



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28th DAY OF JUNE, 2019

BEFORE

THE HON'BLE MR.JUSTICE P.B. BAJANTHRI

WRIT PETITION NOs.35139-35214/2017 (S-RES)

BETWEEN:

1. SMT. PREETHI BHANDAGE
W/O MAHESH
AGED ABOUT 32 YEARS
WORKING AS ACCOUNTANT,
CITY MUNICIPAL COUNCIL
KOPPAL – 583 321
2. SMT. RANJITA N. PISE
D/O SARASWATI N. PISE
AGED ABOUT 30 YEARS
WORKING AS ACCOUNTANT,
TOWN PANCHAYAT, HONALLI
DAVANAGERE DISTRICT – 577 217
3. SMT. G. M. PREMA LEELA
D/O MAHALINGAPPA G.
AGED ABOUT 42 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
CHENNAGIRI, DAVANAGERE
DISTRICT – 577 213
4. SRI. MAHANTHESH M. G.
S/O GURUBASAPPA M
AGED ABOUT 31 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAT, JAGALUR
DAVANAGERE DISTRICT – 577 528

5. SRI. HANUMESHI V.
S/O VENKATESH
AGED ABOUT 35 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
HARAPANAHALLI
DAVANAGERE DISTRICT – 583 131
6. SMT. LAKSHMI M. R.
W/O O. L. DHANANJAYA
AGED ABOUT 39 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAT, YELANDUR
CHAMARAJANAGARA DIST. – 571 313
7. SMT L S ROOPA
W/O VISHWANATH D S
AGED ABOUT 33 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL CONCIL, KUNIGAL
TUMKUR DISTRICT – 572 130
8. SRI. SADANANDA T
S/O RAMA SETTYGAR
AGED ABOUT 37 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAT
TURUVEKERE
TUMKUR DISTRICT 572 227
9. SMT. PADMA S.M
W/O MAHESH M
AGED ABOUT 31 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL CORPORATION
CHIKKANAYAKANAHALLI
TUMAKUR DISTRICT-5
10. MISS. SALMA KOUSAR
D/O RAHAMATHULLA
AGED ABOUT 29 YEARS

WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
MADHUGIRI, TUMAKURU
DISTRICT 572 132

11. SRI. PREETHAM P. V.
S/O VIKRAMADITYA P. K.
AGED ABOUT 32 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYATH, GUBBI
TUMAKUR 572 216
12. SRI. HARISH
S/O HANUMANTHARAYAPPA
AGED ABOUT 33 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
PAVAGADA, TUMAKUR DIST 572 116
13. MISS. SUSHMA
D/O SHRINIVASA
AGED ABOUT 30 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL CORPORATION
BANTWALA, DAKSHINA KANNADA
DISTRICT 574 189
14. SRI. KIRAN LOYD MONTEIRO
S/O LATE ELIAS MONTERIO
AGED ABOUT 37 YEARS
WORKING AS ACCOUNTANT
MANGALORE CITY CORPORATION
MANGALORE 575 003
15. SMT. JOSHMA JUDY D SOUZA
W/O MELWYN KIAN MONTEIRO
AGED ABOUT 30 YEARS
WORKING AS ACCOUNTANT
MANGALORE CITY CORPORATION
MANGALORE 575 003.

16. SMT. AMITHA
W/O SADANANDA
AGED ABOUT 31 YEARS
WORKING AS ACCOUNTANT
MANGALORE CITY CORPORATION
MANGALORE 575 003
17. SRI. RAMESH GOWDA P
S/O LATE KARIYA GOWDA
AGED ABOUT 44 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAT, SULTA
DAKSHINA KANNADA DISTRICT 574 239
18. SMT. ANURADHA M. V.
W/O M. N. SRIDHAR
AGED ABOUT 32 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAT
NAGAMANGALA
MANDYA 571 432
19. MISS. BHAVANA P. N.
D/O LATE NATRAJ P
AGED ABOUT 37 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAT
SOMWARPET
KODAGU DISTRICT 571 236
20. SRI. PARAMESHU M.K
S/O M. J. KRISHNAIAH
AGED ABOUT 31 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAT
H.D. KOTE
MYSORE DISTRICT 571 114
21. SRI. VINAY KUMAR M.K.
S/O KESHAV MURTY M.V.
AGED ABOUT 32 YEARS
WORKING AS ACCOUNTANT

TOWN MUNICIPAL COUNCIL
T. NARASIPURA MYSORE DIST. 571 124

22. SRI. PRADEEP T. G.
S/O GOVINDE GOWDA T. S.
AGED ABOUT 30 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
PERIYAPATANA
MYSORE DISTRICT-571 107
23. SMT. SOUMYA S.
W/O LOHIT B. M.
AGED ABOUT 31 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAT
SARGUR, MYSORE DIST-571 121
24. SRI. VENKATACHALIAH B.
S/O BALAIAH
AGED ABOUT 26 YEARS
WORKING AS ACCOUNTANT
CITY MUNICIPAL COUNCIL
CHINTAMANI, CHIKKABALLAPUR
DISTRICT-563 125
25. SRI. R. SRIDHAR
S/O K. C. RAMAKRISHNAPPA
AGED ABOUT 33 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
BAGEPALLI, CHIKKABALLAPUR
DISTRICT-561 207
26. SRI. JAYARAMA K. M.
S/O MUNIRAJAPPA
AGED ABOUT 33 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAT
GUDIBANDE
CHIKKABALLAPUR DIST-561 209

27. SMT. K. N. RAJALAKSHMI
W/O K S ASHWATH
AGED ABOUT 39 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYATH
ALUR, HASSAN DISTRICT-573 213
28. SRI. SANTOSH G.
S/O GANESH RAO KAMBLE
AGED ABOUT 31 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
HOSADURGA, CHITRADURGA
DISTRICT-577 527
29. SMT. RAJESHWARI B. SORAGANVI
W/O SIDDHARAM BANAKAR
AGED ABOUT 35 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
MAHALINGAPURA
BAGALKOT DISTRICT-587 312
30. SRI NAGARAJ H. K.
S/O HULLAPPA
AGED ABOUT 36 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
GULEDUGUDDA
BAGALKOT DISTRICT-587 203
31. SMT ROOPA G. GOMBI
W/O KADEH B BHADRANNAVAR
AGED ABOUT 30 YEARS
WORKING AS ACCOUNTANT,
TOWN MUNICIPAL COUNCIL
TERDAL, BAGALKOT
DISTRICT-587 315

32. SRI. MABUSAB R NADAF
S/O RAIMANSAB NADAF
AGED ABOUT 32 YEARS
WORKING AS ACCOUNTANT CITY
MUNICIPAL COUNCIL
MUDHOL, BAGALKOT
DISTRICT-587 313
33. SMT. SHARADA L. DODAMANI
W/O SHANKAR R. LAMANI
AGED ABOUT 32 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
BADAMI, BAGALKOT
DISTRICT-587 201
34. SMT. GEETA S. KALAGUDI
D/O S. M. KALAGUDI
AGED ABOUT 33 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAHT, KERURU
BAGALKOT DISTRICT-587 206
35. KUM. SAVITHA VAMANA AWATI
D/O V B AWATI
AGED ABOUT 36 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
ATHANI, BELGAUM
DISTRICT-591304
36. MISS. ASHWINI VISHNU KALE
D/O VISHNU KALE
AGED ABOUT 31 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
CHIKKODI, BELGAUM
DISTRICT-591 201
37. SMT. RASHMI P. SHERKHANE
W/O RAJESH F. HUTAGI

AGED ABOUT 35 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
MUDALAGI
BELGAUM DISTRICT-591 307

38. SMT. SONALI K BUBANALE
W/O SUNIL J. BIDROLE
AGED ABOUT 32 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
BAILHONGAL
BELGAUM DIST 591 102
39. SMT. SHWETA M .NAIK
W/O KIRAN GANESH KURADUR
AGED ABOUT 32 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
SAUDATHI
BELGAUM DISTRICT- 591 126
40. SMT. DEEPA SHANKAR DADDI
W/O M. S. DASTIKOPPA
AGED ABOUT 29 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAT, KALLOLLI
BELGAUM DISTRICT 591 224
41. SRI. VINOD M. SANADI
S/O MARUTI BHIMA SANADI
AGED ABOUT 33 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAT, KHANAPUR
BELGAUM DISTRICT 591 302
42. SRI. VINAY G. KOLLI
S/O GUNDAPPA
AGED ABOUT 30 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL

NAGANUR, BELGAUM
DISTRICT 591 313

43. SRI. SUPREMGUUDA S. PATIL
S/O. SANAGOUDA PATIL
AGED ABOUT 32 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAT
M K HUBBALI
BELGAUM DISTRICT 591 311
44. SRI. SRIDHAR SURESH CHOLACHAGUDD
S/O SURESH S. CHOLACHAGUDD
AGED ABOUT 33 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
RAMADURG BELGAUM DIST 591 123
45. SRI. NASEERUDDIN JAHAGIRDAR
S/O IKBAL PASHA
AGED ABOUT 32 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYATH, RAIBAG
BELGAUM DISTRICT 591 317
46. SRI. SANTOSH S. MEDAR
S/O SIDDAPPA MEDAR
AGED ABOUT 32 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYATH
KUNDAGOL, DHARWAD DIST 581 113
47. SMT. JYOTHI S. KANPETH
W/O VENKATESH
AGED ABOUT 27 YEARS
WORKING AS ACCOUNTANT
CITY MUNICIPAL COUNCIL
HUBLI DHARWAD CITY CORPORATION
HUBLI 580 020

48. SRI. PANDURANGA RAMPUR
S/O GIRIDHAR
AGED ABOUT 37 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAT, NARIGAL
GADAG DISTRICT 582 119
49. MS. NAGARATNA S UPIN
D/O SHRISHAIL
AGED ABOUT 31 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
RON, GADAG DIST 582 209
50. SMT. REKHA M. HOSAMANI
W/O M. N. KIWADAR
AGED ABOUT 32 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYATH, MULAGUND
GADAG DISTRICT 582 117
51. SRI. GURUNATH P PATALI
S/O PUNDLIKAPPA
AGED ABOUT 32 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYATH, SHIRAHATTI,
GADAG DISTRICT 582 120
52. SRI. RAGAHVENDRA RAHACHANDRASA
HABEEB
S/O RAMACHANDRASA HABEEB
AGED ABOUT 35 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
MUNDARAGI, GADAG DIST 582 101
53. SRI. MAHESH C. HOSAMANI
S/O CHENNABASANAGOUDA
AGED ABOUT 36 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL

LAXMESHWAR, GADAG DIST 582116

54. SMT. SUDHA P. ARABAGONDAMATH
W/O NIRANJAN HIREMATH
AGED ABOUT 31 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL SAVANUR
HAVERI DISTRICT 581 118
55. SMT. SOUBHAGYA R BALIGAR
W/O VEERESH POOJAR
AGED ABOUT 31 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
BYADAGI, HAVERI DISTRICT 581 106
56. SRI. RAJESH S. KAHAR
S/O SUBHAS
AGED ABOUT 30 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
SHIGGAON, HAVERI DISTRICT 581 205
57. SMT. ASHWINI P. SUNAGAR
W/O YELLAPPA SHIVANNAVAR
AGED ABOUT 31 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL,
BANKAPUR
HAVERI DISTRICT 581 202
58. NAGARAJ G. SHAMANUR
S/O G. N. SHAMANUR
AGED ABOUT 33 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYATH, HIREKERURU
HAVERI DISTRICT 581 111
59. SRI. DURGARAM B. UTHALEKAR
S/O BAIRAPPA
AGED ABOUT 37 YEARS

WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
HANGAL, HAVERI DISTRICT 581 104

60. SMT. GAYATRI S. BAITHKHOLKAR
D/O SHRIPAD BAITHKHOLKAR
AGED ABOUT 31 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
HALIYAL, UTTAR KANNADA DIST 581 329
61. SMT. AMRUTHA BALATALEKAR
W/O KEERTHI GANAPATHI NAIK
AGED ABOUT 26 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL, ANKOLA
UTTAR KANNADA DISTRICT 581 324
62. SMT. USHA VITTAL MESTA
W/O SATISH NARAYAN MESTA
AGED ABOUT 26 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYTH, HONNAVAR
UTTAR KANNADA DISTRICT 581 334
63. SRI. NAGARAJ RAJARAM TERADAL
S/O RAJARAM TERADAL
AGED ABOUT 27 YEARS
WORKING AS ACCOUNTANT
CITY MUNICIPAL COUNCIL
DANDELI, UTTAR KANNADA
DISTRICT 581 325
64. SRI. NAGI POGU ARVIND KUMAR
S/O LATE N. OBAIAH
WORKING AS ACCOUNTANT
TOWN PANCHAYTH
KAMALAPURA , BELLARY DIST 583 221
65. SRI. THIMMAPPA A.
W/O SHANKARAPPA

AGED ABOUT 26 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYATH , KOTTUR
BELLARY DISTRICT 583 134

66. SRI. JAGADISH R.
S/O LATE RAMAPPA R.
AGED ABOUT 25 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
SANDUR, BELLARY DISTRICT 583 119
67. SRI. VIJAYAKUMAR A. KANAKAGIRI
S/O ANDANAPPA KANAKAGIRI
AGED ABOUT 31 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
HOOVINAHADAGALI
BELLARY DISTRICT 583 219
68. SRI. GURUMURTHY H. V.
S/O VEERABHADRAIAH
AGED ABOUT 39 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYATH, KUDALAGI
BELLARY DISTRICT-583 135
69. SRI. BILANKARA RAMESH
S/O LAKSHMANA RAO B.
AGED ABOUT 31 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL COUNCIL
KAMPLI BELLARY DISTRICT-583 132
70. SRI. MANJUNATH S. SALUNKE
S/O S. R. SALUNKE
AGED AOUT 32 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYAT KALAGHATAGI
DHARWAD-580 001

71. SMT. H. V. VIMALA
W/O A. P. SHANKAR
AGED ABOUT 33 YEARS
WORKING AS ACCOUNTANT
PATTANA PANCHAYATH
ARKALGUD, HASSAN DIST-573 102
72. SRI. HARISH M.
S/O MAHADEVA
AGED ABOUT 26 YEARS
WORKING AS ACCOUNTANT
CITY MUNICIPAL CORPORATION
CHALLAKERE, CHITRADURGA
DISTRICT-577 522
73. SMT. HEMAVATHI THIMMANNA
HADAGUNDI, D/O THIMMANNA
HADAGUNDI, AGED ABOUT 33 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL CORPORATION
GAJENDRAGAD, GADAG
DHARWAD-582 101
74. SRI RUDRAPPA SHIVAPPA CHALAVADI
S/O SHIVAPPA CHALAVADI
AGED ABOUT 37 YEARS
WORKING AS ACCOUNTANT
TOWN MUNICIPAL CORPORATION
NARAGUND, GADAG DHARWAD-582 101
75. SMT. ARCHANA SADASHIV PUJARI
D/O SADASHIV
AGED ABOUT 30 YEARS
WORKING AS ACCOUNTANT
TOWN PANCHAYATH YELLAPUR
UTTAR KANNADA DISTRICT-581 359
76. SMT. JYOTI KRISHNA NAIK
W/O SRINIVAS NAIK
AGED ABOUT 29 YEARS
WORKING AS ACCOUNTANT

TOWN PANCHAYATH MUNDGOD
UTTARA KANNAD DISTRICT-581 349
...PETITIONERS

(BY SRI. M. S. BHAGWAT, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF URBAN DEVELOPMENT
REP. BY ITS PRINCIPAL SECRETARY
VIKASA SOUDHA, BANGALORE – 560 001
2. DIRECTOR OF MUNICIPAL
ADMINISTRATION
1-4 IT PARK VI FLOOR, RAJAJINAGAR
INDUSTRIAL ESTATE
BANGALORE – 560 044
3. KARNATAKA PUBLIC SERVICE
COMMISSION
REPRESENTED BY ITS SECRETARY
UDYOGA SOUDHA BANGALORE- 560 001
4. THE DEPUTY COMMISSIONER
DAVANAGERE DISTRICT
DAVANAGERE – 577 001
5. THE DEPUTY COMMISSIONER
CHAMARAJANAGARA DISTRICT
CHAMARAJANAGARA – 571 440
6. THE DEPUTY COMMISSIONER
TUMKUR DISTRICT TUMKUR – 572 101
7. THE DEPUTY COMMISSIONER
DAKSHINA KANNADA DISTRICT
DAKSHINA KANNDA – 574 217
8. THE COMMISSIONER
MANGALORE CITY CORPORATION

MANGALORE – 575 001

9. THE DEPUTY COMMISSIONER
MANDYA DISTRICT MANDYA – 571 401
10. THE DEPUTY COMMISSIONER
KODAGU DISTRICT, KODAGU – 571 236
11. THE DEPUTY COMMISSIONER
MYSORE DISTRICT MYSORE – 570 001
12. THE DEPUTY COMMISSIONER
CHIKKABALLAPUR DISTRICT
CHIKKABALLAPUR – 561 207
13. THE DEPUTY COMMISSIONER
HASSAN DISTRICT HASSAN – 573 201
14. THE DEPUTY COMMISSIONER
CHITRADURGA DISTRICT
CHITRADURGA – 577 527
15. THE DEPUTY COMMISSIONER
BAGALKOT DISTRICT
BAGALKOT – 587 101
16. THE DEPUTY COMMISSIONER
BELGAUM DISTRICT BELGAUM – 590 001
17. THE DEPUTY COMMISSIONER
DHARWAD DISTRICT, DHARWAD – 580 001
18. THE DEPUTY COMMISSIONER
GADAG DISTRICT, GADAG – 582 101
19. THE DEPUTY COMMISSIONER
HAVERI DISTRICT HAVERI – 581 110
20. THE DEPUTY COMMISSIONER
UTTAR KANNADA DISTRICT
UTTAR KANNADA – 581 410

21. THE DEPUTY COMMISSIONER
BELLARY DISTRICT, BELLARY – 583 101
22. THE DEPUTY COMMISSIONER
KOPPAL DISTRICT, KOPPAL – 583 231
23. THE COMMISSIONER
HUBLI CITY CORPORATION
HUBLI – 580 020. ... RESPONDENTS

(BY SRI. SRIDHAR N. HEGDE, HCGP FOR R1,
R2, R4 TO R7 AND R9 TO R22
SRI. K. V. NARASIMHAN, ADV. FOR R8;
SRI. REUBEN JACOB, ADV. FOR R3;
SRI. I. G. GACHINAMATH, ADV. FOR R23.)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS FROM THE RESPONDENTS PERTAINING TO THE IMPUGNED ENDORSEMENTS ALL DATED 29.06.2017 VIDE ANNEXURE-A, A1 TO A75 RESPECTIVELY.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED ON 12TH JUNE 2019 AND COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, **BAJANTHRI J.**, MADE THE FOLLOWING:

ORDER

In these bunch of petitions, petitioners have sought for quashing endorsements issued to each of the petitioners (Annexure – A, A1 to A75). Further, they have sought for direction to the

second respondent to regularize their services in the post of Accounting Consultants from their initial date of appointment and to extend the pay scale attached to the post of Accounts in the pay scale of Rs.16,000-29,600/- (Rs.8000-14,800) in the light of the decision passed in W.P.Nos.47587-47591/2012 (Ann.AS).

2. The State Government evolved a policy relating to maintaining books of accounts in each and every local bodies like Municipality or City Corporation. In this regard, the Deputy Commissioner was empowered to recruit Accounting Consultants in the respective Municipalities/Corporation under KMRP Project for Implementation of FBAS with qualification of B'com graduate vide order dated 14.02.2007. On 25.06.2007, petitioners were appointed under the Municipal Reforms Project (KMR) on temporary contract basis as Accounting Consultants but in subsequent documents, respondents 2 to 23 have

misquoted as 'Accountant' whereas it should have been throughout 'Accountant Consultants'. Such appointment was to be on contract basis. While inviting applications from eligible candidates to conduct test and interview vide dated 04.04.2007, it is learnt that respective Deputy Commissioners of the District as per the Government Notification dated 05.09.2008 were empowered to notify and they have notified in the news paper for temporary contract appointment of Accounting Consultants (Accountant) for one year period and it is extendable one more year on consolidated pay of Rs.7500/6000 to the respective post in the local body. (SFC Fund). Condition No.4 reads as under:

“ಗುತ್ತಿಗೆ ಅವಧಿಯು ಪ್ರಾಥಮಿಕವಾಗಿ ಒಂದು ವರ್ಷ ಅವಧಿಯಾಗಿದ್ದು ಒಂದು ವೇಳೆ ಅವಶ್ಯಕತೆಯಿದ್ದಲ್ಲಿ ಗುತ್ತಿಗೆ ಅವಧಿಯನ್ನು ಅಭ್ಯರ್ಥಿಗಳ ತೃಪ್ತಿಕರ ಸೇವೆಯನ್ನು ಆಧರಿಸಿ ಸರ್ಕಾರದ ಪೂರ್ವಾನುಮತಿಯೊಡನೆ ಮತ್ತೊಂದು ವರ್ಷ ಅವಧಿಗೆ ಮುಂದುವರಿಸಬಹುದಾಗಿರುತ್ತದೆ. ಆದರೆ ಯಾವುದೇ ಕಾರಣಕ್ಕೂ ಖಾಯಂಗೊಳಿಸಲಾಗುವುದಿಲ್ಲ”.

Condition No.4 of the advertisement dated
07.11.2008 reads as under:

“ಗುತ್ತಿಗೆ ಅವಧಿಯು ಪ್ರಾಥಮಿಕವಾಗಿ ಒಂದು ವರ್ಷ ಅವಧಿಯಾಗಿದ್ದು ಒಂದು ವೇಳೆ ಅವಶ್ಯಕತೆಯಿದ್ದಲ್ಲಿ ಗುತ್ತಿಗೆ ಅವಧಿಯನ್ನು ಅಭ್ಯರ್ಥಿಗಳ ತೃಪ್ತಿಕರ ಸೇವೆಯನ್ನು ಆಧರಿಸಿ ಸರ್ಕಾರದ ಪೂರ್ವಾನುಮತಿಯೊಡನೆ ಮತ್ತೊಂದು ವರ್ಷ ಅವಧಿಗೆ ಮುಂದುವರಿಸಬಹುದಾಗಿರುತ್ತದೆ. ಆದರೆ ಯಾವುದೇ ಕಾರಣಕ್ಕೂ ಖಾಯಂಗೊಳಿಸಲಾಗುವುದಿಲ್ಲ”.

On 05.09.2008, Government of
Karnataka issued a notification which reads
as under:

In exercise of the powers conferred under by sub-section (4) of Section 323 of Karnataka Municipalities Act, 1964 (Karnataka Act 22 of 1964) and the rule 1 (3) of Karnataka Municipalities Accounting and Budgeting Rules, 2006 under chapter 1 of Part-A General, preliminary, the enclosed 85 ULB'S are notified and included in Schedule 1 of the said rule as serial number 131 to 215 with effect from 1-04-2009. The Karnataka Municipalities Accounting and Budgeting Rules, 2006 are applicable to these

Municipalities with effect from 1-04-2009.

Deputy Commissioners of concerned Districts are also authorized to **appoint Accounting Consultants** to these ULB's in accordance with Government order NO. ನಲಿಇ/22/ಡಿಎಂಎ/2006, ದಿನಾಂಕ: 14-02-2007 WITH IMMEDIATE EFFECT.

3. Among others, petitioners were appointed in the respective districts on contract basis to the post of Accounting Consultants for a specified period of one year on 25.06.2007. Tenure was extended from time to time. In view of the above factual aspect that the post of Accountant was existing from the year 1971. Therefore, it is not the fact that for the first time Accountant post was incorporated in the Rules of recruitment, in the year 2010.

4. State Government issued The Karnataka Municipalities (Recruitment of Officers and Servants) Rules, 1971 (For short 'Rules, 1971). Schedule – I of the said Rules which relates to Accountants is reproduced hereunder:

Sl. No	Category of post	Scale of Pay	Method of Recruitment	Minimum Qualifications and period of probation
11.	Accountants	130-5-140-8-180-EB-10-260-15-290	50 percent by direct recruitment 50 percent by promotion from the Cadre of Accounts Clerks	For Direct Recruitment. -A degree of a recognized University or its equivalent qualification and diploma in L.S.G. Probation: Two years For promotion.-

The Karnataka Municipalities (Recruitment of Officers and Employees) Rules, 2004 (For short, 'Rules, 2004) as regards post of 'Accountant' is reproduced hereunder:

Sl.No	Category of posts	Scale of Pay	Method of Recruitment	Minimum Qualification
(1)	(2)	(3)	(4)	(5)
8.	Accountant	4150-7800	Seventy-five percent by direct recruitment and Twenty-five per cent by promotion from the cadre of First Division Assistant. If no suitable person is available for promotion by direct recruitment	Direct Recruitment .- Must have passed Bachelors degree in Commerce (B.Com) with Accountancy and Commerce from an University recognized by the Government. For Promotion.- (1) Must have put in service of not less than five years in the cadre of First Division Assistant plus. (2) Must have passed B.Com with Accountancy and Commerce from an institution recognized by the Government.

The Karnataka Municipalities (Recruitment of Officers and Employees) Rules, 2010 (For short 'Rules, 2010). Schedule – II, Item No.9 relates to the Post of Accountant is reproduced hereunder:

Sl. No.	Category of posts and scale of the pay	Number of posts	Method of Recruitment	Minimum Qualification
9.	Accountant 8000-14800		Seventy five percent by Direct Recruitment; and Twenty five percent by promotion from the cadre of First Division Assistant. If no suitable person is available for promotion, by Direct Recruitment.	Direct Recruitment- Must have passed Bachelors Degree in commerce (B.Com) with Accountancy and Commerce from an Institution recognized by the Government. For Promotion:- (1) Must have put in service of not less than three years in the cadre of First Division Assistant and, (2) Must have passed B.Com. With Accountancy and Commerce

5. State Government after 4 years from the date of petitioner's appointment in the year 2010 issued Rules called "The Karnataka Municipalities (Recruitment of Officers and

Employees) Rules, 2010 (for short Rules, 2010) vide notification dated 13.01.2011 wherein the post of Accounting Consultants was incorporated and method of recruitment to the post of Accountant is 75% by direct recruitment and 25% by promotion.

Rule 4(2) of Part II identifies the Appointing Authority viz., Group A – Government, Groups B and C – Director of Municipal Administration and Group D – Deputy Commissioner of the respective District or Officer empowered by Government.

Rules 6 and 7 provides for appointment by direct recruitment of Groups A, B C and D. It reads as under:

6. Appointment by direct recruitment for group A,B and C posts:- Subject to the provisions of the Karnataka Public Service Commission (Conduct of Business and Additional Functions) Act, 1959 and the rules and orders made there under and the special or general orders of the Government, wherever, direct recruitment is specified, as a method of appointment it shall be done through the Karnataka Public Service Commission or by the Directorate of Municipal Administration as the Government may decide from time to time.

7. Recruitment of Group D employees and Pourakarmikas- The Government may by special order authorize the Deputy Commissioner of the District to recruit Group D posts in urban local bodies by calling applications from employment exchange or by such other method as Government may specify by time to time.

Rule 11 relates to application of Various Rules issued by the State Government.

6. On 20.12.2008, Government of Karnataka issued a proceeding that Accounting Consultants are entitled to consolidated salary of Rs.8000-9000/- by revising the conditions imposed in Government Orders dated 14.02.2007 and 09.03.2008 and subject to other conditions and rules, Petitioners were paid enhanced consolidated pay for the years 2010-11, and 2012. When things stood thus, petitioners stated to have submitted number of representations seeking for regularization of their services. On their representations, no orders were passed. In the meanwhile, further continuation order was

issued on 19.09.2015 continuing their services up to 31.03.2016.

7. On 03.03.2016, the Karnataka Public Service Commission has issued notification inviting applications from eligible candidates to fill up the post of Accountant among other posts. 54 and 39 posts of Accountant were advertised in the Urban Local Bodies and Corporation respectively. Among others, petitioners filed Writ Petitions before the respective benches like Principal Bench at Bengaluru, Dharwad and Kalburgi and obtained interim orders to the extent of not to terminate their services in W.P.Nos.201115-201136/16 dated 22.03.2016 (Kalburgi), in W.P.Nos.102745-91/16 dated 24.03.2016 (Dharwad) and in W.P.No.33201/16 (Bengaluru) dated nil wherein petitioners and others have sought for regularization of their services in the aforesaid litigations. In this background, second respondent extended the

tenure of the contract appointment by further period of one year from 01.04.2016 to 31.03.2017. On 20.02.2017, Dharwad Bench disposed of Writ Petition Nos.102745-102791/2016 and connected petitions while directing official respondents to consider the representations and pass appropriate orders within a period of 6 months and further, directed petitioner Nos.29 to 70 and 73 to 74 shall not be disturbed. Similar relief was granted by the Kalburgi Bench in W.P.Nos.201115-201119/16 and 201120-201136/16.

8. Respondent No.2 issued notices to the petitioners and others to furnish certain documents for the purpose of consideration of their grievances. On 25.04.2017, Principal Bench disposed of Writ Petition to consider their representations with an observation that petitioners shall not be disturbed until appropriate order is passed. On 26.04.2017,

second respondent issued endorsement rejecting the claim of first petitioner for regularization. Similar notices and endorsements were issued to such of those petitioners either before the Principal or Dharwad or Kalburgi Benches.

9. Feeling aggrieved and dis-satisfied with the endorsement dated 26.04.2017 and Circular dated 22.05.2017 relating to outsourcing of Accounting Consultants, petitioners once again approached this Court in W.P.Nos.24547-24641/2017 in which notices were issued and for consideration of interim prayer, it was listed on 13.06.2017. During pendency of the aforesaid Writ Petitions, second respondent withdrew the statement made in the Circular dated 22.05.2017 that petitioners would be continued only till 30.06.2017. Thereafter, on 13.06.2017 Writ Petitions were disposed of with the observations that petitioners would be given a liberty of

hearing by the concerned respondent before taking further action by the second respondent.

10. Pursuant to the disposal of W.P.Nos.24547-24641/17, second respondent issued notices to all the petitioners informing them that they should be present in his office at 9.30 AM on 28.06.2017 to substantiate their claim for regularization. Petitioners appeared on the fixed date and furnished documents along with the representations. Second respondent issued endorsements rejecting the claim of the petitioners for regularization of their services in the post of Accountant on 29.06.2017. Thus, present petitions are filed questioning the validity of the endorsement dated 29.06.2017 Annexures A to A.75 and further sought for regularization of their service in the cadre of Accountant.

11. Learned counsel for the petitioners vehemently contended that petitioners were all

appointed in the year 2007-08 and 2009 pursuant to the State Government's policy to have one Accounting Consultant post in the respective Municipalities/Corporation for the purpose of introduction of double entry accounting system and Deputy Commissioner of the respective district were empowered to recruit Accountant Consultants. It should be read as Accounting Consultants in terms of Government Order dated 14.02.2007 empowering Deputy Commissioner of various districts to recruit Accounting Consultants while inviting applications, holding tests and interview. Petitioners initial appointments was in accordance with law even though it was on contract basis. It was also pointed that each and every due procedure has been followed as if for regular recruitment except that their appointment was on contract basis. In such an event, petitioners are entitled for regularization of their services. State Government

issued absorption of the employees appointed under the scheme of Swarnajayanti Shahari Rozgaar Yogana in Urban Local Bodies under Rules, 2005. Petitioners are also similarly situated persons who are also entitled for regularization/absorption in the posts of Accounting Consultants in the respective Municipalities. The endorsement issued by the second respondent that the petitioners were not appointed under Swarnajayanti Shahari Rozgaar Yogana, Rules and Regulations on KPTCL quoted in the Court order dated 16.01.2015 insofar as KPTCL Employees Regularisation are different, post of Accountant in the Karnataka Municipalities are required to be filled up in accordance with the Rules, 2010, grievance of the petitioners is contrary to **SECRETARY, STATE OF KARNATAKA & ORS. vs UMADEVI & ORS.**(3) reported in **(2006) 4 SCC 1** of the Hon'ble Apex Court, documents and representation submitted by the petitioners have

no substance. Petitioners contract appointment is for a period of one year or till selection and appointment is done through KPSC and for any reason permanency would not be made. Pursuant to the selection posts, KPSC has forwarded the list of selected Accountant and it is under process. Therefore, question of regularization of petitioners services is impermissible. On these counts, grievance of the petitioners are rejected.

12. Learned counsel for the petitioners submitted that petitioners case is squarely covered by the decision of this Court rendered **P.RAJESH vs KARNATAKA POWER TRANSMISSION CORPORATION LIMITED** decided on 16.12.2015 in W.P.No.47587-47591/2012 & connected Matters. Second respondent has failed to appreciate that the petitioners selection and appointment to the post of Accounting Consultants on contract basis is

after holding due procedure like issuing notification, written test and interview. Except the nature and appointment is contract, rest of the procedure have been followed as if recruitment is for direct recruitment. Respondents after extracting work from the petitioners for all these years, rejected their claim for regularization for the cited reasons are not in terms of the decision rendered by this Court in the case of **P.RAJESH** supra. Each of the contention of the petitioners has not been appreciated by the second respondent, while issuing endorsement. In support of petitioners case, petitioners have cited the following decisions:

(1) SECRETARY vs STATE OF KARNATAKA AND OTHERS vs UMADEVI (3) AND OTHERS reported in (2006)4 SCC 1.

(2) STATE OF GUJARAT AND OTHERS vs PWD EMPLOYEES UNION AND OTHERS reported in (2013)12 SCC 417.

(3) NIHAL SINGH AND OTHERS vs STATE OF PUNJAB AND OTHERS reported in (2013) 14 SCC 65

(4) MALATHI DAS (RETIRED) AND OTHERS vs SURESH AND OTHERS reported in (2014) 13 SCC 249

(5) NARENDRA KUMAR TIWARI AND OTHERS vs STATE OF JHARKHAND AND OTHERS reported in (2018)8 SCC 238

(6) MALLIKARJUNA AND OTHERS vs STATE OF KARNATAKA AND OTHERS (Writ Petition No.15712-15828/2015 and connected matters

(7) STATE OF PUNJAB AND OTHERS vs JAGJIT SINGH AND OTHERS reported in (2017)1 SCC 148

(8) SABHA SHANKAR DUBE vs DIVISIONAL FOREST OFFICER reported in 2018 SCC ONLINE SC 2440

13. Per contra, learned counsel for the respondents supported the endorsement issued by the second respondent and contended that petitioners are not entitled for regularization. Since they were not appointed as Accountant but were appointed as Accounting Consultants. Second respondent has elaborately considered the grievance of the petitioners with reference to Rules of recruitment governing the post of Accountant viz., Rules, 2010,

P.RAJESH's case supra, **UMADEVIS(3)** Judgment and documents and representations of the petitioners. Petitioners nature of appointment is required to be taken into consideration for the purpose of regularization. Petitioners have failed to question the validity of the Clauses imposed in the order of appointment that their appointment is contractual and purely on temporary basis at any rate appointment would not be made permanent. Having accepted the nature of appointment, they are estopped from contending that they are entitled for regularization. They have no legal or statutory right to seek regularization in the post of Accountant unless and until, they have a statutory right read with statutory provision. If regularization is permitted, in such an event it would be violative of Articles 14 and 16 of the Constitution and Rules, 2010. Hon'ble Supreme Court time and again held that regularization of temporary employees would violate fundamental right of an eligible candidate

to the post on permanent/regular basis. Cited decisions on behalf of the petitioners have no assistance to the case in hand for the reasons in none of the decision **UMA DEVI's(3)** case supra has been taken note of appropriately and appreciated various issues dealt therein. Constitution bench decision viz., **UMA DEVI's (3)** case supra holds the field on the subject of Daily Wager, casual employees, ad hoc Employees and contract Employees. Therefore State as a model Employer cannot over look the Constitutional provisions like Articles 14, 16 and 309 read with KCSR Act, 1978.

14. Heard learned counsel for the parties.

15. 'Regularisation' means "to make regular" and according to Blacks Law Dictionary the word "regular" means

"Conformable to law. Steady or uniform in course, practice, or occurrence; not subject to unexplained or irrational variation.

Usual, customary, normal or general. Gerald v. American Cas. CO. of Reading, Pa., D.C.N.C.,249E. Supp. 355, 357. Made according to rule, duly authorized, formed after uniform type; built or arranged according to established plan, law, or principle. Antonym of “casual” or “occasional.” Palle v. Industrial Commission, 79 Utah 47, 7 P.2d.284, 290”.

16. ‘Employment and Regularisation of service’ – employment signifies fresh appointment to fill vacancies whereas the regularization in accordance with service regulation or in accordance with the statutory law. Hon’ble Supreme Court in the case of **MANAGEMENT OF THE BARARA COOPERATIVE MARKETING-CUM-PROCESSING SOCIETY LTD. VS. PRATAP SINGH reported** in 2019 (2) SCC 743. Para.20 of the judgment reads as under:

20. In our view, there lies a distinction between the expression "employment" and "regularization of the service". The expression 'employment' signifies a fresh employment to fill the vacancies whereas the expression 'regularization of the service' signifies that the employee, who is already in service,

his services are regularized as per service Regulations.

17. Undisputed facts are that petitioners contractual appointment is for specified period to the post of Accounting Consultants and not to the post of Accountant. Even though advertisement, test and interview might have been held for the purpose of nature of contract appointment. But such appointment is with a rider that at any reason permanency would not be made. In such event, contract appointee has no right and right has not accrued in his/her favour for the regularization of his/her services in Accountant post. Ultimately, statutory Rules, 2004 read with Rules, 2010 are required to be complied. In this regard, it is necessary to peruse the decision of the Apex Court rendered in **K. ANBAZHAGAN AND ORS. VS. THE REGISTRAR GENERAL HIGH COURT OF MADRAS AND ORS.** reported in 2018 (9) SCC 293 wherein para.14 reads as under:

14. The learned Counsel appearing for the High Court supporting the judgment and the order contends that the Appellants were appointed on Fast Track Courts on contract basis. The Fast Track Courts cannot be said to have been created in pensionable establishment hence the writ petition of the Appellants has rightly been dismissed. It is further submitted that Appellant's claim for regularisation on post of Additional District Judge had been rejected, which was upheld by the High Court vide its judgment dated 20.07.2012. The Appellants functioned purely on ad hoc basis and were not appointed under the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 1995 nor were absorbed in any regular vacancy hence they are not eligible for any retiral benefits, which are available to those who were appointed by due recruitment process under the above 1995 Rules. Tenure of the Fast Track Courts was initially for only five years under the Eleventh Finance Commission and subsequently extended for another five years. Government of Tamil Nadu had further extended the tenure of courts for a period of one year upto 31.03.2012. Thereafter vide Government Order dated 26.08.2011, Government of Tamil Nadu had sanctioned retention of 49 Fast Track Courts in the cadre of District Judge functioning in the State of Tamil Nadu. The Appellants having accepted the purely temporary nature of the post to which they were appointed, they now cannot contend claiming all the benefits available to those, who have been appointed to a substantive post by a recruitment process.

(Emphasis Supplied)

18. In the case of **YOGESH MAHAJAN VS. PROFESSOR R.C. DEKA, DIRECTOR, ALL INDIA INSTITUTE OF MEDICAL SCIENCES** reported in 2018 (3) SCC 218 at para nos.6 and 8, it is held as under:

“6. It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the Petitioner was unable to show any statutory or other right to have his contract extended beyond 30th June, 2010. At best, the Petitioner could claim that the concerned authorities should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the concerned authorities and therefore reject this contention of the Petitioner.

8. Insofar as the final submission of the Petitioner to the effect that some persons were appointed as Technical Assistant (ENT) in May 2016 is concerned, we are of the view that the events of 2016 cannot relate back to the events of 2010 when a decision was taken by the All India Institute of Medical Sciences not to extend the contract of the Petitioner. The situation appears to have

changed over the last six years and the Petitioner cannot take any advantage of the changed situation. There is no material on record to indicate what caused the change in circumstances, and merely because there was a change in circumstances, does not mean that the Petitioner is entitled to any benefit. On the other hand, it might have been more appropriate for the Petitioner to have participated in the walk-in interview so that he could also be considered for appointment as Technical Assistant (ENT), but he chose not to do so.”

19. Petitioners were recruited through advertisement followed by written test and interview which was for limited purpose and that too on contract basis to the post Accounting Consultants and not Accountant which normally would not confer any right of regularization. Contract appointment is permissible under Rule 15 of the Karnataka Civil Services (General Recruitment) Rules, 1977 (for short Rules, 1977). Rule 15 is reproduced herein:

“15. Provision for appointment of retired Government Servants and for appointment by contract.-

(1) Notwithstanding anything contained in these rules or in the rules of recruitment specially

made in respect of any service or post, the Government may, if it considers necessary for reasons to be recorded in writing, that it is in public interest so to do-

- a) appoint to a service or post of any person who retired from the service of the Government, Central Government or any other State Government on such terms and conditions and for Such period, as may be necessary, and after consultation with the commission where such consultation is necessary.
- b) Appoint to the following categories of posts any person who in its opinion is able to discharge duties of such post on Such terms and conditions as may be determined by agreement.-
 - i) posts of Heads of Departments which suitable officers are not available for appointment, according to the rules of recruitment applicable to the posts;
 - ii) posts requiring technical qualification.
 - iii) Posts in the personal establishment of a Minister , a Minister of a State or a Deputy Minister.
 - iv) Posts in the personal establishment of a Chairperson of a Commission or a Committee constituted by the Government, where such Chairperson is a non-official

- and has been given the status of a Deputy Minister;]
- v) Group C posts in the legal cell of the Karnataka Bhavan, New Delhi, when suitable persons are not available for appointment, according to the rules of recruitment applicable to the posts;]
 - vi) Posts of Personal Assistants, Second Division Assistants, Drivers and Group 'D' posts sanctioned in Revenue Department for assisting the Members of Parliament and any other post which may be sanctioned in Revenue Department for the said purpose;]
 - vii) Posts of First Division Assistants, Second Division Assistants and Stenographers sanctioned in Revenue Department for assisting the members of the Karnataka State Legislative Assembly and Members of the Karnataka State Legislative Council;

Provided that notwithstanding anything to the contrary contained in any rule made under the provision to Article 309 of the Constitution of India or in, the agreement or the terms, conditions and period of appointment of any person under clause (a) or clause (b), the services of a person so appointed shall be liable for termination at any time by a notice in writing either given by such person to the Government or by

the Government to such person and the period of such notice shall be one month:

Provided further that the services of any such person may be terminated forthwith and on such termination he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rate at which he was drawing them immediately before the termination of his services, or, as the case maybe, for the period by which such notice falls short of one month.

(2) The total period of appointment of any person or the total period of appointment in any post under clause(b) of sub-rule (1) shall not exceed [5 years]:

[Provided that appointments to posts mentioned in sub-clause and sub-clause (vi)] of clause (b) of sub-rule (1) may be made for a period of co-terminus with the tenure of office of the Minister, the Minister of State [the Deputy Minister or the Member of Parliament concerned.]

(3) Notwithstanding anything contained in clause (b) of sub-clause (1) a person in the service of the Government shall not be eligible for appointment under the said clause.

20. The above statutory provision is restricted to contract appointment only and it is not followed by regularization. Therefore,

contract appointees condition is governed by Rule 15 of Rules, 1977 and there are no other provision. Hence, in the absence of any provision for regularization of contract appointee, no vested right is available to the petitioners.

21. Learned counsel for the petitioners vehemently relied on **P.RAJESH's** case. **P.RAJESH'S** case supra is distinguished with reference to Hon'ble Supreme Court in the case of **RAJ BALAM PRASAD & ORS. vs STATE OF BIHAR & ORS.** reported in (2018)12 SCC 50 wherein pages 16 to 23 reads as under:

16. This is what the Division Bench held for allowing the appeal and dismissing the Appellants' writ petition: (Vinay Kishore Case, SCC Online Pat Para.12)

“12. We have heard learned Counsel for the parties and find that the order passed by the learned Single Judge is not sustainable in law. The order passed in **SANT PRAKASH SRIVASTAVA vs STATE OF BIHAR** dated 28th of July, 2008 was not brought

to the notice of the learned Single Judge. It is further contended that even if the order dated 10.10.2006 was not set aside, the fact remains that such order of regularization could not have been passed since the services of the Muharrir have come to an end in 1991 itself. The permanent status could be conferred to those who were in service and not to those whose services had come to an end many years ago. Such an order could not be made the basis of permanent status through the writ court. Such order dated 10.10.2006 is not enforceable in law. The representation having been declined in the light of the circular dated 16.04.2008, we do not find that the writ Petitioners were entitled to any direction to treat them as regular employees”.

17. We agree with the reasoning of the Division Bench quoted supra.

18. In our opinion also, when the appointment of the Appellants (writ Petitioners) was made for a fixed period in exercise of the powers under Rule 57-A and the said appointment period having come to an end in the year 1991 after granting some extension, we fail to appreciate as to

how the Appellants could claim to remain in service after 1991.

19. One cannot dispute that the State has the power to appoint persons for a temporary period under the Act and Rules framed thereunder and once such power was exercised by the State, the status of such appointee continued to be that of temporary employee notwithstanding grant of some extensions to them for some more period.

20. In other words, the grant of extension to work for some more period to the writ Petitioners could never result in conferring on them the status of a permanent employee or/and nor could enable them to seek regularization in the services unless some Rule had recognized any such right in their favour.

21. That apart, when the period fixed in the appointment orders expired in the year 1991 then there was no scope for the Appellants to have claimed continuity in service for want of any extension order in that behalf.

22. We have perused the Circular dated 16.04.2008 (Annexure P-7) issued by the State. This Circular only says that if any temporary persons are appointed for a particular project and if they are found to be of some utility, their services can be regularized as per Rules.

23. As mentioned above, so far as the cases of these Appellants are concerned, their representations were examined by the State but were rejected finding no merit therein. One of the reasons for rejection of the representation was that the services of the Appellants had already come to an end in 1991 and, therefore, no orders to regularize their services could now be passed after such a long lapse of time.

22. Contractual appointment is for a specified period and not entitled to regularization. Grant of extension of tenure based does not confer on status of employee nor can he/she seek regularization of his/her services in absence of any statutory Rule recognizing such right in his/her favour. On this issue Hon'ble Supreme Court in the case of **COMMITTEE OF MANAGEMENT, ARYA NAGAR INTER COLLEGE, ARYA NAGAR, KANPUR, THROUGH ITS MANAGER AND ANOTHER VS. SREE KUMAR TIWARY AND ANOTHER** reported in 1997 (4) SCC 388

6. In view of the respective contentions, the question that arises for consideration is; whether the

respondent is entitled to the benefit of the Third Removal of Difficulties Order as indicated hereinbefore? Section 33-B(1)(i) of U.P. Secondary Education Service Commission Act, 1982 postulates among others, regulation of a candidate who was appointed by promotion or by direct recruitment in the certificate of teaching grade before May 13, 1989 against a short term vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 and such vacancy was subsequently converted into a substantive vacancy. It is seen that the regular incumbent retired from service on June 30, 1988. Consequently, the temporary vacancy was deemed to have been converted into a substantive vacancy w.e.f. June 30, 1988. But the crucial question is : whether the respondent was continuously serving the institution under clause (c) of Section 33-B(1)? Admittedly, the service of the respondent came to be terminated w.e.f. June 30, 1988. Though he had obtained the stay order and continued to be in service, it was not by virtue of his own right under an order of appointment, he continued in the office with permission of the management. In fact, in the recommendation made before the Selection Committee, they have stated as under:

"Ad hoc appointment of Shri Sri Kumar Tiwari was made on 1.8.1986 L.T. Grade and vide notice dated 30.5.88 his services were terminated. ON the basis

of the above order Shri Sri Kumar Tiwari obtained stay order No.13565 dated 29.7.1988 from Hon'ble High Court. Therefore appointment is disputed."

7. In fact, the regularisation order passed by the District Inspector of Schools also says that it was subject to the result in the writ petition. The appeal being the continuation of the writ petition, the question arises: whether the respondent is entitled to claim the benefit of Section 33-B(1)(a)(i) of the U.P. Secondary Education Services Commission Act, 1982. We have seen that his services came to be terminated on May 30-5-1988 and the Amendment Act has no application. Hence, the Division Bench was right in giving direction that his regularisation will be subject to the further orders since the regularisation order itself means that it was subject to the result of the writ petition.

8. The appeal is accordingly allowed, the writ petition stands dismissed, but in the circumstances, without costs. If there is provision for further appointment according to rules, the bar of age may be relaxed appropriately.

23. Constitution Bench decision in the case of **UMADEVI (3)** supra has been taken into consideration in a recent decision in the case of

UPENDRA SINGH V STATE OF BIHAR reported

in **AIR 2018 SC 1315**

8. Law pertaining to regularisation has now been authoritatively determined by a Constitution Bench judgment of this Court in Secretary, State of Karnataka and Ors. v. Umadevi and Ors., MANU/SC/1918/2006MANU/SC/1918/2006 : (2006) 4 SCC 1. On the application of law laid down in that case, it is clear that the question of regularisation of daily wager appointed contrary to law does not arise. This ratio of the judgment could not be disputed by the learned Counsel for the Appellant as well. That is why she continued to plead that the appointment of the Appellant was made after following due procedure and in accordance with law. However, that is not borne from the records. Pertinently, order dated August 13, 2003, vide which the Appellant was refused regularisation on the aforesaid ground was not even assailed by the Appellant at that time. It may be mentioned that in Uma Devi, the Court left a small window opened for those who were working on ad hoc/daily wage basis for more than ten years, to regularise them as a one-time measure. However, that was also subject to the condition that they should have been appointed in duly sanctioned post. Further, while counting their ten years period, those cases were to be excluded where such

persons continued to work under the cover of orders of the courts or the tribunal. The High Court has, in the impugned judgment, discussed these nuances and has also referred to the judgment in Uma Devi and held that the benefit of one-time measure suggested in that case could not be extended to the Appellant because of the following reasons:

The Appellants clearly fall in the exception noticed in paragraph-53 of Umadevi (supra) as their claims were sub judice on the date the pronouncement of the Constitution Bench was made in view of pendency of C.W.J.C. No. 12235 of 2005 disposed subsequently on 29.08.2006. Such litigious continuation in employment stands excluded from the directions of Umadevi.

The Appellants claim to have been regularized within the staffing pattern. In our opinion, it is not the crux of the matter. The crucial question is if their initial appointment by the Managing Committee was in consonance with Article 14 of the Constitution of India by open advertisement and competitive merit selection. On account of various interpretations by more than one Bench of M.L. Kesari (supra) reference was made to the Full Bench. We have already noticed from the order refusing regularization dated 13.08.2003 that the

appointment of the Appellants on daily wage was not in consonance with the law.

The conclusion in Ram Sewak Yadav (supra) at paragraph 43 is as follows:

43 (A) Uma Devi (supra) prohibits regularization of daily wage, casual, ad-hoc, and temporary appointments, the period of service being irrelevant;

(B) An illegal appointment void ab initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any circumstances.

(C) Irregular appointments can be regularized if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(D) The appointment must not have been an individual favour doled out to the appointee alone and he person must have continued in service for over ten years without intervention of any court orders.

24. A person appointed on purely contractual basis by the State on the specific express condition that his services is for limited period and would not have any right to be absorbed in the regular cadres, has no right to be absorbed permanently. Hon'ble Supreme Court has opined that the High Court/Tribunals cannot give directions to be absorbed in regular service inasmuch as their initial entry is not in accordance with statutory rules governing the post.

25. Learned counsel for the petitioners vehemently contended that petitioners were all appointed in the year 2007-08 and 2009 pursuant to the State Government's policy to have one Accounting Consultants post in the respective Municipalities/Corporation for the purpose of introduction of double entry accounting system and Deputy Commissioner of the respective districts were empowered to recruit

Accounting Consultants. Thus, Deputy Commissioner of various districts proceeded to recruit Accounting Consultants while inviting applications, holding tests and interview. Thus, petitioners initial appointments was in accordance with law even though it is on contract basis. It was also pointed that each and every due procedure for regular recruitment has been followed except that their appointment is on contract basis. In such an event, petitioners are entitled for regularization of their services. State Government issued absorption of the employees appointed under the scheme of Swarna- Jayanti Shahari Rozgaar Yogana in Urban Local Bodies under Rules, 2005. Petitioners are also similarly situated persons who are also entitled for regularization/absorption in the posts of Accounting Consultants in the respective Municipalities. The endorsement issued by the second respondent that the petitioner's were not appointed under Swarnajayanti Shahari Rozgaar

Yogana, Rules and Regulations on KPTCL quoted in the Court order dated 16.01.2015 insofar as KPTCL Employees Regularisation are different, post of Accountant in the Karnataka Municipalities are required to be filled up in accordance with the Rules, 2004 read with 2010, grievance of the petitioners is contrary to Umadevi's(3) decision supra of the Apex Court, documents and representation submitted by the petitioners have no substance. Petitioners contract appointment is for a period of one year or till selection and appointment is done through KPSC. Specific condition was imposed in the order of appointment that for any reason permanency would not be made. Pursuant to the selection posts, KPSC has forwarded the list of selected Accountant and it is under process. Therefore, question of regularization of petitioners services is impermissible. On these counts, grievance of the petitioners are liable to be rejected.

26. Constitution Bench decision of the Hon'ble Apex Court in the case of **UMADEVI** (3) supra, Court has elaborately dealt that daily wagers, casual employees and contract employees are not entitled to seek for regularization, only protection given is such of those persons who are working for the last 10 years with a rider that such of those employees are not working by virtue of Court order. Further, 4 conditions have been stipulated for the purpose of one time regularization. Petitioners grievance cannot be appreciated in view of the Constitution Bench Judgment of the Supreme Court cited supra read with the fact that they were appointed as Accounting Consultants and not against post of Accountant. That apart second respondent has passed a reasoned endorsement covering each of the issues as to how the petitioners are not entitled for regularization to the post of Accountant. In view of these facts and circumstances, petitioners have not made out a

case so as to interfere with the endorsement vide Annexures A to A75.

27. Second respondent issued endorsement to the petitioners wherein petitioners grievances has been rejected for these reasons:

ನಿಮ್ಮ ಮನವಿಯನ್ನು ನ್ಯಾಯಾಲಯದ ತೀರ್ಪಿನ ಅನ್ವಯ ಮತ್ತು ಚಾಲ್ತಿಯಲ್ಲಿನ ನಿಯಮಗಳನ್ವಯ ಪರಿಶೀಲಿಸಲಾಗಿ,

1. ನೀವು ಸ್ವರ್ಣ ಜಯಂತಿ ಸ್ವರೋಚ್‌ಗಾರ್ ಯೋಜನೆ ತರಹ ಯಾವುದೇ ಸರ್ಕಾರದ ಯೋಜನೆಗೆ ನೇಮಕವಾಗಿರುವುದಿಲ್ಲ.
2. ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದ ಆದೇಶದಲ್ಲಿ ದಿನಾಂಕ 16.01.2015ರ ಕೆಪಿಟಿಸಿಎಲ್ ನ ನೇಮಕಾತಿ ನಿಯಮಗಳೇ ಬೇರೆ ಬೇರೆ ಇರುತ್ತದೆ ಹಾಗೂ ಈ ಇಲಾಖೆಯ ಈ ನೇಮಕಾತಿ ನಿಯಮಗಳೇ ಬೇರೆ-ಬೇರೆ ಇರುತ್ತದೆ.
3. ಕರ್ನಾಟಕ ಪ್ರಸಾರಣ (ಅಧಿಕಾರಿ ಮತ್ತು ನೌಕರರ ನೇಮಕಾತಿ) ನಿಯಮಗಳು 2010 ರ ರೀತ್ಯಾ ಅಕೌಂಟೆಂಟ್ ಹುದ್ದೆಗೈನ್ನು ನೇರ ನೇಮಕಾತಿ ಮೂಲಕ ಭರ್ತಿ ಮಾಡಬೇಕಾಗಿರುತ್ತದೆ.
4. ನಿಮ್ಮ ಕೋರಿಕೆಯು ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ಉಮಾದೇವಿ ಪ್ರಕರಣಕ್ಕೆ ವ್ಯತಿರಿಕ್ತವಾಗಿರುತ್ತದೆ.
5. ನಿವೃತ್ತರು ಸಲ್ಲಿಸಿದ ಮನವಿಯಲ್ಲಿ ಸಲ್ಲಿಸಿರುವ ದಾಖಲಾತಿಗಳು ನಿಮ್ಮ ಕೋರಿಕೆಯನ್ನು ಪುಷ್ಟೀಕರಿಸುವುದಿಲ್ಲ.
6. ನಿಮ್ಮ ಗುತ್ತಿಗೆ ಸೇವೆಯು ಸಂಪೂರ್ಣವಾಗಿ ಗುತ್ತಿಗೆ ಆಧಾರಿತವಾಗಿದ್ದು ಕರ್ನಾಟಕ ಲೋಕಸೇವಾ ಆಯೋಗದಿಂದ ಖಾಯಂ ಆಗಿ ನೇರ ನೇಮಕಾತಿ ಆಗುವವರೆಗೆ ಅಥವಾ ಒಂದು ವರ್ಷದ ಅವಧಿಗೆ ಇವೆರಡರಲ್ಲಿ ಯಾವುದು ಮೊದಲು ಅಲ್ಲಿಯವರೆಗೆ ಎಂಬ ಷರತ್ತಿಗೊಪ್ಪಟ್ಟು ತಾತ್ಕಾಲಿಕವಾಗಿರುತ್ತದೆ.
7. ಪ್ರಸ್ತುತ ಲೋಕ ಸೇವಾ ಆಯೋಗದಿಂದ ಅಕೌಂಟೆಂಟ್ ಹುದ್ದೆಗಳಿಗೆ ಆಯೋಗದಿಂದ ಆಯ್ಕೆ ಪಟ್ಟಿ ಸ್ವೀಕೃತವಾಗಿದ್ದು ಅಭ್ಯರ್ಥಿಗಳಿಗೆ ಸಳ ನಿಯುಕ್ತಿಗೊಳಿಸುವ ಪ್ರಕ್ರಿಯೆಯಲ್ಲಿರುವುದರಿಂದ ಗುತ್ತಿಗೆ ಆಧಾರದ ಮೇಲಿನ ನಿಮ್ಮ ಸೇವೆಯನ್ನು ಖಾಯಂಗೊಳಿಸಲು ಬರುವುದಿಲ್ಲ.

28. Petitioners grievance for their regularisation is that their initial appointment on

contract basis was after following due procedure like inviting applications, written tests and interview. Therefore, they are entitled for regularization. Rules 2004 and Rules, 2010 provide for regular recruitment to the post of Accountant. Due to administrative or financial exigency, official respondents might have resorted to contract appointment. Such contract appointees cannot be made permanent or regularized as it would violate Articles 14, 16 and 309 read with Rules, 2004 or 2010 and KCSR Act, 1978 for the reason that another contract appointee in yet any other organization as on that date, did not submit his application apparently for the reason that he was already on contract appointment with some other organization. If the official respondents had notified that contract appointment is followed by regularization, in such an event, those contract employees who are working elsewhere would have opted for Accountant post in the official respondent –

Municipality/Corporation. But, Government authorized Deputy Commissioners to appoint Accounting Consultants. Therefore, such of those persons who are already appointed on contract basis or temporary basis in different organizations of the State or any private organization where they were drawing higher pay than the contract appointment of Accounting Consultants, they are not in a position to leave such contract appointments and join the contract appointment to the post of Accounting Consultants in the Municipality/Corporation like petitioners. So also eligible candidate for Accounting Consultants may not prefer for contract appointment and he may be keen for regular appointment in the interest of job security and to settle in his/her life. Thus, if the petitioners contract appointment is followed by regularization, in such an event, that would be violative of Articles 14 and 16 and so also misleading such of those contract appointees

other than working in Municipality/Corporation like petitioners to the extent that contract appointment is followed by regularization. For public post, mode of recruitment should be in accordance with the Constitutional provision in particular, Articles 14 and 16 of the Constitution. Time and again, Supreme Court after decision in **UMADEVI's** (3) case and in subsequent decisions have clearly held that public posts are required to be filled up after duly following the Constitutional provision read with relevant Rules of Recruitment. Therefore, petitioners grievance relating to regularization read with the cited decisions are hereby distinguished in view of the later decisions.

29. Learned counsel for the petitioners relied heavily on **P.Rajesh's** case supra for regularization. **P.Rajesh's** case is distinguishable with reference to the Hon'ble Supreme Court in the case of **RAJ BALAM PRASAD** supra so also

two Division Bench decisions of this Court disposed of on 13.07.2012 in Writ Petition Nos.15314-15378/2009 and connected matters in the case of **SRI R MANJUNATH AND OTHERS vs THE STATE OF KARNATAKA AND ORS REP. BY ITS SECRETARY, DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS AND OTHERS** decided in Writ Petition Nos.41145-41158/2010 and connected matters (S-KAT) reported in ILR 2012 Kar.5678 in the case of **G.RAVI AND ORS. vs STATE OF KARNATAKA** reported in 2013 (2) AKR 772. Petitioners cited various decisions including **UMADEVI's**(3) case supra (paras. 3 and 53).

30. Contention of petitioners is that **UMADEVI's** decision has no application to them, having regard to the factual aspect of the matter that one time regularization which was permitted in the year 2006 but in the case on hand, it is to be noted that petitioners were appointed on

contract basis subsequent to the decision in **UMADEVİ's** (3) case. Moreover, **UMADEVİ's** case (3) at paras 15 to 17 and 53 which are against the petitioners grievance.

31. **STATE OF GUJARAT & ORS v PWD EMPLOYEES UNION AND ORS** (2013) 12 SCC 417 (paras. 22, 27 and 28) has no application to the petitioners case in view of their nature of appointment and decision in **UMADEVİ's** (3) case that their cannot be a deviation in respect of filling up of public posts in the present case for regularization if permitted for petitioners, it would be violative of Articles 14 and 16 of the Constitution, so also Rules, 2010.

32. Similarly **NIHAL SINGH AND OTHERS** supra (PARA.23, 24 and 31), **MALATI DAS (RETIRED)**'s case supra (para.13), **NARENDRA KUMAR TIWARI's** case supra (para. 4,5,7 and 8), **MALLIKARJUNA's** case supra (2,6 and 8), **STATE OF PUNJAB** cited supra (para. 57, 58, 60

and 61), **SABAH SHANKAR DUBE** cited supra (pars. 11 and 12). These decisions are contrary to **UMA DEVI's** (3) case read with Articles 14, 16, 309. The last decision relates to entitlement of pay scale.

33. Petitioners grievance relating to entitlement and extending the pay scale attached to the post of Accountant in the pay scales of Rs.16000 – Rs.29600 (8000-14800) would arise only as and when first prayer relating to regularization of services of the petitioners are permitted. Since the petitioners have not made out a case for regularization of their services with the second respondent, question of deciding the issue, Whether petitioners are entitled for pay scale attached the post of Accountant may not arise. Moreover, petitioners nature of appointment is contract and on consolidated pay. As long as condition of consolidated pay mentioned in the order of appointment is not

challenged, petitioners are not entitled to pay-scale of the post. That apart post held by the petitioners is Accountant Consultancy and not Accountant.

34. In the case of **NARENDRA KUMAR TIWARI AND OTHERS Vs. STATE OF JHARKHAND AND OTHERS reported in (2018) 8 SCC 238**, para No.7 of the judgment reads as under:

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

This is precisely what Umadevi (3) and Kesari sought to avoid.

35. In the case of **BRIJ MOHAN LAL V. UNION OF INDIA** reported in **(2012) 6 SCC 502**

Para. 172, 173, 174 and 175 reads as under:

172. The prayer for regularization of service and absorption of the petitioner appointees against the vacancies appearing in the regular cadre has been made not only in cases involving the case of State of Orissa, but even in other States. Absorption in service is not a right. Regularization also is not a statutory or a legal right enforceable by the persons appointed under different rules to different posts. Regularization shall depend upon the facts and circumstances of a given case as well as the relevant Rules applicable to such class of persons.

173. As already noticed, on earlier occasions also, this Court has declined the relief of regularization of the persons and workmen who had been appointed against a particular scheme or project. A Constitution Bench of this Court has clearly stated the principle that in matters of public employment, absorption, regularization or permanent continuance of temporary, contractual or casual daily wage or ad hoc employees appointed and continued for long in such public employment would be de hors the constitutional scheme of public

employment and would be improper. It would also not be proper to stay the regular recruitment process for the posts concerned.[Refer to Uma Devi (3).]

174. It is not necessary for us to deliberate on this issue all over again in view of the above discussion. Suffice it to notice that the petitioner appointees have no right to the posts in question as the posts themselves were temporary and were bound to come to an end by efflux of time. With reference to the letters of their appointment and the Rules under which the same were issued, it is clear that these petitioners cannot claim any indefeasible right either to regularization or absorption. It may also be noticed that under the Orissa Superior Judicial Service and Judicial Service Rules, 2007, there is no provision for absorption or regularization of ad hoc Judges.

175. The petitioners from the State of Andhra Pradesh have also prayed for identical relief claiming that the advertisement dated 28-5-2004 issued for filling up the vacancies in the regular cadre should be quashed and not processed any further and the petitioners instead should be absorbed against those vacancies. In view of the above discussion, we find no merit even in these submissions.

36. In a recent decision of the Supreme Court **UNION OF INDIA AND ORS. V. CENTRAL ADMINISTRATIVE TRIBUNAL AND ORS. ETC.ETC.** reported in Civil Appeal Nos.175-176 of 2019 @ SLP (C) Nos. 37798-37799 of 2013 on 08.01.2019 held under what circumstances and at what point of time Regularization is permissible. In other words those employee who have not completed 10 years of service as on the date of deciding **UMADEVIS (3)** case viz., on 10.04.2016 are not entitled to regularization. Whereas, in the present petitions petitioners were appointed to the post of Accountant Consultancy on 25.06.2007. Hence, claim for regularization of the petitioners would be contrary to **UMADEVIS (3)** case supra.

37. Regularisation of employees is required to be examined with reference to the following issues:

- (1) Union of India and State Government instrumentalities cannot

make appointment *de horse* the Constitutional Scheme of public employment.

On this issue Hon'ble Supreme Court had an occasion to deal with the following decisions:

- (i) **UMADEVI (3)** cited supra (Para. 2 and 6)
- (ii) **Surinder Prasad Tiwari v. U.P Rajya Krishi Utpadan Mandi Parishad** reported in (2006) 7 SCC 684 (Paras. 38 and 61)
- (iii) **MEHERCHAND POLYTECHNIC vs ANU LAMBA** reported in(2006)7SCC 161 (para.16).

(2) Equality of opportunity in public employment is the basic structure of Constitution which the State has to honour while making recruitment.

This issue has been examined by the Hon'ble Supreme Court in the following cases:

(i) **UMADEVI (3)** (para.11)

(ii)**RESERVE BANK OF INDIA vs GOPINATH SHARMA** reported in (2006) 6 SCC 221

The Hon'ble Apex Court set-aside the directions of the High Court on regularizing the services of a workman

who was appointed on daily wages and was not working on regular basis.

(3) Mere allowing continuance, whether under Interim Order passed by various Courts, Tribunals or otherwise, does not confer any right.

This issue has been examined in **UMADEVI's (3)** case at paras. 43 and 45 respectively.

(4) Scheme of Regularisation cannot prevail over Rules which are statutory in nature.

This point has been considered in the following decisions:

(i) **UMADEVI's case** (Para.6)

(ii) **PUNJAB WATER SUPPLY AND SEWAGE BOARD vs RANJODH SINGH** reported in (2007) 2 SCC 491 (Para.19)

(5) Courts cannot frame or direct framing of Schemes for regularization of temporary employees as held by the Hon'ble Apex Court in the case of **STATE OF KARNATAKA V. KGSD CANTEEN EMPLOYEES' WELFARE ASSOCIATION** reported in (2006) 1 SCC 567 (para.44).

(6) No directions for regularization, fixation of pay scale, continuance of service, promotion etc. shall be given by the Courts as these are functions of the Executives.

These issues were considered by the Apex Court in **UNION OF INDIA V PUSHPA RANI** reported in ((2008) 9

SCC 242) and **P.U.JOSHI vs ACCOUNTANT GENERAL** reported in (2003) 2 SCC 632 (paras. 35 to 37 and 10 respectively)

(7) Scope of Judicial review is limited.

This issue has been considered by the Hon'ble Supreme Court in the following decisions:

(i) **INDIAN DRUGS AND PHARMACEUTICALS LTD. v WORKMEN, INDIAN DRUGS AND PHARMACEUTICALS LTD.** reported in (2007) 1 SCC 408 (para.37)

(ii) **STATE OF MANIPUR AND ANOTHER v KSH. MOIRANGNITHOU SINGH AND OTHERS** reported in (2007) 10 SCC 544 (para.7)

(iii) **UNION OF INDIA vs PUSHPARANI** reported in (2008) 9 SCC 242 (para.7)

(8) Mere fact that there was selection even for temporary appointment is inconsequential.

This issue has been decided by the Hon'ble Supreme Court in the case of **Dr. (Mrs.) Chanchal Goyal vs State Of Rajasthan** reported in (2003) 3 SCC 485 wherein it was held that mandatory compliance cannot be part of recruitment Rules.

Merely because there was selection for temporary appointment, the same by itself was not confer right on the employee to claim

regularization. Thus, there is no scope for regularization.

(9) Termination in accordance with terms and conditions of the appointment letter is to be adhered.

This issue has been dealt by the Hon'ble Apex Court in the following decisions:

(i) **MUNICIPAL COUNCIL, SAMRALA vs SUKHWINDER KAUR** reported in (2006) 6 SCC 516 (paras. 7 and 9)

7. The respondent, within a span of about 18 months, was appointed thrice and disengaged thrice. As noticed hereinbefore, she was appointed on a contractual basis. The appointments were temporary ones. She was aware that her services could be terminated without notice. She accepted the terms and conditions of the said offers of appointments without any demur.

9. Although, there was no fixed period of contract of employment between the employer and the workman concerned and thus, no question of its renewal on its expiry, but there existed a stipulation in the contract that the Executive Officer has the power to dismiss her without issuing any notice. The question, which now arises for consideration, is whether Section 2(oo)(bb) of the Act is attracted to the facts and circumstances of this case.

(ii) **VIDYAVARDHAKA SANGHA V. Y.D. DESHPANDE** reported in (2006) 12 SCC 482

(iii) **STATE OF RAJASTHAN vs SAJEET SINGH** reported in (2006) 8 CC 508 held continuance despite the expiry of contract period was held not to be sufficient to confer right of regularization.

(iv) **STATE OF PUNJAB vs SUPREET RAJPAL** reported in (2007) 13 SCC 290 The Hon'ble Apex Court set-aside the order of High Court for regularization dehorse the terms and conditions of appointment letter.

(v) In **Chanchal (Dr.)** cited supra it was observed that unless the initial recruitment is regularized through the prescribed agency, there is no scope for regularization.

In the case on hand, it is clearly stated that initial order of appointment with the workman was required to make room once a candidate selected by the Service Commission was available, non-joining of a candidate, would not enure to the benefit of a temporary employee on the ground that appointment itself was subject to the condition of availability of duly selected candidate.

(10) Regularisation is not the mode of recruitment:

39. As Held by the Hon'ble Supreme Court
in ***National Fertilizers Ltd. v. Somvir Singh***
reported in (2006) 5 SCC 493 (Para.18)

(11) Illegality having been committed in the past is no ground that it would be perpetuated:

Article 14 of the Constitution is a positive concept as held in the case of **BIHAR PUBLIC SERVICE COMMISSION vs KAMINI** reported in (2007) 5 SCC 519 ... (Para.10)

(12) Principle of Equal pay for equal work cannot be invoked as held by the Hon'ble Supreme Court in the case of **STATE OF KARNATAKA V. KGSD CANTEEN EMPLOYEES' WELFARE ASSOCIATION** cited supra (para.48)

(13) No legitimate expectation of a temporary employee or a contract employee, has been discussed by the Hon'ble Apex Court in the case of **UMADEVIS (3)** case at para.47.

(14) Interim order to be declined:-

- In **UMADEVIS (3)** case Hon'ble Supreme Court deprecated the practice of the Highcourt's on staying regular selection and laid down that the High Courts should not give interim directions since if employees ultimately are entitled to relief, the same could be extended while disposing the matter.

(15) Denuding of decisions running contrary to ratio laid down in **UMADEVİ's (3)** case. Para.54 which is relevant reads as under:

“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.

(i) In the case of **U.P SEB v. POORAN CHANDRA PANDEY** reported in (2007) 11 SCC 92, wherein Court has directed for regularizing as held in **UMADEVİ's (3)** Judgment. It was considered in Three Judges Bench in **OFFICIAL LIQUIDATOR vs DAYANAND** reported in (2008) 10 SCC 1, wherein while heavily advocating judicial discipline, the Court held the observations made in **POORAN CHANDRA PANDEY** supra to be treated as *obiter* and not as a binding by the High Courts, Tribunals and other judicial foras.

40. Division Bench decision of the Punjab and Haryana High Court at Chandigarh in **SHILPA JINDAL AND ORS. vs CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH BENCH AND ORS.** reported in 2016(3) SCT 486 (P&H) has held as under:

“14. For the purpose of seeking writ of mandamus, one has to establish the legal right. The petitioner does not have any legal right emanating from any statutory Rules/Regulation. In the absence of any provision for regularisation of contract employees, this Court has no power to give a direction to the respondents to consider the petitioner for regularisation either in the post of Lecturer or in the post of Assistant Professor (Associate Professor).

15. The Supreme Court has authoritatively ruled that the Tribunal and Courts cannot give directions to the department/Government Institution or Organizations to regularise services of an employee. Such a direction and implementation of the same would be violative of Articles 14 and 16 of the Constitution. When the petitioner was appointed on contract basis to the post of a Lecturer in the year 2003, the advertisement, as well as, appointment order made clear that selection and appointment was on contract basis. The contract appointment cannot be converted into regular appointment on the sole ground that the petitioner has continued for more than a decade. Had the respondents notified the selection and appointment to the post of Lecturer for 'regular recruitment', large scale candidates who were eligible and/or already working elsewhere on contract basis would be denied to compete for

selection and appointment to the post of Lecturer/Assistant Professor. In other words, each and every eligible candidate must know the nature of public appointment. This Court cannot give direction to regularise petitioner's services by way of writ of mandamus, since the petitioner has not pointed out under which statutory rules she

has got right to seek regularisation. Unless right is vested in a person, Court cannot issue writ of mandamus to the respondents. Mandamus can be issued against a public authority only on its failure to perform mandatory legal duty. If there is no such

failure, mandamus would not be issued. The Supreme Court in the case of *Mani Subrat Jain v. State of Haryana* MANU/SC/0540/1976 : (1977) 1 SCC 486 held as follows:-

"9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something (See Halsbury's Laws of England 4th Ed. Vol. 1, paragraph 122;

State of Haryana v. Subash Chander Marwaha & Ors. (1) Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors. (2) and Ferris Extraordinary Legal Remedies paragraph 198."

In the case of Tirumala Tirupathi Devasthanams v. K. Jotheeswara Pillai (dead) by

LRs and others MANU/SC/7616/2007 : (2007) 9 Supreme Court Cases 461, it has been held that:-

"9. The principles, on which a writ of mandamus can be issued, are well settled and we will refer to only one decision rendered in The Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh

MANU/SC/0060/1977 : AIR 1977 SC 2149, where this Court observed as under:-

"A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limits of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to

do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance."

16. None of the decisions cited on behalf of the petitioner would assist the petitioner's case for seeking regularisation of her services in the absence of statutory provision. Moreover, factual aspects of the cited decisions are entirely different and are not related to regularisation of contract appointees. The petitioner relied upon decision in Dr. Gagan Inder Kaur's case (Supra) which is of the year 1995. In the said case the ad hoc appointment of the petitioners was held as regular. In Guneeta Chadha's case (Supra), which is of the year 2001, this Court held that ad hoc appointees are to be treated as having been regularly appointed. In Lalit Kumar Verma's case (Supra), while referring to Umadevi's case, relief was refused to the employees. In Smt. Shashi Tejpal's case (Supra), this Court in the year 2008, in the matter of grants-in-aid regular appointment against un-aided post, held that regular appointment against un-aided post to be treated as regular appointment against aided. In Sumangal Roy's case (Supra) decided in 2007 by this Court, ad hoc appointment to the post of Lecturer, made in the year 2001 was directed to be treated as regular and to grant consequential benefits. Since that direction was not implemented, once again they approached the Court. In the said case, there is no reference

to Umadevi's case (Supra). In Maninder Singh's case (Supra), decided by this Court in 2009, with reference to Sumangal Roy's case (Supra) and there is no reference to Umadevi's case. In Nihai Singh's case (Supra) decided in the year 2013, having regard to the factual aspects of the case, Umadevi's case was distinguished and direction was given to regularise the services by creating posts. In Narendra Kumar Tripathi's case (Supra) issue involved was of counting of ad hoc service towards seniority.

17. The respondent's counsel relied on Sadanandam's case (Supra) and S.L. Dutta's case (Supra), both relate to policy matters pertaining to recruitment. In Sukanti Mohapatra's case (Supra), the judgment pertains to inter se seniority between regular and irregular appointees, which is not relevant to the present case. The decision by Constitution Bench in Umadevi's case (Supra), of the year 2006, is relevant to the present case.

18. The decision in Tutu Das (Dutta)'s case (Supra), relied upon by the respondent's counsel is relevant to the present case, wherein Supreme Court has referred to number of judgments including Umadevi's case (Supra), to hold that regularisation of daily wagers is not permissible. It is necessary to take note of paragraph 12 of the judgment, which reads as follows:-

"12. What was considered to be permissible at a given point of time

keeping in view the decisions of this Court which had then been operating in the field, does no longer hold good. Indisputably the situation has completely changed in view of a large number of decisions rendered by this Court in last 15 years or so. It was felt that no appointment should be made contrary to the statutory provisions governing recruitment or the rules framed in that behalf under a statute or the proviso appended to Article 309 of the Constitution of India."

In Nanuram Yadav's case (Supra) though matter relates to ad hoc appointment and regularisation, the facts of the case are entirely different. Therefore, it is not a relevant to the present case. The decision in Mamata Mohanty's case (Supra) of the year 2011, is also not relevant, since the matter pertains to grant of UGC pay scales with reference to lack of qualification etc.

19. The Administration of the States has to be carried on through the agency of large number of persons employed in various services and posts under the States. The services under the State Governments consist of civil services. There is relationship of master and servant between the States and its servants but such relationship is not left to be regulated as a mere contractual relationship in view of the provisions contained in part III of the Constitution (Fundamental rights) and part XIV (Articles 309 to 323). Their rights and obligations are all required

to be determined by the provisions of statutes and statutory rules which may be framed or altered by the competent authority unilaterally and are not to be determined by consent of both the parties as in the case of contractual relationship. Matters relating to the services include the power to create or abolish the services or posts fixing the strength of a cadre, prescription of powers and duties attached to the post and every matter relating to services including matters relating to recruitment and conditions of service. It is competent for the legislature to provide for all matters relating to the services in exercise of its legislative power. Rules framed under Article 309 have to be strictly confined to recruitment and conditions of services of persons mentioned therein. Under Article 309 the power of legislature to regulate recruitment and conditions of service is wide and includes power to constitute a new cadre by merging certain existing cadres. Subject to the law made by legislature the rule has the same efficacy as that of legislative enactment. This legislative power carries with it the power to amend or alter the rules with retrospective effect. A rule made in exercise of the power under the proviso to Article 309 constitutes law within the meaning of Article 235. For the same reason such rule may be struck down only on such ground as may invalidate a legislative measure, e.g., violation of Articles 14 and 16 and not because the Court considers it to be unreasonable.

20. In Umadevi's case (Supra) it was held that adherence to the rule of equality in Public Employment is a basic feature of our Constitution. Court would certainly be disabled from passing an order upholding of Article 14 in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution of India. The Court further rejected the prayer that ad hoc appointees working for long to be considered for regularisation as such a course only encourages the State to flout its own rules of recruitment and would confer undue benefits on some at the cost of many waiting to compete.

21. The next word, which is of utmost important in deciding the issue in this case, is the meaning of the word 'regularisation'. The Constitution Bench in Umadevi's case (Supra) has approved the judgments in (1) State of Mysore v. S.V. Narayanappa MANU/SC/0232/1966 : 1967 (1) SCR 128 (2) R.N. Nanjundappa v. T. Thimmiah & another MANU/SC/O680/1971 : (1972) 1 SCC 409 and (3) B.N. Nagarajan and others v. State of Karnataka & others MANU/SC/O450/1979 : (1979) 3 SCR 937, where this word has been explained. To understand the concept of regularisation, it is necessary to look into these decisions.

22 . In R.N. Nanjundappa's case (Supra), the Hon'ble Supreme Court while considering the rules providing for methods of recruitment by

promotion, selection or competitive examination has held as under:-

"26. regularisation cannot be said to be a form of appointment. Counsel on behalf of the respondent contended that regularisation would mean conferring the quality of permanence on the appointment whereas Counsel on behalf of the State contended that regularisation did not mean permanence but that it was a case of regularisation of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularised. Ratification or regularisation is possible of an act, which is within the power and province of the authority, but there has been some non-compliance with procedure or manner, which does not go to the root of the appointment. regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

23.1n B.N. Nagarajan's case (Supra), the meaning of the word 'regular' and 'regularisation' has been further explained:-

"Firstly, the words "regular" or "regularisation" do not connote permanence. They are terms calculated to condone any procedural

irregularities and are meant to cure only such defects as are attributable to the methodology followed in making the appointments. They cannot be construed so as to convey an idea of the nature of tenure of the appointments. When rules framed under Article 309 of the Constitution of India are in force, no regularisation is permissible in exercise of the executive powers of the Government under Art. 162 thereof in contravention of the rules

24. A three judge Bench of the Apex Court in *A. Umarani v. Registrar of CO-Operath Societies and others* MANU/SC/0571/2004 : (2004) 7 SCC 112 dealing With regularisation has held as under:

"Regularisation, In our considered opinion, is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed thereunder. It is also now well settled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

40. It is equally well settled that those who come by back door should go through that door.

41. Regularisation furthermore cannot give permanence to an employee whose services are accused hoc in nature.

45. No regularisation is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointment have been made in contravention of the statutory rules."

25. The Constitution Bench in Umadevi's case (Supra) dealing with regularisation has held as under:-

"17. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularise an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

18. XXX XXX XXX

19. One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality of the project is also of equal concern for the State. The State works

out the scheme taking into consideration the Financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It Is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counter-productive "

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26. Subsequently, the ratio of the Constitution Bench judgement has been followed as reiterated for declining the claim of regularization of services made by the ad hoc/temporary daily wage/casual employment in (i) Indian Drugs and Pharmaceuticals Ltd MANU/SC/4993/2006 : (2007) 1 scc 408;(ii) Gangadhar Pillai v. Simens Ltd. MANU/SC/8652/2006 : (2007) 1 SCC 533; (iii) Kendriya Vidyalaya Sangthan v. L.V. Subramanyeshwara and another reported Manu /SC/2322/2007 : (2007) 5 SCC 326; and (iv) Hindustan Aeronautics Ltd. v. Dan Bahadur Singh and Others reported In MANU/SC/7373/2007 : (2007) 6 SCC 207.

27. The doubts raised In UP State Electricity Board v. Pooran Chandra Pandey MANU/SC/8004/2007 : (2007) 11 SCC 92, on the applicability of Constitution Bench in

Umadevi's case (Supra) in a case where regularisation is sought for in pursuance of Article 14 of the Constitution or the conflict with the judgment of the seven judges bench in Maneka Gandhi v. Union of India MANU/SC/0133/1978 : (1978) 1 SCC 248, has also been set at rest In the case of Official Liquidator v. Dayanand and others

MANU/SC/4591/2008 : (2008) 10 SCC 1.

28. From the above discussion, it is clear that the law regarding regularisation is now well settled by the decision of the Constitution Bench of the Apex Court in Umadevi's case (Supra). The said judgment holds the field and is binding.

29. What could be deduced from the cited decision is as under:-

(i) Any public employment has to be in terms of the Constitutional scheme.

(ii) Adherence to the rule of equality in public employment is a basic feature of our Constitution.

(iii) Regular appointment must be the rule.

(iv) A regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up.

(v) The appointment should be in terms of relevant rules and after a proper competition among the qualified persons. Otherwise, such appointment

would not confer any right on the appointee. (vi) If a contractual appointment is made, the appointment comes to an end

at the end of the contract. The Government or the instrumentality of the State cannot confer any permanency of such employment either by way of regularisation or by way of absorption.

(vii) If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.

(viii) A temporary employee could not claim to be made permanent on the expiry of his term of appointment.

(ix) Merely because a temporary employee or a casual wage worker is continued for a time being 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.

(X) Regularisation is not a mode of appointment.

(xi) The Government or the instrumentality of the State cannot regularise the appointment made contrary to the course of selection as envisaged by the relevant rules governing the Posts.

(xii) The High Court acting under Article 226 of the Constitution of India should not issue directions for regularisation or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.

(xiii) There should be no further by-passing of the constitutional requirement and regularization or making permanent those not duly appointed as per the constitutional scheme.

30. The Constitutional principle is thus for providing equality of opportunity to all which mandatorily requires that each vacancy must be notified in advance, meaning thereby that information of the recruitment must be disseminated in a reasonable manner in public domain ensuring maximum participation of all eligible candidates, thereby the right of equal opportunity and merit is effectuated.

31. The petitioner though contended that she has been appointed on contract basis with due procedure, like advertisement and selection and in accordance with the Constitutional Scheme, but the nature of appointment is only for contract and it is for a limited period, that too with the condition that such appointment would be till regular recruitment is made through UPSC. Therefore, contention of the petitioner that due procedure has been followed while appointing her as a Lecturer/Assistant Professor, is distinguishable for the purpose of regularisation. In Umadevi's case (Supra), the Supreme Court has made clear that "we also clarify that regularisation, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

32. In Umadevi's case (Supra) there is an exception. General principles against regularisation like the employees who have worked for 10 years or more against a sanctioned post without the benefit or protection of the interim order of any Court or Tribunal. Thus the employee should have been continued in service voluntarily and without break of more than 10 years and appointment of such employee should not be illegal even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments would be considered to be illegal. However, the employee while possessing the prescribed qualification and was working against sanctioned post but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular. Umadevi's case (Supra) casts a duty upon the concerned Government or instrumentality to take necessary steps to regularise the services of those irregularly appointed employees who had served for more than 10 years without the benefit or protection of any interim orders of Court's or Tribunals as a one-time measure. The said direction was to be set in motion within 6 months from the date of its decision i.e. w.e.f. 10.4.2006. The true effect of the direction is that all employees who have worked for more than 10 years as on 10.4.2006, the date of decision in Umadevi's case (Supra) are entitled to be considered for regularisation, if otherwise they are eligible. Unfortunately, petitioner's case does not fall within the principle laid down by the Supreme Court in the case of Umadevi's case

(Supra). The conditions stipulated for regularisation would be prior to the date of disposal of Umadevi's case (supra) i.e. 10.4.2006. Consequently, it has no prospective application.

33. The equality clause enshrined in Article 16 requires that every appointment be made by an open advertisement as to enable all eligible persons to compete on merit. However, appointment of the petitioner on contract basis, it is crystal clear, was only for a limited period for 6 months, even though it was extended from time to time, one of the condition is that appointment is till the regular recruitment is made through UPSC. It is to be understood that a contractual appointment comes to an end at the end of the contract. It is also a term of the contract as well as the law regulating recruitment of persons on contract basis. Therefore, when such persons are to be recruited into service on permanent basis the law must again be followed i.e. all persons who are eligible be considered for appointment on permanent posts in accordance with the rules of recruitment and all of them should be given an opportunity by inviting applications indicating that selection and appointment to permanent/regular post/vacancy. That is the mandatory Policy of Articles 14 and 16 of the Constitution. If the regularisation of the petitioner is made, it is per se illegal and discriminatory as those eligible candidates, who had the requisite merit are denied the right to compete for the subject post. There is no intelligible differentia to treat the petitioner as a class by itself, so as to exclude other eligible candidates who possess requisite qualification and other

eligibility criteria from being considered as Lecturer/Assistant Professor.

34. One of the petitioner's contention is that she has rendered service more than a decade on contract basis when she is over age for the recruitment. In such eventuality, at the most the petitioner can seek for relaxation of age as approved by the Supreme Court in Umadevi's case (Supra).

35. In view of the principles laid down by the Constitution Bench of the Supreme Court in Umadevi's case (Supra) and other subsequent judgments, the petitioner is held not entitled to seek for regularisation of her service either to the post of Lecturer or as Assistant Professor. Accordingly, we decline to interfere with so far as denial of regularisation of the petitioner's services on the post of Lecturer/Assistant Professor is concerned. We also uphold the AICTE (Pay Scales, Service Conditions and Qualifications for the Teachers and Academic Staff in Technical Institutions (Degree) Regulations, 2010; Chandigarh College of Engineering and Technology, Chandigarh Administration, Professor, Associate Professor, Assistant Professor, Assistant Professor in Applied Sciences and Senior Librarian (Group 'A' Post) Recruitment Rules, 2012 and advertisement dated 20.9.2013.

41. The post of Accounting Consultants is not identified in Rules, 2004 and 2010, what has been identified is Accountant and appointing

authority has been identified as second respondent whereas petitioners have been selected and appointed by the delegation of the power to the Deputy Commissioner by the Government. Therefore, their initial appointment on contract basis by the Deputy Commissioner cannot be ratified by the 1st respondent or 2nd respondent to the extent of regularization of their services. If such regularization is permitted, it would amount to violation of Articles 14 and 16 of the Constitution read with Rules, 2004 and 2010. Perusal of each of the endorsement even in the Special Rules 2002 and 2005 dealt by the Division Bench of this Court, which was also case of delegation of power to appoint on contract basis to the respective Deputy Commissioner of the District even though appointing authority was Government/Head of the Department. In the present case, appointing authority is Head of The Department for Accountant post. It is evident that petitioners grievance has been considered at

length even to the extent of violative of Constitution Bench decision of the Hon'ble Supreme Court in **UMADEVI's** (3) case and Articles 14 and 16 of the Constitution and Rules, 2010. Further, petitioners initial appointment is on contractual basis and it was purely temporary for a period of one year with a rider for any reason it would not be made permanent. The right to regularization of a person on a purely contractual basis would depend on express or implied terms of the contract appointment. Even though, for administrative exigency, period of contract has been renewed from 2007 to 2017, that apart, petitioners are continuing by virtue of interim order to one of the Accounting Consultant post and not in the post of Accountant. Thus, petitioners have not made out a case seeking for regularization and consequential benefits.

42. This Court had occasions to decide, "Whether contract employees are entitled for

regularization/ absorption or not? With reference to the Special Rules, 2002 in fact, in the case decided, State Government has evolved a policy decision by framing Special Rules called "Karnataka State Civil Services (Absorption of Asst. Engineers and Junior Engineers appointed on contract basis and on ad-hoc basis in the water resource services (Special) Rules, 2002 and similarly, The Karnataka Civil Services (Absorption of persons appointed on contract basis against backlog vacancies in the category of Assistant Engineers and Junior Engineers in the Departments of the Public works Engineering, Water Resources and Rural Development and Panchayat Raj (Special) Rules 2005. Both the Special Rules were the subject matter before the State Administrative Tribunal wherein struck down the Special Rules, 2005 and upheld the validity of the Special Rules, 2002. Thereafter, the Tribunal's orders were the subject matter before this Court in W.P.Nos.41145-41158/2010 and

Connected matters disposed of on 13.07.2012. This Court reversed the order of the Tribunal, while striking down the Special Rule, 2002. Insofar as Special Rules, 2005, Tribunal's order is affirmed. In other words, nullified the Special Rules in respect of absorption and contract appointees. This Court in both the case of Special Rules, 2002 and 2005 elaborately and in depth considered various issues. **In the case of Special Rules, 2002** it was considered **exception to UMA DEVI'S** case (3) in para 77 to 87 with reference to earlier decisions. **Equality** in para 97 and **Discrimination** in para 98. **Subordinate legislation** in para 101 to 105. **Futile writs** in para 109. **Human problems** in para 110 to 113. In the case of **Special Rules, 2005** it was considered the **POST** in para 66 to 69, Recruitment in para 70 to 74, Absorption in para 75 to 81, **Absorption** as a mode of recruitment in para 82-83, **Regularisation** in para 84 to 91, **Regularisation as a mode of recruitment** in

para 92, **Law which holds the field today** in para.93 to 130, Article 162 in para 131 to 133, Absorption Rules in Para.134 to 140, **Resonable Classification** in para.141, **Equality** in para 142, **Discrimination** in para 143 and 144, **Challenge to subordinate legislation** in para 145 to 148, **Absorption of contract employees** in para 149, **Regularisation of contract employees** in para 150 to 157, **Futile writ** in para 158, **discrimination among SC and ST** in para 159, **Abandonment** in para 160 and **Human Problems** in para 161 to 163. The relevant paragraph of the Order of this Court in W.P.Nos.41145-41158/2010 & connected matters (supra) as regards Special Rules, 2002 decision, operative portion of the order is reproduced herein;

“All the writ petitions challenging the Karnataka State Civil Services (Absorption of Assistant Engineers and Junior Engineers appointed on contract basis and ad hoc basis in the Water Resources Services)

(Special) Rules 2002 are allowed, setting aside the order passed by the Karnataka Administrative Tribunal dated 9th April 2010 in Application No. 3005/2003 and other connected matters.

1. The Karnataka State Civil Services (Absorption of Assistant Engineers and Junior Engineers appointed on contract basis and ad hoc basis in the Water Resources Services) (Special) Rules 2002, are contrary to Article 16(3) as well as Article 14 and 16 of the Constitution of India as void ab initio, and accordingly it is struck down.
2. The respondent shall initiate recruitment process to the posts which are absorbed under the impugned Absorption Rules forthwith and complete the same within a period of six months from today and the outer limit being one year from today. All the persons absorbed/appointed/regularized under the impugned Rules are permitted to continue in service till the appointments are made in pursuance of the recruitment in terms of Karnataka Public Works (Irrigation Services (Recruitment of Assistant Engineers and Junior

Engineers) (Special) Rules, 1998, within a period of one year, whichever is earlier.

3. The eligibility for applying as against these vacancies would be that all persons who possess the requisite educational qualification as well as age as on 11.2.1999, the day on which aforesaid special rules came into force. Only those persons who possess the requisite qualification as on 11.2.1999 shall be considered by filling up those vacancies which have been filled up under the impugned Absorption Rules.

Parties to bear their own costs”.

43. The relevant paragraph of the operative portion of the order in W.P.Nos.15314-15378/2009 and connected matters disposed of on 13.07.2012 in respect of Special Rules, 2005 is reproduced here under:

“All these writ petitions challenging the impugned order passed by the Karnataka Administrative Tribunal in application No. 6258/2003 and other connected matters dated

25th day of May, 2009, are dismissed.

- 1) The order passed by the Karnataka Administrative Tribunal declaring that the Karnataka Civil Services (Absorption of persons appointed on contract basis against backlog vacancies in the category of Assistant Engineers and Junior Engineers in the Department of Public Works Engineering, Water Resources and Rural Development and Panchayat Raj) (Special) Rules, 2005 as being contrary to the provisions of Article 14 and 16 of the Constitution of India and the several decisions of the Supreme Court and consequently striking down the said Rules is hereby affirmed.
- 2) The respondents shall initiate recruitment process to the backlog vacancies under the provisions of the Karnataka State Civil Services (Unfilled vacancies reserved for the persons belonging to the Scheduled Caste/ Scheduled Tribes) (Special Recruitment) Rules 2001, i.e., Backlog Rules and complete the same within a period of 6 months from today and the outer limit being one year from today.
- 3) The eligibility for applying as against those backlog

vacancies would be the qualification, educational and age prescribed in the Backlog Rules of 2001 as on the day the said Rules came into force i.e., 21st of November 2001. Only those persons who possessed the requisite qualification as on 21st November 2001 shall be considered for filling up of those backlog vacancies.

- 4) All the persons absorbed/appointed/regularized under the impugned Rules are permitted to be continued in service till the appointments are made in pursuance of the Rules of 2001 as aforesaid or for a period of one year, whichever is earlier.
- 5) This recruitment to fill up the backlog vacancies shall apply only to the backlog vacancies which were existing on the day the Backlog Rules came into force i.e., 21st of November, 2001.
- 6) Parties to bear their own costs”.

44. The Division Bench matters were taken-up before the Apex Court wherein decisions of the Division Bench have been affirmed.

45. State/Department directed henceforth, to consider and make regular APPOINTMENTS only in terms of Cadre Recruitment Rules, 2010, “A person appointed temporarily on ad hoc basis has no right to the post. A fortiori, casual or daily-rated workers or stop-gap appointees will also have no such right – Merely because a person continues under interim orders of the court, such continuance to the post cannot confer any right to continuance or regularisation. Successive extensions of temporary appointment does not give rise to legitimate expectation of regularization. State Government should be a model Employer. For umpteen departments recruitment and appointment to each of the Public Post is required to comply Constitutional scheme/ provision like Articles 14, 16, 309 read with KCSR Act, 1978 and respective rules of recruitment governing the post. In this regard Chief Secretary of the State must issue appropriate direction to each of the selecting and

appointing authority to adhere to the aforesaid provisions, since errors are being committed even today, despite Constitution bench decision in the case of **UMA DEVI's** (3) case supra rendered in 2006.

46. Right to regularization of a person on a purely contractual basis would depend on express or implied terms of the contract as reported in **STATE OF ORISSA vs CHANDRA SEKHAR MISHRA** reported in (2002)10 SCC 583. Para. 4 of the said judgment which is relevant reads as under:

“4. In our opinion, there were two fundamental errors in that relief being granted to the respondent. Firstly, the services of the respondent were terminated with effect from 31.1.1978 and the respondent did not approach the Tribunal within the period of limitation provided by the statute. On this ground alone, the Tribunal should not have entertained the appeal. Secondly, the respondent was appointed on 1-2-1972 on contract basis for a period of three years. This period of contract was extended up to 31-1-1978. When the respondent was only a contractual

employee, there could be no question of his being granted the relief of being directed to be appointed as a regular employee”.

47. In view of decisions in Special Rules 2002 and 2005 and the fact that in **RAJESH'S** case all the issues dealt by the Division Bench of this Court are not considered, so also in the case of **NIHAL SINGH** supra, both the decisions do not assist the petitioner's case. In **NIHAL SINGH'S** case factual aspects are entirely different, in that case it was interpretation of Section 17 of the Police act in that State.

ORDER

47. Accordingly, the Writ Petitions stand dismissed. No order as to costs.

Copy of this judgment be communicated to the Chief Secretary, State of Karnataka through Registry of this Court for reference and communication to each of the Department of the State to avoid contract appointment for longer period. Further, resort for regular recruitment to

each of the public post in accordance with the Rules of recruitment governing the post and to comply with the Constitutional provisions read with Constitution Bench decision in the case of **UMADEVI (3)** supra [**PARA 53**].

**Sd/-
JUDGE**

Brn