

This case reached the Supreme Court as certain temporarily engaged daily wagers demanded regularization on the ground that they had continued in service for more than ten years. A recommendation for their absorption was made to the Government, but it did not accede to the same. The aggrieved workmen thus, approached the Administrative Tribunal who rejected their claim. A writ petition was filed against the decision of the Administrative Tribunal which was allowed and the State was commanded to consider their cases for regularization within four months. Thus, the State of Karnataka approached the Supreme Court. In another matter, members of an association approached the High Court challenging the order of the Government directing cancellation of appointments as well as regularization of all casual workers/daily rated workers made after 01.07.1984 and also sought regularization. The writ petition was disposed of by a learned single Judge of the High Court with liberty to approach the employers for absorption and regularization within a fixed time frame. Appeals filed by the State succeeded leading to the association approaching the Supreme Court. The matter was referred to a larger Bench as there was conflict of opinion in various judgments of the Supreme Court and the matter was heard and decided by a Bench comprising five Hon'ble Judges. After examining the law on the subject, it was held that the Constitution permitted employment in public service in accordance with the Rule of Equality only. All citizens of India had an equal right to compete for public employment and any employment granted in violation of the Rule of Equality was illegal. The mode of appointment through 'regularization' was a clear violation of the Constitutional scheme and was illegal. Thus, neither the Executive nor the Courts could direct 'regularization' of persons appointed in violation of the relevant rules. The term 'regularization' and 'permanence' were distinguished and it was held that 'regularization' refers to removal of an irregularity occurring in the process of appointment which was not fundamental in nature. It did not connote granting of permanent appointment which was a concept totally different from that of 'regularization'. In this regard, Para No.15 of the judgment is reproduced below:-

'15. 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 regularize an appointment made after following the due procedure, even though a nonfundamental 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.'

The right of the State to grant temporary appointments for special projects or to tide over emergent situations was, however, recognized with the rider that such appointments would come to an end on the project coming to an end or the cessation of the emergent situation necessitating appointment of temporary employees. Such appointments would also come to an end on conclusion of the time period for which appointments were made. It was also held that theory of legitimate expectation, Right to Life under Article 21 of the Constitution and sympathetic considerations would not get attracted in such cases.

Secretary, State of Karnataka v. Uma Devi, 2006(4) SCC 1