

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.1162/2018

1. Sri Basudeb Debnath, S/O- Sri Motilal Debnath 140, Lake Chowmuhani Bazar, P.O-Agartala, P.S-West Agartala, District-West Tripura, PIN-799001.
2. Sri Bhulu Dey, S/O- Sri Sukumar Dey, Village and P.O- Barjala, P.S- Capital Complex, Near- Radha Krishna Nat Mandir, District- West Tripura, PIN-799002.
3. Sri Hiralal Das, S/O- Late Suklal Das, Resident of- Bhallukiya Tilla, P.O- Kunjaban, P.S- East Agartala, District- West Tripura, PIN- 799006.
4. Sri Karnajit Chowdhury, S/O- Late Monoranjan Chowdhury, Resident of- Barjala, P.O- Barjala, P.S-West Agartala, District-West Tripura, PIN-799002.
5. Sri Pradip Ghosh, S/O- Sri Paritosh Ghosh, Resident of- 290, Bhati Abhoynagar, Bitarban, Near Ramnagar Out Post, Village- Agartala, P.S- West Agartala, District- West Tripura PIN-799002.
6. Sri Raju Das, S/O- Sri Narayan Das, Resident of- Chanmari, UPC Club, Kunjaban, Capital Complex, P.O- Kunjaban, P.S- Capital Complex, District- West Tripura, PIN-799006.
7. Sri Raju Das, S/O- Sri Gopal Chandra Das, Village- R.K. Nagar, P.S- Bodhjung Nagar, P.O- Khas Noagoan (Banikya Chowmuhani), Near Samaj Kalyan Sangha, District- West Tripura, PIN-799008.
8. Sri Ranabir Chowhan, S/O- Sri Badal Chowhan, Resident of- Kunjaban Colony, Village and PO- Abhoynagar, P.S- East Agartala, District- West Tripura PIN-799006.
9. Sri Samir Chandra Ghosh, S/O- Late Nepal Chandra Ghosh, Resident of- East Chanmari, P.O- Bankumari, P.S- West Agartala, District- West Tripura, PIN- 799006.
10. Sri Sanjoy Dey, S/O- Sri Dhirendra Kumar Dey, Resident of- Ranir Bazar, Bridhya Nagar, Near Ration Shop, P.O and P.S- Ranir Bazar, District- West Tripura, PIN- 799035.

11. Sri Sukanta Dey, S/O- Sri Prafulla Dey, Resident of- Radhanagar, P.O- Agartala, P.S- West Agartala, District- West Tripura, PIN-799001.

12. Smt. Suniti Dhanuk, W/O- Sri Daya Sankar Dhanuk, Resident of- 120, AMC, Ward No-3, Harijan Colony, Sub-Division-Sadar, 79 Tilla, Agartala, P.O- Kunjaban, P.S- Capital Complex, District- West Tripura, PIN- 799006.

----Petitioner(s)

Versus

1. The Union of India, Department of Personnel and Training, Represented by Principal Secretary, North Block, New Delhi, PIN-110001.

2. The Comptroller & Auditor General of India, 9, Deen Dayal Upadhyaya Marga, New Delhi-110124.

3. The Asst. Comptroller Auditor General (N), 9, Deen Dayal Upadhyaya Marga, New Delhi-110124.

4. Accountant General (Audit), Tripura, Malancha Nibas, P.O- Kunjaban, Agartala, West Tripura, PIN-799006.

5. Senior Deputy Accountant General (Audit), Office of the Accountant General (Audit), P.O- Kunjaban, Agartala, West Tripura, PIN-799006.

-----Respondent(s)

Along with

WP(C) No.1161/2018

1. Sri Sudip Biswas, S/O- Sudhan Biswas, West Noabadi, P.O- Agartala, P.S- Bodhjungnagar, District- West Tripura, PIN-799008.

2. Sri Siman Rakshit, S/O- Lt. Hira Lal Rakshit, resident of A.D. Nagar, Road No-14, P.O. and P.S- A.D Nagar, District- West Tripura, PIN-799003.

3. Sri Haradhan Dey, S/O- Lt. Indramohan Dey, Resident of- Dhaleswar Natun Palli, P.O- Dhaleswar, PS- East Agartala, District- West Tripura, PIN-799007.

4. Smt. Sabitri Podder, D/O- Gopal Podder, Resident of- Indranagar, Agartala, P.O- Indranagar, P.S- NCC, District- West Tripura, PIN-799006.

5. Sri Samir Sutradhar, S/O- Nepal Sutradhar, Resident of- West Bhubanban, Agartala, P.O- West Bhubanban, District- West Tripura, PIN- 799001.
6. Sri Sumit Dhanuk, S/O- Madhu Dhanuk, Resident of- G.B. 79 Tilla, Harijan Colony, Agartala, PO- Kunjaban, P.S- Capital Complex, District- West Tripura, PIN-799006.
7. Sri Sudhir Oriya, S/O- Bipul Oriya, resident of- Badharghat Sri Palli, Agartala, P.S-Amtali, P.O- A.D. Nagar, District- West Tripura, PIN- 799003.
8. Sri Raja Biswas, S/O- Rakhal Ch. Biswas, Resident of- Old Kali Bari Lane, Krishnanagar, P.O- Agartala, P.S-West Agartala, District- West Tripura, PIN- 799001.
9. Sri Goutam Roy, S/O- Lt. Digendra Kr. Roy, Resident of- A.D Nagar, Road No-6, P.O. and P.S- A.D Nagar, District- West Tripura, PIN- 799003.
10. Sri Shibu Das, S/O- Gouranga Das, Resident of- Madhya Bhubanban, P.O- West Bhubanban, District- West Tripura, PIN- 799002.
11. Sri Bimal Sarkar, S/O- Lt. Laxman Sarkar, Resident of- Lankamura, Ghosh Para, P.O- Lankamura, P.S- West Agartala, District- West Tripura, PIN- 799009.
12. Sri Gopal Karmakar, S/O- Lt. Pramod Karmakar, Resident of G.B 79 Tilla, Agartala, P.O- Kunjaban, P.S- Capital Complex, District- West Tripura, PIN-799006.
13. Sri Babul Karmakar, S/O-Lt. Santosh Ch. Karmakar, Noa Gaon, Krishnanagar, Agartala, P.O- Noa Gaon, Krishnanagar, P.S- NCC, Dist- West Tripura, PIN-799006.
14. Sri Biswajit Das, S/O-Dulal Das, resident of G.B 79 Tilla, P.O- Kunjaban, P.S- NCC, Dist-West Tripura, PIN- 799006.

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4. Accountant General (Audit), Tripura, Malancha Nibas, P.O- Kunjaban, Agartala, West Tripura, PIN-799006.
5. Senior Deputy Accountant General (Audit), Office of the Accountant General (Audit), P.O- Kunjaban, Agartala, West Tripura, PIN-799006.

-----Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Asstt. S.G.,
Mr. Biswanath Majumder, CGC.

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

Date of hearing and judgment : **9th March, 2021.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

(Akil Kureshi, C.J.)

These petitions arise in common background. They were heard together and would be disposed of by this common judgment.

2. At the outset, we may record facts in brief. In WP(C) No.1162 of 2018 petitioners are serving as casual workers in the office of Accountant General (Audit), Tripura on the post of Multi Tasking Staff (MTS) since several years. They are paid fixed monthly wages. According to them, some

of them have been continued uninterruptedly since more than 20 years by now. Many of them have completed more than 10 years of such service. Few of them have been engaged more recently. At Annexure-1 these petitioners have produced a chart showing their year of initial engagement, total length of service as on 17.01.2017 and the monthly wages for the work assigned to them which is being paid to them. This chart reads as under:

Sl. No.	Name	Date of Engagement	Length of service	Monthly Wages paid (Rs.)	Duties Performed
1.	Raju Das(I)	1998	18 yrs	8000	General MTS duty
2.	Suniti Dhanuk	1998	18 yrs	7000	Safaiwala
3.	Hiralal Das	1998	18 yrs	8000	General MTS duty
4.	Bhulu Dey	2004	12 yrs	10,000	Attached with AG
5.	Sukanta Dey	2006	10 yrs	8000	General MTS duty
6.	Raju Das(II)	2006	10 yrs	8000	General MTS duty
7.	Samir Ghosh	2006	10 yrs	8000	Driver (Ambassador car)
8.	Pradip Ghosh	2006	10 yrs	8000	Attached with DAG/Admn
9.	Sanjay Dey	2006	10 yrs	8000	General MTS duty
10.	Basudeb Debnath	2008	8 yrs	8000	General MTS duty
11.	Ranabir Chouhan	2011	5 yrs	5500	General MTS duty
12.	Karnajit Chowdhury	2012	4 yrs	8000	Attached with DAG/Audit
13.	Babu Dhanuk	2013	3 yrs	5500	Safaiwala

3. The petitioners contend and with respect to which there is no serious dispute that in the department there are 34 sanctioned posts of MTS. Since long, many of these posts have remained vacant. On account of large

number of vacancies in the cadre, the department had to engage casual workers such as the petitioners to perform important tasks such as, cleaning, driving the official car etc. In support of this averment the petitioners have produced at Annexure-2 a letter dated 11.10.2010 written by the Sr. Deputy Accountant General (Audit) to the Comptroller & Auditor General of India pointing out that against the sanctioned strength of 34 persons in the cadre of MTS only 19 posts were filled up. It was, therefore, difficult to manage the duties of the MTS such as, maintaining cleanliness, upkeep of the sections, sanitation work of the building and office premises, cleaning, dusting, watch and ward, delivery etc. On account of this, he had to engage 9 persons on casual basis. The petitioners have also produced at Annexure-3 another such letter dated 12.10.2012 written by the Accountant General (Audit) to the Principal Director (Staff), Office of the Comptroller & Auditor General of India in which it is pointed out that the office has not made any recruitments to the post of MTS and that the day to day work is being managed by engaging casual workers. The petitioners have also produced a letter dated 20.03.2017 which is in the nature of reply to the queries raised on their behalf under Right to Information Act received from Deputy Accountant General/Admn. In this letter it was stated that presently against 34 casual workers for the same nature of work.

4. On 20.01.2017 the respondents had issued impugned communication. It was a letter written by the Assistant Comptroller & Auditor General to all Heads of Department located in North East which provided that henceforth no funds will be allocated under the head 'Wages' w.e.f. 01.04.2017 except in special cases and whenever need be, proposal for outsourcing of staff in different categories for filling up the vacant posts will be furnished. On the basis of these guidelines, all the petitioners would face termination. These petitioners, therefore, filed WP(C) No.353 of 2017 and connected petitions. On 05.06.2017 the Single Judge of this Court in the said petition ordered the respondents to maintain status quo. All the petitions came to be disposed of by a common judgment dated 25.09.2017. The Court was of the opinion that the issues had to be decided by the Central Administrative Tribunal and writ petition at the first instance could not have been filed. While permitting the petitioners to approach the Central Administrative Tribunal, the Court extended the interim order by 15 days. These petitioners thereupon filed Original Application No.283 of 2017 before the Central Administrative Tribunal, Guwahati Bench. This Original Application was disposed of by impugned judgment dated 05.09.2018 directing the department to dispose of the representation of the petitioners within 4 months from the receipt of the copy of the order giving opportunity

of hearing and passing a reasoned order. Thereupon the petitioners filed the present petition and once again obtained interim order against their termination.

5. Facts in WP(C) No.1161 of 2018 are substantially similar. Here the petitioners are engaged on casual basis in the Audit Wing of the Accountant General's office, Tripura, Agartala against sanctioned posts of MTS. In their cases, they have not given the details of their length of engagement. However, we are informed that all of them have been engaged since 2010 and onwards.

6. In background of such facts, learned counsel for the petitioners raised following contentions:

(i) All the petitioners have been engaged against clear vacancies. All the petitioners possess educational qualification of Higher Secondary pass which is prescribed as per recruitment rules for the post in question. They must, therefore, be granted regularization after years of casual engagement in view of decision of Supreme Court explaining the Constitution Bench judgment in case of *Secretary, State of Karnataka and others vrs. Umadevi (3) and others* reported in (2006) 4 SCC 1;

(ii) The petitioners have been paid wages at fixed rates. After several years, the petitioners have a right to claim salary in the minimum of the scale provided for the regular incumbents;

(iii) In any case, the services of the petitioners cannot be terminated for outsourcing of the work. Any such attempt on part of the department would breach the principle of one casual engagement cannot be replaced by another.

7. On the other hand, learned counsel for the A.G. department opposed the petitions contending that in view of the decisions of Supreme Court in case of *Umadevi* (supra) the petitioners cannot claim regularization in service. All the petitioners were engaged without any selection or open competition. The department for a greater efficiency wishes to outsource the work. It is on account of interim orders passed by the Courts that their engagement is still continued.

8. In case of *Umadevi* (supra), the Constitution Bench of the Supreme Court considered the prevailing practice of engaging casual workers in Government organisations and corporations, continuing for long period of time and thereafter regularizing them. Such practice was strongly deprecated holding that all public employments must be visited by the

principles of equality flowing from Articles 14 and 16 of the Constitution. Any engagement which is without open competition will breach these requirements. It was observed that:

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 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 right on the appointee.

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48. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on

Articles 14 and 16 of the Constitution are therefore overruled.”

9. Having said that, a small window for consideration of regularization was kept open when in paragraph-53 (of SCC) the Supreme Court made following observations:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa [AIR 1967 SC 1071], R.N. Nanjundappa [(1972) 1 SCC 409]* and *B.N. Nagarajan [(1979) 4 SCC 507]* 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 *irregularly* 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. 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.”

10. Thus, as provided in the said portion of the judgment, in case where the employment has continued for more than 10 years without intervention of the orders of the Courts, the regularization of services of such employees would have to be considered as long as the initial engagement was irregular but not illegal and such engagement was against sanctioned posts. This was also described as a one-time measure. In *Umadevi* (supra), Supreme Court did not elaborate as to which kind of engagements would be treated as irregular and which illegal. Going by the tenor of the judgment, however, any engagement which was made without open competition and thus without adhering to the principles of equality flowing from Articles 14 and 16 of the Constitution would be illegal. However, in case of *State of Karnataka and others vrs. M.L. Kesari and others* reported in (2010) 9 SCC 247 the situation was viewed slightly differently. Before we take note of the relevant observations of the Supreme Court in the said case, we may trace the facts. It was a case in which the original petitioners were engaged on daily basis by Zila Panchayats during

the period between 1985 to 1987 in different capacities. They were continued on daily wages for 15 years without intervention of the Court. In the year 2002 they had filed writ petitions before the Karnataka High Court. Division Bench in the writ appeal decided on 28.07.2004 held that these petitioners were entitled to regularization, subject to certain conditions. It was this judgment which was challenged by the State of Karnataka before the Supreme Court. The Supreme Court decided the appeal of the State of Karnataka after the Constitution Bench judgment in case of *Umadevi* (supra) was rendered. The ratio in *Umadevi* case (supra) was explained as under:

“7. It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in *Umadevi* (3) [(2006) 4 SCC 1], if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be

illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.” (emphasis supplied)

11. Thereafter, after referring to the expression “one-time measure” used by Supreme Court in case of *Umadevi* (supra), it was further observed as under:

“11. The object behind the said direction in para 53 of *Umadevi* (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in *Umadevi* (3) was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in *Umadevi* (3)] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the

employer has not undertaken such exercise of regularisation within six months of the decision in *Umadevi* (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in *Umadevi* (3) as a one-time measure.”

12. As noted, in case of *Umadevi* (supra) there is no elaboration of which kind of appointments should be treated as illegal and which kind irregular and therefore, the observation that even in an engagement which was not made after competition with qualified candidates would be an irregular appointment, must be seen as the observations of the Court in the said case of *Kesari* (supra).

13. In case of *Amarkant Rai vrs. State of Bihar and others* reported in (2015) 8 SCC 265 the Court referred to the decisions in case of *Umadevi* (supra) and *Kesari* (supra) and gave following directions:

“13. In our view, the exception carved out in para 53 of *Umadevi* (3) is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bore any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularisation viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of clerk was regularised w.e.f. 1987. The appellant although

initially working against unsanctioned post, the appellant was working continuously since 3-1-2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits to be paid from 1-1-2010.”

14. The decision last in the line which needs to be referred and which in the context of our facts is significant, is one in case of *Narendra Kumar Tiwari and others vrs. State of Jharkhand and others* reported in **(2018) 8 SCC 238**. It was a case in which large number of daily rated or contractual workers engaged by Government of Jharkhand had approached the High Court for regularization of their services. The High Court did not grant the relief in view of the regularization rules framed by the State of Jharkhand upon which they had approached the Supreme Court. It was argued that on the day when the decision in case of *Umadevi* (supra) was rendered, none of these persons had completed 10 years of service and, therefore, cannot be regularized. While allowing their appeal, it was observed that the decision in case of *Umadevi* (supra) was intended to put a full stop to pernicious practice of irregularly or illegally appointing daily-wage workers and continuing with them indefinitely. It was for this reason that the concepts of one-time measure and cut-off date were introduced in

the hope that the State would cease and desist from making irregular and illegal appointments and instead make appointments on regular basis. The Supreme Court thereafter, after referring to the decision in case of *Kesari* (supra) further observed as under:

“7. The purpose and intent of the decision in *Umadevi* (3) was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in *Umadevi* (3) is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what *Umadevi* (3) and *Kesari* sought to avoid.” (emphasis supplied)

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15. Culmination of the above decisions would be that the directions in case of *Umadevi* (supra) cannot be seen as providing a rigid cut-off date for applying the principle of 10 years of completion of engagement without Court intervention. Any such argument would give a complete license to the State and its authorities to continue to engage persons on casual basis and to

refuse to recognize any of their rights even after decades of such engagement by citing the cut-off date referred to by the Supreme Court in case of *Umadevi* (supra). This has been duly explained by Supreme Court in case of *Kesari* (supra) and *Narendra Kumar Tiwari* (supra). In the present case, we may recall, many of these petitioners were engaged against sanctioned posts and clear vacancies long before the decision in case of *Umadevi* (supra) was rendered. Even after the Constitution Bench rendered its judgment in case of *Umadevi* (supra) in the year 2006, without any intervention from Courts all these engagements continued till June, 2017. Thus in some cases for over a decade after the decision in case of *Umadevi* (supra) this casual engagements continued. Curiously if the argument of the Government was that on account of the decision in case of *Umadevi* (supra) such engagements cannot be regularized, it would be a contradiction in term when the State made fresh engagements on casual basis long after the judgment in case of *Umadevi* (supra) was rendered. Subject to fulfilling the conditions provided in case of *Umadevi* (supra) as explained in later decisions in case of *Kesari* (supra) and *Narendra Kumar Tiwari* (supra), these petitioners would deserve consideration for regularization.

16. Even those who may not qualify for regularization, cannot be disengaged after eliciting work from them for years together by citing a

change in policy that henceforth such work would be outsourced. It may be open for the State to outsource some of its tasks but not by disengaging persons engaged since long and that too when the vacancies against which such engagements were made are still continued. As correctly pointed out by the counsel for the petitioners, in case of *Hargurpratap Singh vrs. State of Punjab and others* reported in (2007) 13 SCC 292 the Supreme Court had observed as under:

“3. We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the ~~extent~~²⁹³ extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly.”

17. It was also not be open for the State to continue to pay fixed wages to these workers for decades together when (i) their engagement was against sanctioned posts; (ii) they have been continued for long period of time; (iii) they fulfill the educational qualifications prescribed for the post; (iv) the work is perennial in nature; (v) they have been engaged virtually continuously throughout since their initial engagements and (vi) they are doing the same work which regular staff members are doing. They may not be equated with regular Government servants for the purpose of pay and allowances, nevertheless on the principle of “equal pay for equal work” as elaborately explained in case of *State of Punjab and others vrs. Jagjit Singh and others* reported in (2017) 1 SCC 148, they must get wages of course on daily basis, on the minimum of the scales prescribed for the post in question minus other allowances. Relevant portion of the judgment of Supreme Court in case of *Jagjit Singh* (supra) may be noted:

“58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the

cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”

18. We are of the view that the Tribunal ought not to have diverted the petitioners before the departmental authorities. The department had made its stand very clear namely that none of these petitioners have a claim to any further right than what they are being granted. In other words, the department not only opposed their regularization, also was firmly of the opinion that their services should be terminated. Under the circumstances, no purpose would be served in asking the department to pass a speaking order on their representations.

19. Under the circumstances, petitions are disposed of with following directions:

(a) The respondents shall form a committee to consider the cases of all the petitioners for regularization. Those petitioners who fulfill the following conditions shall be regularized:

- (i) Those petitioners who held necessary educational qualifications at the time of their initial engagement;
- (ii) They had completed more than 10 years of engagement before the High Court for the first time granted them protection against termination;

Such regularization shall be from the date of this judgement;

(b) None of the petitioners shall be disengaged for outsourcing the work. However, it would be open for the department to make appointments on regular basis upon which the concerned petitioners, if not qualified for regularization shall have to vacate the place. It may also be open for the department to abolish the posts and in such eventuality disengagement can take place by following the principle of last come first go;

(c) Till any of these petitioners are regularized and till those petitioners who do not qualify for regularization but continue to be engaged in the same capacity, they shall be paid daily wages at the minimum scale of pay prescribed for the post in question without attendant allowances;

(d) The revised wages shall be paid from the date of the judgment;

(e) The exercise for regularization shall be completed within six months from today.

20. Petitions disposed of accordingly.

Pending application(s), if any, also stands disposed of.

(S.G. CHATTOPADHYAY), J

(AKIL KURESHI), CJ

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