MANAGER (NOW REGIONAL DIRECTOR), R.B.I. A

v.

GOPINATH SHARMA AND ANR.

JULY 17, 2006

[DR. AR. LAKSHMANAN AND LOKESHWAR SINGH PANTA, JJ.] B

Constitution of India, 1950:

Articles 14, 16 and 226—Policy for engaging daily wage workers framed by Reserve Bank of India—High Court in writ petition directing reinstatement of disengaged worker with back wages—Held, High Court erred in examining legality of the policy of RBI and holding it contrary to Articles 14 and 16—Order of High Court set aside and that of Labour Court restored. C

Article 226—Finding of fact recorded by Labour Court that workman did not complete 240 days—High Court in writ petition by disengaged worker setting aside order of Labour Court and directing his reinstatement with back wages—Held, High Court erred in allowing writ petition—Workman was also not entitled to back wages as per the principle of "no work-no pay"—Industrial Disputes Act, 1947—Disengaged daily wage worker—Claim for reinstatement and back wages—Delay/Laches. D

E

Industrial Disputes Act, 1947:

Reference to Labour Court after 13 years—Held, a dispute which is stale could not be subject matter of reference—Delay/Laches.

Respondent No. 1, a daily wage worker in the appellant Bank, was included in the list of such workers for the year 1975-76, but was not included in the list for the year 1976-77. His representation was rejected. However, he again made representation relying on the decision of the Supreme Court in *H.D. Singh's case. The Central Government on 25.1.1989, ultimately, referred the matter for adjudication to the Central Government Industrial Tribunal-cum-Labour Court. The Labour Court rejected the claim on the ground of delay and laches as also on merits holding that since the workman did not complete the service of 240 days, he was not entitled to benefit of s.25-F of the Industrial Disputes Act, 1947, nor could he be given the benefit of decision in *H.D. Singh's* case. But his writ petition was allowed by the High Court ordering his reinstatement with partial back wages. Aggrieved, the employer** F G H

A Bank filed the present appeal.

On the questions: (i) whether the High Court in a petition under Article 226 of the Constitution of India, assailing the correctness of the judgment of the Labour Court on a dispute arising under the Industrial Disputes Act, was justified in examining the policy of the R.B.I. on the touchstone of Article 14 B of the Constitution of India; (ii) whether the High Court, in proceedings under Article 226, can interfere with the findings of the Labour Court on factual issues in the absence of a challenge on the ground of perversity and can award relief on a ground not raised before the Tribunal; and (iii) whether a person can be ordered reinstatement even when he was engaged on day-to-day basis C and it is not established that he was working on regular post and without establishing any right to hold any post particularly when respondent No.1 had worked only for 58 days.

Allowing the appeal, the Court

D HELD: 1. The High Court has clearly erred in examining the legality of the policy and giving relief solely on the ground that it found the policy and actions of the appellant contrary to Articles 14 and 16 of the Constitution of India. It is pertinent to notice that the High court has taken into consideration an entirely new aspect which was neither pleaded by the petitioner in the writ petition nor was claimed in the claim statement filed before the Labour Court, E without giving an opportunity to the parties to effectively reply to the same. [605-B-C]

Secretary, State of Karnataka & Ors. v. *Umadevi & Ors.*, JT (2006) 4 SC 420 and *Manager, Reserve Bank of India, Bangalore* v. *S. Mani & Ors.*, [2005] 5 SCC 100, relied on.

F

2.1. Respondent No.1 has worked for 58 days on casual basis. There is no cross-examination on this aspect. Besides, respondent No. 1 was discharged in July 1976 and the reference was made on 25.1.1989 nearly after 13 years. A dispute which is stale could not be a subject matter of reference. The High Court, on erroneous view of the facts and circumstances G of the case, allowed his petition without taking into account the categoric finding of fact recorded by the Labour Court that he had not completed 240 days in the Bank and held that this will not make much difference. Such a casual approach is not warranted. Order passed by the High Court is set aside. [605-F-G; 613-E-F]

H **H.D. Singh* v. *Reserve Bank of India*, AIR (1986) SC 132 - [1985] 4

SCC 201, distinguished. A

Nedungadi Bank Ltd. v. *K.P. Madhavankutty & Ors.*, JT (2000) 1 SC 388 and *S.M. Nilajkar & Ors.* v. *Telecom District Manager, Karnataka,* JT (2003) 3 SC 436, relied on.

Balwant Singh v. *Labour Court, Bhatinda,* (1996) Labour Industrial Cases 45 and *Employers in relation to the Management of Sudamdih Colliery of M/s Bharat Coking Coal Ltd.* v. *Their Workman represented by Rashtriya Colliery Mazdoor Sangh,* JT (2006) 1 SC 411, referred to. B

2.2. The High Court completely erred in relying on Section 25G of the Industrial Disputes Act, 1947 and thus misdirected itself about the applicability of the Section as the case in hand does not involve retrenchment. [606-E] C

The Haryana State Agricultural Marketing Board v. *Subhash Chand & Anr.*, JT (2006) 3 SC 393, relied on.

Regional Manager, S.B.I. v. *Rakesh Kumar Tewari,* JT (2006) 1 SC 252 and *Regional Manager, State Bank of India* v. *Raja Ram,* [2004] 8 SCC 164, referred to. D

3. The High Court also failed to consider that inclusion of the name in the waiting list for appointment as 'Ticca Mazdoor' on day-to-day basis does not confer any right for regular appointment or to hold any post. No relief can now be given to respondent No.1 especially when the system of keeping waiting list for Ticca Mazdoor has been dispensed with since 23.7.1993 and E at present the Bank does not maintain any list. The High Court, therefore, wrongly proceeded on the basis as if the daily wage appointment is for a regular post on which a person can be reinstated. The High Court has also committed an error in giving the relief of reinstatement with back wages without considering whether the workman was gainfully employed from 1976 till date F of judgment, there being no evidence on record. Likewise, the High Court ought to have seen that respondent No.1 was not entitled to any back wages on the basis of the well settled principle "No work - No Pay". [606-E-H]

M.G. Datania v. *Reserve Bank of India,* [2004] 10 SCC 451 and *Rajasthan State Road Transport Corpn. & Ors.* v. *Zakir Hussain,* [2005] 7 G SCC 447, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7902 of 2004.

From the Judgment and Order dated 4.9.2003 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 35290/1996. H

A Mahendra Anand, H.S. Parihar, Kuldeep Parihar and D.K. Sharma for the Appellant.

Pramod Swarup, Pareena Swarup, Ameet Singh and Praveen Swarup for the Respondents.

B The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. The appellant, the Manager (Now Regional Director), Reserve Bank of India, Mall Road, Kanpur, aggrieved against the final judgment and order dated 4.9.2003 of the High Court of Judicature at Allahabd in Civil Misc. Writ Petition No. 35290 of 1996, has filed this appeal. C The High Court allowed the writ petition filed by the first respondent herein and set aside the award of the Industrial Tribunal/Labour Court and ordered reinstatement on similar post with back wages.

BACKGROUND FACTS:

D Respondent No.1 was advised that he has been wait listed for daily wage casual employment in the Bank at Lucknow office of the Bank. Respondent No.1 applied for consideration of his day-to-day appointment which request was acceded to. In June, 1975, respondent No.1 acquired qualification of High School but did not inform the Bank about the same. E Therefore, his name was included in the fresh list from 1.7.1975 to 30.6.1976 and was allowed to work during the aforesaid period. The name of respondent No.1 was not included in the fresh list from 1.7.1976 to 30.7.1977. He made representation for inclusion of his name in the fresh list from 1976-1977. However, his representation was turned down by the Bank. Respondent No.1 again started making representations for taking him back on the basis of the F judgment of this Court in *H.D. Singh* v. *Reserve Bank of India,* AIR (1986) SC 132, [1985] 4 SCC 201 and thereafter raised an industrial dispute before the Assistant Labour Commissioner (Central) Kanpur. The Central Government referred the matter for adjudication to the Labour Court/Industrial Tribunal, Kanpur as under:-

G

> "Whether the action of management of RBI, Kanpur in striking off the name of Gopi Nath Sharma from the list of approved peon-cum-Farash is justified? If not, to what relief the concerned workman is entitled?"

H On 30.7.1996, an award was passed by the Tribunal rejecting the claim

of respondent No.1 on the ground of delay and laches and also on merits holding that since as per evidence adduced before Tribunal, he did not complete the service of 240 days in the Bank, he is not entitled to the benefit of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act") or the benefit of the judgment of this Court in *H.D. Singh* v. *Reserve Bank of India* (supra).

Aggrieved by the rejection, respondent No.1 filed C.M.W.P.No. 35290 of 1996 before the High Court on 4.11.1996. On 4.9.2003, the High Court delivered the judgment allowing the writ petition ordering reinstatement of respondent No.1 with back wages @ 10% from 1976 to 1989 and @ 50% from 1989 till 4.9.2003 (the date of judgment). Aggrieved by the above judgment, the appellant filed the present appeal.

QUESTIONS OF LAW

The questions of law that arise for consideration before us are as under:

1. As to whether the High Court in a petition under Art. 226 of the Constitution of India, assailing the correctness of the judgment of the Labour Tribunal on a dispute arising under the Industrial Disputes Act, was justified in examining the policy of the R.B.I. on a touchstone of Art. 14 of the Constitution of India?

2. Whether the High Court, in proceedings under Art. 226, can interfere with the findings of the Central Government Industrial Tribunal-cum-Labour Court on factual issues in the absence of a challenge on the ground of perversity and can award relief on a ground not raised before Tribunal?

3. Whether a person can be ordered reinstatement even when he was engaged on day-to-day basis and it is not established that he was working on regular post and without establishing any right to hold any post particularly when respondent No.1 had worked only for 58 days?

We heard Mr. Mahendra Anand, learned senior counsel, assisted by Mr. H.S. Parihar, learned counsel, appearing for the appellant and Mr. Pramod Swarup, learned counsel appearing for respondent No.1.

Learned senior counsel appearing for the appellant drew our attention to the award passed by the Tribunal. The Tribunal held that the reference was

A highly belated as the name of the concerned workman was expunged in 1976 itself. The Tribunal also relied on the judgment in the case of *Balwant Singh* v. *Labour Court, Bhatinda,* (1996) Labour Industrial Cases 45 wherein five years' old reference was held to be belated by the Court and in the absence of sufficient explanation, relief of reinstatement was denied. Relying upon this authority, the Tribunal held that the concerned workman would not be entitled B for any relief. On merits, the Tribunal observed as under:

> "On merits too, the case of the concerned workman is not proved. The concerned workman has filed his affidavit. He was cross examined, whereas the management has given the evidence of Kanhaiya Lal Prasad MW.1 who had stated that the concerned workman had not C completed 240 days in any calendar year. He has not been cross-examined. Thus, this evidence is unchallenged. Consequently, relying upon his evidence, it is held that the concerned workman has not completed 240 days in a calendar year. Hence Section 25F is not attracted."

D

As stated above, the respondent herein invoked the jurisdiction of the High Court under Art. 226 of the Constitution of India by filing a writ petition with a prayer to quash the order dated 30.7.1996 passed by the Tribunal and the verbal order dated 29.7.1976 passed by respondent No.2 in the writ petition for deletion of the name of the petitioner (respondent No.1 herein) E from the list of peon-cum-Farash of the Reserve Bank of India. A further direction in the nature of *mandamus* commanding the Presiding Officer (respondent No.2 in the writ petition) to include the name of respondent No.1 herein in the list of peon-cum-Farash with retrospective effect from 29.7.1976 with all the consequential benefits was sought for. The writ petition was F resisted by the Reserve Bank of India by filing a detailed counter affidavit in the High Court.

The High Court firstly took up the preliminary objection for consideration which was to the effect that reference was barred by time as it has been made after about 13 years and that the respondent was wait listed for the post of G Peon-cum-Farash in 1973. As far as the question of validity of reference is concerned, the High Court held that the Tribunal cannot go into the validity of the reference and that the employer can challenge the reference order on the ground of delay and since the reference order was not challenged by the Bank, the Labour Court was obliged to decide the matter and that the Labour Court was not authorized to go into the validity including delay. The High H

Court, as far as, the question of validity of discontinuing the services of respondent No.1 due to over-qualification was concerned, it has held that over qualification cannot be a disqualification for peon-cum-Farash where maximum qualification prescribed was 8th pass. The High Court further observed that such an approach amounts to discouraging acquisition of education on the one hand and that such an approach is clearly arbitrary, discriminatory and not in national interest.

As regards the statutory requirement of 240 days in a calendar year, the High Court has observed that even if the stand taken by the Bank that the respondent had not completed 240 days in a calendar year is taken to be correct, *it will not make much difference* and that by virtue of the reference, the Labour Court was required to judge as to whether the action of the Bank in striking off the name of respondent No.1 from the list of approved employees was justified or not.

According to the High Court, acquiring higher qualification is not misconduct and hence, dismissal of workman on this ground is wrongful dismissal. The High Court further observed that some of the juniors of respondent No.1 were retained on the ground that they had not acquired higher qualification and that the Bank specifically did not deny this fact and in such a situation if the removal of respondent No.1 is taken to be retrenchment, he would be entitled to relief under Section 25G of the I.D. Act. It was, therefore, held that the employer-Bank wrongfully terminated the services of respondent No.1 by not including his name in the list prepared after June, 1976 and that the order of the Labour Court deciding the reference against the respondent-workman is illegal and liable to be set aside. As far as, back wages is concerned, the High Court held that the workman is entitled to get nominal wages of 10% and thereafter 50% respectively.

In the result, the High Court allowed the writ petition filed by the respondent herein and set aside the order of the Tribunal and the action of the management of the Bank in striking out the name of respondent No.1 from the list of approved peon-cum-Farash after June, 1976 and further directed that the respondent must be reinstated and appointed to the similar post.

Learned senior counsel appearing for the appellant submitted that the High Court's judgment is perverse and that the High Court cannot interfere with the findings of the Tribunal on factual issues in the absence of a challenge on the ground of perversity and cannot award any relief on a ground nor raised before the Tribunal.

A Learned senior counsel further submitted that the respondent—a daily wage worker, was engaged on day to-day basis and that it was not established that he was working on a regular basis and without establishing any right to hold any post. Learned senior counsel also submitted that the High Court erred in examining the legality of the policy and giving relief solely on the ground that it found the policy and actions of the appellant contrary to B Articles 14 and 16 of the Constitution. In this context, it was submitted that the High Court has taken into consideration an entirely new aspect which was neither pleaded by the petitioner (respondent No.1 herein) in the writ petition before the High Court nor was claimed in the claim statement filed before the Tribunal, without giving any opportunity to the appellant to effectively reply C to the same i.e., the aspect of alleged arbitrariness and discrimination in not considering the over qualified person for further day to-day engagement. He further submitted that the High Court erred in not taking into account the categoric finding that respondent No.1 had not completed 240 days of service in the Bank and holding that this will not make much difference.

D *Per contra,* Mr. Pramod Swarup, learned counsel appearing for respondent No.1, submitted that acquiring higher qualification is not a misconduct and hence dismissal of workman on this ground is wrongful dismissal and that the High Court considered the contention of respondent No.1 that some of his juniors were retained on the ground that they had not E acquired higher qualification, and the Bank did not deny this fact and that the employer-Bank wrongfully terminated the services of respondent No.1 by not including his name in the list prepared after June, 1976 and that the order of the Labour Court/Tribunal deciding the reference against the workman is illegal and liable to be set aside. Learned counsel further submitted that respondent No.1 worked for more than 240 days and that the Management F did not produce the attendance Register for the period involved and only produced some of the documents by which it could show that respondent No.1 had not worked for more than 240 days. Without the attendance register and other material which was withheld by the Bank, the respondent was handicapped in cross examining the management witness. He denied that the G respondent has worked only for 58 days. In conclusion, he submitted that this Court cannot interfere with the well considered judgment of the High Court which has rightly set aside the order of the Tribunal and ordered reinstatement with back wages.

We have carefully considered the rival submissions made by learned H counsel appearing for the respective parties. Learned senior counsel appearing

for the appellant, in support of his contention, cited many decisions. We shall advert to the decisions cited at a later stage. We have also carefully perused the relevant records and the orders impugned in this appeal. A

In our opinion, the High Court has committed a patent error in allowing the writ petition filed by the respondent herein who is a daily wage worker when it was not established that he was working on regular basis. The High Court, in our opinion, is not justified in directing that respondent No.1 must be reinstated and appointed to similar post. The High Court has also clearly erred in examining the legality of the policy and giving relief solely on the ground that it found the policy and actions of the appellant contrary to Arts. 14 and 16 of the constitution. It is pertinent to notice that the High court has taken into consideration an entirely new aspect which was neither pleaded by the petitioner in the writ petition before the High Court nor was claimed in the claim statement filed before the Tribunal without giving an opportunity to the parties to effectively reply to the same. Likewise, the High Court also failed to consider that the system of engagement of 'Ticca Mazdoors' has since been abolished in November, 1993, while this fact was brought on record of High Court in the counter affidavit filed on behalf of the Bank. B C D

It is a matter of documentary proof that the respondent has worked only for 58 days as could be seen from the statement filed by the Bank. This document was annexed to the reply filed on behalf of the Bank before the Tribunal. In paragraph 9 of the reply, the Bank stated as follows: E

> "As regards para 9, Shri Vidya Dutta and others mentioned herein were either non-matriculates or had completed 240 working days in the preceding 12 calendar months at the relevant time. As such, Shri Sharma's case is not comparable to those cases and there is no discrimination in not including his name in the fresh waiting list." F

The respondent has worked only for 58 days. There is no cross-examination on this aspect. It is also not out of place herein to mention that respondent No.1 was discharged in July, 1976 and the Central Government referred the matter for adjudication on 25.1.1989 nearly after 13 years. G

Employers in relation to the Management of Sudamdih Colliery of M/s Bharat Coking Coal Ltd. v. *Their Workman represented by Rashtriya Colliery Mazdoor Sangh,* JT (2006) 1 SC 411 :

This case, in turn, refers to the judgments in *Nedungadi Bank Ltd.* v. H

A *K.P. Madhavankutty & Ors.*, JT (2000) 1 SC 388 and *S.M. Nilajkar & Ors.* v. *Telecom District Manager, Karnataka,* JT (2003) 3 SC 436. This Court held that even though there is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the disputes should be referred to as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of B workmen. This Court has held that a delay of four years in raising the dispute after even re-employment of most of the old workmen was held to be fatal. In *Nedungadi Bank Ltd's* case (supra) this Court held a delay of seven years to be fatal and disentitled the workmen to any relief.

C In our opinion, a dispute which is stale could not be a subject matter of reference.

In our view, respondent No.1 was not appointed to any regular post but was only engaged on the basis of the need of the work on day to-day basis and he has no right to the post and that his dis-engagement cannot be treated D as arbitrary. The High Court, in our view, has totally misdirected itself in holding that non-consideration of the name of respondent No.1 on acquiring higher qualification is not misconduct, hence, dismissal of the workman on this ground is wrongful within the meaning of Item 3, Schedule II to the Industrial Disputes Act, 1947 without giving any reason as to how non-inclusion of name for day to-day appointment amounts to wrongful dismissal. E The High Court completely erred in relying on Section 25G of the I.D. Act while not holding that the workman has been retrenched within the meaning of Section 25F and thus misdirected itself about the applicability of provisions of Section 25G of the I.D. Act even if it does not involve retrenchment. The High Court also failed to consider that the inclusion of the name in the waiting F list for appointment as 'Ticca Mazdoor' on day to-day basis does not confer any right for regular appointment or to hold any post. As already noticed, no relief can now be given to respondent No.1 especially when the system of keeping waiting list for Ticca Mazdoor has been dispensed with since 23.7.1993 and at present the Bank does not maintain any list. The High Court, therefore, wrongly proceeded on the basis as if the daily wage appointment is for a G regular post on which a person can be reinstated. The High Court has also committed an error in giving the relief of reinstatement with back wages without considering whether the concerned workman was gainfully employed from 1976 till date of judgment, there being no evidence on record. Likewise, the High Court ought to have seen that respondent No.1 was not entitled to H any back wages on the basis of the well settled principle "No work No Pay".

In our opinion, the High Court has completely erred in ordering an appointment to a similar post on which a person just before the name of respondent No.1 is at present working without considering the fact that such person must be senior to the workman concerned and was already promoted to the next cadre in Class III.

Mr. Pramod Swarup, learned counsel appearing for the respondent argued that along with respondent No.1, Vidya Dutta, Ram Roop Pasi, Lakhan Lal Srivastava, Aquil Ahmad, Mazafar Alam, Chandra Bhan and Mahesh Kumar Shukla were also appointed by the Bank in Class IV Staff and the former four persons are still working as Coin Note Examiners drawing about Rs.2000/- per month and the latter three persons have been absorbed as labour and peon drawing about Rs.1700/- per month. The respondent has stated that besides financial loss, his promotions have also been adversely affected by the discriminate and illegal termination of his services/striking his name from the approved list of peon-cum-Farash w.e.f. July, 1976. In paragraph 9 of the reply, the Bank has denied the said statement as could be seen from paragraph supra.

This categorical denial has not been considered by the High Court and the High Court does not even refer to this aspect. We have already noticed that the respondent has worked only for 58 days and that the monthly chart filed and annexed to the reply affidavit clearly shows that the respondent has actually worked for 58 days only.

Regional Manager, S.B.I. v. *Rakesh Kumar Tewari,* JT (2006) 1 SC 252 (Ruma Pal and Dr. AR. Lakshmanan, JJ.) :

In the above case, there was no pleading that there is violation of Section 25G of the I.D. Act. Respondent No.1 raised no allegation of violation of Section 25G of the I.D. Act in his statement of claim before the Tribunal. This judgment also refers to the judgment in *Regional Manager, State Bank of India* v. *Raja Ram,* [2004] 8 SCC 164, where this Court held:

> 'Before an action can be termed as an unfair labour practice it would be necessary for the Labour Court to come to a conclusion that the badlis, casuals and temporary workmen had been continued for years as badlis, casuals or temporary workmen, with the object of depriving them of the status and privileges of permanent workmen. To this has been added the judicial gloss that artificial breaks in the service of such workmen would not allow the employer to avoid a

A charge of unfair labour practice. However, it is the continuity of service of workmen over a period of years which is frowned upon. Besides, it needs to be emphasized that for the practice to amount to unfair labour practice it must be found that the workmen had been retained on a casual or temporary basis with the object of depriving the workman of the status and privileges of a permanent workman. B There is no such finding in this case. Therefore, Item 10 in List I of the Fifth Schedule to the Act cannot be said to apply at all to the respondent's case and the Labour Court erred in coming to the conclusion that the respondent was in the circumstances, likely to acquire the status of a permanent employee."

C *The Haryana State Agricultural Marketing Board* v. *Subhash Chand & Anr.*, JT (2006) 3 SC 393 :

This case relates to the disengagement of casual employees. The question arose was as to whether the provisions of Section 25G are to be complied D with. In this case, the respondent was appointed on contractual basis by the appellant during paddy seasons on consolidated wages. Upon termination of the services, the respondent raised an industrial dispute. The appellant took the stand that the respondent was employed only for 208 days during the previous year whereas the respondent contended that he had worked for 356 days. The Labour Court held that the termination was violative of Section 25G E of the I.D. Act and hence an unfair labour practice. The appellant filed a writ petition against the decision of the Labour Court which was dismissed by the High Court. Setting aside the decision of the Labour Court, the High Court held Fifth Schedule to the I.D. Act inapplicable and hence dispensing with the engagement of the respondent cannot be said to be unwarranted in law.

F *Secretary, State of Karnataka & Ors.* v. *Umadevi & Ors.*, JT (2006) 4 SC 420 :

In paragraphs 34 and 35 of the above judgment, this Court held as under:

G "34. While answering an objection to the *locus standi* of the writ petitioners in challenging the repeated issue of an ordinance by the Governor of Bihar, the exalted position of rule of law in the scheme of things was emphasized, Chief Justice Bhagwati speaking on behalf of the Constitution Bench in *Dr. D.C. Wadhwa & Ors.* v. *State of* H *Bihar & Ors.* stated:

"The rule of law constitutes the core of our Constitution of India and it is the essence of the rule of law that the exercise of the power by the State whether it be the Legislature or the Executive or any other authority should be within the constitutional limitations and if any practice is adopted by the Executive which is in flagrant and systemic violation of its constitutional limitations, petitioner no. 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice."

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It is also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad hoc* employees who by the very nature of their appointment do not acquire any right. High Courts acting under Article 226 of the Constitution of India should not ordinarily issue directions for absorption, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued

A under cover of an order of court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief it may be possible for it to mould the relief B in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the state the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the C economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of constitutional and statutory mandates.

35. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed D on *ad hoc* basis, temporary basis or based on no process of selection as envisaged by the rules. This court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the Directive Principles in that behalf. But the acceptance of E that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing F complete justice in any cause or matter pending before this court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the *Dharwad* decision, the Government had issued repeated directions and mandatory orders that no temporary or *ad hoc* G employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment specifically interdicted by the orders issued by the Executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper H to pass an order in exercise of jurisdiction under Article 226 or 32 of

the Constitution or in exercise of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this court to mould the relief, this court would not grant a relief which would amount to perpetuating an illegality." A B

Manager, Reserve Bank of India, Bangalore v. *S. Mani & Ors.*, (2005) 5 SCC 100:

In paragraphs 30 and 31 of the above judgment, this Court held as under: C

"30. In *Range Forest Officer* v. *S.T. Hadimani,* [2002] 3 SCC 25 it was stated:

"3....10n our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof or receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside." D E F

31. In *Siri Niwas,* [2002] 8 SCC 400, this Court held :

"13. The provisions of the Evidence Act, 1872 *per se* are not applicable in an industrial adjudication. The general principles of it are, however, applicable. It is also imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof was on the respondent workman herein to show that he had worked for 240 days in the preceding twelve months prior to his alleged retrenchment. In terms of section 25-F of the Industrial Disputes Act, 1947, an order retrenching a workman would not be G H

A effective unless the conditions precedent therefore are satisfied. Section 25-F postulates the following conditions to be fulfilled by an employer for effecting a valid retrenchment:

(i) one month's notice in writing indicating the reasons for retrenchment or wages in lieu thereof;

B

(ii) payment of compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months."

It was further observed:

C "14..... As noticed hereinbefore, the burden of proof was on the workman. From the award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of section 25-B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not D produce or call for any document from the office of the appellant herein including the muster rolls. It is improbable that a person working in a local authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during E the aforementioned period. He did not even examine any other witness in support of his case."

This judgment was approved in the case of *Secretary, State of Karnataka & Ors.* v. *Umadevi & Ors.* (supra). This judgment also refers to the *H.D. Singh's* case (supra). This Court held that *H.D. Singh's* case was rendered on F its own facts.

In *M.G. Datania* v. *Reserve Bank of India,* [2004] 10 SCC 451, while the L.P.A. was pending in the High Court, a terms of settlement was arrived at on 23.7.1993 between the Management of the Bank and the Reserve Bank Workers' Federation. The relevant portion is as under:

G

"Terms of settlement

(i) The existing arrangement or practice of engaging persons on daily wages purely on temporary and *ad hoc* basis in Class IV in various cadres shall be discontinued forthwith.

H

(ii) ..... A

(iii) .....

(iv) ....."

This Court in a recent judgment in the case of *Rajasthan State Road Transport Corpn. & Ors.* v. *Zakir Hussain,* (Ruma Pal and Dr. AR. B Lakshmanan,JJ.), [2005] 7 SCC 447, this Court held as under:

> "The respondent was a temporary employee of the appellant Corporation on probation for a period of two years. His services were terminated by an order of termination simpliciter. The order was innocuous and without any stigma or evil consequences visiting him. C Therefore, there was no requirement under the law to hold any enquiry before terminating the services. The courts below have also erred in granting back wages along with reinstatement. Even otherwise, the respondent has not led any evidence before the trial Court except his own *ipse dixit* to show that his services were terminated on the ground of any alleged misconduct. Therefore, it was not obligatory on D the part of the Corporation to hold an enquiry before terminating the services."

For the aforesaid reasons, we are of the opinion that respondent No.1 has worked for 58 days on casual basis, therefore, he is not entitled for any E relief in his belated claim. The High Court, on erroneous view of the facts and circumstances of the case, allowed the writ petition filed by the respondent herein without taking into account the categoric finding of fact that respondent No.1 had not completed 240 days of service in the Bank and held that this will not make much difference. In our opinion, such a casual approach is not warranted in the facts and circumstances of the case. We, therefore, have no F hesitation in setting aside the order dated 4.9.2003 passed by the High Court in C.M.W.P. No. 35290 of 1996 and affirm the order passed by the Tribunal.

In the result, the appeal succeeds. However, there shall be no order as to costs.

G

R.P. Appeal allowed.