practice.

(6) The daily wagers may be regularized, provided vacancies, posts are existing and in consonance to rules, regulations, scheme or Government Order, for the purpose compatible with the constitutional provisions particularly those embodied in Articles 14, 16, 38, 39, 41 and 43 of the Constitution with particular reference to the doctrine of 'social justice' which the Supreme Court has expatiated upon in *Air India Statutory Corporation v. United Labour Union* : (1997)ILLJ 1113 SC , as under:

'Social justice, equality and dignity of persons are cornerstone of social democracy. Social justice is a dynamic device to mitigate the suffering of the poor, weak, Dalits, tribals, and deprived sections of the society and to elevate them to the level of equality to live their lives with dignity of person.....Social security, just and humane conditions of work and leisure of workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity.'

(7) The learned Counsel in support of the aforementioned contentions has relied upon the decision of *Surinder Singh v. The Engineer-in-Chief, CPWD and Ors.* : (1986)ILLJ403SC ; *Sushil Kumar Yadunath Jha v. Union of India* : (1986)ILLJ7SC ; *Jacob M. Puthuparambil v. Kerala Water Authority and Ors.* : (1991)ILLJ65SC and *Karnataka State Private College Stop Gap Lecturers Association v. State of Karnataka and Ors.* : (1993)ILLJ831SC as well as the decision of *A.K. Jain v. Union of India*, 2 S. C. Service Law Journal 203 (Sic) and *Rajbinder v. State of Punjab and Ors.*, 2 S.C Service Law Journal 521 (Sic)

(8) The references were made on behalf of the petitioner on Daily-rated Casual Labour through *Bhartiya Dak Tar Mazdoor Manch v. Union of India and Ors.* : (1988)ILLJ370SC ; *Bhagwati Prasad v. Delhi State Mineral Development Corporation* : (1990)ILLJ320SC ; *Bharat Petroleum Management v. Bharat Petroleum Co. Ltd.* : [1990]1SCR962 ; *Dhirendra Chamoli and Anr. v. State of UP.* : (1986)ILLJ134SC .

(9) Learned Counsel for the petitioner has claimed petitioner's regularisation on the strength of judgement of this Court (Hon'ble Om Prakash, J.) in (1991) 1 UPLBEC 401, *Tejpal and Ors. v. Director of Education and Ors.*, where this Court

has observed that regularisation is imperative under Constitutional Philosophy when the daily wagers have put in deployment for several years, however, the decision of this Court in Tejpal (supra) can not be a binding precedence in view of large number of subsequent decisions of this Court and Supreme Court.

(10) In view of three Judges Bench decision of the Supreme Court in : (1990)ILLJ320SC , Bhagwati Prasad v. Delhi State Mineral Development Corporation, the learned Counsel for the petitioner has submitted that the writ petitioners were having relevant educational qualification and were serving for long period with artificial breaks in service, could be considered for regularisation in phases, in accordance with seniority by ignoring the artificial breaks of three months while purpose of computing their past service, however, this case shall have no binding precedence and has not decided any law and only under the facts and circumstances has directed the respondent authorities to consider the case of regularisation.

(11) The petitioner has claimed regularisation on the strength of a judgement of this Court (Hon'ble D. K. Seth, J.) in 1998 (78) FLR 100, Ram Sunder Yadav and Anr. v. The Regional Sports Officer, Sports Stadium, Meerut and Ors., where the writ petitioners after having worked about 7-8 years in the Sports Stadium were directed for being considered for regularisation following the decision of Bhullar Hath Yadav and. others v. Mayo Hall Sports Complex, Allahabad and Ors. 1990 (61) FLR 68. The facts of Ram Sundar Yadav (supra) are different and distinguishable and the decision is in per encurium as the same is not taking upto date decision of the Supreme Court on the subject or regularisation while passing above judgement.

(12) In : (2001)ILLJ710SC , Gujarat Agricultural University v. Rathod Labhu Bechar and Ors., the Supreme Court observed that daily-rated labourers engaged dehors the rules as plumbers, carpenters, sweepers, pump operators, helpers and masons by fully State-aided University were allowed to continue as such for a long period of 10 years, therefore, non-regularising the services of such daily wagers by University was held as an unfair labour practice and the daily-rated labourers were indicated to be considered for absorption against existing vacant posts in

accordance with the rules and if necessary by relaxing qualification and creating necessary number of posts.

(13) The Supreme Court in : (1997)11SCC396 , Ratan Singh v. Union of India and Anr., has held that the service of a daily-rated workman, who had continuously served for the requisite statutory minimum period, in a year, cannot be terminated without complying the requirement of Section 25F of the Industrial Disputes Act and a lump-sum amount of Rs. 25,000/- was directed to be paid to the workman in lieu of reinstatement of back-wages.

(14) In (2000) 7 SCC 74, Hindustan Machines Tools and Ors. v. M. Rangareddy and Ors., the Supreme Court following the decisions of Piara Singh (supra); Raj Narayan Prasad v. State of U.P. : (1998)8SCC473 and Niadar v. State (Delhi Administration) : (1992)4SCC112 , where the casual labourers deployed (3 to 10 years) in such multi-unit public sector undertaking of Central Government claiming regularisation while undertaking was facing great financial difficulties, the direction of the High Court to prepare an absorption scheme to such undertaking in the light of the provisions of Articles 38(1), 39(e) and 43 of Constitution was not interfered with, however, the liberty was granted to such undertaking, while framing the scheme, to assess the requirement of regular work force and necessity to alleviate the suffering of such workers and then to fix the strength of force to enable the workers to get the benefit of regularisation within a reasonable time and only, those, who were fulfilling the conditions of eligibility with relaxation of age in prevailing rules, were directed to be considered for regularisation.

7. Following submissions were made for and on behalf of Sri H. R. Mishra, learned Standing Counsel for Ghaziabad Development Authority :

(1) Unfortunately, however, in none of the aforementioned cases, the Supreme Court considered its earlier binding precedents on the question of manner or regularisation, that is, State of Mysore v. S. V. Narayanappa : [1967]1SCR128 and R. N. Nanjudappa v, T. Thimmiah : (1972)ILLJ565SC . The aforementioned judgments of the Supreme Court were followed by a three Judges Bench of the Supreme Court in B. N. Nagarajan and Ors. v. State of Karnataka, reported in : (1979)ILLJ209SC .

(2) In R. N. Nanjudappa (supra), the Supreme Court held that if an appointment is made in infraction of the rules or if it is in violation of the provisions of the Constitution, such appointments being, illegal, the same cannot be regularised. It was further held that ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. It held-'Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head appointment in defiance of rules or it may have the effect of setting at naught the rules. The Supreme Court in that case negated the contention that regularisation in employment is possible by taking recourse of Article 162 of the. [Constitution of India](#) in the following words:-

'In the present case, the contention on behalf of the respondents that the regularisation was itself a mode of appointment under Article 162 of the Constitution is unsound. The Rules came into existence in the present case in 1964. The regularisation was made in the year 1967. The regularisation was made with effect from 1958. Therefore, the Rules became applicable. The regularisation in the present case was also bad because even without specific methods of requirement appointments could be made only by selection or promotion or transfer from equivalent grade. The method of recruitment and qualification for each State Civil Services was to be set forth in the rules of recruitment of such service specially made in that behalf.'(3) The Supreme Court held that Article 162 does not confer power to regularise nor does it confer power on the Government to make rules for recruitment or conditions of service. It was further held :-

'All that the Public Service Commission did was to regularise the appointment to the post of the Principal. The regularisation by the State of the appointment is with effect from 1958. This regularisation is bad for the following reasons. First, regularisation is not itself a mode of appointment. Secondly, the modes of appointments are direct recruitment or selection or promotion or appointing for reasons to be recorded in writing an officer holding a post of an equivalent grade by transfer from any other service of the State.'(4) In B. N. Nagrajan and Ors. v.

State of Karnataka, reported in : (1979) ILLJ209SC , it was held:-

'It was argued that the regularisation of the promotion gave it the colour of permanence and the appointments of the promotees as Assistant Engineers must, therefore, be deemed to have been made substantively right from the 1st of November, 1956. The argument, however, is unacceptable to us for two reasons. Firstly the words 'regular' or 'regularisation' do not connote permanence. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to the methodology followed in making the appointments. They cannot be construed so as to convey an idea of the nature of tenure of the appointments'(5) Article 16 of the [Constitution of India](#) provides that all citizens of India are entitled to get equal opportunity for the purpose of obtaining employment in State Service.

(6) In order to fulfil such a condition, it is necessary to consider the cases of all citizens who are eligible to be appointed. For that purpose, it is not only necessary to call for the names from, the Employment Exchange, but the same is in some cases also required due advertisement of posts in Newspapers by notifying the vacancies and the requisite qualifications therefor so that all eligible candidates may apply for their appointment in the said posts.

(7) Right to work is not a fundamental right but a right to be considered for appointment is as enshrined under Articles 14 and 16 of the [Constitution of India](#).

(8) It cannot, thus, be stated that the petitioners had been appointed upon compliance of the recruitment process as envisaged under the Education Code or upon compliance with the principles enshrined under Article 16 of the [Constitution of India](#).

(9) From the decisions of the Supreme Court as also of this Court, as referred to hereinbefore, it will thus be evident that any appointment which was made by a person having no authority to do so or the appointments which have not been made following the mandatory provisions of the Recruitment Rules and Articles 14 and 16 of the Constitution, such appointments should be held to be a nullity. In this view of the matter, in my opinion, this Court in exercise of its writ jurisdiction

cannot direct regularisation of the services of the employees when the same would be violative of Articles 14 and 16 of the Constitution.

(10) In *Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and Ors.* : (1992) IILLJ452SC , it was observed :-

'We may take note of the pernicious consequences to which the direction of regularisation of workmen on the only ground that they have put in works for 240 or more days, has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in Employment Exchange, it has become a common practice to ignore the Employment Exchange and the person registered in the Employment Exchange, and to employ and get employed directly those who are either not registered or are lower in the long waiting list in the employment register. The Court can take judicial notice of the fact that such employment is sought and given directly for various illegal consideration including money. The employment is given for temporary periods with technical breaks to circumvent the relevant rules, and it continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchange for years. Not all those who gain such back door entry in the employment are in need of the particular jobs. Though already employed elsewhere. They join the job for better and secured prospects. That is why most of the cases which come to the Courts are of employment in Government Departments, Public Undertaking or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect to indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that those who are employed on such works are required to be continued for 240 more days have to be absorbed as regular employees although the works are time bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests thus jeopardised on both Courts.'

(11) In *Karnataka State Private Colleges Stop Gap Lecturers Association v. State of Karnataka and Ors.* : (1993) IILLJ831SC ,

the Supreme Court again held :-

'Ad-hoc appointments, a convenient way of entry usually from backdoor, at times even in disregard of rules and regulations, are comparatively recent innovation to the service jurisprudence. They are individual problems to begin with, become a family problem in Court of Law. It is unjust and unfair to those who are lesser fortunate in society with little or no approach even though better qualified more meritorious and well deserving. The infection is widespread in Government or semi-Government departments or State financed institutions. It arises either because the appointing authority resorts to it deliberately as a favour or to accommodate someone or for any extraneous reason ignoring the regular procedure provided for recruitment as a pretext under emergency measure or to avoid loss of work etc. or the Rules or circulars issued by the department itself empower the authority to do so as a stop-gap arrangement. The former is art abuse of power. It is . unpardonable. Even if it is found to have been resorted to as a genuine emergency measure the Courts should be reluctant to grant indulgence. Latter gives rise to equalities which have bothered Courts every now and then.'(12) In State of Punjab and Ors. v. Surinder Kumar and Ors. : [1992]194ITR434(SC) , it has been held :-

'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.'(13) In Sandeep Kumar v. State of UP. : AIR 1992 SC713 , the Supreme Court held:-

'From the facts placed before us, it appears that the scheme under which the petitioners are working is of a very specific nature. There is no permanent need for the. work and since it is a project for a particular purpose, it will not be possible to direct that the petitioner may be regularised in service.'(14) The Supreme Court

again reiterated aforementioned view in Karnataka State Private College Stop-gap Lecturers (supra).

(15) The Supreme Court in J.K. Public Service Commission etc. v. Dr. Narinder Mohan and Ors. etc., 1993 (4) SCC 597, it was held :-

'Existence of Statutory Rules is not a condition precedent to appoint an eligible and fit person to a post. The executive power is co-extensive with legislative power of the State and under Article 162, the State can create civil posts and fill them up according to executive instructions consistent with Articles 14 and 16 of the Constitution. It is settled law that once statutory rules have been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill, in the gaps but the instructions cannot and should not supplant the law, but would only supplement the law.'The Court proceeded to observe :-

'A little leeway to make ad-hoc appointment due to emergent exigencies does not clothe the executive Government with power to relax the recruitment or to regularise such appointment nor to claim such appointments to be regular or in accordance with rules. Back door ad hoc appointments at the behest of power source or otherwise and recruitment, according to rules are mutually antagonistic and strange bed partners. They cannot coexist in the same sheath. The former in negation of fair play. The latter are the product of order and regularity. Every eligible person not necessarily be fit to be appointed to a post or office under the State, selection according to rules by a properly constituted commission and fitment for appointment assures fairness in selection and inhibits arbitrariness in appointments.'(16) In, Jacob M. Puthuparambil (supra), there existed statutory rules for regularisation of the services of the writ petitioners.

(17) In case of Karnataka State Private College Stop Gap Lecturers' Association (supra), the Supreme Court was considering the practice of the management of the Private Colleges to appoint teachers for a fixed period and then break their services for one day and again reappoint them. In that situation the Supreme Court gave certain directions. The situations in these cases are not the same, inasmuch as herein the petitioners were appointed for a fixed period, their services

Were terminated for a considerably long time and they were later on appointed in different schools. The circular letter issued by the Kendriya Vidyalaya Sangathan clearly stated that such appointments were made on contractual basis.

(18) In *Sushil Kumar Yadunath Jha v. Union of India* : (1986)ILLJ7SC , the question arose for consideration was whether the writ petitioner appointed to a temporary post as post graduate teacher in Kendriya Vidyalaya Sangathan terminated after three years, after becoming reappointee would be entitled to the benefit of break in his services.

In the case of *Delhi Development Horticulture Employees' Union (supra)*, the Supreme Court held that back-door appointments are made on various considerations including monetary consideration.

(19) In *State of Haryana v. Piara Singh* : (1993)ILLJ937SC , the question regarding regularization of ad-hoc appointees came up for consideration before the Supreme Court. It was held that normal rule would be regular appointment through the prescribed agency but exigency of administration may sometime call for an ad-hoc and/or temporary appointment to be made. Such ad-hoc or temporary appointee, the Supreme Court held, if allowed to continue for a fairly long span, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and service record and appointment does not run counter to the reservation policy of the State. Direction given by the High Court in that case for regularization of every ad-hoc or temporary employees who had been continued for one year was held to be totally 'untenable' and 'unsustainable'. In the case of *Piara Singh (supra)* the Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad-hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad-hoc or temporary appointment by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad-hoc or

temporary employee. Ad-hoc or temporary employee should not be replaced by another ad-hoc or temporary employee,' he must be replaced by only regularly selected employee. The ad-hoc appointment should not be a device to circumvent the rule of reservation.'

(20) Recently in *V. Sreenivasa Reddy v. Government of A.P.* : AIR 1995 SC586 , the Supreme Court indicated as below :-

'It is now well settled law that that appointment/promotion must be in accordance with the Rules, direct recruitee takes his seniority from the date on which he starts discharging the duty of the post borne on the cadre while a temporary appointee appointed dehors the rules or on adhoc basis or to a fortuitous vacancy gets seniority from the date of regular appointment.' It also held :-

'In *A.K. Bhatnagar v. Union of India*, (1991) 1 SCC 54, this Court while deprecating the practice of the Government giving a go-by to the statutory rules or regulations, framed under proviso to Article 309 of the Constitution making large scale departure, expressed thus :-

'On more than one occasion this Court has indicated to the Union and the State Government that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often Government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the Government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules.(21) This Court (DB) in *Bhullar Nath Yadav and Ors. v. Mayo Hall Sports Complex and Ors.*, 1990 ACJ 429, following the judgement of the Supreme Court in *The Dharwad District PWD Literate Daily Wage Employee Association and Ors. v. State of Karnataka and Anr.*, JT 1990 SC 343 : 1990 SCC (2) 396, has held' that by virtue of petitioners working for last several years on daily wages in Mayo Hall Sports Complex cannot be denied, regularisation even in absence of sanctioned post and the respondents were

expected to devise ways and means to absorb the writ petitioners on permanent basis, specifically those writ petitioners, who had put three years or more in service on daily wages, were entitled to be absorbed and regularised. This Court in *Bhullar Nath Yadav (supra)* has further observed that paucity of funds and absence of posts can not be a ground for denying the benefit of regularisation to the writ petitioners.

(22) In *The Dharwad District (supra)*, it was observed by the Supreme Court that it would be unfair on the part of the State to keep an employee on daily wages for indefinite period and such a treatment is violative of equality clause of Articles 14 and 16 of the Constitution.

(23) In 1999 (82) FLR 76, *Channey Lal and Ors. v. Director, Malaria Research Centre, New Delhi and Anr.*, where the petitioners deployed on daily wages were orally asked not to come to work even after more than three years of deployment and on their claim for regularisation on the ground that the writ petitioners have acquired right to be considered for regularisation by virtue of having worked more than 240 days without any break in a calendar year and they were entitled to the protection of Article 311 of the Constitution, this Court following the decision of *Himanshu Kumar Vidyarthi v. State of Bihar*, 1997 (76) FIR 237, has held that the daily wagers working, as a workman deployed in a project does not hold civil post under the State and have no right to the post, these daily wagers can not be said to work on temporary or permanent basis and are not entitled to the protection of provisions of Article 311 of the Constitution, and since the daily wagers have no right to the post as such the concept of retrenchment can not be extended to such daily wage employee and disengagement of such daily wager can not be said to be arbitrary in view of *Himanshu Kumar Vidyarthi (supra)*. The disengagement of deployment of daily wager, who is engaged for a day is not a termination of service. Since the daily wage labour is engaged only on the basis of a contract lasting for a day and each engagement is a fresh, non-engagement or disengagement is not held to be arbitrary. In view of *Pushpa Agarwal v. Regional Inspectress of Girls Schools, Meerut*, 1995 (70) FLR 20, the principle of retrenchment as provided under Central Industrial Disputes Act and Rules framed thereunder is also attracted in respect of a workman governed under the U.P.

Industrial Disputes Act and the Rules framed thereunder.

(24) In : (1968)ILLJ288SC , State of Assam and Ors. v. Kanak Chandra Dutta, the Supreme Court (Constitution Bench) has also held that casual labourer is not holder of civil post.

(25) This Court (DB) in 1992 (2) ACJ 1366, Zakir Hussain v. Engineer-in-Chief, Irrigation Department; U.P. Lucknow, has held that daily wager has no right to the post and there must be regular or permanent post and funds must be available for payment of salary and the daily wagers are to be qualified for appointment to the post and by virtue of only having worked for three years they can not claim regularisation as a matter of right and the regularisation cannot be made as a thumb of rule, and this Court relegated the matter for adjudication and avail the alternative remedy for claiming the relief in reference to Section 25F of the Industrial Disputes Act.

(26) In State of U.P. v. Labour Court, Haldwani and Ors., 1999 (81) FLR 319, it was held that the engagement of daily wager in the Irrigation Department comes to an end every evening. Refusal to employ him from a particular day, his disengagement was not under the provision of Section 25-F of Industrial Disputes Act. It was observed in Para 6 of the above case as below :-

'Employment to Government service in the. Irrigation Department is regulated by statutory rules. Presently, the respondent No. 2 was not employed in accordance with the rules. For engaging a person casually on day to day basis the Statutory rules are not required to be followed under which the posts have to be advertised and only the best from the , market have to be picked up keeping in view reservation provided from certain classes. Thus, every eligible person has an opportunity to participate in the recruitment process. This is not so in the case of daily wager in whose case even regularisation regarding age, medical fitness, character roll etc. are not observed. Therefore, daily and casual workers who are engaged in, disregard of all rules cannot be allowed to enter . Government service through the back door and the Labour Court cannot be allowed to be used as a legal means for such back door entry. The anomalous situation that the impugned award creates can be seen from the fact that till before his alleged retrenchment

the respondent No. 2 was on engagement from day today. The impugned award makes him a permanent employee with the necessary consequence that he would have to be paid salary for all the 365 days as regular employee and the other benefits of regular employment can also not be denied to him. Thus, the award, put him, in as much better position that he was before the alleged retrenchment. Such a result is not conceived.'(27) Non-renewal of contractual employment and dispensation of engagement at any stage without any reason in terms of appointment does not amount to retrenchment under Section 2(oo) of Industrial Disputes Act as held by the Supreme Court in : (1997)11SCC521 , Escorts Ltd. v. Presiding Officer and Anr., while following an earlier decision of Supreme Court in : (1994)ILLJ597SC , M Venugopal v. Divisional Manager, LIC. Later on it was considered and followed when similar view was taken by the Supreme Court in : (1996)ILLJ888SC , State of Rajasthan and Ors. v. Rameshwar Lal Gahlot, where termination of appointment after expiry of specified period held valid and not attracting Section 25F of [Industrial Disputes Act, 1947](#) unless the termination was found to be malafide or in colourable exercise of powers. Similar view was also-taken by the Supreme Court in 2002 (9) SCC 622, Executive Engineer, CPWD, Indore v. Madhukar Purshottam Kolharkar and Anr..

(28) Undisputedly, the petitioner was a daily wager. The daily wagers have no right to the post in view of : [1997]3SCR368 , Himanshu Kumar Vidyarthi v. State of Bihar and 1993(1) AWC 172, Bipin Bihari Srivastava v. District Judge, Basti, because appointment of daily wagers are made by not complying or observing the procedural formalities in consonance to any rules, regulations or by observing the procedures prescribed for the recruitment. The engagement of daily wager commences in the morning and comes to an end in the evening of every day. There is a contractual deployment for every day. It is upto the employer to allow to continue the employment or disengage the daily wager at any time in absence of work. The daily wager has no right or protection under Article 311 of the [Constitution of India](#). : (1968)ILLJ288SC , State of Assam v. Kanak Chandra Dutta, 1998 LIC 1088 (AP) (Para 16); Jagdev v. State of U.P. and 1999 (82) FLR 76, (Paras 8 and. 10), Channey Lal v. Director Malaria Research Centre, New Delhi.

(29) The daily wagers engaged without any written appointment order could be terminated without any written order also in view of *Magarsen v. State of U.P. and Ors.* : (2002)IILLJ924All .

(30) The daily wagers/muster roll employees can not be regularised unless the posts are in existence or the vacancies are available. To entertain the claim for regularisation means to provide appointment to a post after regularising the service of an employee. The position of daily wager is entirely different inasmuch the daily wager holds no post in view of 2003 AIR SCW 3382, *State of Haryana and Anr. v. Tilak Raj and Ors.* : (1994)IILLJ977SC , *Madhyamik Shiksha Parishad v. Anil Kumar Mishra* (Paras 4 and 6); 1996 (9) SCC 34, *State of U.P. v. UP. Madhyamik Shiksha Parishad Shramik Sangh and Ors.* (Paras 3 and 4); as well as 1995 (Supp) (4) SCC 49, *State of Orissa v. Dipti Malapatra* (Para 4).

(31) The daily wagers are deployed on temporary assignment only and not on sanctioned post and completion of 240 days work by daily wager can not attribute status of a casual workman under Industrial Disputes Act and as such does not create a right to regularisation in view of : (1994)IILLJ977SC , *Madhyamik Shiksha Parishad v. Anil Kumar Mishra and Ors.*.

(32) In : (1997)IILLJ856SC , *Ashwini Kumar v. State of Bihar*, it was. observed by the Supreme Court that if initial entry is itself unauthorised and not against any sanctioned vacancy, the question of regularising the incumbent on such a non-existent vacancy does not arise and even if such purported regularisation or confirmation is given, it would be an exercise in futility.

(33) In : (1993)IILLJ297SC , *State of Orissa and Ors. v. Sukanti Mohaptra and Ors.*, the Supreme Court held that services of the candidates appointed irregularly in total disregard of the rules, cannot be regularised in exercise of such powers under the departmental rules. .

(34) Similarly in case of *Dr. Narinder Mohan* (supra), the Supreme Court reiterated that having made the rules, the executive cannot fall back upon its general power under Article 162 to regularise the ad-hoc appointments under the rules.

(35) In : (1996)IILLJ795SC , Dr. Surinder Singh Jamwal and Anr. v. State of Jammu and Kashmir and Ors., the Supreme Court has held that the ad-hoc appointments made dehors the rules without following proper procedure of recruitment,. would not confer any right or regularisation merely on the basis of the length of the service.

(36) In : (1997)1SCC350 , P. Ravindran and Ors. v. Union Territory of Pondicherry and Ors., the Supreme Court held that regularization of ad-hoc appointees by passing the process of recruitment through open competition to be held by the Public Service Commission, is not permissible.

(37) In : (1997)IILLJ78SC , Santosh Kumar Verma and Ors. v. State of Bihar through Secretary, Department of Urban Development, Government of Bihar and Ors., the Supreme Court held that the posts temporarily filled in contravention of law, cannot be regularized.

(38) In case of : (1992)IILLJ452SC , Delhi Development Authority, Horticulture Employees' Union (supra), the Supreme Court has gone to the extent of saying that a good deal of illegal appointment market has developed resulting in a new source of corruption and frustration of those who are waiting registered in the Employment Exchange for the years.

(39) In (1995) 1 UPLBEC 93, Dr. Arundhati Ajit Pargaonkar v. State of Maharashtra and Anr., the Supreme Court has held that the post was one, which was to be filled up through Public Service Commissioner, therefore, the claim of regularisation was not worth accepting.

(40) In : (1997)ILLJ 1204 SC , State of Uttar Pradesh v. Ajay Kumar, it has been held by the Supreme Court that there must exist a post and there must be Statutory Rules or administrative instructions for appointment to the post and the High Court was in error in directing regularisation of service of the respondents.

(41) In : (1997)11SCC228 , Union of India v. Uma Maheshwari, the Supreme Court has held that the claim of regularisation by a daily wager is not sustainable if no regular work or regularisation scheme is in operation.

(42) In 2004 (54) ALR 85, this Court (DB) relying on various judgements of the Supreme Court rejected the claim of regularisation of daily wage employees of P.W.D. and Minor Irrigation Department holding that public posts are to be filled up after due advertisement. For seeking regularisation, there must exist a post and there should be statutory rules or administrative instructions, in absence of which, the claim of regularisation is unsustainable.

(43) Learned Counsel for the respondents has, however, submitted that the rulings cited by the petitioner are not applicable to the facts and circumstances of the instant case because the case in hand is a case of the nature, where the petitioner was engaged for a particular Project and when the Project itself is over then naturally the question of his regularisation does not arise. In support, reliance has been placed upon a recent ruling of the Supreme Court in 2003 (3) AISLJ 147, Surendra Kumar Sharma v. Vikas Adhikari and Anr., where the services of the petitioner engaged for a short duration under a scheme known as Rural Employment Programme were terminated, the Supreme Court had held that 'when the scheme itself was over and it was known to him that his requirement was only during the currency of the scheme, then no relief could be granted.' The Supreme Court while deciding the aforesaid Surendra Kumar Sharma's case (supra) had the occasion to deal with the following rulings of the Supreme Court on the subject:-

(i) Delhi Development Horticulture Employees' Union (supra) and : (2003)IILLJ359SC , S.M. Nilajkar and Ors. v. Telecom, District Manager, Karnataka, where the Court while dealing with such scheme for project employees observed as under :-

'It is common knowledge that the Government as a Welfare State floats several schemes and projects generating employment opportunities, though they are short-lived. The objective is to meet the need of the moment. The benefit of such schemes and project is that for the duration they exist, they provide employment and livelihood to, such persons as would not have been able to secure the same but for all schemes or projects. If the workmen employed for fulfilling the need of such passing-phase-projects or schemes were to become a liability on the employer-State by too liberally interpreting the labour laws in favour of the

workmen, then the same may well act as a disincentive to the State for floating such schemes and the State may opt to keep away from initiating such schemes and projects even in time of dire need because it may feel that by opening the gates of welfare it would be letting in onerous obligations entailed upon it by extended application of the labour laws.'(ii) : (1999) ILLJ 187 SC Rajendra and Ors. v. State of Rajasthan and Ors., where the termination of the employment had been caused by abolition of posts consequent upon the schemes having been abolished for non-availability of funds, it was held as under :-

'that when posts temporarily created for fulfilling the needs of a particular project or scheme limited in its duration come to an end because the need for the project, comes to an end either because the need was fulfilled or the project had to be abandoned wholly or partially for want of funds, the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged, because such a direction would amount to requisition for creation of posts though not required by the employer and finding such posts though the employer did not have funds available for the purpose.'(iii) (1998) 3 SCC 354, Jaipal and Ors. v. State of Haryana, where also the employees of the project of adult and non-formal education, a temporary project, which was a time bound project to last till 1990, were held not entitled for regularising of their services.

(44) This Court (Hon'ble Sunil Ambwani, J) in (2001) 2 UPLBEC 1554, Chandra Prakash Gupta v. Additional District Magistrate (Project), Hamirpur and Anr., has observed that when the writ petitioner initially appointed as a typist on daily wages in integrated rural development programme had served 34 months with short breaks on the strength of the interim order of this Court, was not said to be holder of appointment letter by virtue of interim order of the Court and the deployment of such daily wager could be terminated as his initial deployment was made without following the procedure and was by way of back-door entry. In Chandra Prakash Gupta (supra), this Court has observed as below :-

'6. The question of regularization of daily wages employees has been subject matter of judicial scrutiny for a long time. In a developing country various schemes are implemented. These schemes are supported by limited financial allocation.

The employees appointed on daily wages in such schemes are fully aware of its temporary nature, and also the nature and terms of their appointment. In *Daily Rated Casual Labour Employed under P&T; Department v. Union of India* : (1988)ILLJ370SC , the Supreme Court considered the rights of the daily rated casual labour and directed for submission of a scheme to extend permanent status of the workmen. *State of Haryana and Ors. v. Piara Singh and Ors.* : (1993)ILLJ937SC , was a case of ad-hoc temporary Government employees and consider the validity of the orders of regularisation made by State of Haryana, in which Supreme Court held that eligible and qualified continue in service satisfactorily for a long periods raises presumption of need of regular posts. Later on there has been a marked changed in law relating to regularisation of daily rated employees. In *Ghaziabad Development Authority and Ors. v. Vikram Chaudhary* : (1995)ILLJ703SC , it was held that in the absence of availability of posts for regular appointment, regularisation cannot be directed and that the daily rated employees should be given minimum wages under the Statute, if any, or the prevailing wages in the locality. In *State of Himachal Pradesh v. Nodha Ram* : [1996]1SCR54 , it has been held that where a project is completed, and closed due to non-availability of funds, the employees have to go along with its closure. No vested right, is created in temporary employments. Directions can not be given to regularise their services in the absence of any existing vacancies, nor can directions be given to the State to create posts in a non-existing establishment. In this case Supreme Court found that the directions, issued by Court for regularisation were illegal warranting interference.'⁽⁴⁵⁾ In : [1996]1SCR54 , *State of Himachal Pradesh through the Secretary, Agriculture to the Government of Himachal Pradesh, Shimla v. Nodha Ram and Ors.*, the Supreme Court has held as under

'It is seen that when the project is completed and closed due to non-availability of funds, the employees have to go along with its closure. The High Court was not right in giving the direction to regularise them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularise their services in the absence of any existing vacancies nor can directions be given to the State to create posts in a non-existent establishment. The Court would adopt pragmatic approach in giving directions. The directions

would amount to creating of posts and continuing them despite non-availability of the work. We are of the considered view that the directions issued by the High Court are absolutely illegal warranting our interference. The order of the High Court is, therefore, set aside. (Para 4).'(46) This Court (Hon'ble Sudhir Narain, J.) in (2001) 2 UPLBEC 1448, Arvind Kumar Rai and Ors. v. State of U.P. and Ors., held that the daily wagers can not be treated as ad-hoc appointees in view of Rule 4 of the U.P. Regularisation of Ad-hoc Appointments (on posts outside purview of the Public Service Commission) Rules, 1979 as the daily wagers are not better., than the work-charge, ad-hoc or temporary employees and in absence of statutory provisions or rules none of them can be regularised.

(47) This Court (Hon'ble M.C. Jain, J.) in (2001) 2 UPLBEC 1267, Vinod Singh and Anr. v. State of U.P. and Ors., has observed that by virtue of working for 240 days in a calender year a right is not accured in favour of the writ petitioner for his absorption in the Government department as for absorption the existence of vacancy or post is necessary.

(48) This Court (Hon'ble A.K.Yog, J.) in (2001) 2 UPLBEC 1429, Santosh Kumar Sonkar v. State of U.P. and Ors., has observed that the daily wagers deployed in the year 1986 in stop gap arrangement to meet temporary work load and discontinued in the. year 1987 on extinction of the work load, however, on their claim could not be regularised or absorbed as they have not vested right for regularisation or absorption.

(49) In (2004) 1 UPLBEC 60, State of U.P. and Anr. v. Rajendra Prasad and Ors., this Court (DB) while relying above judgement of, State of U.P. and Ors. v. U.P. Madhyamik Shiksha Parishad Shramik Sangh and Ors. (supra) has held that the daily wagers can not be regularised in absence of scheme or rules, neither the State could be directed to frame rules for regularisation as giving direction to State to frame rules is the function of legislature.

(50) In Ashwani Kumar v. State of Bihar, AIR 1997 SC 1627, the Supreme Court held that the question of confirmation or regularization of an irregularly appointed candidate could arise if the candidate concerned is appointed in an irregular manner or an ad-hoc basis against a possible vacancy which is already

sanctioned, but if initial entry is itself unauthorized and is not against any sanctioned vacancy, the question of regularizing the incumbent on such non-existent vacancy could never survive for consideration and even if such purported regularization or confirmation is given, it would be an exercise in futility. The Supreme Court held that regularization of such appointment would amount to decorating a still-born baby. In *Delhi Development Horticulture Employees' Union v. Delhi Administration Delhi and Ors.* : (1992) IILLJ452SC , the 'pernicious consequences' of the direction of regularization of workmen on the only ground that they have put in works for 240 or more days, has been pointed out as under :-

'Although there is Employment Exchange Act which requires recruitment on the basis of registration in Employment Exchange, it has become a common practice to ignore the Employment Exchange and the person registered in the Employment Exchange, and to employ and get employed directly those who are either not registered or are lower in the long-waiting list in the employment register. The Court can take judicial notice of the fact that such employment is sought and given directly for various illegal consideration including money. The employment is given for temporary periods with technical breaks to circumvent the relevant rules and is continued for 240 days or more days with a view to give the benefit of regularization knowing the judicial trend that those who have completed 240 days or more days are directed to be automatically regularized. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchange for years.'(51) In *State of U.P. v. Ajay Kumar*, (1997) 1 SCC 88, it has been held that there must exist a post and either administrative instructions or statutory rules must also be in operation to appoint a person to the post. Daily wage appointment, it was further held, would obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists.

(52) In (1999) 1 UPLBEC 454, *Rajendra Prasad and Anr. v. State of U.P. and Ors.*, this Court (Hon'ble S.R.Singh, J.) held that in absence of legally vacant post and scheme wholesale regularization cannot be directed, however, direction was made to the State Government to frame rules and schemes for regularization. This Court in *Rajendra Prasad* (supra) held as under :-

'I am of the considered view that 'wholesale' and unconditional Orders cannot be issued by this Court directing the respondents to regularize the services of the petitioners, and in no case such direction can be issued in the absence of posts and a scheme rules visualizing regularization on certain principles and norms framed in consonance with the related constitutional provisions for 'Regularisation' has not been claimed herein in the above sense of the term. Rather it comprehends induction into the cadre of the service which in the absence of posts and a legally framed scheme cannot be allowed except on pains of violating the Constitution and relevant Service Rules.' (Para 7)

'In the conspectus of the above discussion. I am persuaded to the considered view that the service conditions of the daily rated employees must be modulated re-fixed by making appropriate rules compatible with the constitutional provisions particularly those embodied in Articles 14, 16, 38, 39, 41 and 43 of the Constitution with particular reference to the doctrine of 'social justice'.' (Para 11)

(53) The issue of regularisation has been considered by the Supreme Court from time and again and the law has been laid down in very clear terms in the cases, i.e. State of Haryana and Ors. v. Piara Singh and Ors. (Supra); Jacob M. Puthuparambil and Ors. v. Kerala Water Authority and Ors., : (1991)ILLJ65SC ; J&K; Public Service Commission etc. v. Dr. Narinder Mohan and Ors. : (1994)ILLJ780SC ; Dr. A. K. Jain v. Union of India : [1988]1SCR335 ; Ek. Ramakrishnan and Ors. v. State of Kerala and Ors. : (1997)ILLJ 1215 SC and Ashwani Kumar and Ors. v. State of Bihar and Ors. : (1997)ILLJ856SC ; and the ratio of all those judgements can be summarized to the extent that the question as to whether the services of certain employees appointed on ad-hoc basis should be regularised relates to the conditions of service. The power to prescribe the conditions of service can be exercised either by making Rules under the proviso to Article 309 of the [Constitution of India](#) or any analogous provision and in the absence of such Rules, under the instructions issued in exercise of its executive power. The Court comes into the picture only to ensure observance of fundamental rights and statutory provisions, Rules and other instructions, if any, governing the conditions of service. The main concern of the Court in such matters is to ensure the Rule of Law and to see that the executive acts fairly and gives a

fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the Directive Principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad-hoc status for long. A perusal of the authorities would show that appointments are as a rule to be made in accordance with statutory rules, giving equal opportunity to all the aspirants to apply for the posts and following the prevalent policy of reservation in favour of Scheduled Castes/Scheduled Tribes and Other Backward Classes. Whenever the employees are appointed on ad-hoc basis to meet an emergent situation, every effort should be made to replace them by the employees appointed on regular basis in accordance with the relevant rules as expeditiously as possible. Where the appointment on ad-hoc basis has continued for long and the State has made rules for regularisation, regularisation has to be considered in accordance with the rules. Where, however, no rules are operative, it is open to the employees to show that they have been dealt with arbitrarily and their work position has been exploited by keeping them on ad-hoc for one spell of time. However, it is a question of fact whether in the given situation, they were treated arbitrarily. In, *Khagesh Kumar v. Inspector General of Registration, U.P. and Ors.* : AIR 1996 SC417 , the Supreme Court did not issue direction for regularisation of those employees, who had been appointed on ad-hoc basis or on daily wages after the cut-off date, i.e. 1.10.1986 as was mandatorily required by the provisions of U.P. Regularisation of Adhoc Appointment (On posts outside the Purview of the Public Service Commission) Rules, 1979 and those who were not eligible under the said Rules were not given regularisation. The same view has been taken by the Supreme Court in *Inspector General of Registration and Anr. v. Awadhesh Kumar and Ors.* : (1996)9SCC217 . Moreover, the above referred cases further laid down that for the purpose of regularisation, various pre-requisite conditions are to be fulfilled, i.e., the temporary/ad-hoc appointment of the employee should be in consonance with the statutory rules, it should not be a back door entry. The service record of the petitioner should be satisfactory, the employee should be

eligible and/or qualified for the post at the time of his initial . appointment. There must be a sanctioned post against which the employee seeks regularisation and on the said sanctioned post, there must be a vacancy. Moreover, regularisation is to be made according to seniority of the temporary/ad-hoc employees. The regularisation should not be in contravention to the State policy regarding reservation in favour of Scheduled Castes/ Scheduled Tribes and Other Backward Classes and other categories for which state has enacted any Act or framed rules or issued any Government Order etc.

(54) Similar view has been taken in Union of India v. Vishamber Dutt : (1997)ILLJ381SC and State of Uttar Pradesh v. U.P. Madhyamik Parishad Kshramik Sangh : AIR 1996 SC708 . In the case of State of Himachal Pradesh v. Ashwani Kumar : (1996)ILLJ869SC , the Supreme Court has held that if an employment is under a particular Scheme or the employee is being paid out of the funds of a Scheme, in case the Scheme comes to closure or the funds are not available, the Court has no right to issue direction to regularise the service of such an employee or to continue him on some other project, for the reason that 'no vested right is created in a temporary employment'.

(55) If the workmen appointed without following any procedure prescribed under the Act or the Rules by such authority, who had no competence to appoint them, and their appointment was not in accordance with law, the provisions of the Act, 1947 are attracted for the reason that provisions of Section 25J of the Act have over-riding effect on other laws because the Legislature, in its wisdom, thought that the rights and liabilities arising out of the law and retrenchment should be uniform throughout wherever the Act was in force and every State should have its own law in consonance with the Central Law. This view stands fortified by the judgment of the Supreme Court in P. Virudhachalam and Ors. v. Management of Lotus Mills and Anr. : (1998)ILLJ389SC ; Krishna District Co-operative Marketing Society Ltd, v. N. V. Puranchandra Rao and Ors., : (1987)ILLJ365SC and Vikramaditya Pandey v. Industrial Tribunal and Anr., 2001 AIR SCW 310.

(56) In, Prabhu Dayal Jat v. Alwar Sahkari Bhumi Vikas Bank, 1991 Lab and IC 944, the Court considered the case of an employee, whose services stood

terminated on the ground that he had been appointed without any authorisation of law. This Court held that even in that case the provisions of the Act were attracted.

(57) On the contrary, in *Sita Ram Mali v. State of Rajasthan*, 1994 (2) WLC 177, Rajasthan High Court held as under :-

'Making appointment on daily wages without the availability of the post and without following the provisions of Articles 14 and 16 suffers from patent illegality. Apparently for the reasons which are only extraneous, the Officers of the Department have given appointments on daily wages to few favoured. Those who have waited in queue at the Employment Exchange have been altogether ignored. In fact, while the length of the queue continuously increase, the back-door entrants got the entry in service as daily wages employee and got the order of appointment on salary in the regular pay scale and ultimately the order of regularisation on the service.' The Court deprecated the practice of making appointments on daily wages and held that even the appointment on daily wages without advertising the vacancy or calling the names from Employment Exchange violates the provisions of Articles 14 and 16 of the Constitution and hence it is violative of the fundamental rights of other eligible persons and, thus, the relief of regularisation cannot be claimed.

(58) The question of appointment dehors the Rule has been considered by the Supreme Court from time and again and the Court held that such appointments are unenforceable and inexecutable. It is settled legal proposition that any appointment made dehors the Rules violates the Public Policy enshrined in the rules and, thus, being void, cannot be enforced. [Vide *Smt. Ravinder Sharma and Anr. v. State of Punjab and Ors.*, (1995) 1 SCC 138; *Smt Harpal Kaur Chahal v. Director, Punjab Instructions*, 1995 (Suppl) 4 SCC 706; *State of Madhya Pradesh v. Shyama Pardhi*, (1996) 7 SCC 118; *State of Rajasthan v. Hitendra Kumar Bhatt*, : (1997)6SCC574 ; *Madhya Pradesh Electricity Board v. S. S. Modh and Ors.*, : AIR 1997 SC3464 ; *Bhagwan Singh v. State of Punjab and Ors.* : (1999)9SCC573 and *Chancellor v. Shankar Rao and Ors.* : (1999)6SCC255 .

(59) Appointment dehors the Rules violates the mandate of the provisions of Articles 14 and 16 of the Constitution as held by the Supreme Court in *Delhi*

Development Horticulture Employees' Union v. Delhi Administration (supra) and Piara Singh, (supra). In Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors. (supra), the Supreme Court recognised the public employment as public properly and held that all persons similarly situated have a right to share in it though its enjoyment is subject to the recruitment rules which must be in consonance with the Scheme of the [Constitution of India](#).

(60) In Dr. M.A. Haque and Ors. v. Union of India and Ors. : (1993)ILLJ 1139 SC , the Supreme Court observed as under :-

'.....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 by passing of the Public Service Commissions are permitted, it will open a back-door 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 appears that since this Court has in some cases permitted regularisation of the irregularly recruited employees, some Governments and authorities have been increasingly resorted to irregular recruitments. The result had been that the recruitment rules and the Public Service Commissions have been kept in cold storage and candidate dictated by various considerations are being recruited as a matter of course.'(61) Depricating the practice of making appointment dehors the Rules by the State or other State instrumentalities in Dr. Arundhati A. Paragaonkar v. State of Maharashtra : (1995)ILLJ927SC , the Court rejected the claim of the petitioner therein for regularisation on the ground of long continuous service observing as under :-

'Nor the claim of the appellant, that she having worked as Lecturer without break for 9 years' on the date the advertisement was issued, she should be deemed to have regularised appears to be well founded. Eligibility and continuous working for howsoever long period should not 'be permitted to overreach the law. Requirement of rules of selection...cannot be substituted by humane considerations. Law must take its course.'(62) The Supreme Court in State of U.P. and Ors. v. U.P. State Law Officers Association and Ors. : [1994]1SCR348 , has observed as under:-

'This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the backdoor have to go by the same door.....The fact that they are made by public bodies cannot best them with additional sanctity. Every appointment made to a public office, howsoever made, is not. There is, therefore, no public interest involved in saving all appointments irrespective of their mode.. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.'(63) Even if there are no Statutory Rules or Bye-laws of the society providing a mode of appointment, the Executive Instructions/Policy adopted by the respondent-Society must be there providing for a mode of appointment. Even if no such Executive Instructions/Policy/Guidelines/Circular etc. is in existence then a fair procedure for appointment has to be adopted in consonance with the provisions of Articles 14 and 16 of the Constitution. [Vide Nagpur Improvement Trust v. Yadaora Jagannath Kumbhare, (1998) 8 SCC 99].

(64) In Ramesh Kumar Sharma and another Rajasthan Civil Services Appellate Tribunal and Ors., 2000 AIR SCW 4206, the Supreme Court held that 'expression 'Service Rules' cannot be given a restrictive meaning in the absence of the definition of the said terms and, therefore, it would include within its sweep, the necessary Government Order providing the method recruitment'.

(65) A Constitutional Bench of the Supreme Court in B.R. Kapoor v. State of Tamil Nadu : AIR 2001 SC3435 (Jayalalitha case), observed that it is the duty of the Court to examine whether the incumbent possesses qualification for appointment and the manner in which the appointment can be made or the procedure adopted was fair, just and reasonable and if not, appointment should be struck down.

(66) The Supreme Court (Constitution Bench) in Ajit Singh (II) v. State of Punjab and Ors. (1997) 7 SCC 209, has held that Articles 14 and 16(1) are basic features of the Constitution. The same view has been reiterated in Ashok Kumar Gupta v. State of U.P. and Ors., : [1997]3SCR269 and Indra Sawhney v. Union of India and Ors. : AIR 2000 SC498 . Thus, strict adherence is required thereto.

(67) In *Kumari Srilekha Vidhyarthi etc. v. State of U.P. and Ors.* : AIR 1991 SC537 and *A.P. Agarwal v. Government (NCT) of Delhi and Ors.* : AIR 2000 SC205 , the Supreme Court held that every State action, in order to survive, must not be susceptible to vice the arbitrariness which is a crux of Article 14 of the Constitution and the very basis of the Rule of Law.

(68) Therefore, any appointment made by a Statutory Authority, which may be a State within the meaning of Article 12 of the Constitution, if found to have been made by a person without any competence or without following the procedure prescribed by law and in case the procedure is not prescribed and the procedure adopted by the Authority is not in consonance with Articles 14 and 16 of the Constitution, the incumbent cannot claim any benefit as in such a case the contract of service becomes unenforceable and inexecutable.

If the view country the above is accepted, the same would override the mandate of the Constitution also, it will take away the powers of the High Court to issue a writ of quo warranto, wherein the appointment of an incumbent can be challenged not only by an aggrieved persons but a stranger also.

(69) Invalidity of an appointment may arise not only from want of qualification, but also from the violation of such legal conditions or procedure for appointment as mandatory and as a result of which the appointment becomes void. [Vide *M. Pantiah and Ors. v. Muddala Veeramallappa and Ors.* : [1961]2SCR295 ; *University of Mysore v. CD. Govinda Rao* : [1964]4SCR575 and *P.N. Lakhanpal v. A.N.Roy* : AIR1975 Delhi66 . There can be no quarrel to issue that the Board is an Authority, which is a 'State' within the meaning of Article 12 of the Constitution. Thus, question of saving such an illegal appointment did not arise.

(70) The instant cases are squarely covered by the judgement, of the Supreme Court in *Factory Manager, Cimmco Wagon Factory v. Virendra Kumar Sharma and Anr.* : (2000)IILLJ775SC , wherein the Supreme Court, while deciding the similar case, has observed as under:-

'Assuming that the respondent was asked to work in a factory in anticipation of securing appointment, that too by an officer who ,was not competent to give

appointment, that did not make the respondent a workman or regular employee of the appellant company.'(71) This Court (Hon'ble Dr. B.S. Chauhan, J.) in (2003) 2 ESC (All.) 1007, State of U.P. v. Presiding Officer, Labour Court, Meerut, has held that the appointment should be made at initial stage in accordance with rules. Incumbent must possess the requisite qualification for the post on the date of appointment and if appointment had been made on temporary ad-hoc basis, the workman should not be permitted to continue for long rather the vacancies should be filled up on permanent basis in accordance with law only if the statutory provision or executive instruction provides for regularisation after completing a particular period only then regularisation is permissible. In special circumstances, Court may give direction to consider the case for regularisation provided continuation on ad-hoc basis is so long that it amounts to arbitrariness and provisions of Article 14 are attracted. There must be sanctioned post against which regularisation is sought. At the same time policy of the State enforcing the reservation for particular classes like SC, ST, OBC etc. and further for women, handicapped and ex-service men cannot be ignored.

(72) Following : (1996)ILLJ870SC , Morinda Co-operative Sugar Mills Ltd. v. Ram Kishan, the Supreme Court in Anil Bapurao Kanase v. Krishna Sahakari Sakhar Karkhana Ltd. and Anr. (1997) 10 SCC 5999, observed that the termination/disengagement of seasonal worker deployed in Chemistry section of sugar factory when the work was over could not be treated as retrenchment -within the meaning of Secion 2 (oo) of Industrial Disputes Act irrespective of the claim that such employee had rendered more than 180 days service, in such situation Section 25F of said 'Act' was not attracted.

(73) While referring decision of 1994 Supp. (2) SCC 316, Mool Raj Upadhyaya v. State of H.P., the Supreme Court in : (1997)IIILLJ668SC , H.P. Housing Board v. Om Pal and Ors., had held that the Administrative Tribunal without holding termination of retrenched daily wage workers as invalid and holding them to be continuing in service, could not direct their regularisation and payment of enhanced wages to them.

(74) After considering its own judgement in, *Piara Singh (supra)* and decision in *Satyanarayan Sharma v. National Mineral Development Corporation Ltd.*, : (1990)IILLJ596SC , the Supreme Court has observed in : (1998)9SCC258 , *Municipal Corporation, Bilaspur and Anr. v. Veer Singh Rajpur and Ors.*, that the direction of High Court to regularise the service of casual labourer was unwarranted, being contrary to the administrative directions, instructions, circulars and orders of Government when the Municipal Corporation found that the Administrator had made deployment of daily rated/muster roll/casual labour irregularly and on extra-political consideration and municipal corporation intended to reduce the establishment expenditure and the Government had prohibited to fill up the vacant posts and creation of new posts including regularisation, however, the Supreme Court acknowledged the liberty for the municipal corporation, in case, it was making further appointment of casual or daily rated workers, and to consider the said retrenched persons on daily wages in preference by waiving age bar if necessary, provided they were otherwise qualified and eligible to the post.

(75) The Supreme Court in (1998) 9 SCC 709, *State of Punjab and Ors. v. Sardara Singh*, held that the High Court could not direct regularisation of daily wager, however, a direction could be given to the State Government to frame scheme of regularisation and if the scheme is already framed, a direction may be given to the State for considering the matter of regularisation in accordance with the scheme.

(76) Following its own decision in 1990 (Suppl) SCC 191, *M.M.R. Khan v. Union of India and.* : (1996)IILLJ42SC , *Reserve Bank of India v. Workmen* and in reference to decision of *Parimal Chandra Raha v. L.I.C.*, 1995 Supp. (2) SCC 611, the Supreme Court in : (1999)IILLJ696SC , *Indian Petrochemicals Corporation Ltd. and Anr. v. Shramik Sena and Ors.*, has held that relation of workmen of statutory canteen managed by contractor with the establishment maintaining such canteen are question of fact on the basis of material on record and such persons were said to be workmen of the establishment for the purpose of Factory Act only and not ipso facto workmen of the establishment for the other purposes, like, recruitment, seniority, promotion, retirement benefits etc., however, on their claim direction of High Court granting relief of regularisation was held to be justifiable in the light of

provisions of Articles 14 and 16 of the Constitution in that undertaking was not as a matter of statutory right of the workmen but to eradicate unfair labour practice and to undo social injustice and as a measure of labour welfare and imposition of certain conditions as to eligibility for the benefit of the relief.

(77) The Supreme Court in : (1997)IILLJ698SC , Executive Engineer, State of Karnataka v. K. Somasetty and Ors., relying on its earlier decisions in Union of India v. Jai Narain Singh 1995 Supp. (4) SCC 672; State of H.P. v. Suresh Kumar Verma (supra) has held that State while discharging public welfare function can not be said to be an Industry and the decision of the Labour Court made in reference to Section 10 of [Industrial Disputes Act, 1947](#) reinstating the daily wagers discharged from the project was said to have been no right to the post and the reinstatement of such daily wagers was held unjustifiable.

(78) The Supreme Court in : (2002)IILLJ 1153 SC , Haryana State F.C.C.W. Store Ltd. and Anr. v. Ram Niwas and Anr., while following its earlier decisions in Upton India Ltd. v. Shammi Bhan : [1998]1SCR719 and Harmohinder Singh v. Kharga Canteen Ambala Cantt. : (2001)IILLJ488SC , has observed that disengagement of workers deployed on a particular project in terms of contract of service when the work and procurement and supply of wheat in the said project was over, then the deployment of such daily wagers as Watchman/Chaukidar on contractual basis, could not be said to be retrenchment within the meaning of Sections 2(oo)(bb) and 25F of Industrial Disputes Act. .

(79) Following its own decision in : (2002)9SCC693 , Sufal Jha v. Union of India, the Supreme Court in another decision of Ircon International Ltd. v. Daya Shankar and Anr. : (2002)ILLJ548SC , has observed that the work-charge employee appointed on a particular Railway Ballast Project as a Khalasi for the duration of continuation of project could not automatically continue in deployment thereafter when the project is over and the work-charge employee became surplus and was retrenched after being paid compensation under Industrial Disputes Act and the direction of High Court to consider such retrenched employee as permanent employee was said to be erroneous, however, in peculiar facts and circumstances the said retrenched employee could be considered in accordance with the

seniority against the vacancy arising in future.

(80) The Supreme Court in : (2002)9SCC739 , A.P.S.R.T.C. Cuddapah v. K. Bajjanna, observed that the workman under the same employer at the time of reinstatement at the direction of the Labour Court are to be treated harmoniously in respect of payment of back-wages and the burden shall be on workman to show that he was not gainfully deployed during the period of non-employment.

(81) The Supreme Court further in : (2001)IILLJ818SC , Employer in Relation to the Management of G.C. of BCCL v. Workmen represented by Bihar Colliery Kamgar Union, has observed that disability of workman/employee being underage at the time of appointment does not stand subsequently removed and regularisation based on such appointment could not be upheld, more so, when there was specific provision barring underage persons from working in mines.

(82) The Supreme Court relying on its earlier decisions of Gammon India Ltd v. Union of India, (1947) 1 SCC 596; B.H.E.L. Worker's Assn. v. Union of India, (1985) 1 SCC 630; Mathura Refinery Mazdoor Sangh v. Indian Oil Corporation Ltd. : [1991]1SCR468 , and Dena Nath v. National Fertilisers Ltd. : (1992)ILLJ289SC , in : [1994]3SCR1034 , R.K. Panda and Ors. v. Steel Authority of India and Ors., has indicated that regularisation of contract labour engaged at Rourkela Plant of Steel Authority of India on the ground that they continued for long periods (10 to 20 years) through contractor shall involve question of fact, therefore, normally assessment of period could be determined by the Labour Court and Industrial Tribunal on evidence and not by the High Court or Supreme Court in writ jurisdiction or under Article 136 of the Constitution respectively, however, on the basis of the interim orders of Supreme Court many contract labourer had continued in employment for several years, were directed to be considered for absorption or for voluntary retirement by the management under a guideline.

(83) The Supreme Court in : (1996)IILLJ801SC , Union of India and Ors. v. Dharma Pal and Ors., directed for enforcement of a scheme for regularisation in absence of any existing rules of casual/daily wagers/ workcharge employees engaged in construction/execution of maintenance work under Chandigarh Administration, whereas, the Supreme Court way back in 1991 Supp.(2) SCC 338,

V.B. Rao v. Steel Authority of India Limited and Anr., had indicated that reinstatement of an employee can not be insisted upon where the employer had lost confidence in the employee owing to his involvement in criminal cases in connection with appropriation of certain funds, however, the High Court was said not to be incorrect in substituting. reinstatement by compensation to cover both backwages and entitlement for loss of future services.

(84) SM. Nilajkar (supra) in special facts and circumstances when the burden of deployment was on the employer to show that the deployment of workman in Government project or scheme was under a stipulated contractual manner and the workman/employee, was made aware of such stipulation at the commencement of his deployment otherwise mere prove of employment of casual worker or daily wager in a project or scheme and termination of service from the project or scheme coming to an end was not enough to attract the Section 2(oo)(bb) of Industrial Disputes Act and the termination was said to be retrenchment.

(85) Following Union of India v. K.V. Baby : (1999)ILLJ 1290 SC ; Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments : (1973)IILLJ495SC and Dharangadhra Chemical Works Ltd. v. State of Saurashtra : (1957)ILLJ477SC , the Supreme Court in (2001) 3 SCC 36, Indian Banks Association v. Workmen of Syndicate Bank and Ors., has held that commission agents/ deposit collectors of banks though not regular employees nonetheless were having relationship of master and servant between the bank and such workmen, could be deployed on commission basis and not entitled to absorption as regular workmen and not entitled to pay scale, allowances and service conditions of regular bank employees.

(86) In State of Haryana v. Tilak Raj and Ors. : (2003)IILLJ487SC , the Supreme Court pointed out that the principle of equal pay for equal work is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organisations or even in the same organisation. In State of Haryana v. Tilak Raj (supra), the Supreme Court observed that a scale of pay is attached to a definite post and in case of a daily wagr, he holds no post, hence he cannot be compared with the regular and permanent staff for any or all

purposes including a claim for equal pay for equal allowances. Equal pay for equal work is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scale and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.

In *Tilak Raj* (supra), the Supreme Court has held that the claim of equal pay for equal work by a daily wager against the regular and permanent staff are not tenable. Since the daily wager holds no post and scale of pay is attached to a definite post, however, the State Government was directed to ensure that minimum wages are prescribed for daily wagers and the same to be paid to them. While reserving the judgement of 2002 (2) SCT 349 (Punj. and Har.), it was held in *Tilak Raj* (supra) as below :-

'A scale of pay is attached to a definite post and in case of a daily wager, he holds no posts. The respondent workers on daily wages in Haryana Roadways cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-a-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of equal pay for equal work¹ is an abstract one. However, the appellant-State has to ensure that minimum wages are prescribed for such workers and the same is paid to them. Equal pay for equal work is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scale. The problem about equal pay cannot always be translated into a mathematical formula.'(87) To enforce his submissions, the learned Counsel for the petitioner placed credence on a decision in *The Dharwad District P.W.D. Literate Daily Wage Employees Association and Ors. v. State of Karnataka and Anr.*, 1990 (2) SLR 43 and *State of U.P. v. Putti Lal*, (2002) 2 UPLBEC 1595 (SC). In *Putti Lal's* case, the Supreme Court has directed to consider the case of

regularization according to the relevant prevailing rules and for payment of minimum of the pay scale as applicable to their counter part in the Government until services of such daily wage employees are regularized. The other decisions relied upon by the learned Counsel are Gujarat Agricultural University v. Rathod Labhu Bechar : (2001)ILLJ710SC ; Jayanta Biswas v. University of Calcutta and Ors., (2001) 1 UPLBEC 74 and Daily Rated Casual Labour Employees under P and T Department through Bhartiya Dak. Tar Mazdoor Manch v. Union of India and Ors., : (1988)ILLJ370SC , to hammer home the submissions aforesaid.

(88) In (2003) 2 UPLEBEC 1755, Orissa University of Agriculture and Technology and Anr. v. Manoj K. Mohanty, the Supreme Court relying on the. decisions in Jasmer Singh (supra), M.R. Ganesh Babu (supra) and Pradip Kumar Dey (supra) has held that the writ petitioner employed in the University on temporary basis as a typist continued for more than five years with an artificial break while working as Junior Assistant was not entitled for regularisation by applying principle of equal pay for equal work and in the said case the Supreme Court in Para 11 observed as under :-

'11. This Court in Union of India and Ors. v. Pradip Kumar Dey : (2000)8SCC580 , after referring to various decisions dealing with the similar question in Para 8 has held thus -

'In our considered view, the Division Bench of the High Court was not right and justified in straightway giving direction to grant pay scale to the respondent when there was no material placed before the Court for comparison in order to apply the principle of 'equal pay for equal work' between the Radio Operators of CRPF and the Radio Operators working in civil side in the Central Water Commission and the Directorate of Police Wireless. In the absence of material relating to other comparable employees as to the qualifications, method of recruitment, degree of skill, experience involved in the performance of job, training required, responsibilities undertaken and other facilities in addition to pay scales, the learned Single Judge was right when he stated in the order that in the absence of such material it was not possible to grant relief to the respondent. No doubt, the Directorate of CRPF made recommendations to the Pay Commission for giving

higher pay scales on the basis of which claim is made by the respondent for grant of pay-scale. The factual statements contained in the recommendation of a particular department alone cannot be considered per se proof of such things or then cannot by themselves vouch for the correctness of the same. The said recommendation could not be taken as a recommendation made by the Government. Even otherwise a mere recommendation did not confer any right on the respondent to make such a claim for writ of mandamus.'(89) This Court (D.B.) in (2004) 1 UPLBEC 77, State of U.P. and Ors. v. U.P. Madhyamik Shiksha Parishad Shramik Sangh and Ors., has held that writ petitioners while working as daily wagers for several years could not claim same pay scale as regular Class-III employees, nor other benefits admissible to other regular employees and for regularisation. the daily wagers have to face regular selection in accordance with the rules as they cannot be regularised without such selection, and in said case this Court in Para 47 has held as under :-'47. No doubt in certain decisions the Courts have given directions for regularising daily wagers or casual/temporary employees but in our opinion such directions do not amount to a precedent vide Indian Council of Agricultural Research v. Raja Balwant Singh College, 2003 (1) ESC 424; Delhi Administration v. Manoharlal : 2002 CriLJ4295 , etc. What is a binding precedent is a principle of law, which has been laid down in a decision of the Court and a mere direction without laying down any principle of law not a precedent. A case is an authority for . what it actually decides vide Goodyear India Ltd. v. State of Haryana : [1991]188ITR402(SC) ; Sreenivasa General Traders v. State of A.P. : [1983]3SCR843 ; Union of India v. Dhanwanti Devi : (1996)6SCC44 ; M/s Amar Nath Om Prakash v. State of Punjab and Ors. : [1985]2SCR72 , etc. Everything in a decision is not a precedent vide State of Punjab v. Baldeo Singh, 1999 SCC (Cri) 1080.'

8. In general, a disputed question of fact is not investigated in a proceeding under Article 226, particularly where an alternative remedy is available, e.g., the merits or rival claims to property or a disputed question of title; State of Rajasthan v. Bhagwani, (1993) Supp (1) SCC 306 (paragraph 7).

9. The High Court may interfere with a finding of fact, if it is shown that the finding is not supported by any evidence, or that the finding is 'perverse' or based upon a

view of facts which could never be reasonably entertained; *Arjun v. Jamnadas*, (1990) 1 SCJ 59, (paragraph 15).

10. A finding based on no evidence constitutes an error of law, but an error in appreciation of evidence or in drawing inferences is not, except where it is perverse, that is to say, such a conclusion as no person properly instructed in law could have reached, or it is based on evidence which is legally inadmissible. *Board of Wakfs v. Hadi*, (1993) Supp 1 SCC192, (paragraph 17).

11. If the conclusion of facts is supported by evidence on record, no interference is called for even though the Court considers that another view is possible; *Maharashtra S.B.S.E. v. Gandhi*, (1991) 2 SCC 716, (paragraph 10).

12. I have heard learned Counsel for the parties. Since the petitioner was deployed initially in the year 1988 and was kept on deployment as daily wager peon to the Class IV category in the authority for a limited, period with breaks from time to time and had approached this Court by way of filing Writ Petition No. 34733 of 1992 for claiming the relief of regularisation and for grant of regular. pay scale in view of the Government Order dated 24.10.89, whereupon this Court was pleased to dispose of the above writ petition on 7.10.1998 with a direction to the respondents to consider the claim of the petitioner and to decide his representation. In compliance thereto the representation was decided on 4.1.1999. For the same cause of action the petitioner cannot approach this Court again, however when there was a specific stand taken by the respondents that at his sweet will and voluntarily he has left the deployment on 11.3.1994 and being a daily wager he had no right to the post and he was deployed on contractual basis for each day and his deployment commenced in the morning and came to an end in the evening and in absence of any vacancy and rules, the petitioner could not have been regularised. No opportunity of hearing was required for not engaging or for non-deployment of daily wager on contractual basis.

13. In view of the above observations, the writ, petitioner cannot claim any relief, as the claim of the petitioner is illegal. The writ petition is dismissed.

