IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P(C)No. 17436/2006

Judgment reserved on: 16th April,2009.

Judgment delivered on:30.05.2009

Mr. Rajinder Prasad ..... Petitioner

Through: Mr. Shanmuga Patro, Adv.

versus

NHRC
Through Its Secretary General
Faridkote House,
Copernicus Marg,
New Delhi ..... Respondents

Through: Mr. R.V. Sinha, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.

1. By way of the present writ petition filed under Article 226 of the constitution of India, the petitioner seeks directions

for his reinstatement with respondent on the post of Constable w.e.f 1.9.2006 and also for declaring his services from the year 1997 to 2006 in the category of re-employment. The petitioner has also claimed grant of all consequential benefits after directing his reinstatement retrospectively from 1.9.2006.

2. The brief facts as set out by the petitioner in the present case are that

3. The petitioner worked in the Army as Hawaldar for a period of 15 years. After taking voluntary retirement from Army the petitioner applied to the respondent Commission. The petitioner's application was considered and the respondent offered job of constable to the petitioner in the Investigative Division of the Commission. At the time of the petitioner's appointment, post of constables were lying vacant in NHRC and he was appointed against one such post with an assurance of regularization or absorption as and when the formalities for regular appointment are completed. In view of such an assurance from NHRC the petitioner on his

part got himself registered both with the Soldier Board and thereafter with Employment Exchange constituted for Ex-Serviceman located at Kirbi Place, Delhi Cantt. New Delhi. At the time of the appointment of the petitioner with the respondent Commissioner the recruitment rules of the Commission were yet to be notified. In such circumstances, the Commission engaged the services of the petitioner on contract basis for a period of one year with the understanding that once the Commission gets its recruitment rules notified the petitioner's services will be regularized as per the rules applicable to Ex-Serviceman and he shall be absorbed in the Investigative Division of the Commission. The petitioner was given an increment to protect/maintain his salary at par with other constables working with the Commission. During the pendency of the proposal seeking amendment of Regulations/Rules the petitioner's services continued without any interruption. Through letter dated 1.5.97 the petitioner's appointment was changed from contractual to re-employment. On 22.9.1997 the Ministry of Home Affairs passed an order empowering the

Chairperson to exercise powers of framing, amendment and relaxation or all or any of the provisions of recruitment rules contained in the NHRC Commission (Group 'C' and 'D'). Recruitment Rules, 1996. Based on the said development, the Commission fixed the petitioner's pay at Rs. 3050/- in the pay scale of Rs. 3050-75-3950-80-4590 w.e.f. 22.9.97 i.e. at par with the pay scales prevailing for other Constables working with NHRC. During 1997 to 2006 the petitioner continued serving the respondent Commission without any interruption on usual terms and conditions including provision for leave as well as increments in pay, honorarium etc. The petitioner preferred series of representations during this time seeking regularization of his services on re-employment. Vide letter dated 31.8.2006 the petitioner was informed that his services were regularized till the date of the letter and simultaneously terminated his services w.e.f. the same date. On the same date the petitioner sought to know reasons for such termination from the respondent with request to re-consider their decision. The Commission expressed its inability to accede to the

petitioner's request. Thus the present petition has been preferred by the petitioner.

4. Counsel for the petitioner submitted that the petitioner being an ex-serviceman was granted re-employment by the respondent and therefore, the petitioner had a legitimate expectation to continue in service as already he had put in more than 10 years uninterrupted service with all sincerity and hard work without any sort of grievance. Counsel thus urged that the respondent through letter dated 31.8.2006 illegally terminated the services of the petitioner that too when the regular vacancy duly existed to fill the post of Constable. Counsel for the petitioner further submitted that wrongly the services of the petitioner were treated on contract basis when under the recruitment rules no such provision for contractual employment is envisaged. Even the principles of natural justice were flagrantly violated by the respondent before directing termination of the services of the petitioner. Even the recruitment rules were not in force when the petitioner was

taken into re-employment and the respondent has failed to amend the recruitment rules even though advised by the Ministry of Home Affairs so as to confirm re-employment of the petitioner with the respondent, counsel contended. In support of his arguments counsel for the petitioner placed strong reliance on paras 43, 44, 47 to 54 of the judgment of the Apex Court in **Secretary, State of Karnataka Vs. Uma Devi, 2006 (4) SCC 1**. The contention of the counsel for the petitioner was that the respondent utterly failed in following the mandate of the law laid down by the Hon'ble Supreme Court in the aforesaid case. Once the services of the petitioner were being extended from time to time and the petitioner had already put in continued and uninterrupted service of more than 10 years, then he should not have been abruptly thrown out by the respondent commission when already regular vacancy on the post of constables duly existed. Counsel for the petitioner also contended that unrestricted and unconditional powers were given to the respondent commission to frame, amend and relax any of the recruitment rules 1996 and had such an

exercise been taken by the respondent commission, then, the petitioner would not have faced the wrath of the commission and instead suitable amendment in the recruitment rules could have been made to accommodate him in the category of ex-serviceman for granting re-employment. The contention of the counsel for the petitioner is that the case of the petitioner is squarely covered by the judgment of the Apex Court in **Uma Devi's case (Supra)** and a particular reference was made by the petitioner to para no. 33 of the said judgment.

5. Refuting the said submissions of the counsel for the petitioner, Mr.R.V. Sinha counsel for the respondent contended that the petitioner was appointed as a Constable on contract basis on 30.4.1996 and his services were terminated on 31.8.2006, whereafter his contractual period was not extended. Counsel for the respondent further submitted that there is no provision for re-employment in the recruitment rules and therefore, rightly the extension of the petitioner was not given by the respondent commission and

grant of any extension would have been in contravention of the recruitment rules.

6. Counsel for the respondent further contended that no statutory or legal right has been violated and in the absence of the same, the petitioner cannot maintain the present petition under Article 226 of the Constitution of India. Counsel for the respondent also contended that simply because of the fact that the petitioner had continued in service for more than a period of 10 years would not in itself confer any legal or enforceable right in him to claim regular appointment against the post of Constable and if any such direction is given by this Court, the same would be contrary to law. The contention of the counsel for the respondent is that all appointments have to be made in accordance with the recruitment rules and once a person is not appointed in conformity with the recruitment rules, such an appointment is illegal on the very face of it and such an illegality cannot be further perpetuated by legitimating the same. In support

of his arguments, counsel for the respondent placed reliance on the following judgments:

1. **Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors.,- 2006 (4) SCC 1. (pars 47 to 54)**
2. **Surinder Prasad Tiwari Vs. U.P. Rajya Krishi Utpadan Mandi Parishad & Ors.-2006(7) SCC 684.**
3. **State of M.P. & Ors. Vs. Lalit Kumar Verma- 2007(1) SCC 575**
4. **Indian Drugs & Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd.-2007(1) SCC 408.**

7. I have heard learned counsel for the parties at considerable length and perused the record.

8. The facts of the case which are not in dispute are that the petitioner was initially appointed vide memorandum dated 25.4.96 on contract basis for a period of one year. As per the petitioner, he was discharged from the Army and thereafter he sought re-employment with the respondent Commission in terms of the Central Government Rules for Reservations and Concessions available to Ex-serviceman. The relevant Rule 4 Ex-Servicemen(Re-employment in Central Civil Services & Posts)Rules, 1979 is reproduced as under:

"**Reservations of vacancies**

(1) Ten per cent of the vacancies in the posts of the level of Assistant Commandant in all paramilitary forces; ten per cent of the vacancies in each of the categories of group 'C' Posts and of such posts in each Group 'C' Service; and twenty per cent of the vacancies in each of the categories of Group 'D' Posts and of such posts in each Group 'D' Service, including permanent vacancies filled initially on a temporary basis and temporary vacancies which are likely to be made permanent or are likely to continue for three months and more, to be filled by direct recruitment in any year shall be reserved for being filed by ex-servicemen."

9. The respondent Commission was constituted by the Government with the sole object to protect and promote human rights in India. One of the important functions of the respondent Commission is to conduct investigation into various complaints received by them complaining violations of human rights by the citizens. In order to have strong investigation team the National Human Rights (Regulation) Rules,1996 were framed and in terms thereof 24 constables were to be appointed 'by transfer or transfer on deputation' from Central or State Police Forces from similar or equivalent

grade. The petitioner had approached the respondent Commission against the said vacancies of 24 Constables but since, by then, the said rules were not yet notified, therefore, the petitioner was appointed on contractual basis for a period of one year, although on a pay scale at par with other Constables with some other fringe benefits as are admissible to other Government employees. The services of the petitioner were extended from time to time and in fact the nature of the employment of the petitioner was changed from contractual to re-employment and the petitioner remained in the said zone till 1.5.97. In the meanwhile, Ministry of Home Affairs issued an order dated 22.9.97, whereby the Chairman of the respondent Commission was given full powers to frame, amend, relax any of the recruitment rules framed for appointment of 'C' and 'D' Posts. The petitioner continued with the said employment and kept sending reminders to the respondent Commission to give him regular appointment in the category of Ex-serviceman against the sanctioned post of Constable. Despite several reminders, the respondent Commission did

not take any steps either to amend the said rules or to confirm the employment of the petitioner against the regular vacancy of Constable and ultimately through letter dated 31.8.2006 informed the petitioner that his engagement would stand terminated w.e.f. 31.8.2006.

10. In the aforesaid scenario the petitioner is before this Court to seek directions for his reinstatement on the said post of Constable with grant of all consequential benefits, after treating the petitioner in continuous employment on the said post.

11. On the other hand, the respondent has taken a stand that no importance can be attached to such an illegal appointment which is clearly de hors the recruitment rules and therefore, the appointment which is ex-facie illegal and is in violation of Articles 14 and 16 of the Constitution of India cannot receive any protection under the mandate of law. Surprisingly, both the counsels have placed reliance on the judgment of the Apex Court in **Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors. (2006) 4 SCC 1**.

12. Counsel for the petitioner has placed reliance on paras 33 of the aforesaid judgment, while counsel for the respondent has placed reliance on paras 43, 44, 47 to 54 of the judgment.

13. The relevant paras of the said judgment are reproduced as under:

Secy., State of Karnataka v. Umadevi (3),(2006) 4 SCC 1

33. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularisation. The cases directing regularisation have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment.

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.

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be

used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after *Dharwad decision*1 the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

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.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages

formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. 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.

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

51. The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(*a*) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts

recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Rai Shivendra Bahadur (Dr.)* v. *Governing Body of the Nalanda College*34. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa*111, *R.N. Nanjundappa*212 and *B.N. Nagarajan*8 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 abovereferred 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.
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> **54.** It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

14. The petitioner in the present case has claimed his employment based on the above observations of the Apex Court in para 53 treating the appointment of the petitioner as an irregular employment but having completed 10 years of service against a sanctioned post. The petitioner has also claimed that the respondent was to carry out amendment in the recruitment rules so as to include reemployment as one of the modes of recruitment of constables in the category of ex serviceman and for which the Chairperson of National Human Rights Commission was duly vested with the powers to amend any of the provisions of recruitment rules so far category of group C and D posts are concerned. Counsel for

the respondent on the other hand has taken a stand that the petitioner was being granted extension every year but grant of such extension cannot vest any right in the petitioner to claim statutory right for appointment on the said post or to claim regularization in service. The respondent has also taken a stand that rule regarding reservation in the category of ex serviceman is not available to the petitioner as recruitment on the post of the constable in commission is not through direct recruitment as the same is either through transfer or transfer through deputation only and, therefore, the reservation in the category of ex serviceman which could only be through direct recruitment was not available to the petitioner, who was directly appointed on contract basis dehors the recruitment rules. The respondent also took a stand that repeated efforts were made by the respondent to include reemployment as one of the mode of recruitment of constables, but the request made by the respondent was denied by the Home Ministry and till such time the RRs are amended to make suitable provision for reemployment as one of the modes of recruitment in the category of ex-serviceman

till such time the case of the petitioner could not be considered in the category of ex service man on reemployment basis and, therefore, his contract was being extended from time to time, which ultimately came to an end on 31.8.2006. In support of his arguments not only reliance was placed by the counsel for the petitioner on the judgment of the Apex Court in **Uma Devi's case** but attention was also invited to similar view taken by the Apex Court in the judgment of **Surinder Prasad Tiwari (Supra)** wherein while dealing with a case of a contractual employee whose services were engaged from time to time on different projects, the Apex Court held that in the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularization of services of a person who is working either as a daily wager, ad hoc employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14,16 and 309 of the Constitution. The relevant paras of the said judgment are reproduced as under:-

> "38. In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularisation of services of the person who is working either as daily-wager, ad hoc employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment.
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> 39. In view of clear enunciation of law laid down in the recent judgment of the Constitution Bench and other judgments, we do not find any infirmity in the impugned judgment of the High Court. The appeal being devoid of any merit is accordingly dismissed. However, in the facts and circumstances of the case, we direct the parties to bear their own costs."

15. Similarly in the case of **State of M.P. and Ors vs. Lalit Kumar Verma** where the Apex Court was dealing with the case of a daily wager, the Court held in para 21 of the said judgment that the case would not come within the exception carved out by the Constitution Bench in Umadevi's case in para 53 of the judgment. The relevant paras of the said judgment are reproduced as under:-

> 21. The legal position somehow was uncertain before the decision rendered by the Constitution Bench of this Court in Umadevi (3)6. It has categorically been stated before us that there was no vacant post in the department in which the respondent could be reinstated. The State had also adopted a policy decision regarding regularisation. The said policy decision also has no application in the case of the respondent. Even otherwise, it would be unconstitutional being hit by Article 16 of the Constitution of India.

16. In **Indian Drugs & Pharmaceuticals Ltd. vs Workmen IDPL (supra)** the Apex Court was dealing with the employees who were appointed as casual workers on daily wage basis, who continued in their service for a long period and the Apex Court after drawing a distinction between a temporary employee and permanent employee held as under:-

> "14. The distinction between a temporary employee and a permanent employee is well settled. Whereas a permanent employee has a right to the post, a temporary employee has no right to the post. It is only a permanent employee who has a right to continue in service till the age of superannuation (unless he is dismissed or removed after an inquiry, or his service is terminated due to some other valid reason earlier). As regards a temporary employee, there is no age of superannuation because he has no right to the post at all. Hence, it follows that no direction can be passed in the case of any temporary employee that he should be continued till the age of superannuation."

17. In yet another case of Municipal Corporation, **Jabalpur vs Om Prakash Dubey (2007) 1 SCC 373** the Apex Court confronted with the issue of large number of employees appointed by the Corporation on daily wages, who claimed themselves to be the regular employees and drawing a distinction between irregular employees and illegal employees. The Court held as under:-

> "11. The question which, thus, arises for consideration, would be: Is there any distinction between "irregular appointment" and "illegal appointment"? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules has been made, the appointment may be irregular in the sense that some provisions of the rules might not have been strictly adhered to."

18. In the background of the aforesaid legal position there does not remain even an iota of doubt that no appointment can be made through any backdoor entry. The State or any instrumentality of the State is bound to follow the mandate of Constitution as adumbrated in Articles 14 and 16 of the Constitution of India. When the recruitment rules are in place the employer is legally bound to follow and comply the same. No employer can be heard to say that the recruitment rules are in place, but still they will not be followed. In certain exigencies, no doubt some appointments are made to meet certain emergent situations, but such irregular appointments cannot be extended beyond the point of time when such emergent situations are over and when there is ample time to follow the due process as laid down in the recruitment rules. Any appointment in violation of recruitment rules by the State

or Union or by any instrumentality of the State if made in contravention or violation of the rules without giving fair and equal opportunity to all the eligible persons through an advertisement or through employment exchange so as to provide a fair chance of competition to all those who are entitled to compete would be in negation of the constitutional guarantee enshrined under Article 16 of the Constitution of India. Equal opportunity is a basic feature of our Constitution and public employment is repository of a State power.

19. The contention of the counsel for the petitioner that the appointment of the petitioner at the most was irregular and not an illegal cannot be accepted for more than one reason. First there was no provision for direct recruitment under the recruitment rules of the respondent to appoint constables on reemployment basis under the category ex serviceman, rather the appointment on the post of constable is either by transfer or by transfer on deputation and the petitioner does not qualify for appointment as per the said recruitment rules of the respondent. The contention of the petitioner that

Chairperson of the respondent Commission was well within his powers to amend the recruitment rules does not find favour with the Court as this is not within the domain of the Courts to give such directions to the State or the instrumentalities of the State to first amend the rules and then give appointment to the person, who was appointed dehors such recruitment rules. Thirdly, the petitioner himself is to be blamed for not taking prompt steps for seeking such directions when he was continuing in his service and it is only when his services was terminated, he felt the brunt of his illegal appointment. No doubt it could not have been expected of a statutory body like National Human Rights Commission, who are protectors and saviors of the Human Rights of people to keep extending the contract of the petitioner in the face of existing recruitment rules which no where provide for reemployment of ex serviceman on the said post of constable.

20. Human rights are those inalienable and natural rights without which we cannot live as human beings. The National

Human Rights Commission (NHRC) was set up under the Human Rights Act, 1993 with the objective of safeguarding human rights by investigating human rights violations and punishing the offenders, including those whose negligence permitted the offence. Fortunately, NHRC is playing an effective role in implementation of human rights and sets up right the Government entitites but relentless human rights violation of the present petitioner by NHRC, itself has gone unnoticed by it. The claims raised by the petitioner from time to time before NHRC fell to the deaf ears. There has been blatant violation of the human rights of the petitioner, who after putting in about more than 10 years of service was thrown out on the ground that his appointment was dehors the recruitment rules. Such periodical extensions on service ruins one's entire career and at times the employee gets deprived of many opportunities may be because of over age or other factors, which otherwise would have been available if such an employee would have shown the exit door at the earliest possible time. The petitioner must also show the blame for his sufferings as he was fully aware that his

appointment was not backed by the recruitment rules. The Apex Court in catena of judgments has held that Courts cannot show undue sympathy or generosity in such cases of illegal appointment as the function of the Courts is to see whether there has been strict adherence to the scheme of the Constitution or Recruitment Rules and other statutory provisions dealing with public employment, which of course have to be fair and transparent for all the eligible persons seeking employment on such posts instead of making way for the few favoured one's who get entry through back doors either with the influence of high ups or through some other extraneous means. Since the respondent Commission failed to protect the human rights of the petitioner concerned, who will be thrown on the road to struggle again to search for a job, the same being in serious violation of his human rights, costs of Rs. 1 lakh is imposed on the respondent for their such an inhuman act. Costs of Rs. 1 lakh shall be paid by the respondent to the petitioner within a period of four weeks from the date of this order.

21. With the above directions, the petition is disposed of.

May 30,2009 **KAILASH GAMBHIR, J.**

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