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SURENDRA PRASAD TIWARI

v.

UTTAR PRADESH RAJYA KRISHI UTPADAN MANDI PARISHAD AND ORS.

SEPTEMBER 8, 2006

B

[G.P. MATHUR AND DALVEER BHANDARI, JJ.]

C

Constitution of India—Articles 14, 16 and 309—Person employed on contractual basis for a short period from time to time—Writ Petition by the person on termination of his services—Services of the person were continued under an interim order of the High Court—Writ Petition finally dismissed by the High Court—Plea of the person for regularisation of his services on ground of his working for a long period during the period of operation of the interim order—Validity of—Held, the services of a person cannot be directed to be regularised as he was not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution—Person does not have a right to be absorbed merely because his services were continued under an interim order of a Court.

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Appellant was employed on contractual basis for a short period from time to time as per the needs and exigencies of different projects undertaken by respondents. On termination of the services by the respondents, the appellant filed a Writ Petition before High Court. The High Court passed an interim order of stay in the Writ Petition. The High Court finally dismissed the Writ Petition.

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In appeal to this Court, the appellant contended that the respondents are guilty of unfair labour practice by engaging him on contract basis without any security of tenure and continuing him for years on meagre wages for the works of perennial nature; and that he was working for the respondents continuously for 14 years and hence he is entitled for regularisation in services.

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The respondents contended that they continued with the services of the appellant for a long period only due to the interim order of the High Court; that the appellant was merely a temporary employee who was given employment

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as per the needs and exigencies of different projects undertaken by them; that the appointment of the appellant was not against any substantive post; and that the appellant was given fixed term appointments on contractual basis and his services were automatically terminated after expiry of the contract period.

Dismissing the appeal, the Court

HELD: 1.1. On careful analysis of the appointment orders giving contractual appointments to the appellant, it is revealed that the appellant's contractual appointment was for a fixed term for carrying out the work of a specified project. The appellant was engaged from time to time to work on different projects and thereafter the appellant was not appointed. The appointment of the appellant was not made following the procedure as laid down under Articles 14 and 16 of the Constitution of India. Adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment. Admittedly the appellant has not been appointed in terms of the relevant rules or in adherence to Articles 14 and 16 of the Constitution. [837-B-C; 841-F; 843-G]

1.2. Our constitutional scheme clearly envisages equality of opportunity in public employment. The Founding Fathers of the Constitution intended that no one should be denied opportunity of being considered for public employment on the ground of sex, caste, place of birth, residence and religion. This part of the constitutional scheme clearly reflects strong desire and constitutional philosophy to implement the principle of equality in the true sense in the matter of public employment. [846-B-C]

1.3. 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 regularization 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 Article 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. [846-D-E]

Secretary, State of Karnataka and Ors. v. *Umadevi, (3) and Ors.,* [2006] 4 SCC 1 CB; *Indira Sawhney and Ors.* v. *Union of India and Ors.,* [1992] Supp. 3 SCC 217 CB; *Banarasi Das and Ors.* v. *State of U.P. and Ors.,* AIR (1956) SC 520; *General Manager, Southern Railway and Anr.* v. *Rangachari,*

A **AIR (1962) SC 36 CB;** *Delhi Development Horticulture Employees' Union* **v.** *Delhi Administrative, Delhi and Ors.*, **[1992] 4 SCC 99;** *State of Himachal Pradesh, through the Secretary, Agriculture to the Govt. of Himachal Pradesh* **v.** *Nodha Ram and Ors.*, **[1998] SCC L & S 478; AIR (1997) SC 1445;** *Karnataka State Private College Lecturers Association etc.* **v.** *State of* B *Karnataka and Ors.*, **[1992] 2 SCC 29;** *Haryana State Agricultural Marketing Board* **v.** *Subhash Chand and Anr.*, **[2006] 2 SCC 794;** *National Fertilizers Ltd. and Ors.* **v.** *Somvir Singh*, **[2006] 5 SCC 493 and** *Union Public Service Commission* **v.** *Girish Jayanti Lal Vaghela and Ors.*, **[2006] 2 SCC 482, relied on.**

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3981 of 2006.

From the Judgment and Order dated 21.10.2003 of the High Court of Judicautre at Allahabad, Lucknow Bench in Writ Petition No. 6475(S/B) of 1992.

D Shashindra Tripathi and M.P. Shorawala for the Appellant.

M.L. Verma, Aarohi Bhalla, V.C. Mehrotra and Sujata Kurdukar for the Respondents.

The Judgment of the Court was delivered by

E **DALVEER BHANDARI, J.** Leave granted.

Regularization in public employment is the main issue which falls for adjudication in this appeal.

F This appeal is directed against the judgment dated 21.10.2003 passed in Civil Writ Petition No. 6475 of 1992 by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, UP.

Brief facts which are necessary to dispose of the appeal are recapitulated as under:

G The appellant was appointed by Rajya Krishi Utpadan Mandi Parishad, U.P., vide order dated 17.7.1989, for a period of three months on contractual basis on a remuneration of Rs.1,500/- for conducting a survey in the deficiency of procurement of the agricultural produce of Meerut Division, namely, Potato etc. Since the nature of employment has been disputed by the appellant, H therefore, we deem it appropriate to set out the relevant portion of the order

dated 17.7.1989 as under:

"Shri Surinder Prasad Tiwari, 17, Rana Partap Marg, Lucknow, is hereby appointed for a period of three months only, on contractual basis on a remuneration of Rs.1,500/- (Rupees one thousand five hundred only) per month for conducting a survey in the deficiency of procurement of the agricultural produce of Meerut Division, namely Potato etc.

The services of Shri Tiwari shall stand terminated automatically after the expiry of the above period of three months and his services can also be terminated earlier also without assigning any reason, if there is no need or under special circumstances. However, no compensation will be given to Shri Tiwari in this regard.

Sd/- Vijendra Pal

Director, Mandi."

The appellant, on 6.12.1989, was again appointed for a period of three months on contractual basis on a remuneration of Rs.1500/- for surveying the land of the village community and to determine whether Gramin Bazar/Haat is held on the lands of Gram Samaj or Zila Parishad and how many wholesalers/ commission agents were working. The relevant part of order dated 6.12.1989 reads as under:

"In continuation of the efforts of the Mandi Parishad for terminating/ abolishing prevalent system of Tehbazari in the Faizabad and Gorakhpur Divisions, Shri Surinder Prasad Tiwari through Shri V.P. Mishra, 17, Rana Partap Marg, Lucknow, is hereby appointed for a period of three months only, on contractual basis on a remuneration of Rs.1,500/- (Rupees one thousand five hundred only) per month for conducting a survey of the following works-

(1) Details of the land of the village community;

(2) Whether Gramin Bazar/Haat is held on the lands of Gram Samaj or Zila Parishad;

(3) How many wholesalers/commission agents are working.

The services of Shri Tiwari shall stand terminated automatically after the expiry of the above period and his services can be terminated

earlier also without assigning any reason, if there is no need or under special circumstances. However, no compensation will be given to Shri Tiwari in this regard.

Sd/- Arvind Mohan

Director, Mandi"

On 23.3.1990, the appellant was again appointed on contractual basis for a period of five months. The relevant part of the order dated 23.3.1990 reads as follows:

"In continuation of the efforts of the Mandi Parishad terminating/abolishing prevalent system of Tehbazari in the Faizabad and Gorakhpur Divisions, Shri Surinder Prasad Tiwari, 17, Rana Partap Marg, Lucknow, is hereby appointed for a period of five months, on contractual basis, on a remuneration of Rs.1,500/- (Rupees one thousand five hundred only) per month for conducting a survey of the following works-

(1) Details of the land of the village community;

(2) Whether Gramin Bazar/Haat is held on the lands of Gram Samaj or Zila Parishad;

(3) How many wholesalers/commission agents are working.

The services of Shri Tiwari shall stand terminated automatically after the expiry of the above period and his services can be terminated earlier also without assigning any reason, if there is no need or under special circumstances and no compensation will be given to Shri Tiwari in this regard.

Sd/- Arvind Mohan

Director, Mandi"

The appellant, on 23.8.1990, was again appointed for a period of four months on contractual basis. The relevant part of the order dated 23.8.1990 reads as under:

"Shri Surinder Prasad Tiwari is hereby appointed for a period of four months only, on contractual basis on a remuneration of Rs.1,800/- (Rupees one thousand eight hundred only) per month for executing

the development works of Kanpur Area viz., Wood Mandi and Leather Mandi and for development of Vegetable Mandi and for survey and other works, from the date of his joining the Mandi Samiti, Kanpur. All the terms and conditions of the contract shall remain as before. Shri Tiwari will work under the control of Secretary, Mandi Samiti, Kanpur and payments also will be made to him by the Mandi Samiti, Kanpur.

Sd/- Arvind Mohan

Director, Mandi"

The appellant was again appointed for a period of four months by an order dated 14.2.1991. Relevant part of the said order reads as under:

"Shri Surinder Prasad Tiwari through Shri V.P. Mishra, 17, Rana Pratap Marg, Lucknow is hereby appointed for a period of four months only on a monthly remuneration of Rs.1,800/- (Rupees one thousand eight hundred only) for conducting survey of the construction/development works of the New Mandis of Wood and Leather in Kanpur. He is being appointed in the Mandi Samiti, Kanpur as per the terms and conditions of the contract. Thereafter, this contract work shall automatically stand terminated.

Payments of the aforesaid remuneration will be made to Shri Surinder Tiwari by the Mandi Samiti, Kanpur.

Sd/- Arvind Mohan

Director, Mandi"

On 1.7.1991 the appellant was again appointed for a period of four months on contractual basis. The relevant part of the order dated 1.7.1991 reads as under:

"By Board's Order No.A-K/91-328 dated 14.2.1991, Shri Surinder Prasad Tiwari was appointed in the Mandi Samiti, Kanpur, for a period of four months only, on contractual basis on a remuneration of Rs.1,800/- (Rupees one thousand eight hundred only) per month as per the terms and conditions of the Contract. Now, after completion of the period of the contract, the services of Shri Tiwari are hereby extended for a further period of three months from the date of issuance of this order, in the interests of general public. The contractual period shall stand

A terminated automatically after expiry of three months. However, his services can also be terminated any time before contractual period of three months, in case he is not required, or under any special circumstances, and for which Shri Tiwari will not be entitled to any compensation. The remuneration of Shri Tiwari will be paid by the Mandi Samiti, Kanpur, as per the terms and conditions of earlier B contract.

He should join only after agreeing to the terms and conditions of the previous contract.

Sd/- Arvind Mohan

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Director, Mandi"

Lastly, on 14.10.1991, the appellant was again appointed for a period of six months on contractual basis. The relevant part of the order dated 14.10.1991 reads as under:

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"Shri Surinder Prasad Tiwari through Shri V.P. Mishra, 17, Rana Pratap Marg, Lucknow is hereby appointed for a period of six months only, on contractual basis, on a monthly remuneration of Rs.1,800/- (Rupees one thousand eight hundred only) per month for executing the election/ re-organization works of Mandi Samitis, under the terms and conditions E of the contract. He is being kept on contract with effect from the date of his joining and he will remain under the control of the Deputy Director (Marketing) Mandi Parishad, H.O.

Sd/- Arvind Mohan

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Director, Mandi"

The case of the appellant is that his services were orally terminated on 1.9.1992, whereas, according to the respondents, the appellant's appointment was on contractual basis and his services came to an end after the period of G the contract was completed. The appellant aggrieved by the oral termination and/or non-continuation in service preferred a writ petition before the Allahabad High Court at Lucknow Bench, Lucknow.

The Division Bench of the High Court after hearing the parties observed that, in law, there are only two kinds of appointments. The first is the H permanent appointment and the second is the temporary appointment.

According to the Division Bench, temporary appointments have further various sub-categories, such as casual appointee, daily wager, *ad-hoc* appointee, contractual appointee, probationer etc. The Court observed that a temporary appointee has no right to the post. Only a permanent appointee has such a right to the post. The Court observed that the appointments to the permanent posts are made after following the procedure under Article 16 of the Constitution. The Court observed that the appellant was never appointed by following the said procedure and he was never confirmed and, consequently, he has no right to the post as well. The Court further observed that merely because the appellant had succeeded in getting an interim order of this Court, it does not entitle him to have any right and the writ petition filed by the appellant was dismissed by the High Court on 21.10.2003.

The appellant, aggrieved by the said order of the High Court, preferred this appeal before this Court. The appellant has raised a number of questions of law in this appeal. The same are reproduced as under:

a. Whether engaging the employees on contract basis without any security of their tenure and continuing them for years on meager wages for the works of perennial nature, is not illegal, arbitrary, unconstitutional and within the ambit of Unfair Labour Practice?

b. Whether an employee continuing on post from last more than 14 years is not entitled to the regularization of his services?

c. Whether the appointment of the petitioner can be termed as irregular and illegal when the Mandi Regulations 1984 itself provide the provisions of a contract appointment?

d. Whether it is permissible under law to terminate the services of the petitioner while the hundreds of juniors appointed in the same manner are still retained in the service?

e. Whether the High Court has not committed the error of law in dismissing the writ petition of the petitioner when approximately 110 civil appeals of the employees appointed in the same manner are still pending before the Hon'ble Supreme Court?

f. Whether the High Court has not erred in dismissing the writ petition of the petitioner ignoring the fact that the matter of regularization of the petitioner is still under consideration before the authorities?

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g. Whether the oral order terminating the service of the petitioner can be justified when the same was passed without assigning any reason and without giving opportunity of hearing?

h. Whether the High Court was justified in dismissing the petition filed by the petitioner?

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i. Whether in any event the judgment and order passed by the High Court is liable to be set aside?

The appellant submitted that the impugned judgment is manifestly illegal, incorrect and against the record of the case. The appellant also submitted that the respondents are guilty of unfair labour practice by engaging the employees C on contract basis without any security of their tenure and continuing them for years on meager wages for the works of perennial nature. It was further submitted that the appellant has been working continuously for 14 years and was entitled to be regularized in service. The appellant also submitted that number of persons similarly placed are still continuing in their services, D whereas the services of the appellant have been dispensed with.

This Court issued a show-cause notice and, in pursuance to the said show-cause notice, a comprehensive counter affidavit was filed by Lokesh Kumar, Deputy Director (Administration), Head Quarters, Mandi Parishad, Lucknow on behalf of the respondents. At the outset, it was incorporated in E the counter affidavit that the appellant had suppressed the material facts from this Court. The appellant had not disclosed to the Court that his tenure of 14 years was due to the interim order dated 15.9.1992 granted in favour of the appellant by the High Court and it was because of the interim order that the respondents had to continue the appellant in the department. It was further F stated in the counter affidavit that the appellant was merely a temporary employee who was given employment as per the needs and exigencies of different projects undertaken by the Mandi Parishad. It was further stated that the appointment of the appellant was not against any substantive post, as alleged by the appellant in the writ petition. It was also incorporated in the counter affidavit that the appellant was given fixed term appointments on G contractual basis and his services were automatically terminated after the expiry of the contract period. The copies of the orders giving contractual appointments to the appellant have been produced along with the counter affidavit, which have already been reproduced in the preceding paragraphs of this judgment. According to the respondents, the appellant's case for H regularization has no merit and the High Court was correct and justified in

dismissing the writ petition filed by the appellant. A

In the rejoinder affidavit, the appellant has reiterated the averments incorporated in the petition.

On careful analysis of the appointment orders, it is revealed that the appellant's contractual appointment was for a fixed term for carrying out the B work of a specified project. The appellant was engaged from time to time to work on different projects and the last contract was dated 14.10.1991 and thereafter, the appellant was not appointed. The appellant's appointment was purely a fixed term appointment. By no stretch of imagination it could be said that the appointment of the appellant was made while following the procedure as laid down under Articles 14 and 16 of the Constitution. A three-Judge C Bench of this Court in *Delhi Development Horticulture Employees' Union* v. *Delhi Administration, Delhi & Ors.,* reported in [1992] 4 SCC 99, observed as under:

> "The above figures show that if the resources used for the Jawahar D Rozgar Yojna were in their entirety to be used for providing full employment throughout the year, they would have given employment only to a small percentage of the population in need of income, the remaining vast majority being left with no income whatsoever. No fault could, therefore, be found with the limited object of the scheme given the limited resources at the disposal of the State. Those employed E under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularization, is to frustrate the scheme itself. No court can be a party to such exercise. It is wrong to approach the problems of those F employed under such schemes with a view to providing them with full employment and guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for G whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them from introducing the new ones, for want of resources. This is not to say that the problems of the unemployed deserve no consideration or sympathy. This is only to emphasise that even among the unemployed a distinction exists H

A between those who live below and above the poverty line, those in need of partial and those in need of full employment, the educated and uneducated, the rural and urban unemployed etc."

In *State of Himachal Pradesh, through the Secretary, Agriculture to the Govt. of Himachal Pradesh* v. *Nodha Ram & Ors.*, reported in [1998] SCC

B (L&S) 478 : AIR 1997 SC 1445, in regard to the status of the temporary project employees employed in the Government project, the Court 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 regularize them

C or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularize 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

D 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 side."

E The ratio of this case squarely applies to the facts of this appeal.

In *Karnataka State Private College Stop-Gap Lecturers Association etc.* v. *State of Karnataka & Ors.*, reported in [1992] 2 SCC 29, the Court held as under:

F ".. A temporary or *ad hoc* employee may not have a claim to become permanent without facing selection or being absorbed in accordance with rules but no discrimination can be made for same job on basis of method of recruitment. Such injustice is abhorrent to the constitutional scheme."

G The controversy involved in this case is no longer *res integra*.

A Constitution Bench of this Court in the case of *Secretary, State of Karnataka & Ors.* v. *Umadevi (3) & Ors.*, reported in [2006] 4 SCC 1 has comprehensively dealt with the issues involved in this case. The Constitution Bench has observed as follows:

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"2. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. 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.

4. But, sometimes this process is not adhered to and the Constitutional scheme of public employment is bypassed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned.

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 arbitrarily (See: *Basu's Shorter Constitution of India*). 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. The State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to

A ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law B governing employment. It is recognized 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 C 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."

D In the above case, this Court, in para 11, further observed as under:

"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 E 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 F 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 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 G methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognized 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 H 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."

This Court, in the aforesaid case, also discussed the case of *Indra Sawhney & Ors.* v. *Union of India & Ors.*, reported in [1992] Supp 3 SCC 217. It is observed in this case as under:

"644. The significance attached by the Founding Fathers to the right to equality is evident not only from the fact that they employed both the expressions 'equality before the law' and 'equal protection of the laws' in Article 14 but proceeded further to state the same rule in positive and affirmative terms in Articles 15 to 18.

645. Inasmuch as public employment always gave a certain status and power-it has always been the repository of State power-besides the means of livelihood, special care was taken to declare equality of opportunity in the matter of public employment by Article 16. Clause (1), expressly declares that in the matter of public employment or appointment to any office under the State, citizens of this country shall have equal opportunity while clause (2) declares that no citizen shall be discriminated in the said matter on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. At the same time, care was taken to declare in clause (4) that nothing in the said Article shall prevent the State from making any provision for reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in the services under the State."

These binding decisions are clear imperatives that adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment.

The Constitution Bench in *Umadevi's* case (supra) has observed that adherence to the rule of equality in public employment is a basic feature of our Constitution. It was observed as under:

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or

A in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any B right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his C term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant D rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad hoc* employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue E directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the F service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment G would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

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A In the instant case, the appellant has continued in service for 14 years because of the interim order granted by the High Court on 15.9.1992. In the aforesaid case, the Constitution Bench has observed that merely because an employee had continued under cover of an order of the court, which the court described as "litigious employment", he would not be entitled to any right to be absorbed or made permanent in the service.

B In the instant case, the appellant submitted that he has been continued in service for 14 years and is entitled for regularization. This aspect of the matter has also been specifically dealt with by the said Constitution Bench in para 45 of the judgment and it was observed as under:

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> "45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open D eyes. It may be true that he is not in a position to bargain-not at arms length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be E continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible..."

An argument was made before the Constitution Bench that the State action in not regularizing the employees was not fair within the framework of F the rule of law. The Court observed that if the appointments, which have not been made according to the constitutional scheme, are regularized, that would amount to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by the people of this country.

G Admittedly, the appellant has not been appointed in terms of the relevant rules or in adherence to Articles 14 and 16 of the Constitution.

In *Umadevi's* case (supra), this Court has also dealt with another aspect of the matter and observed as under:

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A "47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when B 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......"

The ratio of the aforementioned judgment is that the courts cannot C encourage appointments which are made outside the constitutional scheme and it is improper for the courts to give any direction for regularization of the person who has not been appointed by following the procedure laid down under Articles 14, 16 and 309 of the Constitution.

Recently, this Court again reiterated the same principle in the case of D *Haryana State Agricultural Marketing Board* v. *Subhash Chand & Anr.*, reported in [2006] 2 SCC 794. In this case also, the employees were appointed on contract basis. The Court held as under:

"It is the contention of the appellant that the respondent was appointed during the 'wheat season' or 'paddy season'. It is also not in dispute E that the appellant is a statutory body constituted under the Punjab and Haryana Agriculture Produce Marketing Board Act. In terms of the provisions of the said Act, indisputably, regulations are framed by the Board laying down the terms and conditions of services of the employees working in the Market Committees. A bare perusal of the offer of appointment clearly goes to show that the appointments were F made on contract basis. It was not a case where a workman was continuously appointed with artificial gap of 1 day only. Indisputably, the respondent had been re-employed after termination of his services on contract basis after a considerable period(s)."

G In a recent judgment in *National Fertilizers Ltd. & Ors.* v. *Somvir Singh*, reported in [2006] 5 SCC 493, this Court had an occasion to examine the matter after pronouncement of the aforementioned judgment by the Constitution Bench. The Court in this case has laid down that it is now trite law that "State" within the meaning of Article 12 of the Constitution is bound to comply with the constitutional requirements as adumbrated in Articles 14

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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.

In *National Fertilizers Ltd.* (supra), this Court referred to the decision in *Union Public Service Commission* v. *Girish Jayanti Lal Vaghela & Ors.*, reported in [2006] 2 SCC 482, wherein the Court had observed as under:

> "The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the *inter se* merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution."

In *Banarsidas & Ors.* v. *State of U.P. & Ors.*, AIR (1956) SC 520, a Constitution Bench of this Court had an occasion to deal with the scope of Article 16 of the Constitution. The Court laid down that Article 16 of the Constitution is an instance of the application of the general rule of equality laid down in Article 14 with special reference to the opportunity for appointment and employment under the Government.

We are able to discern the same ratio from the judgment of another Constitution Bench of this Court in *General Manager, Southern Railway & Anr.* v. *Rangachari,* AIR (1962) SC 36.

Equal opportunity is the basic feature of our Constitution. Public employment is repository of the State power. Certain status and powers

A emanate from public employment.

H.M. Seervai, in his celebrated book "*Constitutional Law of India*" has mentioned that in fact the principle of recruitment by open competition was first applied in India and then applied in England.

B Our constitutional scheme clearly envisages equality of opportunity in public employment. The Founding Fathers of the Constitution intended that no one should be denied opportunity of being considered for public employment on the ground of sex, caste, place of birth, residence and religion. This part of the constitutional scheme clearly reflects strong desire and C constitutional philosophy to implement the principle of equality in the true sense in the matter of public employment.

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, D it would be improper for the courts to give directions for regularization 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.
E

In view of clear enunciation of law laid down in the recent judgment of the Constitution Bench and other judgments, we do not find any infirmity in the impugned judgment of the High Court. The appeal being devoid of any merit is accordingly dismissed. However, in the facts and circumstances of the F case, we direct the parties to bear their own costs.

B.S. Appeal dismissed.