Apex Court on the Rights of Temporary Employees to Claim Regularisation and other Reliefs: An Anthology

Apex Court on the Rights of Temporary Employees to Claim Regularisation and other Reliefs: An Anthology

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The Governments, both the Central and the States have been engaging employees on a temporary basis and after some time regularising their services, this practice has been held to be bad and contrary to the law of the land by the Supreme Court. The temporary employees have no right of regularisation of their services and here is an anthology of the Supreme Courtâ€™s decisions dealing with each relevant aspect.

A. The Union and the State Governments and their instrumentalities cannot make appointment dehors the constitutional scheme of public employment The Constitution Bench of the Honâ€™ble Apex Court in State of Karnataka v. Umadevi (31) has held that appointment in the State and its instrumentalities should only be in accordance with the rules and procedure relating to regular recruitment, the Court reasoned:

2. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made 0thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be in terms of the constitutional scheme.

6. The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarilyâ€¦. Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedures which specify the necessary qualifications, the mode of appointment, etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. (emphasis supplied)

This view was reiterated in Surinder Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mandi Parishad2 wherein it was held:

38. In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularisation of services of the person who is working either as daily-wager, ad hoc employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment. (emphasis supplied)

In National Fertilizers Ltd. v. Somvir Singh3, the Apex Court observed:

13. The respondents herein were appointed only on applications made by them. Admittedly, no advertisement was issued in a newspaper nor was the employment exchange notified as regards existence of vacancies. It is now trite law that â€œStateâ€• within the meaning of Article 12 of the Constitution is bound to comply with the constitutional requirements as adumbrated in Articles 14 and 16 thereof. When the Recruitment Rules are made, the employer would be bound to comply with the same. Any appointment in violation of such Rules would render them as nullities. It is also well settled that no recruitment should be permitted to be made through back door. (emphasis supplied)

The need for keeping in view the right of equality in Mehar Chand Polytechnic v. Anu Lamba4, wherein the Court essayed thus:

16. Public employment is a facet of right to equality envisaged under Article 16 of the Constitution of India. The State although is a model employer, its right to create posts and recruit people therefor emanates from the statutes or statutory rules and/or rules framed under the proviso appended to Article 309 of the Constitution of India. The recruitment rules are framed with a view to give equal opportunity to all the citizens of India entitled for being considered for recruitment in the vacant posts. (emphasis supplied)

The need for making such appointments dehors the framework of constitutional scheme such as insisting upon sponsorship of the employment exchange or holding of the written exams has been stressed in series of cases like Mahboob Deepak v. Nagar Panchayat, Gajraula5, Municipal Corpn., Hyderabad v. P. Mary Manoranjani6, Mahadeo Bhau Khilare (Mane) v. State of Maharashtra7, State of Manipur v. Y. Token Singh8, Post Master General v. Tutu Das (Dutta) 9, Nagar Mahapalika, Kanpur v. Vibha Shukla10, State of Jharkhand v. Manshu Kumbhkar11 and State of Orissa v. Prasana Kumar Sahoo12.

B. Equality of opportunity in public employment is the basic feature of the Constitution, which the State has to honour while making recruitment In Umadevi (3)13, the Constitution Bench drawing upon the principle of equality in public employment as enshrined under the Constitution opined:

11. In addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and the Public Service Commissions for the States. Article 320 deals with the functions of the Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognised by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the Scheduled Castes and Scheduled Tribes for employment. The States have made Acts, rules or regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, rules and regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein. (emphasis supplied)

This view was strictly followed in Mehar Chand Polytechnic v. Anu Lamba14 and in State of M.P. v. Yogesh Chandra Dubey15.

In Salt Commr. v. Central Salt Mazdoor Union16, the Apex Court opined that the State is not bound by the act of its officers contrary to the statutory rules and any infraction by such officers would not confer a benefit on temporary employees.

In RBI v. Gopinath Sharma17, the Apex Court set aside the direction of the High Court of regularising the services of a workman who was appointed on daily wages and was not working on regular basis. Similarly in Yogesh Chandra Dubey18, the Apex Court set aside regularisation of daily wagers not appointed in terms of the statutory rules but in exigencies of administration.

C. Mere long continuance whether under interim orders passed by various courts, tribunals or otherwise does not confer any right Mere long continuance whether under the protection of interim orders passed by the courts, tribunals or even otherwise confers no right on temporary employees to claim regularisation. In Umadevi (3) 19, it was made clear:

45. â€¦ The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution. (emphasis supplied)

With respect to employees continuing under the interim orders, it was held:

43. â€¦ It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. â€¦ Merely because an employee had continued under cover of an order of the court, which we have described as â€œlitigious employmentâ€• in the earlier part of the judgment, he would not be entitled t any right to be absorbed or made permanent in the service.20 (emphasis supplied)

In CIT v. Leena Jain21, the Apex Court set aside the decision of the High Court of regularising the services of workman by virtue of his having worked for long on contract basis and remanded the matter to the High Court for fresh adjudication, keeping in mind the decision in Umadevi (3)22. (See also Somvir Singh23, Gurbachan Lal v. Regional Engg. College24 and Kendriya Vidyalaya Sangathan v. L.V. Subramanyeswara25.)

D. Scheme for regularisation cannot prevail over rules which are statutory In Umadevi (3) 26, the Constitution Bench held:

6. â€¦ Normally, statutory rules are framed under the authority of law governing employment. It is recognised that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed. (emphasis supplied)

The Apex Court in J&K Public Service Commission v. Dr. Narinder Mohan27 laid down that where the rules relating to recruitment had been made, the executive could not fall back upon the general power under Article 162 of the Constitution of India to regularise the ad hoc appointments. (See also State of Karnataka v. KGSD Canteen Employeesâ€™

Welfare Assn.28, A.P. SRTC v. P. Chandra Sekhara Rao29 and State of U.P. v. Desh Raj30.)

In Punjab Water Supply & Sewerage Board v. Ranjodh Singh31, wherein while quashing the appointments made by means of policy decisions contained in a circular, it was held:

19. In the instant case, the High Court did not issue a writ of mandamus on arriving at a finding that the respondents had a legal right in relation to their claim for regularisation, which it was obligated to do. It proceeded to issue the directions only on the basis of the purported policy decision adopted by the State. It failed to notice that a policy decision cannot be adopted by means of a circular letter and, as noticed hereinbefore, even a policy decision adopted in terms of Article 162 of the Constitution of India in that behalf would be void. Any departmental letter or executive instruction cannot prevail over statutory rule and constitutional provisions. Any appointment, thus, made without following the procedure would be ultra vires. (emphasis supplied)

See also Post Master General32, Punjab State Warehousing Corpn. v. Manmohan Singh33 and CCE v. Ratan Melting & Wire Industries34.

E. Courts cannot frame or direct framing of schemes for regularisation of temporary employees In KGSD Canteen Employeesâ€™ Welfare Assn.35 the Apex Court deprecated the tendency on the part of courts to direct framing of schemes for regularisation of temporary employees, the Court said:

44. The question which now arises for consideration is as to whether the High Court was justified in directing regularisation of the services of the respondents. It was evidently not. In a large number of decisions, this Court has categorically held that it is not open to a High Court to exercise its discretion under Article 226 of the Constitution either to frame a scheme by itself or to direct the State to frame a scheme for regularising the services of ad hoc employees or daily wage employees who had not been appointed in terms of the extant service rules framed either under a statute or under the proviso to Article 309 of the Constitution. Such a scheme, even if framed by the State, would not meet the requirements of law as the executive order made under Article 162 of the Constitution cannot prevail over a statute or statutory rules framed under the proviso to Article 309 thereof. (emphasis supplied)

F. No directions for regularisations, fixing pay scale, continuation in service, promotion, etc. shall be given by the courts as these are executive functions It is now well settled that it is not for the court to issue direction to the State as to how the selection process should be, it is for the State to consider as to how to streamline the selection procedure, the court can only examine as to whether the procedure for selection as adopted by the Government is unconstitutional or otherwise illegal or vitiated by arbitrariness or mala fides. This was emphasised in Indian Drugs & Pharmaceuticals Ltd. v. Workmen36, wherein it was held:

37. Creation and abolition of posts and regularisation are purely executive functions vide P.U. Joshi v. Accountant General37. Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. This Court cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the Constitution, and the judiciary, too, must know its limits.

Further, in State of Manipur v. Ksh. Moirangninthou Singh38, the Apex Court held that post the decision in Umadevi (3)39, no direction for regularisation in services could be issued:

7. We are of the opinion that in view of the Constitution Bench judgment of this Court in State of Karnataka v. Umadevi (3)40 this Court cannot direct regularisation in service. Since the court has no power to direct regularisation, it also follows that it has no power to direct grant of benefits payable to the regular employees.41(emphasis supplied)

Similarly in Union of India v. Pushpa Rani42, the Court opined:

7. The court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the court to make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration. (emphasis supplied)

Also see Govt. of A.P. v. K. Brahmanandam43.

In Bihar Public Service Commission v. Kamini44, the Apex Court refused to interfere with the opinion of the expert committee as regards eligibility and qualification required of the candidates. In Indian Drugs & Pharmaceuticals Ltd.45, it was held that since a temporary employee has no age of superannuation therefore no direction can be passed to continue such employee till superannuation. In Malik Mazhar Sultan v. U.P. Public Service Commission46 the Court observed that relaxation in age could not have been granted on the basis of advertisement and same could be given only if it was permissible under the recruitment rules. Similarly, in Tirumala Tirupati Devasthanams v. K. Jotheeswara Pillai47, termination of services of muster roll employees who were ineligible by virtue of being overaged was upheld on the ground that the recruitment rules did not provide for relaxation in age and weightage to their past services.

G. Mere fact that there was selection even for temporary appointment is inconsequential In Chanchal Goyal (Dr.) v. State of Rajasthan48, the Apex Court while insisting on mandatory compliance with the recruitment rules held that merely because there was selection for temporary appointment, the same by itself would not confer a right on the employees to

claim regularisation, thus there is no scope of regularisation unless the appointment was on regular basis.

H. Termination in accordance with the terms and conditions of the appointment letter is proper The Apex Court in Municipal Council, Samrala v. Raj Kumar49, upheld the termination of services of a temporary employee notwithstanding the fact that the appointment was not for a fixed period and was continued repeatedly.

Similarly in Municipal Council, Samrala v. Sukhwinder Kaur50, it was observed:
7. The respondent, within a span of about 18 months, was appointed thrice and disengaged thrice. As noticed hereinbefore, she was appointed on a contractual basis. The appointments were temporary ones. She was aware that her services could be terminated without notice. She accepted the terms and conditions of the said offers of appointments without any demur.
9. Although there was no fixed period of contract of employment between the employer and the workman concerned and thus, no question of its renewal on its expiry, but there existed a stipulation in the contract that the Executive Officer has the power to dismiss her without issuing any notice. (emphasis supplied)

In Vidyavardhaka Sangha v. Y.D. Deshpande51 and State of Rajasthan v. Sarjeet Singh52, continuance despite the expiry of contract period was held not to be sufficient to confer right to regularisation. In State of Punjab v. Supreet Rajpal53, the Apex Court set aside the order of the High Court of regularisation dehors the terms and conditions of the appointment letter and remitted the matter for fresh adjudication.

In Chanchal Goyal (Dr.)54, it was observed that unless the initial recruitment is regularised through a prescribed agency, there is no scope for a demand for regularisation. In this case it was clearly stipulated in the initial order of appointment that the workman was required to make room once a candidate selected by the Service Commission was available, the non-joining of the said candidate was held to be immaterial on the grounds that the appointment itself was subject to the condition of availability of duly selected candidate, therefore when one candidate did not join, the next in list would have taken his place. (Also see Gurbachan Lal55, SBI v. Mahatma Mishra56, Karnataka Handloom Development Corpn. Ltd. v. Mahadeva Laxman Raval57 and Institute of Management Development v. Pushpa Srivastava58.)

I. Regularisation does not mean conferring permanence Regularisation does not connote conferring permanence and is meant to cure defects attributable to methodology involved in making the appointments or to condone the procedural irregularities and judicial process cannot become a mode of making appointments. In R.N. Nanjundappa v. T. Thimmiah59, the Court explained:
26. â€¦ If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. 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. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules. (emphasis supplied)

Also see observations in Umadevi (3) 60 (SCC pp. 24-25, para 16):
16. In B.N. Nagarajan v. State of Karnataka61 this Court clearly held that the words â€œregularâ€• or â€œregularisationâ€• d
connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. â€¦ We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularisation. (emphasis supplied)

Similarly, in Hindustan Petroleum Corpn. Ltd. v. Ashok Ranghba Ambre62, it was held: 19. In our opinion, the High Court was in clear error in equating reinstatement of employee in service in earlier proceedings with confirmation and granting status of permanency. Continuation in or regularisation of service of an employee and extending the benefit of confirmation or making him permanent are two different concepts. (emphasis supplied) Also see Kendriya Vidyalaya Sangathan63.

J. Regularisation is not the mode of recruitment What follows from the above discussion is that regularisation, is not the mode of recruitment by the State within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the rules framed thereunder. Without multiplying authorities, suffice it would be to refer to the observations to this effect in para 18 of Somvir Singh64 and in para 19 of Prasana Kumar Sahoo65 and M.P. State Coop. Bank Ltd. v. Nanuram Yadav66.

K. Mere description of illegal appointments does not mean that they are not illegal In Umadevi (3) 67, the Constitution Bench carved out an exception with respect to duly qualified workmen in duly sanctioned posts who had continued for ten years or more but without any interim orders, the Court directed regularisation of such employees as one-time measure, the extract is reproduced as under:

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa68, R.N. Nanjundappa69 and B.N. Nagarajan70 and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularlyâ€ appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. (emphasis supplied)

It is however settled that a mere description of illegal appointments as irregular would not cure away the illegality. In Ranjodh Singh71 referring to Uma Devi (372), the Apex Court opined:

17. A combined reading of the aforementioned paragraphs would clearly indicate that what the Constitution Bench had in mind in directing regularisation was in relation to such appointments, which were irregular in nature and not illegal ones.

Similarly, in Manmohan Singh73, Ashok Kumar Sonkar v. Union of India74 and Nanuram Yadav75, the Apex Court termed the appointments made in violation of the recruitment rules as an illegal appointments, terming such appointments as nullity in the eye of the law.

L. Illegality having been committed in past is no ground that it should be perpetuated; Article 14 has a positive concept

The fact that all appointments have been made without following the procedure, or services of some persons appointed have been regularised in the past, is not the ground on which regularisation shall be granted. If illegality has been committed in the past, then such illegality cannot be allowed to perpetuate. Article 14 has a positive concept. No equality can be claimed in illegality. Article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated, however, if some persons derived benefit by illegality and had escaped from the clutches of law, similarly placed persons cannot plead, nor can the court countenance that benefit had from infraction of law and must be allowed to be retained. Also see observations to same effect in para 10 of Bihar Public Service Commission76 and Tutu Das (Dutta)77, Somvir Singh78 and K. Brahmanandam79.

M. Umadevi (3) 80 applies in cases concerning industrial adjudicatorsâ€™ powers The powers of industrial adjudicators to vary the terms of contract are well documented, however the same cannot be read to mean that the industrial adjudicator can issue directions relating to regularisation running counter to the ratio laid down by the Constitution Bench of the Apex Court. The Apex Court in U.P. Power Corpn. Ltd. v. Bijli Mazdoor Sangh81, held that though the industrial adjudicator can modify the relief, however he does not have the power to dilute the observation of the Constitution Bench on the issue of regularisation.

N. Completion of 240 days confers no right to regularisation It is settled law that merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services are liable to be regularised, it would be apt here to quote the judgment of the Apex Court in Gangadhar Pillai v. Siemens Ltd. 82, wherein the following was stated:

28. It is not the law that on completion of 240 days of continuous service in a year, the employee concerned becomes entitled to for regularisation of his services and/or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Under the Industrial Disputes Act, the concept of 240 days was introduced so as to fasten statutory liabilities upon the employer to pay compensation to be computed in the manner specified in Section 25-F of the Industrial Disputes Act, 1947 before he is retrenched from services and not for any other purpose. In the event a violation of the said provision takes place, termination of services of the employee may be found to be illegal, but only on that account, his services cannot be directed to be regularised. Direction to reinstate the workman would mean that he gets back the same status. (emphasis supplied)

Also see Hindustan Aeronautics Ltd. v. Dan Bahadur Singh83, Tutu Das (Dutta) 84 and Chandra Shekhar Azad Krishi Evam Prodyogiki Vishwavidyalaya v. United Trades Congress85.

O. Regularisation done prior to Umadevi (3) 86 need not be opened up In SCC p. 42, para 53 of Umadevi (3)87 the Constitution Bench opined:

53. â€¦ We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme. (emphasis supplied)

However, in a few decisions, namely, State of Punjab v. Lakhwinder Singh88 and Rajasthan Krishi Vishva

Vidhyalaya v. Devi Singh89, the Apex Court in matters where regularisation had been granted prior to Umadevi (3)90, still in its wisdom remanded the matter back for fresh decision in accordance with the principles laid down in Umadevi (3)91. A perusal of these judgments shows that the plea of regularisation done prior to Umadevi (3)92 shall not be opened as has been laid down in para 53 was not taken, but for which the remand orders would not have been passed.

P. Principle of equal pay for equal work cannot be invoked In KGSD Canteen Employeesâ€™ Welfare Assn.93, while adjudicating on the question of the remuneration to be paid to temporary employees, the Apex Court rejected the contention of parity in pay scale holding:

48. The contention that at least for the period they have worked they were entitled to remuneration in the scale of pay as that of the government employees cannot be accepted for more than one reason. They did not hold any post. No post for the canteen was sanctioned by the State. According to the State, they were not its employees. Salary on a regular scale of pay, it is trite, is payable to an employee when he holds a status. (emphasis supplied)

Similar ruling was given in Yogesh Chandra Dubey94 wherein while drawing a distinction with a person who is appointed after following the recruitment rules to a post, the Apex Court following the earlier judgment in KGSD Canteen Employeesâ€™ Welfare Assn.95 held that since the temporary employees were not appointed to any post therefore they were not entitled to any scale of pay. In State of U.P. v. Putti Lal96, it was held that daily wagers were only entitled to receive the minimum of pay scale received by employees in regular government service but would not be entitled to any other allowances or increment.

In State of Haryana v. Charanjit Singh97, it was held that classification on the basis of mode of selection/recruitment for the purpose of disbursement of wages was valid and in case of contract employees the wages/salary would have to be paid in accordance with the terms and conditions contained in the letter of appointment. In State of Haryana v. Shakuntala Devi98, it was held that a temporary employee is not entitled to the benefit of family pension scheme. Also see State of Punjab v. Surinder Singh99, Kendriya Vidyalaya Sangathan100, Mahadeo Bhau Khilare (Mane)101 and CIT v. Susheela Prasad102.

Q. No legitimate expectation The doctrine of legitimate expectation cannot be invoked by temporary employees to claim that they be made permanent and the fact that in certain cases the court had directed that the employees be made permanent cannot be used to found a claim based on legitimate expectation.

In Umadevi (3)103 it was held:

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

This was followed in Indian Drugs & Pharmaceuticals Ltd.104 and in Chanchal Goyal (Dr.)105.

R. Interim orders to be refused In State of Karnataka v. Umadevi (3)106, the Apex Court deprecated the practice of the High Courts of staying regular selection and laid down that the High Courts should not issue interim directions since if the employee ultimately is found to be entitled to a relief, the same could be moulded accordingly.

S. Denuding of decisions running contrary to ratio laid down in Umadevi (3)107 In Umadevi (3)108, the Apex Court overruled all the decisions in which directions contrary to what had been stated by the Constitution Bench had been given, the extract is reproduced herein:

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

See also Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel109.

However, in U.P. SEB v. Pooran Chandra Pandey110, a two-Judge Bench of the Apex Court directed regularisation overlooking the judgment of Umadevi (3)111. The aforesaid judgment came up for consideration before a three-Judgesâ€™ Bench of the Apex Court in Official Liquidator v. Dayanand112, wherein while heavily advocating judicial discipline the Court held the observations made in Pooran Chandra Pandey113 to be treated as obiter and not as binding by the High Courts, tribunals and other judicial foras.

Â Â Â Â Â Â Â *. Â Advocate, Delhi High Court.

- (2006) 4 SCC 1, 17-18, paras 2 & 6 : 2006 SCC (L&S) 753.
- (2006) 7 SCC 684, 699, para 38 : 2006 SCC (L&S) 1745.
- (2006) 5 SCC 493, 497, para 13 : 2006 SCC (L&S) 1152.
- (2006) 7 SCC 161, 166, para 16 : 2006 SCC (L&S) 1580.
- (2008) 1 SCC 575 : (2008) 1 SCC (L&S) 239.
- (2008) 2 SCC 758 : (2008) 1 SCC (L&S) 554.
- (2007) 5 SCC 524 : (2007) 2 SCC (L&S) 194.
- (2007) 5 SCC 65 : (2007) 2 SCC (L&S) 107.
- (2007) 5 SCC 317 : (2007) 2 SCC (L&S) 179.
- (2007) 15 SCC 161 : (2010) 1 SCC (L&S) 698.
- (2007) 8 SCC 249 : (2007) 2 SCC (L&S) 879.
- (2007) 15 SCC 129 : (2010) 2 SCC (L&S) 765.
- (2006) 4 SCC 1, 21-22, para 11.
- (2006) 7 SCC 161.
- (2006) 8 SCC 67 : 2006 SCC (L&S) 1797.
- (2008) 11 SCC 278 : (2008) 2 SCC (L&S) 1122.
- (2006) 6 SCC 221 : 2006 SCC (L&S) 1298.
- (2006) 8 SCC 67.
- (2006) 4 SCC 1, 38, para 45.
- Umadevi (3), (2006) 4 SCC 1, 36, para 43.
- (2006) 11 SCC 350 : (2007) 1 SCC (L&S) 441.
- (2006) 4 SCC 1.
- (2006) 5 SCC 493.
- (2007) 11 SCC 102 : (2008) 1 SCC (L&S) 743.
- (2007) 5 SCC 326 : (2007) 2 SCC (L&S) 143.
- (2006) 4 SCC 1, 19, para 6.
- (1994) 2 SCC 630 : 1994 SCC (L&S) 723 : (1994) 27 ATC 56.
- (2006) 1 SCC 567 : 2006 SCC (L&S) 158.
- (2006) 7 SCC 488 : 2006 SCC (L&S) 1672.
- (2007) 1 SCC 257 : (2007) 1 SCC (L&S) 163.
- (2007) 2 SCC 491, 501, para 19 : (2007) 1 SCC (L&S) 713.
- (2007) 5 SCC 317.
- (2007) 9 SCC 337 : (2007) 2 SCC (L&S) 809.
- (2008) 13 SCC 1.
- (2006) 1 SCC 567, 584, para 44.
- (2007) 1 SCC 408, 426, para 37 : (2007) 1 SCC (L&S) 270.
- (2003) 2 SCC 632 : 2003 SCC (L&S) 191.
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