

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1644 OF 2025

Film & Television Institute of India

...Petitioner

V/s.

1. Javed Rasul Banedar
2. Rahul Rajendra Pawar
3. Prakash Nivrutti Kamble
4. Ramchandra Nathu Ambekar
5. Amit Kalidas Jagtap
6. Maheboob H. Bagwan
7. Mahesh Atmaram Pawar
8. Sigma Human Resources (India) Pvt. Ltd.

...Respondents

WITH

WRIT PETITION NO.14169 OF 2025

1. Amit Kalidas Jagtap
2. Javed Rasul Banedar
3. Rahul Rajendra Pawar
4. Prakash Nivrutti Kamble
5. Ramchandra Nathu Ambekar
6. Maheboob H. Bagwan
7. Mahesh Atmaram Pawar

...Petitioners

V/s.

1. Film & Television Institute of India
2. Sigma Human Resources (India) Pvt. Ltd.

...Respondents

Ms. Priyanka Telang for the Petitioners in WP/1644/2025 and Respondents in WP/14169/2025.

Mr. Shrikant Malegaonkar with Mr. Shubhankar Malegaonkar, Mr. Prakash Yedage, Mr. Kunal Shirgire and Mr. Ishan Deshpande for the Petitioners in WP/14169/2025 and for Respondents in WP/1644/2025.

CORAM : SANDEEP V. MARNE, J.
JUDGMENT RESD. ON : 17 SEPTEMBER 2026
JUDGMENT PRON. ON : 29 SEPTEMBER 2026

JUDGMENT:

1) These are cross Petitions filed by the employer and workmen challenging the Award dated 2 April 2024 passed by the Presiding Officer, Industrial Tribunal, Pune in Reference (IT) No. 45/2015. Answering the Reference partly in favour of the workmen, the Industrial Tribunal has held that the action of the employer in not regularising the services of 7 workmen and putting them on contract basis through contractors is illegal and unjustified. The Industrial Tribunal has directed the employer to grant benefits of permanency to the 7 workmen since January 2023. The employer is aggrieved by the Award directing grant of permanency to the 7 workmen and has filed Writ Petition No.1644 of 2025. On the other hand, the 7 workmen are also aggrieved by the Award of the Industrial Tribunal to the extent of denial of grant of permanency from January 2003 and have filed Writ Petition No. 14169 of 2025.

2) Film and Television Institute of India (FTII) is an autonomous body under the Ministry of Information and Broadcasting of the Government of India and receives grant-in-aid. It provides high level of professional education and technical expertise in the art and technique of film making and television production. According to the employer-FTII, the concerned 7 workmen were hired by it on '*as and when required*' basis for odd jobs of light boy, studio boy etc. since 2005-06 on payment as per mutually agreed terms. They were paid on daily wages basis and were hired as and when the students needed their services for completion of the exercise/project work. The FTII did not issue any appointment letters to the workmen. On the other hand, it is the claim of the workmen that they are in continuous services with the FTII since the year 2003. The workmen complained that in the year 2007, FTII illegally started paying them wages through contractors. The workmen raised a demand for permanency and accordingly at their instance, Reference (IT) No. 45/2015 was made to the Industrial Tribunal by Ministry of Labour, Government of India vide orders dated 12 November 2015 and 27 November 2015 in respect of the demand of the 7 workmen for grant of permanency.

3) The workmen filed their Statement of Claim, which was resisted by the FTII by filing Written Statement. The workmen examined Mr. Javed Banedar and Mr. Rahul Rajendra Pawar. FTII did not lead any oral evidence but produced several documents. After considering the pleadings, oral and documentary evidence, the Industrial Tribunal delivered Award dated 2 April 2024, answering the Reference partly in the affirmative and holding that the action of FTII in not regularising the services of 7 workers was illegal and unjustified and the Industrial

Tribunal has directed FTII to grant benefit of permanency to 7 workers since January 2023. As observed above, the FTII is aggrieved by the Award dated 2 May 2024 and has filed Writ Petition No. 16444 of 2025. On the other hand, the workmen are aggrieved by non-grant of permanency since January 2003 and have filed Writ Petition No. 14169 of 2025.

4) Ms. Telang, the learned counsel appearing for FTII would submit that the Industrial Tribunal has grossly erred in granting permanency to the workmen. That the workmen were not employed by FTII in any manner. That their services were offered by their respective contractors. Contractual engagements were accepted by the workmen without any demur. Even initially their hiring was need-based. That Studio Assistants are required only when students made projects at the end of their course. That there was no requirement of permanent personnel and therefore the workmen were hired as and when needed. She submits that the claim for permanency was grossly barred by limitation as their need based engagements with FTII came to an end in 2006 and that therefore, the reference for grant of permanency in services of FTII in the year 2015 was grossly delayed. In support of her contention of delay, Ms. Telang relies on judgment of the Apex Court in Nedungadi Bank Ltd. vs. K.P. Madhavankutty and Ors.¹ and U.P. State Road Transport Corporation vs. Babu Ram². She submits that neither the workmen claimed that the contract was sham and bogus nor any enquiry is made by the Industrial Tribunal in that regard. That in any case, the six tests laid down by the Hon'ble Apex Court in Balwant Rai Saluja and

¹ (2000) 2 SCC 455

² (2006) 5 SCC 433

Anr. vs. Air India Limited and Ors.³ are not satisfied in the facts of the present case.

5) Ms. Telang further submits that direction for regularisation is in the teeth of judgment of Constitution Bench in **Secretary, State of Karnataka and Ors. vs. Umadevi (3) and Ors.**⁴ That there were no permanent sanctioned posts, against which the workmen were engaged. That FTII does not have power to create posts and that the said power is only with the Government of India. In support of her contention that industrial adjudicator does not have jurisdiction to direct creation of posts, Ms. Telang relies on judgment of Division Bench of this Court in **Municipal Council, Tirora and Anr. vs. Tulsidas Baliram Bindhade**⁵. She also relies on judgment of the Apex Court in **Mahatma Phule Agricultural University and Ors. vs. Nashik Zilla Sheth Kamgar Union and Ors.**⁶

6) Ms. Telang submits that 15 posts of Studio Assistants subsequently created cannot be a ground for directing permanency for the 7 workers. The said 15 posts of Studio Assistants are created in the year 2023 on account of introduction of postgraduation courses in the FTII. She submits that there is no provision in the Industrial Employment (Standing Orders) Central Rules, 1946 for grant of permanency on completion of period of 3 months as falsely sought to be suggested on behalf of the workmen. Ms. Telang has also relied on various other judgments in support of her contention that it is impermissible to grant

³ (2014) 9 SCC 407

⁴ (2006) 4 SCC 1

⁵ 2016 (6) MH.L.J. 867

⁶ (2001) 7 SCC 346

regularization /permanency merely because of long length of service. On above broad submissions, she prays for setting aside the impugned Award.

7) So far as the Petition filed by the workmen is concerned, she submits that there is no question of granting the benefit of permanency since the year 2003 as there is no evidence of engagement of the workers in the year 2003. That the case does not involve performance of continuous services and what was initially done was only need-based hiring. That in any case, Central Standing Orders do not provide for grant of permanency on completion of merely 3 months of service. She accordingly prays for dismissal of the petition filed by the workmen.

8) Mr. Malegaonkar, the learned counsel appearing for the workmen opposes the petition filed by FTII. He submits that the workmen were engaged since the year 2007 continuously and till the year 2007, they were being directly paid by FTII. In 2007, the workmen were illegally shifted through contractors in violation of provisions of Section 9 of the Industrial Disputes Act, 1947 (**ID Act**). That no notice of change was issued while undertaking illegal exercise of shifting of the workers through contractors. That the workmen were utilised through contractors for over 11 years till 2018. That with a view to frustrate the Reference, the workers were terminated in the year 2018.

9) Mr. Malegaonkar further submits that the workmen had filed an application seeking production of various documents relating to services rendered by the workmen. That though the application was

allowed, the FTII deliberately withheld the record and did not produce the same. That therefore adverse inference needs to be raised against FTII. He submits that the workmen have worked continuously for over 15 long years. That Industrial Tribunal has rightly taken into consideration the factum of existence of 15 posts of Studio Assistants, which are advertised by the FTII. That therefore the direction for grant of permanency does not suffer from any error. He prays for dismissal of the petition filed by FTII.

10) Mr. Malegaonkar further submits that the Tribunal ought to have granted permanency to the workers on completion of 90 days of service in accordance with the provisions of the Central Standing Orders. That there is no basis for directing permanency since January 2023. That termination of services of the workmen in the year 2018 is in the teeth of provisions of Section 33 of the ID Act. He accordingly prays for allowing the petition filed by the workmen and for grant of benefit of permanency from January 2003.

11) Rival contentions urged on behalf of the parties now fall for my consideration.

12) It is first necessary to consider the challenge raised by the employer-FTII to the Award of Industrial Tribunal. This is because if the FTII succeeds in setting aside the impugned Award, the petition filed by the workmen would be rendered infructuous. Accordingly, first I proceed to consider FTII's challenge to the impugned Award.

13) The impugned Award directs grant of permanency to the 7 workmen in the services of FTII since January 2022. The Industrial Tribunal has directed grant of permanency since January 2023 by taking into consideration the fact that FTII issued advertisement in January 2023 for filling up 15 posts of Studio Assistants.

14) The claim of the 7 workmen for grant of benefit of permanency/regularisation is premised on their alleged services with FTII since the year 2003. It is the claim of the workmen that during 2003 to 2007, they were directly paid wages by FTII and were later paid through contractors from the year 2007 onwards. The details of various contractors, through whom they are shown to have been engaged, were pleaded by the workmen in their Statement of Claim. It appears that during pendency of the Reference, the services of the workmen were terminated on 2 July 2018. The impugned Award thus contemplates not just grant of benefit of permanency but also reinstatement of the workmen since they have been already terminated during pendency of the Reference on 2 July 2018.

15) The law on the issue of regularisation of services of temporary/casual/*ad hoc*/contract workers is well settled by the judgment of Constitution Bench in **Umadevi** (supra). Now it is well-settled position that appointments made in violation of constitutional scheme of equal opportunity cannot be regularized. If a person accepts engagement either in temporary or casual capacity, he cannot turn around and claim permanency/regularisation merely on the strength of long continuation in service. It is held by the Apex Court that mere continuation in service

for a long duration does not *ipso facto* create a right to have the services regularised. It is held by the Hon'ble Apex Court in paras-43, 45, 46 and 47 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 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. 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 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 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 directions for absorption, regularisation, 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 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 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.

45. While directing that appointments, temporary or casual, be regularised 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 eyes. It may be true that he is not in a position to bargain—not at arm's 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 continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. 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 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.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in *Dharwad* [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] , *Piara Singh* [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] , *Jacob* [*Jacob M. Puthuparambil v. Kerala Water Authority*, (1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] and *Gujarat Agricultural University* [*Gujarat Agricultural University v. Rathod Labhu Bechar*, (2001) 3 SCC 574 : 2001 SCC (L&S) 613] and the like, have given rise to an expectation in them that their services would also be regularised. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can

legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. [See Lord Diplock in *Council for Civil Services Union v. Minister of Civil Service* [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] , *National Buildings Construction Corpn. v. S. Raghunathan* [(1998) 7 SCC 66 : 1998 SCC (L&S) 1770] and *Chanchal Goyal (Dr.) v. State of Rajasthan* [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] .] There is no case that any assurance was given by the Government or the department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after *Dharwad decision*. Though, there is a case that the State had made regularisations in the past of similarly situated employees, the fact remains that such regularisations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularised in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularisation of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

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.

16) Thus, as per the judgment of the Constitution Bench in *Umadevi*, it is impermissible for Courts and Tribunals to regularize services of temporary workers merely on the basis of their long length of service. The Hon'ble Apex Court has, however, recognised only one exception in para-53 of the judgment in *Umadevi*, in which it is held as under:

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128 : AIR 1967 SC 1071] , *R.N. Nanjundappa* [(1972) 1 SCC 409 : (1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] 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 aboveresferred 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.

17) Thus, an exception is made where irregularly appointed persons have continued to work for 10 years or more (without the intervention of the Court) and such persons are directed to be regularised as a one-time measure.

18) In **Maharashtra State Road Transport Corporation (MSRTC) vs. Casteribe Rajya Parivahan Karmchari Sanghatana**⁷, the issue before the Apex Court was whether an industrial adjudicator was bound by declaration of law by the Hon'ble Apex Court in **Umadevi** in the light of provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices, 1971 (**MRTU & PULP Act**). While holding that the powers given to the Industrial and Labour Courts under MRTU & PULP Act are very wide and though the judgment of the Apex Court in **Umadevi** does not denude the Industrial and Labour Courts of their statutory power under Sections 31 and 32 of the MRTU & PULP Act, permanency can be granted to the workers who are victims of unfair labour practice on the part of the employer under Item-6 Schedule-IV of the Act only where post on which they have been working exists. The Apex Court in **MSRTC vs. Casteribe** (supra) also accepted the legal proposition that the Courts cannot direct creation of posts as held in **Mahatma Phule Agricultural Universities** (supra). The Apex Court ruled in **MSRTC vs. Casteribe** that provisions of MRTU & PULP Act enable an industrial adjudicator to take affirmative action against the erring employer and since the powers are of wide amplitude, the same take within their fold the direction to accord permanency.

19) In **Hari Nandan Prasad and Anr. vs. Food Corporation of India and Anr.**⁸, the Apex Court again had an occasion to consider the issue of regularisation/permanency by an industrial adjudicator in the light of judgment of the Apex Court in **Umadevi**. The Apex Court held that a balancing act and harmonious reading of the two judgments in

⁷ (2009) 8 SCC 556

⁸ (2014) 7 SCC 190

Umadevi and **MSRTC vs. Casteribe** was required to be made and only in cases where posts are available, direction for regularisation can be made when a worker has continued as a daily wage worker for number of years. In a case where the posts are not available, direction for regularisation would be impermissible. It further held that regularisation can only be directed of the concerned workers meeting the eligibility requirement for the post. It further held that regularisation can also be directed where it is found that similarly situated workmen are regularised violating the equality clause under Article 14 of the Constitution of India. The Apex Court held in para-39 of the judgment in **Harinandan Prasad** as under:

39. On a harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily-wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.

20) In **Municipal Council, Tirora** (supra), a reference was made to Division Bench of this Court in the light of conflicting decisions of two Single Judge Bench judgments of this Court on the issue of interpretation of Clause-4C of the Model Standing Orders under the Industrial

Employment (Standing Orders) Act, 1946. The Division Bench answered the Reference by holding that industrial adjudicator does not have the power to direct creation of posts through the relief of grant of permanency on completion of 240 days of service. It has held that mere completion of 240 days of service does not warrant a direction for grant of permanency in an instrumentality of State. The Division Bench held thus:

19. In this reference, the position emerging before us is similar. There is no conflict between the provisions of M.S.O. 4-C and the provisions of the S. 76 of the 1965 Act. In the event of the appointment having been made validly, it may be possible to invoke the provisions Cl. 4-C of M.S.O. A view to the contrary would result in regularizing/validating a void act. Cl. 4-C neither permits nor contemplates the same. As held in the above judgments, if the appointment is not made in accordance with the constitutional scheme, it is void ab-initio and, therefore, there can be no claim to its regularization or for grant of permanency in any manner. This is all the more so as Cl. 32 of the M.S.O. clarifies that the Standing Orders are not to operate in derogation of any other law i.e. S. 76 of 1965 Act. Definitely any interpretation of Clause 4C conducive to defeating the Constitutional mandate is unwarranted. Violation of Clause 4C of the MSO may tantamount to an unfair labour practice under item 9 of Sch. IV of the 1971 Act but unless & until, other additional factors are proved on record, finding of indulgence in an unfair labour practice under item 6 of Sch. IV thereof can not be reached. As explained by the Hon. Apex Court in case of Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana, (supra), existence of a legal vacancy must be established & as discussed above, the power to recruit with the employer must also be demonstrated. In absence thereof, workman can not succeed in proving the commission of unfair labour practice under item 6 by the employer. These two ingredients, therefore, also must be established when benefit of Cl. 4-C is being claimed. Unless availability of a vacancy is shown or then power with the employer to create the post and to fill it is brought on record, mere continuation of 240 days can not and does not enable the workman to claim permanency by taking recourse to Cl. 4C read with item 9 of Sch. IV of 1971 Act. Clause 4C does not employ word "regularisation" but then it is implicit in it as no "permanency" is possible without it. Conversely, it follows that when a statutory provision like S. 76 disables the employer either from creating or filling in the posts, such a claim can not be sustained. This also nullifies the reliance upon the judgment of learned Single Judge in case of Maharashtra Lok Kamgar Sanghatana v. Ballarpur Industries Limited (supra) where the employer was a private Company not subjected to such regulatory measures by any Statute and enjoyed full freedom to create the posts and to recruit. One of us (B.P. Dharmadhikari, J.) is party to the judgment of this Court in Raymond UCO Denim Private Ltd. v. Praful Warade & Ors. (supra) which again needs to be distinguished for the same reasons. The judgment of learned

Single Judge in case of Indian Tobacco Company Ltd. v. The Industrial Court and Ors. (supra), judgment of Hon'ble Apex Court affirming it or then judgment of Hon'ble Apex Court reported at Western India Match Company Ltd. and Workmen are all considered therein & are distinguishable as the same do not pertain to the province of public employment or consider inherent Constitutional restraints (the suprema lex - see Mahendra L. Jain v. Indore Development Authority and others (supra) and Cl. 32 of the MSO. For same reasons, law laid down by the Full Bench judgment of this Court in MANU/MH/0888/2006 : 2007 (1) CLR 460 : 2007 (1) Mah. L.J. 754- Gangadhar Balgopal Nair v. Voltas Limited & Anr. does not advance the cause of workmen. The Division Bench of this Court in May & Baker Ltd. v. Kishore Jaikishandas Ichhaporia (supra) while construing Section 10-A(3) held that the expression "other law" would not refer to the model standing orders or the certified standing orders since they are laws made under the provisions of parent act itself and not under any other law. The Model Standing Orders and Certified Standing Orders, held the Division Bench, "are laws no doubt but they are laws made under the provisions of the Act". They were held not to be provisions under any other law. This discussion therefore shows how these words "in derogation of any law for the time being in force" in Cl. 32 of MSO need to be understood & does not help Adv. Jaiswal or Adv. Khan.

20. In Vice-chancellor, Lucknow University v. Akhilesh Kumar Khare & Anr. (supra) relied upon by Adv. Parihar, Hon. Apex Court follows its Constitution Bench in Umadevi (III) and while rejecting relief of regularization to the daily wagers who were engaged in public employment without proper procedure, grants them compensation of Rs. 4 Lakh each by way of compassion. This judgment does not consider any welfare labour legislation and, therefore, can not provide direct answer to the reference made. Judgment of this Court taking similar view in the light of 1971 Act in the case of Punjabrao Krishi Vidyapeeth, Akola v. General Secretary, Krishi Vidyapeeth Kamgar Union & Anr. (supra) is already considered above. The Division Bench of this Court in State of Maharashtra and Anr. v. Pandurang Sitaram Jadhav (supra) finds that the respondents before it were employed as daily wagers in the establishment of the government milk dairy for a longer period of 12 to 20 years. There were no sanctioned posts and vacancies in existence in the concerned department. Respondents failed to demonstrate that their appointments were made in accordance with the procedure prescribed for selection. The Division Bench finds it wholly unjust to direct the appellant State Government to grant permanency to the respondents. It points out that the provisions of Model Standing Orders are subject to the Rules regulating selection and appointment so also subject to the constitutional scheme of public employment. Respondents - Daily wagers are declared to possess no legal right to claim permanency. Order passed by the learned Single Judge to the contrary have been quashed. State Government is held obliged to make appointments in adherence to the constitutional scheme of Public employment. Respondents - Daily Wagers appointed without following the prescribed procedure for selection by passing public participation did not acquire any legal right to claim

permanency. It is apparent that no inconsistency exists and cannot be worked out in State of Maharashtra & Anr. v. Pandurang Sitaram Jadhav as also Pune Municipal Corporation v. Dhananjay Prabhakar Gokhale (supra) on one hand and Ballarpur Industries Limited v. Maharashtra Lok Kamgar Sanghatana (supra) on the other hand. Status of employer, nature of employment and inherent Constitutional limitation on public employer or absence of such fetters on any private employer or absolute freedom available to it to create post/s and recruit, are some of the distinguishing features which prohibit this exercise.

21. Thus, in the light of this discussion, it follows that in absence of vacant sanctioned posts with the Municipal Council, a workman who has put in continuous service of 240 days or more in span of 12 months, can not invoke Clause 4C of the MSO to claim either permanency or regularization. We accordingly answer the question referred. Registry to place the writ petitions before the learned Single Judge as per roster assignment for further consideration.

21) The judgment of the Division Bench in ***Municipal Council, Tirora*** has been followed by the Single Judge of this Court in ***Raigad Zilla Parishad V/s. Kailash Balu Mhatre and Ors.***⁹, in which this Court has held that regularization cannot be automatic on completion of 240 days of service under Clause-4C of Model Standing Orders in absence of sanctioned vacancies. In that case, this Court has adopted the formula of sending proposal to the State Government for sanction/creation of posts for considering regularization of temporary workers who had rendered substantially long service.

22) However, recently, there have been at least four judgments delivered by the Hon'ble Apex Court directing regularisation of services of temporary workers, who were found to have been employed for a considerable period of time. The judgments take into consideration the ratio of the judgment in ***Umadevi***, but have directed regularization of temporary workers who were found to have been engaged for several

⁹ 2022 (2) Mh.L.J.146

years by applying the exception recognised in para 53 of the judgment of the Constitution Bench. It would be apt to take into consideration ratio of those judgments.

23) In *Jaggo vs. Union of India*¹⁰, the Apex Court has held that the judgment in *Umadevi* sought to curtail the practice of backdoor entries and ensure appointments adhere to constitutional principles, its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. It is held that the judgment in *Umadevi* is aimed at distinguishing between “illegal” and “irregular” appointments and that the judgment holds that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. It is further held that the laudable intent of the judgment is being subverted when institutions rely on its *dicta* to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. It is held in paras-21 to 26 of the judgment in *Jaggo* has held as under:

21. The High Court placed undue emphasis on the initial label of the appellants' engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment : continuous, long-term service, indispensable duties, and absence of any *mala fide* or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an

¹⁰ 2024 SCC Online 3826

increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.

24. The landmark judgment of the United State in the case of *Vizcaino v. Microsoft Corporation* serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

- **Misuse of “Temporary” Labels:** Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as “temporary” or “contractual,” even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

- **Arbitrary Termination:** Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.
- **Lack of Career Progression:** Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.
- **Using Outsourcing as a Shield:** Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.
- **Denial of Basic Rights and Benefits:** Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

26. While the judgment in *Uma Devi* (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in *Uma Devi* (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

24) In *Vinod Kumar and Ors. vs. Union of India and Ors.*¹¹, the Hon'ble Apex Court has held that the essence of employment and the rights thereof cannot be determined merely by the initial terms of appointment when the actual course of employment has evolved

¹¹ (2024) 9 SCC 327

significantly over time. It is further held that the failure to recognise the substantive nature of employees' roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations. The Court held in paras-5 to 9 of the judgment as under:

5. Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement. Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status.

6. The application of the judgment in *Umadevi (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in *Umadevi (3)*.

7. The judgment in *Umadevi (3)* also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Para 53 of *Umadevi (3)* case is reproduced hereunder:

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8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to

recognise the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations.

9. Accordingly, the appeals are allowed. The judgment [*Vinod Kumar v. Central Administrative Tribunal*, 2016 SCC OnLine All 4489] of the High Court is set aside, and the appellants are entitled to be considered for regularisation in their respective posts. The respondents are directed to complete the process of regularisation within 3 months from the date of service of this judgment.

25) In **Rajkaran Singh and Ors. vs. Union of India and Ors.**¹², the Hon'ble Apex Court has held in paras-31 to 34 as under:

31. As held in *Vinod Kumar* (supra), “the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time.”

32. This Court fully associates with this principle and finds it wholly applicable in the present case, especially in light of the administrative orders and Board proceedings referred to *supra* that have consistently treated the appellants as equivalent to regular government employees. The mere classification of employees as ‘temporary’ or ‘permanent’ is not merely a matter of nomenclature but carries significant legal implications, particularly in terms of service benefits and protections.

33. In the present case, the totality of circumstances indicates that despite their formal classification as temporary employees, the appellants’ employment bears substantial hallmarks of regular government service. The denial of pensionary benefits solely on the basis of their temporary status, without due consideration of these factors, appears to be an oversimplification of their employment relationship with the government. This approach runs the risk of creating a class of employees who, despite serving the government for decades in a manner indistinguishable from regular employees, are deprived of the benefits and protections typically accorded to government servants.

34. Thus, we are of the opinion that the denial of pensionary benefits to the appellants is not tenable or justifiable in the eyes of law as the same is arbitrary and violates the fundamental rights as guaranteed by Articles 14 and 16 of the Constitution of India. It is indeed relevant to note that the appellants’ batch seems to be the last in their genre of SSD Fund temporary employees and thus, manifestly, the direction to extend the benefits of the 6th CPC and the RP Rules to the appellants shall not form a precedent so as to have a detrimental effect on the financial health of the SSD Fund.

¹² 2024 SCC OnLine SC 2138

26) In *Shripal and Another Vs. Nagar Nigam Gaziabad*¹³, the Apex Court has dealt with a case where a claim was raised that the workers were engaged through contractors. It is held that the Horticulture Department was actually supervising their work and was paying them wages. The Apex Court also held that there was no evidence of issuance of tenders for engagement of contractors. The Apex Court also held that the termination of the workers without following statutory obligations was illegal. It is held by the Apex Court in the judgment as under:

10. The Respondent Employer consistently labelled the Appellant Workmen as casual employees (or workers engaged through an unnamed contractor), yet there is no material proof of adherence to Section 6N of the U.P. Industrial Disputes Act, 1947, which mandates a proper notice or wages in lieu thereof as well as retrenchment compensation. In this context, whether an individual is classified as regular or temporary is irrelevant as retrenchment obligations under the Act must be met in all cases attracting Section 6N. Any termination thus effected without statutory safeguards cannot be undertaken lightly.

11. Furthermore, the Employer's stance that there was never a direct employer-employee relationship is wholly unsubstantiated. If, in fact, the Appellant Workmen had been engaged solely through a contractor, the Employer would have necessarily maintained some form of contract documentation, license copies, or invoices substantiating the contractor's role in hiring, paying, and supervising these workers. However, no such documents have been placed on record. Additionally, the Employer has failed to establish that wages were ever paid by any entity other than its own Horticulture Department, which strongly indicates direct control and supervision over the Workmen's day-to-day tasks is a hallmark of an employer-employee relationship. Had there been a legitimate third-party contractor, one would expect to see details such as tender notices, contract agreements, attendance records maintained by the contractor, or testimony from the contractor's representatives. The absence of these crucial elements undermines the Employer's claim of outsourced engagement. In fact, it appears that the Workmen were reporting directly to the Horticulture Department officials, receiving instructions on their duties, and drawing wages issued under the Municipality's authority. This pattern of direct oversight and wage disbursement substantially negates the narrative that they were "contractor's personnel." Consequently, the discontinuation of their services carried out without compliance with statutory obligations pertaining to notice, retrenchment compensation, or approval under Section 6E of the U.P. Industrial Disputes Act, stands on precarious ground. The very foundation of the

¹³ 2025 SCCOnline SC 221

Employer's defense (i.e., lack of an employer-employee relationship) is not supported by any credible or contemporaneous evidence.

12. The evidence, including documentary material and undisputed facts, reveals that the Appellant Workmen performed duties integral to the Respondent Employer's municipal functions specifically the upkeep of parks, horticultural tasks, and city beautification efforts. Such work is evidently perennial rather than sporadic or project-based. Reliance on a general "ban on fresh recruitment" cannot be used to deny labor protections to long-serving workmen. On the contrary, the acknowledged shortage of Gardeners in the Ghaziabad Nagar Nigam reinforces the notion that these positions are essential and ongoing, not intermittent.

13. By requiring the same tasks (planting, pruning, general upkeep) from the Appellant Workmen as from regular Gardeners but still compensating them inadequately and inconsistently the Respondent Employer has effectively engaged in an unfair labour practice. The principle of "equal pay for equal work," repeatedly emphasized by this Court, cannot be casually disregarded when workers have served for extended periods in roles resembling those of permanent employees. Long-standing assignments under the Employer's direct supervision belie any notion that these were mere short-term casual engagements.

14. The Respondent Employer places reliance on Umadevi (supra)² to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are "illegal" and those that are "irregular," the latter being eligible for regularization if they meet certain conditions. More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.

15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records—despite directions to do so—allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement.

27) Recently in **Deepak Prakash Ghole and Ors. vs. Savitribai Phule Pune University**¹⁴, this Court had an occasion to decide regularisation of services of temporary employees working in Pune University. After considering the ratio of the judgments of the Apex Court in **Jaggo, Vinod Kumar**, and **Rajkaran Singh** (supra), this Court held in paras-8 and 12 of the judgment as under:

8. In my view, the cases of the Petitioners need to be reconsidered by the Respondent-University in the light of the changed scenario. This Court is not proposing to direct Respondent-University to create posts for absorption of the Petitioners. However, in the event there are vacant sanctioned posts in the University for the purpose of accommodation of the Petitioners, the Respondent-University can absorb the Petitioners against such posts rather than filling them up through open advertisements. Mr. Naidu contends that there is no dispute about the eligibility of the Petitioners to hold the respective posts. Though Mr. Apte disputes this position, the Management Council has not recorded any finding about non-holding of requisite qualifications while considering the cases of the Petitioners for regularization. What essentially came in their way was absence of regularly sanctioned posts at the time of their initial engagements and non-conduct of proper selection process at that time. However, if the posts are now existing for the purpose of absorption of the Petitioners, I do not see any reason why Petitioners should be continued on temporary basis forever. In view of the limited injunction passed by the Industrial Court, and as per decision taken by the Management Council in meeting dated 19 July 2016, and particularly in view of need of the Respondent-University, services of Petitioners are likely to be utilized in future as well. In such circumstances, it is appropriate that the cases of the Petitioners are considered for regular absorption against available posts, if any.

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12. I am sure, the Respondent-University would keep in mind the ratio of the above-quoted judgments while considering the cases of the Petitioners for absorption. In the event regular posts are not available for absorption of the Petitioners, the Respondent-University would be justified in rejecting the cases of the Petitioners for absorption. However, if posts are available, the long length of service rendered by the Petitioners needs to be borne in mind for considering their cases for conferment of benefit of permanency on them.

28) Having discussed the law on the issue of regularisation, I now proceed to decide whether the directions issued by the Industrial Tribunal

¹⁴ Writ Petition No. 14337 of 2024 decided on 11 June 2026

for grant of permanency to the workmen in the present case warrant any interference. As observed above, the Industrial Court has directed grant of permanency to the seven workmen w.e.f. January 2023. Here it must be noted that there is a very fine distinction between the concepts of 'regularisation' and 'permanency', which is noted by the Constitution Bench in *Umadevi* after taking into consideration its judgments in *R. N. Nanjundappa vs T. Thimmiah & Anr*¹⁵ and *B.N. Nagarajan Versus. State of Karnataka*¹⁶. It is held that the words 'regular' or 'regularisation' are calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. Keeping in mind the distinction in 'regularisation' and 'permanency', the Apex Court has held in *Umadevi* 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 regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization. The Industrial Adjudicators very often use the word 'permanency' possibly on account of the concept under the Standing Orders. However, when a benefit is sought to be granted to the workmen on the basis of long length of service, the Courts, Tribunals and even industrial adjudicators should ideally direct grant of regularisation and not grant of permanency. This is because the irregularity in making initial appointments are being condoned on the strength of long length of service and therefore what is undertaken is the exercise of 'regularisation' and not conferment of 'permanency'. This Court has dealt with the difference in the two concepts in *ONGC Vs.*

¹⁵ 1972 2 SCR 799

¹⁶ (1979) 4 SCC 507

Central Government Industrial Tribunal¹⁷. It is held in para 30 and 31 of the judgment as under:

30. Mr. Cama has attempted to highlight the inconsistencies in use of the word 'regularisation' in the Reference as against use of the word 'permanency' in the Award. He has relied on judgment of the Apex Court in **Umadevi (3)** in support of his contention that regularization and permanency are two different concepts. After referring to the judgment in **R. N. Nanjundappa vs T. Thimmiah & Anr** and **B.N. Nagarajan Versus. State of Karnataka**, the Apex Court held in paragraphs 15 and 16 as under:

15. Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence. In *State of Mysore v. S.V. Narayanappa* MANU/SC/0232/1966 : [1967]1SCR128 , this Court stated that it was a mis-conception to consider that regularization meant permanence. In *R.N. Nanjundappa v. T. Thimmiah and Anr.* MANU/SC/0680/1971 : (1972)ILLJ565SC , this Court dealt with an argument that regularization would mean conferring the quality of permanence on the appointment. This Court stated:-

Counsel on behalf of the respondent contended that regularization would mean conferring the quality of permanence on the appointment, whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. 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 regularized. Ratification or regularization 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. Regularization 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.

16. In *B.N. Nagarajan and Ors. v. State of Karnataka and Ors.* MANU/SC/0450/1979 : (1979)ILLJ209SC , this Court clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of

¹⁷ Writ Petition No. 13673 of 2025 decided on 9 September 2026

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. This court emphasized that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. 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 regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

31. No doubt, the concept of regularization and permanency are distinct and different. Regularization envisages conversion of irregular appointments into regular ones. In paragraph 53 of the judgment in *Umadevi (3)*, the Apex Court has explained the scope of regularization and held that only duly qualified employees engaged against duly sanctioned and vacant posts may be considered for regularization, even though the regular selection process was not followed at the time of their initial engagements. In the present case also, the workers were duly qualified and also participated in the selection process by appearing in written tests. Whether posts were sanctioned at the oil rigs is itself a matter of debate, particularly in view of the peculiar nature of the activities undertaken by ONGC. However, the fact that services of the workers are continued for over 25 years can give rise to an assumption about need for their services. Therefore, the benefit of regularization cannot be denied to them.

29) In the present case, the Industrial Tribunal has granted the benefit to the workmen w.e.f. 1 January 2023 after noting existence of regular posts. Therefore, what is granted in the real sense is regularization. Be that as it may. I now proceed to determine whether the direction of the Industrial Tribunal to grant even regularization from 1 January 2023 is in order or not.

30) The seven workmen have undoubtedly worked with the FTII since 2003 till they were terminated during pendency of the Reference in 2018. However, In the present case, there is slight twist added on account of conversion of temporary services of the workmen into contractual services since the year 2007. It appears that during 2003 to 2007, the concerned workmen had worked directly with FTII. Though they were temporary and were engaged without issuance of any appointment orders, there is no denial to the fact that direct payments were made to them by FTII. May be after the judgment of the Constitution Bench in *Umadevi*, the FTII turned smarter and decided to convert direct engagement of the workmen into contractual arrangement. From 1 January 2007 onwards, it appears that the workmen were routed through the contractors. It is not a matter of coincidence that when contracts were issued to different contractors from 1 January 2007, the contractor chose to hire services of the same workmen who had earlier worked with FTII. Ordinarily, when a work is outsourced to a contractor, the contractor brings in his own workmen to perform the contract. To illustrate, if housekeeping contract is awarded, the contractor quotes rates and accordingly deploys his own workers to perform the contract. When the contract ends and some other contractor is appointed, the earlier contractor withdraws his staff and they get replaced by the staff of the new contractor. The contractor whose contract ends thereafter may secure a contract with some other organisation and the staff withdrawn from earlier establishment gets deployed with the new establishment. This is the broad framework of outsourcing of work to a contractor.

31) In the present case however, when Aces India Pvt. Ltd was awarded contract from 1 January 2007 to 31 March 2008, the contractor engaged services of the 7 workmen instead of bringing in its own staff. When the contract of Ace India Pvt. Ltd. ended and the new contractor was appointed (*Global Enterprises*) on 1 May 2008, the new contractor again hired the services of the 7 workmen. This saga continued upto the last contractor-Sigma Human Resources (India) Pvt. Ltd. who was the contractor at the time of making of the Reference. Thus, services of the workmen are continued by four distinct contractors. Thus, the contractors changed, but the 7 workmen continued to work at FTII. There is thus continuity in services of the 7 workmen with FTII, initially as direct workers of FTII during 2003 to 2006 and later through distinct contractors till they were terminated in 2018. In my view, this is the most important factor which needs to be kept in mind for holding that the 7 workmen were indeed the workers of FTII and they were merely routed through contractors with a view to avoid liability to regularise their services. This is one of the most vital tests prescribed by the Apex Court in ***Balwant Rai Saluja and Anr.*** (supra). The six tests laid down by the Apex Court in its judgment in ***Balwant Rai Saluja*** for establishment of employer-employee relationship are as under:

65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

- (i) who appoints the workers;
- (ii) who pays the salary/remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service; and
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in *Bengal Nagpur Cotton Mills case* ((2011) 1 SCC 635), *International Airport Authority of India case* ((2009) 13 SCC 374) and *Nalco case* ((2014) 6 SCC 756).

32) In the present case, the first test is satisfied as FTII made the initial engagement. The second test is also satisfied as initially for three years, the wages were paid by the FTII. During initial spell of services, FTII had the authority to dismiss. The decision to terminate the services in 2018 is also taken by FTII. There is continuity of services despite change of contractors, which satisfies the fifth condition. The test of supervision and control is also satisfied as it is the case of FTII that the workers used to be utilised by the students for their projects in the studios. Also, since same workmen continued under different contractors, supervision and control over them by FTII can easily be inferred. If the workers had relationship only with the contractor without any semblance of relationship with FTII, same workers could not have continued over a period of 15 long years initially as direct workers of FTII and later through different contractors. Another important test fulfilled in the present case is initial direct employment by the FTII and their subsequent routing through the contractor. In the present case therefore, several tests laid down by the Apex Court in its judgment in ***Balwant Rai Saluja*** are clearly established. It therefore becomes difficult to believe that the workers did not have a right to be considered for regularisation/permanency in services of FTII merely because they were paid through different contractors.

33) Having held that the seven workers were indeed the direct temporary workers of FTII, I now proceed to decide as to whether in the

light of the law laid down by the Apex Court in various judgments, they have established right of regularization in the facts of the present case. As observed above, the workers continued to work with FTII for 15 long years. They were terminated during pendency of the Reference. The termination was effected in order to avoid the liability to regularise their services. Though FTII has raised a defence that engagement of workers was made based on need of the students, it has ultimately come on record that FTII has created 15 posts of Studio Assistants and issued advertisement No.1/2023 for filling them up. Therefore, at least since 2023, there is no concept of need-based engagements. Now, the FTII has finally realised the need for services of at least 15 Studio Assistants and has accordingly created 15 posts. The defence of need-based engagement therefore deserves outright rejection.

34) Ms. Telang has submitted that FTII does not have the power to create posts. She has relied on Office Memorandum dated 4 January 2024 issued by the Government of India, Ministry of Finance, Department of Expenditure by which a compendium of instructions for creation, revival, conversion and transfer of posts in autonomous bodies of the Central Government is issued. The Office Memorandum, however, lays down mere guidelines for creation of posts in the autonomous bodies of the Central Government. In the present case, creation of posts has occurred either in the year 2023 or before that year, since the advertisement was issued in the year 2023 for filling up the posts. In that sense, the Office Memorandum dated 4 January 2024 has no relevance to creation of posts of Studio Assistants in FTII. However, since Mr. Telang has strenuously relied on the Office Memorandum dated 4 January 2024,

this Court repeatedly queried with her as to whether there is any letter or order of the Ministry of the Central Government sanctioning 15 posts of Studio Assistants. Ms. Telang, however, is unable to invite attention of the Court to any such letter or order. On the other hand, this Court has noted the submission of Ms. Telang that FTII is now an autonomous institute and has undertaken several Postgraduate courses, for which there is need for posts of Studio Assistants. Since the defence of “autonomous institute” is raised, it gives room to infer that the decision to create posts may have been taken by FTII itself in exercise of the autonomy extended to it. Be that as it may. It is not necessary to delve deeper into that aspect. This Court is not directing creation of posts for a period prior to 1 January 2023. Whoever might have created the posts, what is of relevance is the fact that the posts have been created in the year 2023 and that they do exist.

35) The Industrial Tribunal has rightly taken into consideration the factum of existence of 15 posts of Studio Assistants for the purpose of considering the prayer of the 7 workers for regularisation/permanency. Thus, the present case is clearly covered by the exception recognised by the Hon'ble Apex Court in para-53 of its judgment in **Umadevi**. The 7 workers have worked with FTII for more than 10 years. Their appointments may have been irregular on account of non-following of selection process at the time of their initial engagements. In my view therefore, the case involves regularisation of irregularly appointed staff, who have worked for more than 10 years. Therefore, even in the light of the judgment of the Apex Court in **Umadevi**, the workmen did establish their right of regularisation before the Industrial Tribunal. If the

subsequent judgments of the Hon'ble Apex Court in *Jaggo, Vinod Kumar, Rajkaran Singh* and *Shripal* (supra) are taken into consideration, it is difficult to hold that regularisation can be denied to the 7 workers.

36) It appears that there was dispute before the Industrial Tribunal about the exact dates of initial engagements. The Tribunal has recorded following findings on the issue:

27. Letter dated 28/04/2015 was not proved by the Second Party. However, as per direction of this Tribunal dated 12/04/2023 below Exh. U-18, the Labour Commissioner Authority has produced original letter dated 28/04/2015 bearing signature of the Registrar of FTI. This document is admitted by the second party. Though, this document is disputed by the First Party, but it is on the count of admissibility only and mode of proof. Objection regarding genuineness/truthfulness of the said document is not raised by the First Party. Furthermore, First Party No.1 in its written statement has clearly admitted that workers concerned were performing work of 'Studio Assistant' during the year 2005-2006.

26. In my view for the purpose of deciding the question as to whether workers concerned were in employment of First Party No.1 prior to 2007, letter dated 28/04/2015 coupled with admission of First Party No.1 in its Written Statement, are very important. This is an admission of FTII in respect of engagement of workers concerned with FTII prior to 2007. Therefore, this admission can very well be considered for determination of question referred for adjudication.

27. From letter dated 28/04/2015, it can be inferred that workers namely Ram Ambekar was working on daily wages since June 2005 upto December 2006, Mahesh Pawar was working on daily wages since June 2005 up to December 2006 except November 2006, Prakash Kamble was working since November 2005 till December 2006, Javed Banedar was working on daily wages since July 2006 up to October 2006 and December 2006, Rahul Pawar was working on daily wages since June 2006 up to October 2006 and December 2006, Amit Jagtap was working on daily wages since May 2006 upto October 2006 and December 2006, Mehboob Bhawan was working on daily wages since June 2006 upto September 2006.

28. It is the case of second party workers that since January 2007 onwards they are shown to be working under Contractors. In fact, they were working with FTII but were falsely shown as working under Contractors. The Ld. Counsel for the Second Party strenuously submitted that change of employer since January 2007 is a change in service condition of workers concerned. No notice was given

under Section 9-A of the I.D. Act. Therefore, act of First Party No.1, being in breach of provisions of law, is illegal.

37) Mr. Malegaonkar submits that the workmen had filed an application before the Industrial Tribunal seeking production of documents relating to their initial engagements and that despite passing of order for production of the documents, FTII failed to produce the same. It appears that in absence of any concrete evidence about the exact dates of initial engagements, the Industrial Tribunal has relied on letter dated 28 April 2015 for inferring that the workmen were engaged before 1 January 2007. The exact dates of initial engagements are not very relevant for the purpose of determining the entitlement for regularization and what really matters is the fact that FTII paid wages to the workers directly. However since FTII withheld the records from the Industrial Tribunal, this Court has accepted the contention of the workers that they began services with FTII since 2003. However, nothing really turns on whether the initial engagements were since 2003 or since the dates indicated in Para 27 of the Industrial Tribunal's Award.

38) Ms. Telang has highlighted the issue of delay in seeking Reference and has relied on judgments of the Apex Court in ***U.P. State Road Transport Corporation*** and ***Nedungadi Bank Ltd.*** (supra). In my view, however, the claim for regularisation gives rise to continuous cause of action. The claim for regularisation needs to be raised only after rendering some length of service. No one can file claim for regularisation immediately after appointment. In the present case, if the exception recognised by the Hon'ble Apex Court in ***Umadevi*** is applied to the facts here, it can be seen that the cause for making Reference seeking

regularisation arose only after putting in 10 years of service. In my view therefore, Reference made in the year 2015 cannot be treated as stale by any stretch of imagination. Even if the factum of conversion of the workmen from direct workers of FTII to workers of the contractors since 2008 is taken into consideration, it cannot be stated that in the context of the prayer for regularization, the cause of action arose in the year 2008. When the Reference was made, the seven workmen were working with the FTII. Their grievance was not only about conversion of nature of their services. If they were to seek restoration of their status as direct temporary workers of FTII (which existed prior to the year 2008), what is sought to be contended by Ms. Telang may have been true. However, the relief sought in the reference was for grant of regularization for which the entire stretch of service from 2003 onwards is of relevance. The point of the contract being sham and bogus is raised only for the purpose of establishment of a link and continuity between the two spells of service from 2003 to 2007 and from 2008 onwards. Thus, the objection of delay raised by FTII deserves rejection.

39) The FTII has erred in terminating the services of the workmen during pendency of the Reference. While terminating their services, the statutory requirements are not followed. The workmen are not paid the retrenchment compensation or issued notice before terminating their services. The statutory requirements are not followed possibly on account of FTII's stand that the workmen were not its employees. The said plea is found to be erroneous. Therefore the statutory requirements ought to have been followed even if the termination was necessitated. Here termination is found to be

unnecessary and the statutory requirements are also not followed. Also provisions of Section 33 of the ID Act are violated in the present case as termination was resorted to during pendency of the Reference. However, it appears that the Industrial Tribunal has failed to pass formal order for reinstatement while directing grant of benefit of permanency.

40) In view of the above discussion, it is seen that the workmen did make out a case for grant of benefit of regularisation after working with FTII for over 15 long years. This is particularly in view of existence of 15 vacancies of Studio Assistants since the year 2023. Ms. Telang has fairly pointed out that FTII has kept on hold the recruitment process initiated vide Advertisement No.1/2023 awaiting outcome of the present petitions. Thus, none of the 15 vacancies are filled up and they are available for consideration of cases of the 7 workmen for regularisation. Thus there is no warrant for interference with the Award of the Industrial Tribunal. Writ Petition filed by FTII therefore deserves to be dismissed.

41) So far as Writ Petition No. 14169 of 2025 filed by the 7 workmen is concerned, I do not find any merit in the same. The Petition is filed seeking permanency from January 2003. Grant of permanency since January 2003 is premised on Central Standing Orders. However, perusal of the Standing Orders nowhere makes it mandatory that a casual worker must be regularised or made permanent on completion of 90 days of service as sought to be suggested by Mr. Malegaonkar. Even if there is any such Standing Order, the same cannot be utilised for the purpose of seeking permanency on completion of 90 days of service as held by this Court in *Municipal Council, Tirora* (supra) in the context of Model

Standing Order-4(c) applicable to establishments where State Government is the Appropriate Government. Industrial adjudicator cannot direct creation of posts on establishment of state instrumentalities by granting permanency on completion of 240 days of service. Applying similar analogy, mere completion of 90 days of service in the Central Autonomous bodies is not a ground for granting permanency to temporary workers. An industrial adjudicator cannot indirectly ensure creation of posts on the establishment of FTII by directing grant of permanency on completion of 90 days of service. In my view therefore, Writ Petition No. 14169 of 2025 filed by the 7 workers deserves to be dismissed.

42) The conspectus of the above discussion is that there is no warrant for interference in the order passed by the Industrial Tribunal directing grant of permanency to the workers since January 2023. It is however necessary to clarify that the 7 workers shall not be entitled to any benefits in respect of the period they were not in service i.e., from the date of their termination w.e.f. 2 July 2018. Also, since permanency is granted from January 2023 in Award delivered on 2 April 2024, the workers shall be entitled to any notional benefits in respect of the period from January 2023 to 2 April 2024. They shall be entitled to actual arrears from the date of the judgment of the Industrial Tribunal w.e.f. 2 April 2024. Thus, there shall not be any benefit admissible to the workers in respect of the period prior to January 2023. They would be entitled to notional benefits from January 2023 to 1 April 2024 and actual benefits from 2 April 2024 onwards.

- 43) I accordingly proceed to pass the following order :
- (i) Both the Petitions are dismissed.
 - (ii) The FTII shall reinstate the seven workmen in its service on/or before 31 October 2026 as regular employees.
 - (iii) FTII shall grant notional benefits of permanency to the seven workmen from January 2023 to 1 April 2024.
 - (iv) From 2 April 2024 onwards, the seven workmen shall be entitled to actual arrears of pay, allowances and other benefits.
- 44) With the above directions, both the Petitions are disposed of. Considering the facts and circumstances of the case, there shall be no order as to costs.

[SANDEEP V. MARNE, J.]

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