* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on:14th March,2024**
Pronounced on: 31st May, 2024

\+ W.P.(C) 8391/2020 and CM APPL. Nos. 27227/2020 & 7192/2024

SOUTH DELHI MUNICIPAL CORPORATION ..... Petitioner
Through: Mr.Arun Birbal, Advocate

versus

VISHANT KUMAR KHOLIYA AND OTHERS ..... Respondent
Through: Mr. Vinay Kumar Garg Senior Advocate with Mr. Rajiv Agarwal, Ms. Meghna De, Ms. L.Gangmei, Mr. N. Bhushan and Ms. Surbhi, Advocates

\+ W.P.(C) 3339/2024 and CM APPL. No.13752/2024

MUNICIPAL CORPORATION OF DELHI ..... Petitioner
Through: Mr.Divya Swamy, Standing Counsel MCD with Mr.Yagyawalkya Singh and Ms.Akriti Singh, Advocates

versus

PRADEEP RANA & ORS. .....Respondents
Through: Mr. Vinay Kumar Garg Senior Advocate with Mr. Rajiv Agarwal, Ms. Meghna De, Ms. L.Gangmei, Mr. N. Bhushan and Ms. Surbhi, Advocates

\+ W.P.(C) 16307/2023 and CM APPL. No.65674/2023

MUNICIPAL CORPORATION OF DELHI ..... Petitioner
Through: Ms.Shriparna Chatterjee, SC with

Mr.Soumitra Chatterjee and Mr.Manish, Advocates

versus

PRAMOD BHAN AND ORS ..... Respondents
Through: Mr. Vinay Kumar Garg, Senior Advocate with Mr. Rajiv Agarwal, Ms. Meghna De, Ms. L.Gangmei, Mr. N. Bhushan and Ms. Surbhi, Advocates

\+ W.P.(C) 16584/2023 and CM APPL. No. 66809/2023

MUNICIPAL CORPORATION OF DELHI ..... Petitioner
Through: Ms.Sriparna Chatterjee, SC with Mr.Soumitra Chatterjee and Mr.Manish, Advocates

versus

MANISH KUMAR AND ORS ..... Respondents
Through: Mr. Vinay Kumar Garg, Senior Advocate with Mr. Rajiv Agarwal, Ms. Meghna De, Ms. L.Gangmei, Mr. N. Bhushan and Ms. Surbhi, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

1. The present batch of petitions under Articles 226 and 227 of the Constitution of India is arising out of various awards of the learned Industrial Tribunal wherein the claim of the respondent workmen seeking regularization has been decided in their favour and against the petitioner.

2. Since, the facts as well as the legal issues involved in the present batch of petitions are similar, therefore, this Court has culled out the facts

and submissions out of the writ petition bearing W.P.(C) 8391/2020 titled '*South Delhi Municipal Corporation Vs. Vishant Kumar Kholiya And Others*' for the disposal of the present batch of petitions.

Factual Matrix

3. The instant petition has been filed on behalf of the petitioner under Article 226 of the Constitution of India seeking setting aside of the Award dated 13th November, 2019 ("impugned Award" hereinafter) passed by the learned Presiding Officer, Industrial Tribunal, Rouse Avenue Courts Complex, New Delhi ("Industrial Tribunal" hereinafter), in case bearing I.D No. 58/2016.

4. The petitioner i.e., South Delhi Municipal Corporation ("petitioner entity" hereinafter) was a statutory body that emerged in the year 2012 from the trifurcation of the Municipal Corporation of Delhi by way of amending the Delhi Municipal Corporation Act, 1957. The petitioner entity is entrusted with the task of maintaining municipal services within the territorial jurisdiction as demarcated to it after the abovesaid trifurcation.

5. In the year 2010, the petitioner entity engaged the respondents ("respondent workmen" hereinafter) on contractual basis to work at the posts namely 'Assistant Malaria Inspector' ("AMI" hereinafter) and 'Assistant Public Health Inspector' ("APHI" hereinafter).

6. Thereafter, in the year 2014, the respondent workmen filed a statement of claim before the Labour Department, Government of NCT of Delhi thereby, claiming regularization to the posts of AMI and APHI from the date of their initial appointment and differential in wages for the said period.

7. During the pendency of the abovesaid dispute, the petitioner entity on 16th April, 2015 through the Delhi Subordinate Staff Selection Board ("DSSB" hereinafter), issued an advertisement inviting applications for appointment to the post of AMI and APHI.

8. Pursuant to the above, the respondent workmen moved another application before the Industrial Tribunal, Karkardooma Courts, Delhi, in I.D No.106/2015 seeking *status quo* and an interim stay on the abovesaid recruitment and to reserve certain seats for the respondent workmen herein, which was dismissed *vide* order dated 4th February, 2019.

9. Subsequently, the Deputy Labour Commissioner, Government of NCT of Delhi, *vide* reference dated 14th May, 2015 bearing no. F.24/(266)/Lab./SD/2015/9758, referred the industrial dispute between the respondent workmen and the petitioner entity in case bearing I.D No. 58/2016 before the Industrial Tribunal in the following terms:

> *"Whether the demand of the workmen Sh. Vishant Kumar Kholiya& 38 Ors. (As per Annexure-A) for regularization of their services on the post of Assistant Malaria Inspector/ Assistant Public Health Inspector with retrospective effect from the initial date of their joining into the employment along with difference of salary on the principle of "Equal Pay for Equal Work" from the initial date of their joining onwards, is legal and justified; and if so, to what relief are they entitled and what directions are necessary in this respect?"*

10. In the meanwhile, the respondent workmen, being aggrieved by the order dated 4th February, 2019 passed in I.D No.106/2015, filed a writ petition bearing W.P (C) no. 2203/2019, wherein, this Court, *vide* order dated 6th March, 2019, held that since the dispute is pending adjudication

before the learned Tribunal, no order is required to be passed in the present petition. It was also held that the services of the respondent workmen shall not be altered without complying with the provisions of Section 33 of the Industrial Disputes Act, 1947 ("the Act" hereinafter) during the pendency of the said dispute.

11. The learned Industrial Tribunal, upon completion of pleadings, on 8th November, 2016, framed four issues, and thereafter, passed the impugned Award dated 13th November, 2019 ("impugned Award" hereinafter), holding that the respondent workmen are entitled to be regularised with the petitioner entity to the posts of AMI and APHI from the date of their initial appointment along with entitlement to difference in wages as per the principle of equal pay for equal work.

12. Aggrieved by the aforementioned Award, the petitioner entity has preferred the instant writ petition under Article 226 of the Constitution of India seeking setting aside of the same.

SUBMISSIONS

13. Learned Counsel appearing on behalf of the petitioner entity submitted that the learned Industrial Tribunal erred in passing the impugned Award as the same has been passed without taking into consideration the entire evidence, facts and circumstances of the present case, and therefore, the same is liable to be set aside.

14. It is submitted that the learned Industrial Tribunal erred in granting regularization to the respondent workmen as the appointment of the respondent workmen to the pots of AMI and APHI was carried out by way of a newspaper advertisement which categorically stipulated that the

said engagement is made purely on contractual basis and shall hold validity until regular appointments to the said posts are effectuated.

15. It is further submitted that since the newspaper advertisement expressly stipulated that the appointment was contractual, the respondent workmen were well versed with the terms of their appointment thus, precluding them from seeking regularization to the posts on which they were temporarily engaged.

16. It is further submitted that at the time of appointment also the respondent workmen signed their contract of appointment and undertook to not seek regularisation to the said posts thus, at this stage, they cannot turn around and violate the same.

17. It is submitted that the learned Industrial Tribunal failed to take into consideration the fact that since the term of appointment were expressly stated that the engagement was purely on contractual basis, a huge number of interested candidates would have applied for the said posts had they known that their services would one day be subject to regularization. Thus, the learned Industrial Tribunal has erred as the said impugned Award is against public interest as the rights of those who were not before the Tribunal have been prejudiced by the passing of the impugned Award.

18. It is submitted that at the time of appointment it was made clear to the respondent workmen that their appointment is being effectuated purely on contractual basis for a period of six months which is subject to increase as per the requirements.

19. It is further submitted that the procedure of appointment did not entail a robust mechanism consisting of a written examination and/or an

interview thus, the said appointment does not bestow upon them the right to be regularised.

20. It is submitted that the learned Industrial Tribunal erred in law by holding that the respondent workmen are entitled to be regularized as they are subject to unfair labour practices by the petitioner entity. It is submitted that the petitioner entity had not resorted to any unfair labour practices rather abided by the terms of initial engagement.

21. It is submitted that the appointment of respondent workmen was a stopgap arrangement to cater to the period until regular appointment is effectuated by the petitioner entity *via* a recruitment procedure carried out by the DSSB.

22. It is submitted that the petitioner entity had not indulged into unfair labour practices and the intention was never to violate the provisions contained under Section 2(ra) read with Item 10 of V Schedule of the Act rather, the said appointment was a stopgap arrangement in public interest until regular appointment to the said posts were effectuated.

23. It is submitted that the learned Industrial Tribunal has erred in law by not taking into consideration the ratio of landmark cases namely ***Secretary, State of Karnataka Vs. Uma Devi***[1]; ***Oil and Natural Gas Corporation Vs. Krishan Gopal &Ors.***[2] and ***University of Delhi vs Delhi University Contract Employees***[3].

24. It is submitted that the Central Administrative Tribunal ("CAT" hereinafter) has time and again held that the similarly placed colleagues

[1] **(2006) 4 SCC 1**
[2] **(2020) 3 SCALE 272**
[3] **(2021) 16 SCC 71**

of the respondent who were also engaged on contractual basis at the same post *vide* the advertisement, are entitled to be regularised.

25. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner entity prays that the instant petition may be allowed, and the relief as prayed, may be granted.

(on behalf of the respondent)

26. *Per Contra*, Mr. Vinay Kumar Garg, learned senior counsel appearing on behalf of the respondent workmen vehemently opposed the instant petition submitting to the effect that the instant petition is misconceived, and the impugned Award has been passed after taking into consideration the settled position of law and the entire evidence on record hence, the same is liable to be dismissed.

27. It is submitted at the outset that the instant petition is nothing but a gross misuse of law as is it does raise a substantial question of law rather the petitioner entity intends to harass the respondent workmen and deny the relief as granted by the learned Industrial Tribunal by way of extended litigation.

28. It is further submitted that the petitioner under the garb of the writ jurisdiction is raising fresh pleas which were not asserted before the learned Industrial Tribunal, therefore, the instant petition is liable to be dismissed on this ground alone.

29. It is submitted that the instant writ petition is not maintainable as the petitioner entity is seeking re-appreciation of the findings recorded by the learned Industrial Tribunal which is impermissible in law as the standard of interference by a writ court is very limited and re-appreciation of evidence cannot be done under the writ jurisdiction. To substantiate the

same, the learned counsel for the respondent workmen placed reliance upon the judgments passed in ***Syed Yakoob vs K.S. Radhakrishnan &Ors.***[4] and ***MCD vs Asha Ram &Anr.***[5].

30. It is submitted that the averments made on behalf of the petitioner entity that the respondent workmen being engaged on purely contractual basis therefore**,** the learned Industrial Tribunal ought not to have granted the relief of regularization is bad in the eyes of law as the Hon'ble Supreme Court has time and again held that the Tribunals are entrusted with the power to make appropriate awards in determining industrial disputes brought before it. To substantiate the same, the learned counsel for the respondent workmen placed reliance upon the judgments passed in ***Bharat Bank Ltd. v. Employees of Bharat Bank Ltd***[6] *;* ***Bidi, Bidi Leaves' and Tobacco Merchants Association. Vs The State of Bombay***[7] *and* ***ONGC vs Krishan Gopal & Ors***[8].

31. It is submitted that the respondent workmen have been continuously working with the petitioner entity at the post of AMI and APHI for the past ten years which is in contradiction to the stance taken by the petitioner entity i.e., the respondent workmen were engaged for exigencies of work as a stopgap mechanism until regular appointment was effectuated.

32. It is submitted that it an admitted fact on account of the witness appearing on behalf of the petitioner entity that the work carried out by the respondent workmen is that of regular nature.

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[4] AIR 1964 SC 477
[5] 117 (2005) DLT 63
[6] (1950) LLJ 921, 948-49 (SC)
[7] AIR 1962 SC 486
[8] 2020 SCC online SC 150

33. It is further submitted that the contract of appointment has been used by the petitioner entity to violate the statutory rights to which they are entitled to under the provision of the Act.

34. It is submitted that the learned Industrial Tribunal has rightfully held that the petitioner entity had indulged into unfair labour practices by denying the respondent workmen the wages and status of regular employees thus, violating the provisions contained under Section 2(ra) read with Item 10 of V Schedule of the Act. To substantiate the same, the learned counsel for the respondent workmen placed reliance upon a judgment passed in ***Chief Conservator of Forests and another v. Jagannath Maruti Kondhare***[9] and ***Amrish Kumar v. Indian Institute of Mass Communication***[10].

35. It is submitted that this Court, *vide* order dated 5th January, 2024, directed the petitioner to file an affidavit stating therein, whether the procedure for filling up the post on which the respondent workmen are working has been completed or not.

36. It is further submitted that the petitioner entity, *vide* the said affidavit, has stated that since the year 2014, a total of 85 posts have been filled wherein, 40 AMI and 45 APHI have been appointed and still 177 posts of AMI and 78 posts of APHI are vacant, therefore, the said conduct clearly shows that the intention of the petitioner entity is to seek regular nature of work from people such as the respondent workmen by engaging them on contractual basis and granting them lesser wages.

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[9] AIR 1996 SC 2898
[10] 2020 SCC Online Del 1915

37. It is submitted that the averment made by the learned counsel for the petitioner entity that the impugned Award is defective and is against the ratio of the judgement passed in ***Secretary, State of Karnataka Vs. Uma Devi (Supra)*** is untenable as the facts and circumstances of the instant matter are different and also that the true intent of ***Uma Devi (Supra)*** was not to give a free hand to the employer to commit unfair labour practices against the workmen. To substantiate the same, the learned counsel for the respondent workmen placed reliance upon the judgments passed in ***Sheo Narain Nagar & Ors vs State of Uttar Pradesh & Ors*** [11] and ***The Project Director Department of Rural Development Government of NCT of Delhi v. Its workman through Delhi Prashashan Vikas Vibhag Industrial Employees Union***[12].

38. Therefore, in light of the foregoing submissions the learned counsel appearing on behalf of the respondent workmen prayed that the instant petition, being devoid of any merit is liable to be dismissed.

ANALYSIS AND FINDINGS

39. The petitioner has approached this Court seeking setting aside of the impugned Award dated 13th November, 2019 passed by the learned Industrial Tribunal in I.D No. 58/2016 whereby, the respondent workmen were held to be entitled for regularization at the posts of AMI and APHI with the petitioner entity from the date of their initial appointment and were also entitled to difference in wages as per the principle of equal pay for equal work.

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[11] **(2018) 13 SCC 432**
[12] **2019 SCC Online Del 7796**

40. It is the case of the petitioner entity that the impugned Award is bad in law as the same has been passed without taking into consideration the entire evidence, facts and circumstances of the case. It is contended that learned Industrial Tribunal erred in holding that the respondent workmen fall within the definition of Section 2(s) of the I.D Act and that the Hon'ble Supreme Court has held that the contractual appointment presupposes that no legitimate expectation for regularization can be sought. It is contended that regularization is not a vested right and merely because an employee has been in long and continuous employment, it does not entitle him to seek regularization.

41. It is further contended that the learned Industrial Tribunal erred in law by disregarding the applicability of the ratio of landmark cases namely ***Secretary, State of Karnataka Vs. Uma Devi (Supra)*** which is the benchmark judgement when it comes to regularization. It is submitted that the learned Industrial Tribunal erred in law by premising its reasoning on the principle of 'equal pay for equal work' as contractual and regular appointment do not stand on an equal footing and form two distinct class of employees. It is also contended that the Tribunals must not interfere with the administrative policies of the management unless it observes gross violation of the principles as enshrined in the Constitution of India as the management is entrusted with the power to frame and formulate its own policies.

42. In rival contentions, the respondent workmen vehemently opposed the instant petition submitting to the effect that the instant petition is misconceived as it does not raise a substantial question of law and the impugned Award has been rightfully adjudicated. It is contended that it is

an admitted position on behalf of the management witness that the respondent workmen have been working against the vacant posts and discharging their duties similar to those of regular Field Workers however have been drawing wages as per the Minimum Wages Act.

43. It is further contended that the instant petition is nothing but gross misuse of process of law as the standard of interference by a writ court is very limited and re-appreciation of evidence cannot be done under the writ jurisdiction. It is contended that the learned Industrial Tribunal has rightfully held that the respondent workmen have been subjected to unfair labour practice as they have been working as contract employees for years on lesser salary. It is further contended that the Hon'ble Supreme Court has reiterated time and again that the Tribunals are entrusted with the powers to make appropriate awards in determining industrial disputes brought before it thus it cannot be contended by the petitioner entity that the learned Tribunal is not vested with powers to grant regularization to contractual employees.

44. It has been asserted on behalf of the respondent workmen that they have been working for the petitioner entity since almost last ten years and since they have been working for a prolonged period of time, they are entitled for the regularization of their services. Further, it has also been contended that the petitioner entity has engaged in unfair labour practice. In the affidavit filed by the petitioner entity it has been categorically stated that since the year 2014, a total of 177 posts of AMI and 78 posts of APHI are vacant and only 85 posts have been filled wherein 40 AMI and 45 APHI have been appointed.

45. The common issue which falls for consideration before this Court is whether the respondent workmen are entitled to the regularisation of their services as held by the learned Tribunal.

46. The impugned award passed in the is reproduced herein below:

"19. Findings on issue no.1

Issue no.1: Whether there exists relationship of employer and employee between the parties? OPW.

It is seen from the record that relationship of employer and employee, between the parties, has not been disputed as it has been admitted by the management that the workmen are employed as Assistant Malaria Inspector (AMI) and Assistant Public Health Inspector (APHI) with the management though on contract basis and accordingly, the factum of existence of relationship of employer and employee between the management and the workmen, who have appeared in workmen evidence, as abovesaid, stands proved, on record. The instant issue is accordingly, decided in favour of the workmen and against the management.

20. Findings on Issue no.2.

Issue no.2: Whether the claim of the workmen has been properly espoused by the Union? OPW

It is seen from the record that to prove the factum of espousal of the instant dispute of the workmen with the management, the workmen have led the evidence of WW40 Sh. Surender Bhardwaj, General Secretary of the Municipal Employees Union in workmen evidence by way of his affidavit by way of evidence, Ex.WW40/A, who has relied upon a document, already Ex.WW1/6 in the evidence of workman/ WW1 Sh. Vishant Kumar Kholiya, also relied upon by the other workmen/ WWs WW1 to WW11, WW13 to WW37 and WW39, in their evidence by way of their examination-in-chief in workmen evidence, on record, being

copy of resolution dated 28.02.2014 of espousal of the instant dispute of the workmen qua the management by the concerned Union viz. Municipal Employees Union (Regd.) passed in the meeting of its executive committee held, in this regard, on the said date, presided over by the WW 40 Sh. Surender Bhardwaj in his capacity as General Secretary of the said Union as on the said date and issued under his signature, as deposed by him, i.e.

"1. It is unanimously resolved to raise an industrial dispute in favour of S/Sh. Vishant Kumar Kholiya and 38 others working as Assistant Malaria Inspector/ Assistant Public Health Inspector, Public Health Department, South Delhi Municipal Corporation, who are members of our Union for securing their regularisation in services on the post of AMI & APHI, with retrospective effect from the initial date of their joining into the employment and to pay them entire difference to salary on the principle of "equal pay for equal work" from the initial joining onwards."

As also, it is seen from the cross-examination of the said WW 40 Sh. Surender Bhardwaj, General Secretary of the Municipal Employees Union (Regd.) on behalf of the management in workmen evidence, as abovesaid, on record, or even in the management evidence of its MW1 Sh. Rajesh Kumar, Administrative Officer (Public Health) of the management that the management has not been able to prove any document, on record, in rebuttal to the deposition of the WW40 Sh. Surender Bhardwaj, General Secretary of the Municipal Employees Union of the workmen towards the factum of espousal of the instant dispute of the workmen with the management, vide Ex.WW1/6, in its respect, as abovesaid, which is copy of resolution of espousal of ·the instant dispute of the workmen by the concerned Union in the relevant meeting of its executive committee held, in this regard, on 28.02.2014, apart from suggestions in bald denial thereof and thereby has not been able to disprove the said document, in any manner whatsoever and accordingly, the instant dispute of the workmen qua the management is held

to be appropriately espoused by the Union of workmen, thereby qualifying the instant dispute as an industrial dispute as required vide the mandatory provisions of Section 2(k) of the Industrial Disputes Act, 1947 (as amended upto date), applicable to it for this Tribunal to seize jurisdiction upon the same.

X X X

23. Findines on issue no.3 viz. As per terms of reference

Terms of reference are reproduced hereinbelow: "Whether the demand of the workmen Sh. Vishant . Kumar Kholiya & 38 Ors. (As per Annexure-A) for · regularisation of their services on the post of Assistant Malaria Inspector I Assistant Public Health Inspector with retrospective effect from the initial date of their joining into the employment

X X X

24. It is seen from the record that by way of their affidavits by way of evidence of the workmen, Ex.WW1/A to Ex.WW39/A, i.e workmen I WW1 to WW39 (except for WW12 Sh. Nitish Parkash Pandey, who has not appeared in workmen evidence at all and WW38 Sh. Dharmveer Meena, who has not appeared in his cross-examination on behalf of the management in workmen evidence), have categorically deposed that they have been working with the management continuously on the post of Assistant Malaria Inspector (AMI) and Assistant Public Health Inspector (APHI) respectively, w.e.f. the date as mentioned against their names vide Annexure-A to the 'Order' and 'terms of reference' of the appropriate Government in respect of the instant dispute, as abovesaid, along with documents Ex.WW1/1 to Ex.WW39/1 proved in workmen evidence, as abovesaid, to which there is no effective rebuttal on the part of the management in the cross-examination of the said workmen witnesses in workmen evidence apart from that they have been appointed on the said post on contract basis initially for a period of six months each and accordingly,

were not entitled to be regularised on the said post, which it is seen from the record is the defence of the management to the claim of the workmen, as abovesaid, in the instant reference and that the management has not indulged in unfair labour practices by continuing the employment of the workmen with the management on the said post on contractual basis w.e.f. the initial date of appointment of the workmen on the same with a view to denying them the benefits of regular employees performing the same work with the management.

25. It is further seen from the record that in view of the claim of the workmen against the management in the instant dispute to the effect that they have been in continuous employment of the management as Assistant Malaria Inspector (AMI) and Assistant Public Health Inspector (APHI), respectively, in their respect, w.e.f. the dates, as mentioned against their names vide Annexure-A to the 'Order' and 'terms of reference' of the instant dispute, between the parties, as abovesaid, as also the employment/ duration of employment of the workmen with the management on the relevant posts of Assistant Malaria Inspector (AMI) and Assistant Public Health Inspector (APHI), w.e.f. the dates as mentioned in respect of the respective workmen vide Annexure-A to the 'Order' and 'terms of reference' of the instant dispute, between the parties, as abovesaid, i.e. w.e.f. September/ October, 2010, having been admitted by the management in its cross-examination of the workmen/ WW1 to WW39 in workmen evidence (except for WW12 Sh. Nitish Parkash.Pandey, who has not appeared in workmen evidence at all and WW38 Sh. Dharmveer Meena, who has not appeared in his crossexamination on behalf of the management in workmen evidence) that. it is wrong to suggest that the management has not indulged in unfair labour practices by· continuing the employment of the workmen with the management on the said post on contractual basis w.ef. the initial date of appointment of the workmen on the same with a view to denying them the benefits of regular employees performing

the same work with the management, there being no rebuttal to the said averments of the workmen regarding their employment with the management on the posts and w .e.f. the date of their initial joining with the management on the same vide AnnexureA to the 'Order' and 'terms of reference' of the instant dispute, between the parties, as abovesaid, in their cross-examination on behalf of the management in workmen evidence, as abovesaid, which averments of the workmen in respect of their appointment management on the post of Assistant Malaria Inspector (AMI) and Assistant Public Health Inspector (APHI), respectively, w.e.f the dates of their initial joining with the management on the same and the present place of their posting with the management, as mentioned against their names, vide Annexure-A to the 'Order' and 'terms of reference' of the instant dispute, between the parties, as abovesaid, along with vide contents of para nos.1 and 2 of their statement of claim on merits in the same to the effect:

1. The present statement of claim is being filed on behalf of 39 workmen whose service particulars are as under:-

X X X

2. That all the workmen aforesaid were taken into job in the year 2010 w.e.f. the dates as mentioned above. In fact, the vacancies of AMI and APHI were advertised in various daily newspapers. Consequently, the workmen aforesaid applied for the same and subsequently, their interviews were taken. Thereafter, the police verification and medical examination was also got done by the management aforesaid regarding the workmen as detailed above."

it is seen from the record have been admitted by the management with no rebuttal to the same, when it states in reply on merits in its written statement to the same as follows:

"1. That Para no.1 of the Statement of Claim regarding particulars of 39 workmen under reply is a matter of record

and the workmen be put to strict proof of their contention in this regard.

2. That Para no.2 of the Statement of Claim under reply is alsobeing a matter of record and the workmen be also be put to strict proof of their contention in this regard."

26. That it is further seen from the record that there being no defence on the part of the management to the said avernments/ assertions of the workmen apart from reliance upon Ex.MWl/2 being copy of "Contract Agreement" dated 27.09.2010 initially entered by the management with the workman/ WWI Sh. Vishant Kumar Kholiya in respect of his employment with the management on the post of Assistant Malaria Inspector (AMI) on contract basis on a consolidated sum of Rs.10,300/- per month for a period of 6 months w.e.f. 27.09.2010 to 26.03.2011, on the terms and conditions of service as mentioned therein, however, it being not disputed that the workmen are continuously in the employment of the management as Assistant Malaria Inspector (AMI) and Assistant Public Health Inspector (APHI) respectively, w.e.f. the dates viz. September/ October, 2010, as mentioned against their names vide the Annexure-A to the 'Order' and 'terms of reference' of the instant dispute, between the parties, read with contents of para nos.1 and 2 of the statement of claim of the workmen in the same, as abovesaid, (which are also not disputed/ any material in rebuttal of the same given in the corresponding reply on behalf of the management to the same in its written statement filed to the statement of claim of the workmen in the instant reference, on record, as already observed herein above), with an alleged artificial break of one day after every six months of their employment, which I find from the record has not been proved, on record.

27. It is further seen from the record that vide Ex.MW 1/3 the are admitted to certain allowances vide Order dated 05.04.2017 of the Central Administrative Tribunal, Principal Bench, New Delhi passed in O.A. No. 3784/2015, between

the parties, in this regard, which has been complied with by the management in respect of the workmen vide its Office Order dated 20.03.2019, Ex.MW1/1, on record, which documents also go towards proving the claim of the workmen of they being continuously in employment of the management on the post of Assistant Malaria Inspector (AMI) and Assistant Public Health Inspector (APHI), respectively, w.e.f. the dates in September/ October, 2010, as mentioned against their names vide Annexure A to the 'Order' and 'terms of reference' of the instant dispute, between the parties, as abovesaid, till to date.

28. It is further seen from the record that it has been admitted/ deposed by the MW1 Sh. Rajesh Kumar, Administrative Officer, Public Health Department of the management in his cross-examination on behalf of the workmen in management evidence that he cannot state whether the particulars of the workmen in the instant dispute given in annexure A to the order of reference dated 14.05.15 as well as in the para No. 1 of the statement of claim filed on behalf of the workmen in the same are correct or not; that he had never examined the service record of the workmen; that he had filed the affidavit on the basis of information in the office as told to him by Dealing Assistant Court, who is a retired Malaria Inspector with the management; that the address of the management as mentioned on Exhibits WW1/1 and WWl/2 is correct; that documents Exhibits WWl/7, WWJ/8, WW211, WW2/2, WW213, WW3/l, WW411, WW4/2, WW4/3, WW5/l, WW611, WW711, WW712 WW7!3, WWB/1, WWB/2, WWB/3, WW9/l, WW912, WlV9/3, WW9!4, WWJ0/1, WWJ0/2, WWJ0/3, WWJ0/4, WWJJ/1, WW11/2, WW11/3, WW13/l, WW13/2, WWJJ/3, WW13/4, WWJ411, WW1412, WW1511, WW15/2, WW15/3, WW16/1, WWJ6!2, WW16/3, WW1711, WW1712, WW17/3, WW38/l, WW38/2, WW38!3, WW37/l, WW37/2, WW33/l, WW33/2, WW33!3, WW2111, WW21!2, WW21!3, WW35!1, WW35/2, WW23/J, WW23/2, WW23!3, WW2314 WW28/1, WW2812, WW2813, WW28/4 WW19/l, WW19/2, WW19/3, WW19/4, WW20/J, WW2012, WW24/1, WW24/2, WW34/1, WW34/2, WW25/1,

WW25/2, WW26/1, WW26/2, WW29/1, WW29/2, .WW29/3, WW27/1,WW2712, WW31/1, WW31/2, WW32/1, WW32/2, WW18/1, WWIB/2, WW22/1 and WW30/1 have been issued by the management; that it is correct that the concerned workmen are working on the post of Assistant Malaria Inspector and Assistant Public Health Inspector against the vacant posts of the said appointments carrying the regular pay scale; that the management is not having any complaint against the concerned workmen in respect of their work and conduct; that he cannot say whether in the year 2010 an advertisement had been issued by the management in National Daily in respect of the posts of Assistant Public Health Inspector and Assistant Malaria Inspector; that he also cannot say whether the concerned workmen along with other candidates had applied for the said posts with the management pursuant to such advertisement; that he also cannot say whether the concerned workmen had been duly selected by conduction of interviews by the constituted selection board of the management to the post of Assistant Public Health Inspector and Assistant Malaria Inspector at that time or not; that it is correct that the workmen are fulfilling requirements as per the recruitment rules of the management for the said posts; that it is correct that the work of the posts of Assistant Public Health Inspector and Assistant Malaria Inspector is of a permanent nature; that it is correct that the concerned workmen are not getting the emoluments and benefits as their regular counter parts doing similar nature of duties and working hours; that the workmen are working regularly since their appointment except one day break being given after every six months; that he was unable to show any rule and regulation of the management justifying such one day break in service of the concerned workmen after every six months; that it is wrong to suggest that the one day break was given to circumvent the law and the facts of this case; that he cannot say what is the sole purpose of giving one day break; that the management is not having any policy to regularize such like workmen as the concerned workmen; that it is correct that

the posts of Assistant Public Health Inspector and Assistant Malaria Inspector are lying vacant with the management; that it is correct that the requirement of executing a contract as mentioned by him in para No. 7, of his affidavit, on the part of the concerned workmen was essential for their continuing in employment with the management on the said posts and in case the same was not submitted on the part of each of them, the service of such workman would not have been continued; that it is correct that the corporation is having the right to appoint and terminate anybody in service; that it is wrong to suggest that the management has indulged in unfair labour practices by appointing the workmen as contractual workers with the object of depriving status and salary of a regular employee doing similar nature of work and duty of hour, to them and that it is wrong to suggest that the management has adversely discriminated the concerned workmen in the matter of their service conditions.

29. That it is thus, evident that the management is making the workmen work on the post of Assistant Malaria Inspector (AMI) and Assistant Public Health Inspector (APHI) continuously w.e.f. the date of their first appointment to the same as mentioned in their respect vide Annexure A to the 'Order' and 'terms of reference' of the instant industrial dispute, between the parties, as abovesaid, read with contents of para nos.1 and 2 of the statement of claim filed by the workmen in the same (which are not disputed by the management vide its corresponding reply on merits to the same in its written statement, filed to the statement of claim of the workmen, in the instant reference, on record, as already observed hereinabove) till to date i.e. for a considerable period of more than 9 years in respect of them w.e.f. the date of their first appointment with the management to the posts in question, as abovesaid, on record, with further admission/ deposition on the part of the management witness MW1 Sh. Rajesh Kumar, Administrative Officer, Public Health Department of the management in his cross-examination on behalf of the

workmen in management evidence that it is correct that the concerned workmen are working on the post of Assistant Malaria Inspector and Assistant Public Health Inspector against the vacant posts of the said appointments carrying the regular pay scale; that the management is not having any complaint against the concerned workmen in respect of their work and conduct; that it is correct that the workmen are fulfilling the requirements as per the recruitment rules of the management for the posts; that it is correct that the work of the posts of Assistant Public Health Inspector and Assistant Malaria Inspector is of a permanent nature; that it is correct that the concerned workmen are not getting the emoluments and benefits as their regular counter parts doing similar nature of duties and working hours; that the workmen are working regularly since their appointment except one day break being given after every six months; that he was unable to show any rule and regulation of the management justifying such one day break in service of the concerned workmen after every six months; that it is wrong to suggest that the one day break was given to circumvent the law and the facts of this case; that he cannot say what is the sole purpose of giving one day break; that the management is not having - any policy to regularize such like workmen as the concerned workmen; that it is correct that the posts of Assistant Public Health Inspector and Assistant Malaria Inspector are lying vacant with the management; that it is correct that the requirement of executing a contract as mentioned by him in para No. 7, of his affidavit, on the part of the concerned workmen was essential for their continuing in employment with the management on the said posts and in case the same was not submitted on the part of each of them, the service of such workman would not have been continued; that it is correct that the corporation is having the right to appoint and terminate anybody in service; that it is wrong to suggest that the management has indulged in unfair labour practices by appointing the workmen as contractual workers with the object of depriving status and salary of a regular employee

doing similar nature of work and duty of hour, to themand that it is wrong to suggest that the management has adversely discriminated the concerned workmen in the matter of their service conditions. which action of the management it is found amounts to unfair labour practice qua the workmen as outlined/ stipulated vide clause 10 of the Fifth Schedule of the Industrial Disputes Act, 194 7, (as amended up to date) viz. uro employ workmen as "badlis" casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen" and as also argued by Ld. AR for the workmen in this regard.

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35. In view of the case law, as abovesaid, as also in view of the facts and circumstances of the case, as abovesaid, I find from the record that the workmen/ WWl to WW11, WW13 to WW37 and WW39, as abovesaid, (WW12 Sh. Nitish Parkash Pandey having not appeared both in his examination-in-chief and cross-examination on behalf of the management in workmen evidence and WW38, Sh. Dharamveer Meena having not appeared in his cross-examination on behalf of the management in workmen evidence), have been able to make out a case for regularisation of their services with the management on the post of Assistant Malaria Inspector (AMI) and Assistant Public Health Inspector (APHI), respectively, asmentioned in their respect, vide Annexure-A to the 'Order' and 'terms reference' of the instant dispute, between the parties, as abovesaid, read contents of para no. 1 of the statement of claim, filed by the workmen in the instant reference, as abovesaid, on record, w .e.f. the dates of their first appointment with the management to the concerned posts, as also mentioned against their names vide the same> with retrospective effect from the initial date of their joining into the employment alongwith difference of salary on the principle of "Equal Pay for Equal Work" from the initial date of their joining onwards as per the terms of reference, the instant issue, in view of the admission!

deposition on the part of the MWl Sh. Rajesh Kumar, Administrative Officer, Public Health Department of the management/ South Delhi Municipal Corporation, in his cross-examination on behalf of the workmen in management evidence to the effect that:- "It is correct that the concerned workmen are working on the post of Assistant Malaria Inspector and Assistant Public Health Inspector against the vacant posts of the said appointments carrying the regular pay scale; that the management is not having any complaint against the concerned workmen in respect of their work and conduct; that he cannot say whether in the year 2010 an advertisement had been issued by the management in National Daily in respect of the posts of Assistant Public Health Inspector and Assistant Malaria Inspector; that he also cannot say whether the concerned workmen along with other candidates had applied for the said posts with the management pursuant to such advertisement; that he also cannot say whether the concerned workmen had been duly selected by conduction of interviews by the constituted selection board of the management to the post of Assistant Public Health Inspector and Assistant Malaria Inspector at that time or not; that it is correct that the workmen are fulfilling the requirements as per the recruitment rules of the management for the said posts; that it is correct that the work of the posts of Assistant Public Health Inspector and Assistant Malaria Inspector is of a permanent nature; that it is correct that the concerned workmen are not getting the emoluments and benefits as their regular counter parts doing similar nature of duties and working hours; that the workmen are working regularly since their appointment except one day break being given after every six months; that he was unable to show any rule and regulation of the management justifying such one day break in service of the concerned workmen after every six months; that it is wrong to suggest that the one day break was given to circumvent the law and the facts of this case; that he cannot say what is the sole purpose of giving one day break; that the management is not having any policy to regularize such like

workmen as the concerned workmen; that it is correct that the posts of Assistant Public Health Inspector and Assistant Malaria Inspector are lying vacant with the management; that it is correct that the requirement of executing a contract as mentioned by him in para No. 7, of his affidavit, on the part of the concerned workmen was essential for their continuing in employment with the management on the said posts and in case the same was not submitted on the part of each of them, the service of such workman would not have been continued; that it is correct that the corporation is having the right to appoint and terminate anybody in service; that it is wrong to suggest that the management has indulged in unfair labour practices by appointing theworkmen as contractual workers with the object of depriving status ana · salary of a regular emp-loyee doing similar nature of work and duty of hour, to them and that it is wrong to suggest that the management has adversely discriminated the concerned workmen in the matter of their service conditions", as abovesaid, on record. The instant issue is accordingly, decided in favour of the~onunen and against the management.

36. Findings on issue no.4: Relief.

In view of my findings on issue no.l, 2 and 3, as abovesaid, the workmen/ WWl to WWll, WW13 to WW37 and WW39, as abovesaid, are accordingly, held to be entitled for regularisation of their services on the post of Assistant Malaria Inspector I Assistant Public Health Inspector, as applicable in their respect, vide Annexure-A to the 'Order' and 'terms of reference' of the instant dispute, between the parties, as abovesaid, read with contents of para no. 1 of the statement of claim, filed by the workmen in the instant reference, as abovesaid, on record, with retrospective effect from the initial date of their joining into the employment with the management, as also applicable in their respect, vide Annexure-A to the 'Order' and 'terms of reference' of the instant dispute, between the parties, as abovesaid, read with contents of para no. 1 of the statement of claim, filed by the

workmen in the instant reference, as abovesaid, on record, alongwith difference of salary on the principle of "Equal Pay for Equal Work" from the initial date of their joining onwards. The workmen nomenclated as WW12 Sh. Nitish Parkash Pandey and WW38 Sh. Dharamveer Meena, having not appeared in workmen evidence and in cross-examination on behalf of the management in workmen evidence, respectively, are held to be not entitled to any relief in the instant reference.

37. Reference is answered accordingly and award is passed in these terms."

47. Upon perusal of the aforementioned Award, it can be summarily stated that the learned Tribunal upon completion of pleadings had framed four issues, firstly, whether there exists relationship of employer and employee between the parties; secondly, whether the claim of the workmen has been properly espoused by the Union? And thirdly, whether the workmen are entitled for their claim as per the terms of reference, and fourthly, to what relief are the parties entitled.

48. *Qua* issue no. 1, the learned Tribunal observed that the relationship of employer and employee between the parties has not been disputed as it has been admitted by the petitioner management that the workmen were employed as Assistant Malaria Inspector (AMI) and Assistant Public Health Inspector (APHI) with the management on a contract basis. The same has also been proved on record by the parties through their respective evidence. Therefore, the instant issue is accordingly, decided in favour of the workmen and against the management.

49. *Qua* issue no. 2 the petitioner has raised a contention that the cause of the workmen has not been properly espoused by the union. In

response, the respondent workman argued that as the union has presented the resolution passed by it in order to raise an industrial dispute in the favour of the workmen, the same will be enough to give effect to the espousal.

50. The learned Tribunal took into consideration the oral evidence on record coupled with the documents presented having the list of the members as part of the annexure, and the resolution dated 24 the February, 2014 passed by the union and observed that these evidence clearly serve to prove that the cause of the claimants was properly espoused by the union and a resolution to that effect was passed. Further, placing reliance upon a decision by the Hon'ble Supreme Court in the matter *of* ***J.H. Jadhav v. M/s Forbes Gokak Ltd.***[13], the learned Tribunal held that no particular form has been prescribed to effect an espousal, and that the same depends upon and varies with the facts of each case. Hence, the learned Tribunal held that in the instant case it is clear from the evidence on record that the proceeding is maintainable for the proper espousal of the cause of the claimants.

51. *Qua* issue no.3, the learned Tribunal, in the impugned Award, has observed that the respondent workmen were selected through proper selection procedure including interview, police verification and medical examination for performing a permanent and perennial nature of job on the posts of AMI and APHI. They had been doing the work of a regular, permanent and perennial nature on the said posts for as long as 13 years despite which they have remained employed as contractual employees

[13] **Civil Appeal No. 1089 of 2005 dated 11th February, 2005**

when their regular counterparts have been performing the same job and getting salary in proper pay scale.

52. It was held by the learned Tribunal that the petitioner, with the object of depriving the respondent workmen the status and privileges of a regular and permanent employee, has wrongly treated them as contractual employees. In view of the aforesaid observations, the learned Tribunal held that the aforesaid conduct of the petitioner entity amounts to unfair trade practices by employing the workmen concerned on contractual basis and continuing their services on contractual basis for 13 long years.

53. The learned Tribunal placed further reliance on the judgments of ***Chief Conservator of Forest v. Jagannath Maruti Kondhari & Ors***[14] and ***Project Dir. Dep. Of Rural Development v. Its Workmen*** [15] to observe that the non-regularisation of the services of the workmen amounted to unfair labour practice and that the workmen concerned are entitled for regularization of their services on their respective posts of AMI and APHI from their respective initial dates of joining. It was further held that the judgment of ***Uma Devi*** (***Supra***) is not applicable to the present case, since the aforesaid judgment is not applicable on the industrial workers.

54. Before adverting to the merits of the instant batch of petitions, this Court will state the settled position of law pertaining to regularisation of industrial workers.

55. The prolonged temporary employment should not be used as a reason to deny workers the benefits and security that come with

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[14] (1996) 2 SCC 293
[15] 2019 SCC OnLine Del 7796

regularization. Furthermore, a continuous period of service creates a legitimate expectation of permanency. The Hon'ble Supreme Court, in a catena of judgments, has held that the employees who have been continuously employed in an organization for a significant period, even if initially hired on a temporary or contractual basis, should not be treated as temporary forever. This principle aims to prevent the exploitation of workers by keeping them in a perpetual state of temporary employment.

56. Moreover, the industrial workers who perform duties identical to those of regular employees, as per the principle of equal pay for equal work, as laid down in the judgment of ***State of Punjab vs. Jagjit Singh***[16], mandates that employees performing similar duties should receive equal treatment. The Hon'ble Supreme Court has emphasized on the aspect that any differentiation in pay and benefits for employees doing the same work violates Article 14 and Article 39(d) of the Constitution of India. It was further observed by the Hon'ble Court that the denial of equal pay for equal work is not just a matter of statutory interpretation but a constitutional mandate ensuring fairness and justice in labour practices.

57. The Hon'ble Supreme Court in the judgment of ***Randhir Singh vs. Union of India***[17] held that temporary or contractual status of a workman should not be a ground for depriving him of equal pay even if the duties performed are similar to that of a regular employee.

58. This Court has referred to the judgment ***Chief Conservator of Forest (Supra)*** which was also relied upon by the learned Tribunal, wherein it was held that the contractual workers who are working for

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[16] (2017) 1 SCC 148
[17] (1982) 1 SCC 618

longer duration are entitled for regularisation. The relevant extracts of the judgment is reproduced herein below:

> "*25. To bring home his submission regarding the unjust nature of the relief relating to regularisation, Shri Bhandare sought to rely on the decision of this Court in Delhi Development Horticulture Employees' Union v. Delhi Admn. [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386 : JT (1992) 1 SC 394] We do not think that the ratio of this decision is applicable to the facts of the present case inasmuch as the employment of persons on daily-wage basis under Jawahar Rozgar Yojna by the Development Department of Delhi Administration, whose claim for regularisation was dealt with in the aforesaid case was entirely different from that of the scheme in which the respondents-workmen were employed. Jawahar Rozgar Yojna was evolved to provide income for those who are below the poverty line and particularly during the periods when they are without any source of livelihood and, therefore, without any income whatsoever. It is because of this that the Bench observed that the object of the Scheme was not to provide right to work as such even to the rural poor, much less to the unemployed in general. As against this, the workmen who were employed under the schemes at hand had been so done to advance objects having permanent basis as adverted to by us.*
>
> ***26.** Therefore, what was stated in the aforesaid case cannot be called in aid at all by the appellants. According to us, the case is more akin to that of State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] in which this Court favoured the State Scheme for regularisation of casual labourers who continued for a fairly long spell — say two or three years, (paragraph 51). As in the cases at hand the workmen concerned had, by the time they approached the Industrial Courts worked for more or less 5 years continuously, no case for interference with this part of the relief has been made out.*

27. *We may also meet the contention that some of the workmen had been employed under the Maharashtra Employment Guarantee Act, 1977. As to this, we would first observe that no factual basis for this submission is on record. Indeed, in some of the cases it has been pointed out that the employer had not even brought on record any order of appointment under this Act. This apart, a perusal of this Act shows that it has not excepted the application of the Industrial Disputes Act, 1947. This is apparent from the perusal of Section 13 of this Act. It may be further pointed out that this Act having been brought into force from 1978, could not have applied to the appointments at hand most of whom are of the year 1977.*

28. *Insofar as the financial strain on the State Exchequer is concerned, which submission is sought to be buttressed by Shri Dholakia by stating that in the Forest Department itself the casual employees are about 1.4 lakhs and if all of them were to be regularised and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighbourhood of Rs 300 crores — a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri Dholakia as the same has been brought out almost from the hat. The argument relating to financial burden is one of despair or in terrorem. We have neither been impressed by the first nor frightened by the second inasmuch as we do not intend that the view to be taken by us in these appeals should apply, proprio vigore, to all casual labourers of the Forest Department or any other Department of the Government.*

29. *We wish to say further that if Shri Bhandare's submission is taken to its logical end, the justification for paying even minimum wages could wither away, leaving any employer, not to speak of model employer like the State, to exploit unemployed persons. To be fair to Shri Bhandare it may, however, be stated that the learned counsel did not extend his submission this far, but we find it difficult to limit the submission of Shri Bhandare to payment of, say fair wages, as distinguished from minimum wages. We have said so,*

because if a pay scale has been provided for permanent workmen that has been done by the State Government keeping in view its legal obligations and must be one which had been recommended by the State Pay Commission and accepted by the Government. We cannot deny this relief of permanency to the respondents-workmen only because in that case they would be required to be paid wages meant for permanent workers. This right flows automatically from the relief of regularisation to which no objection can reasonably be taken, as already pointed out. We would, however, observe that the relief made available to the respondents is not one which would be available ipso facto to all the casual employees either of the Forest Department or any other Department of the State. Claim of casual employees for permanency or for higher pay shall have to be decided on the merits of their own cases."

59. Further, the Hon'ble Supreme Court, recently in the judgment of ***Vinod Kumar & Ors. Etc. v Union of India & Ors***[18], held that when the workman has been appointed as per the proper procedure of recruitment, therefore, the recruitment is done lawfully, and in such an event the services of the workman can be regularised. The relevant extracts of the judgment is reproduced herein below:

"6. The application of the judgment in Uma Devi (supra) 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,

[18] SLP(C) Nos.22241-42 of 2016 dated 30th January, 2024

which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgement in the case Uma Devi (supra) 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. Paragraph 53 of the Uma Devi (supra) case is reproduced hereunder:

> *"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 SLP(C) regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts*

that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

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 recognize 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."

60. Since this Court has discussed the settled legal proposition in the preceding paragraphs, this Court will now advert to adjudication of the instant petition on merits.

61. It is admitted position that the respondents were selected through a proper procedure, had continuously worked on their respective job positions for a long period of time, done similar work as that of the regularised employee and paid wages lesser than the regularised employee.

62. Upon perusal of the aforementioned judicial dicta and taking into account the factual matrix of the instant case, this Court is of the view that the learned Tribunal correctly held that the respondent workmen have been working for a long period against the sanctioned posts for which the

recruitment was conducted by following the due procedure, therefore, the respondent workmen are entitled for regularisation of their services.

63. It is observed by this Court that while there is no fundamental right to regularization, employees who have been working for a number of years and whose services are needed must be considered sympathetically for grant of regularization. With regard to the facts of the instant case, the respondent workmen are performing functions for the petitioner which is similar to the functions performed by the regular employees working with the petitioner. In light of the said fact, the continuous nature of the employment of the respondent workmen suggests a *de facto* regularization.

64. This Court is of the view that the services of the respondent workmen must be regularised in order to prevent their exploitation and unfair labour practices. The premise of the same lies in the fact that regularizing long-term temporary workers not only benefits the employees but also contributes to the overall efficiency and effectiveness of the organization.

65. In view of the foregoing paragraphs, it is stated that the learned Tribunal rightly held that the respondent workman in the instant batch of petitions meet the conditions to be entitled to be regularized as they have been employed for a long period, performing work similar to the regular employees of the petitioner, and their recruitment was not through any irregular or illegal means which is against the constitutional scheme.

66. The petitioner has contended before this Court that by granting regularization to the respondent workmen, the petitioner will suffer from financial hardships. With regard to the same, this Court is of the view that

while economic considerations are important, they should not override the fundamental principles of fairness and justice in labour practices. Therefore, the contention of the petitioner with respect to the financial hardship is legally untenable and thus, rejected.

67. In view of the aforesaid discussions on facts and law, it is held that the respondent workmen in the batch of petition are entitled to be regularised at their respective positions at which they were employed from the date as specified by the learned Tribunal.

68. Accordingly, this Court is of the view that the impugned award does not suffer from any illegality or error apparent on the face of it which merits interference of this Court.

CONCLUSION

69. The instant petition is an appeal in the garb of a writ petition. The petitioner is seeking a review of the orders despite the fact that there are no such special circumstances that require the interference of this Court.The petitioner is not aggrieved by any such violation of the rights of the petitioner, which merits intervention of this Court in the orders passed by the respondent.

70. The writ of certiorari cannot be issued in the present matter since for the issuance of such a writ, there should be an error apparent on the face of it or goes to the root of the matter. However, no such circumstances are present in the instant petition.

71. The writ jurisdiction is supervisory and the court exercising it is not to act as an appellate court. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact

for that recorded by the adjudicating body, be it a court or a tribunal. A finding of fact, howsoever erroneous, recorded by a court or a tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the Court or the Tribunal was insufficient or inadequate to sustain the impugned finding.

72. This Court is of the view that in light of the aforesaid discussions, the respondent workmen are entitled to regularisation since they were selected through a proper procedure, working for long period of time and are doing work similar to the regular employees.

73. In view of the aforesaid discussions, the impugned award dated 13th November, 2019 passed by the learned Presiding Officer, Industrial Tribunal, Rouse Avenue Courts Complex, New Delhi in case bearing I.D No. 58/2016 is upheld.

74. Accordingly, the impugned awards in the batch of petition are upheld and the instant batch of petition is dismissed along with the pending applications, if any.

75. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MAY 31, 2024
Sv/db/da/ryp