# IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

**PRESENT: THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA**

**AND**

**THE HON'BLE JUSTICE SMITA DAS DE**

***MAT/70/2026***
***IA No.CAN/1/2026, CAN/2/2026***

***THE UNION OF INDIA AND OTHERS ... APPELLANTS***

***VS.***

***ANDAMAN SARVAJANIK NIRMAN VIBHAG MAZDOOR SANGH AND OTHERS ... RESPONDENTS***

| | | |
|---|---|---|
| For the appellants | : | Mr. S.D. Sanjay, ASGI<br>Mr. Divyam Aggarwal, Adv.<br>Mr. V.D. Sivabalan, Adv. |
| For the respondent Nos. 1 & 2 | : | Mr. Gopala Binnu Kumar, Adv.<br>Ms. Vinita Devi, Adv. |
| For the respondent No. 3 | : | Mr. K. M. Nataraj, ASGI<br>Ms. Vatsal Joshi, Adv.<br>Ms. Chidranesh Sharma, Adv.<br>Mr. Rakesh Kumar, Adv. |
| Heard on | : | April 17, 2026, April 21, 2026 and April 22, 2026 |
| Judgment on | : | April 28, 2026 |

**SABYASACHI BHATTACHARYYA, J.**

1. At the outset, we find that CAN/1/2026, for condonation of the delay in preferring the appeal, is still pending. Although no arguments have been advanced on the same by either of the parties, we choose first

to decide the same before proceeding with the adjudication of the appeal on merits.

2. There is a conflict as to the limitation period for preferring a Letters Patent appeal in the Calcutta High Court between the Appellate Side Rules framed by the Full Court and the Limitation Act, 1963. Whereas Rule 2 of Chapter VIII of the former provides that every appeal to the High Court under Clause 15 of the Letters Patent from a judgment of a Judge sitting singly, on the Appellate Side of the High Court, shall be presented within 60 days from the date of the judgment appealed from, Article 117 of the Schedule to the latter stipulates 30 days as the limitation period for an appeal from a decree or order of any High Court to the same Court.

3. Going by the Appellate Side Rules, the appeal has been filed within time; however, as per the Limitation Act, there is a delay of 2 days in presenting the memorandum of the appeal.

4. Since there is some doubt as to whether the Rules governing the procedure of this Court can override a statutory bar, we choose to proceed on the premise that there was a delay of 2 days in preferring the appeal.

5. Even if it is so, by an Order dated April 13, 2026, the Court had observed that an arguable case has been raised by the appellant in this appeal and the private respondents offered to prepare informal paper books. Thus, it is deemed that the said order tantamounts to admission

`

of the appeal and, consequently, deemed condonation of the delay in preferring the appeal. Even otherwise, we are satisfied from the pleadings in CAN/1/2026 that sufficient explanation for the miniscule delay of 2 days in preferring the appeal has been furnished. Accordingly, CAN/1/2026 is allowed without costs, thereby condoning the delay, if any, in preferring the appeal.

6. The Court now proceeds to adjudicate the appeal on merits.

7. The writ petitioners/respondent nos. 1 and 2 are respectively a Trade Union representing the interest of the Daily Rated Workers in the Andaman and Nicobar (A&N) Islands and its President.

8. The genesis of the instant *lis* is a writ petition filed by the private respondent Nos. 1 & 2, bearing WPA/268/2018, seeking a direction upon the Andaman and Nicobar Administration, being the respondent No.3 herein, to grant the benefit of 1/30$^{th}$ pay of the minimum of the relevant pay scale plus dearness allowances in terms of the Office Memorandum (for short, "OM") dated June 07, 1988 issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Government of India, to all Daily Rated Employees working under the respondent No.5 therein on and from the date of their initial engagement.

9. The immediate trigger for the said challenge was the OM dated September 22, 2017 issued by the respondent No. 3, allegedly in derogation of the OM dated June 07, 1988, directing payment to be made

`

to Daily Rated Workers at the enhanced wages payable with effect from September 01, 2017. A learned Single Judge of this Court, vide Judgment dated December 13, 2019, disposed of the writ petition by observing that the impugned OM dated September 22, 2017 was read to mean that it would apply to all Daily Rated Casual Workers engaged by the Administration irrespective of the Department and irrespective of the fact that the post against which they were discharging duties were sanctioned or not. The impugned OM was also read to mean that all Daily Rated Casual Worker engaged by the A&N Administration in any Department will be entitled to 1/30$^{th}$ of the pay at the minimum pay scale plus dearness allowance for work of 8 hours a day on everyday of their engagement on and from June 07, 1988.

10. The respondent No.3/Administration preferred an appeal, bearing MA/9/2020, against the said judgment, which was disposed of by a coordinate Bench of this Court vide judgment dated December 19, 2022 by modifying the judgment of the learned Single Judge to the extent that the benefits to the Daily Rated Mazdoors (DRMs) under the Circular dated September 22, 2017 would accrue only with effect from the date of the Circular and not before that. The Division Bench upheld the direction of the learned Single Judge that no distinction should be made between the DRMs working against the sanctioned posts and DRMs casually engaged by the State, directing that all DRMs under the Administration shall be paid and granted the benefit of the Circular dated September 22, 2017 within two months from the said date. It was clarified that all other

benefits of the DRMs and other persons arising out of the Circular dated June 07, 1988 remain preserved and undisturbed, to be agitated in the event they are aggrieved by any Scheme proposed by the Administration and directed to be framed thereinabove. It is relevant to mention that the Division Bench had further ordered that the Circular and process of framing of Scheme for regularisation and every other benefit under the 1988 Circular, duly addressed, would mandatorily and positively be brought into fore within the next three months from its judgment.

11. No appeal was preferred against the aforementioned decision of the Division Bench.

12. Subsequently, alleging violation of the said judgment of the Division Bench, a contempt application bearing CPAN/24/2023 was filed, in respect of which a Rule was issued by the Division Bench on July 27, 2023.

13. Vide order dated August 03, 2023 passed in the contempt application, the Division Bench observed that the purported affidavit of compliance filed by the Administration said nothing about framing of any Scheme and flagged the illegal and contumacious distinction sought to be drawn between DRMs engaged against sanctioned posts and those not engaged against any sanctioned posts, thereby reopening the issues decided before the Single Bench and confirmed by the Division Bench, without challenging the same before the higher forum. Accordingly, the alleged contemnor No.1, the Lieutenant Governor, Andaman and Nicobar

`

Islands, was directed to deposit with the Registrar of the Port Bair Circuit Bench of the Calcutta High Court a sum of Rs. 5 lakh from his own funds. The alleged contemnor No.2, the Chief Secretary of the Islands, was directed to be suspended forthwith and the next senior-most Officer in the Administration to take over and discharge the functions of the Chief Secretary. A copy of the order was directed to be sent to the Ministry of Home Affairs, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) and Principal Secretary to the Government of India at New Delhi.

14. Being aggrieved by such directions, a challenge was preferred before the Supreme Court, giving rise to Civil Appeal Diary No. 31431/2023. Vide order dated August 04, 2023, the Hon'ble Supreme Court granted stay of the directions contained in the impugned order dated August 03, 2023 of the Division Bench.

15. By an additional affidavit verified on August 10, 2023 by the Chief Secretary, Andaman and Nicobar Administration, it was disclosed before the Hon'ble Supreme Court that the Administration was in the process of formulating a Scheme for regularisation of the DRMs in accordance with the DoP&T OM dated October 07, 2020 regarding regularisation of casual labour and that such Scheme was required to be in compliance the directions/stipulations laid down by the Hon'ble Supreme Court and the Hon'ble High Court.

`

16. The matter, in the meantime having been renumbered as Civil Appeal No. 5014 of 2023, was next taken up by the Hon'ble Supreme Court on August 14, 2023. The learned Attorney-General for India appeared on behalf of the appellants, i.e. the Andaman and Nicobar Administration. The Hon'ble Supreme Court, in its order of even date, recorded salient portions of the Regularisation Scheme which had been chalked out by the Administration. It was recorded that the direction issued by the High Court for the suspension of the Chief Secretary was grossly disproportionate and was extraneous to the extent of the contempt jurisdiction and that the direction on the Lieutenant Governor to deposit Rs. 5 lakh even though the contempt proceeding was still to be heard finally was plainly unsustainable. More importantly, the Hon'ble Supreme Court recorded that the Administration had, during the pendency of the proceedings, taken steps to withdraw the offending clauses of its order dated May 09, 2023 and that Order 2276 states that the enhanced wages shall be implemented with effect from September 01, 2017. It was further observed that Order 2276 stipulates that arrears shall be payable from September 01, 2017 to May 08, 2023 to 4010 DRMs. The Administration, it was observed, had requisitioned funds to the tune of Rupees Three Hundred Crores under the 'wages head' which was under consideration before the Union Ministry of Home Affairs and it had been stated that the regularisation scheme would be framed in terms of the statement which was made before the Division Bench of the High Court, which had been clarified in the additional affidavit. In such view of

`

the matter, the Hon'ble Supreme Court held that the exercise of contempt jurisdiction would not be warranted and all action in compliance shall be completed positively by November 30, 2023 and the contempt proceedings before the High Court shall stand closed. The appeal was accordingly disposed of.

17. By a subsequent Notification dated August, 2023, bearing No. 45-576/2023-PW (PF), the Lieutenant Governor of the Islands approved the "Andaman & Nicobar Casual Labourers/ Daily Rated Mazdoors (DRMs) (Engagement and Regularization) Scheme 2023".

18. Vide order dated September 09, 2024 passed in Miscellaneous Application No. 2531/2023 in Civil Appeal No. 5014 of 2023, the Hon'ble Supreme Court was pleased to record that the payment of Rupees Three Hundred Crores, as envisaged in paragraph 11 of the Order dated August 14, 2023, had admittedly been made, which was submitted by the learned Attorney-General of the India, and not disputed by learned counsel who appeared for the present respondent Nos. 1 & 2. It was further observed by the Hon'ble Supreme Court that as regards the issue of regularisation, it was common ground that the Department of Personnel and Training of Union of India was not a party to the earlier proceeding, in which backdrop it was held that all that needed to be observed at that stage was that if there was any substantive grievance in regard to the Scheme for regularisation, it would be open to the respondents therein to pursue their claims in accordance with law.

`

19. The next chapter in the litigation started with a writ petition, bearing WPA/547/2024, being filed before this Court assailing a letter dated December 13, 2023 issued by the Department of Personnel and Training, Union of India refusing to grant concurrence to the Scheme for regularisation referred to above.

20. The concerned learned Single Judge disposed of the writ petition vide judgment dated February 19, 2026, directing the Department of Personnel and Training, Union of India, to accord approval to the Scheme of 2023 as notified in August 2023 by the Administration.

21. The said judgment is the subject matter of challenge in the present appeal.

22. Mr. S.D. Sanjay, learned Additional Solicitor General of India (ASGI) appearing for the appellant/Union of India (UoI), argues that the learned Single Judge traced the roots of the issue of regularisation and the resultant directions passed in the impugned judgment from the earlier proceedings arising out of WPA/268/2018 but failed to notice that regularisation of Daily Rated Workers was never an issue or relief sought in the said writ petition, and the issue came up only when a direction to that effect was issued by a Division Bench in MA/9/2020, while dealing with a completely different issue.

23. It is argued that the appellants/UoI was never a party to any of the earlier proceedings, either before this Court or in the Hon'ble Supreme

`

Court of India and therefore, any directions passed in those proceedings cannot be said to be binding on the appellants.

24. It is next contended that the Scheme in the present form has not been approved by the appellants because it is against the principles laid down by Hon'ble Supreme Court in *Secretary, State of Karnataka and others vs. Umadevi (3) and others*, reported at *(2006) 4 SCC 1*, since it allows for regularisation of 7520 DRMs en masse, without considering whether they were recruited against sanctioned posts or not. Moreover, the Scheme also provides an arbitrary cut-off date of August 01, 2023 on the criterion that it will benefit more DRMs.

25. Mr. Sanjay, learned ASGI, further argues that the Scheme is also against the basic principles governing the regularisation of employees, such as a difference between 'irregular' and 'illegal' employees, recruitment against sanctioned posts as opposed to unsanctioned posts, lack of inherent right to regularisation merely due to length of service, etc. In this context, learned counsel refers to *Umadevi (3) (supra)*[1], *State of Karnataka and Others vs. M. L. Kesari and others*, reported at *(2010) 9 SCC 247*, *State of Rajasthan and others vs. Daya Lall and others*, reported at *(2011) 2 SCC 429*, and *Indian Drugs & Pharmaceuticals Ltd. vs. Workmen*, *Indian Drugs & Pharmaceuticals Ltd.*, reported at *(2007) 1 SCC 408.*

---

[1] *(2006) 4 SCC 1*

`

26. The Scheme, it is argued, carries a specific clause that all steps to regularise the workers shall be subject to the ratification and concurrence to the Department of Personnel and Training, UoI, but the direction of the learned Single Judge to compulsorily accord approval to the Scheme runs against the discretion of the UoI to consider the merits of the Scheme and ratify the same accordingly.

27. The Scheme, it is contended, has been formulated by the Andaman Administration without the consent or input of the UoI and therefore, the financial burden of the same cannot be thrust upon the appellants, in whatever form the Scheme has been made. It is argued that when the financial burden of the Scheme is to be entirely borne by the Union Government, then a Scheme of the Union Territory cannot be enforced by a writ of mandamus. In support of such proposition, Mr. Sanjay cites *The State of Bihar and another vs. Sachindra Narayan and others*, reported at *(2019) 3 SCC 803.*

28. Mr. Sanjay, learned ASGI, next contends that the learned Single Judge ignored the fact that the exercise of regularisation of employees as an “one-time measure” was already done by the Andaman Administration when it regularised 122 DRMs vide Order dated May 21, 2015. The direction in the impugned judgment has been made without considering that the implementation of the Scheme would have far-reaching continuing financial implications for the public exchequer. It is contended that the learned Single Judge, while exercising writ

`

jurisdiction, could not have directed regularisation of such large number of employees, thereby entering into an Executive decision-making and policy matter. Such judicial overreach would have huge financial implications having cascading effect for the appellants.

29. Mr. Sanjay, ASGI cites, apart from *Indian Drugs & Pharmaceuticals Ltd.(supra)*[2]*, Union of India and others vs. Ilmo Devi and another*, reported at *(2021) 20 SCC 290, State of Jammu & Kashmir and others vs. District Bar Association, Bandipora*, reported at *(2017) 3 SCC 410*, and *State of Maharashtra and another vs. Bhagwan and others*, reported at *(2022) 4 SCC 193,* in support of such contention.

30. Mr. Sanjay, ASGI relies on *Hari Nandan Prasad and another vs. Employer I/R to Management of Food Corporation of India and another,* reported at *(2014) 7 SCC 190*, to contend that the issue of regularisation is purely within the purview of the Executive and the same has to be allowed depending upon the individual cases and the eligibility of the workers concerned, and not en masse through a writ of mandamus.

31. The principles governing the recruitment and regularisation of contractual/ad hoc employees, it is submitted, have been sufficiently laid down in the case of *Umadevi (3) (supra)*[1] and any direction of any Court contrary to the law laid down therein would be denuded of its status as a precedent.

---

[2] *(2007) 1 SCC 408.*
[1] *(2006) 4 SCC 1*

`

32. Mr. Sanjay, ASGI argues that the recent judgments of the Hon'ble Supreme Court cited by respondent Nos. 1 & 2, directing regularisation of employees, are not statements of law but clearly cases distinguishable on facts and are judgments rendered in those peculiar circumstances. Further, those have been passed without considering the other earlier judgments cited by the appellants before this Court and cannot therefore be said to have a higher weightage than the previously pronounced 2-Judge Bench decisions or the 5-Judge Bench decision in *Umadevi (3) (supra)*[1] .

33. Dealing with the argument of the respondent Nos. 1 & 2 that since a Constitutional position holder like the learned Attorney-General for India had lent his advisory opinion for the formulation of the Scheme by the Andaman Administration it implies that it was within the knowledge of the Union Government and cannot be challenged now, Mr. Sanjay, ASGI contends that the same is erroneous, since the learned Attorney-General for India was at that time representing the Andaman & Nicobar Administration before the Hon'ble Supreme Court and the statements made by him therein or advisory opinion given there cannot be said to be binding on the UoI. Thus, the appellants pray for the impugned judgment dated February 19, 2026 to be set aside.

34. On the other hand, Mr. K.M. Nataraj, learned Additional Solicitor General of India (ASGI) appearing for the respondent No. 3/Andaman &

---

[1] *(2006) 4 SCC 1*

`

Nicobar Administration, contends that the Andaman & Nicobar Islands, being a Union Territory (UT), are administered and governed in accordance with the provisions of Articles 239 and 240 of the Constitution of India. As per Allocation of Business Rules, 1961, the Ministry of Home Affairs (MHA) has been appointed as the Nodal Ministry for Legislative Matters, Finance, Budget and Services of UTs. Therefore, the MHA is the Administrative Controlling Authority of UTs. Further, under Rule 5 of the Delegations of Financial Power Rules, 2024, it is provided that no authority shall sanction expenditure of advances without previous consent of the Finance Ministry if it involves the introduction of new principles or practices likely to lead to increased expenditure in future. In view of the above, every proposal sent by UTs has to be considered by the Central Government. Upon such consideration, the Central Government can either approve the proposal, with or without modification, reject the same, or return a proposal for reconsideration.

35. In the above backdrop, Mr. Nataraj argues that the learned Single Judge erroneously issued a writ of mandamus in a matter involving policy decisions of the Central Government, failing to consider that the Administration had requested for concurrence and ratification of the Scheme and nothing further could have been done by them as MHA is the controlling Nodal Authority, which decided not to grant concurrence to the said policy decision. In this context, it is pointed out that the A&N Administration filed an additional affidavit before the Hon'ble Supreme

Court in Civil Appeal No. 5014 of 2023 stating that "it is submitted that all the above steps to regularise are subject to concurrence and ratification by the DoP&T".

36. Mr. Nataraj relies on *Union of India v. Namit Sharma* reported at *(2013) 10 SCC 359* to argue that the direction issued by the learned Single Judge on the policy decision is erroneous. In the said report, it was held that the Court cannot direct the rule-making authority to make the rules where the Legislature confers discretion on the rule-making authority to make rules.

37. Mr. Nataraj, ASGI then cites *Vivek Krishna vs. Union of India and others,* reported at *(2023) 17 SCC 302*, where it was held that a writ of mandamus cannot be issued to direct the respondents to enact law and/or to frame Rules even under the wider powers conferred under Article 226 of Constitution of India. By relying on the said judgment, Mr. Nataraj lays stress on the proposition that it is not for the Court to decide which should be the policy of Government and that policy matters are never interfered with by Courts, unless patently arbitrary, unreasonable or violative of Article 14 of the Constitution.

38. It is next argued that the prayer made in WPA/268/2018 was only for grant of 1/30$^{th}$ pay of the minimum of the relevant pay scale plus dearness allowances and there was no prayer in respect of regularisation or framing of any Scheme for such purpose. The learned Single Judge, in the said proceeding, allowed the writ petition only to the extent of grant

`

of such 1/30th pay of the minimum of the relevant pay scale plus dearness allowances. However, the Division Bench taking up the appeal against the same preferred by the Administration, observed regarding the framing of a Scheme without allowing or dismissing the appeal. It is argued that it is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity and that its invalidity can be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties. In support of such contention, Mr. Nataraj cites *Kiran Singh and others v. Chaman Paswan and others*, reported at *AIR 1954 SC 340*.

39. It is then argued that when an observation or prayer/relief is not part of the ratio of the judgment, at the most it can be considered as *obiter dictum* and cannot be considered as a ratio of the judgment, binding on the parties. Further, there can be no estoppel against statute.

40. Lastly, Mr. Nataraj submits that the learned Single Judge failed to consider that the proposal of the A&N Administration for framing of the Scheme was forwarded to the Central Government to take a call as per Article 240 of the Constitution, but the learned Single Judge issued a

`

mandamus directing the UoI to accord approval, thus touching upon a policy decision, which is arbitrary and perverse in law.

41. In reply, Mr. Gopala Binnu Kumar, learned counsel appearing for the respondent Nos. 1 & 2, who represent the DRMs, contends that since the Andaman & Nicobar Islands is a UT, for the purpose of effective functional requirements under the Administration, on the requisition made by the A&N Administration with justification, posts are created by the Union Government after obtaining concurrence from the Ministry of Finance upon evaluating the factual aspects. Once the posts are created, subsequently Recruitment Rules, followed by fund allocation, are made every successive year.

42. On the basis of the requisition made by the A&N Administration for allotment of funds to engage Daily Rated Employees, the Government of India allocates the funds every successive year, on the basis of which the Administration pays the wages to all the Daily Rated Employees working in different wings of the Administration. Therefore, the engagement and continuation of such Daily Rated Employees are with the concurrence of the Government of India as the Administration does not have any independent source of revenue.

43. After the issue of regularisation was taken up before this Court, vide order dated December 19, 2022, this Court directed to frame a Scheme to regularise the service of the Daily Rated Employees, which was subsequently framed by the Administration in the month of August

`

2023 in terms of the advice of the Attorney-General for India and placed the same before the Union Government for approval. In the said Scheme, the modality to consider regularisation was narrated.

44. The Government of India, taking into consideration its OM dated October 07, 2020, according clarification pertaining to implementation of the judgment of *Umadevi (3) (supra)*[1] and *M.L. Kesari (supra)*[3] , vide order dated December 13, 2023 refused to accord approval to the regularisation Scheme framed by the Administration on the ground that the same was contrary to the said judgments and that the Administration already promulgated a Scheme without considering the modality narrated in the same framed on the advice of the Attorney-General.

45. It is argued by Mr. Kumar that the order dated December 13, 2023 was passed while ignoring the relevant consideration and materials placed in the Regularisation Scheme framed by the Administration in accordance with the advice of the Attorney-General for India. The writ petitioners/respondent Nos. 1 & 2 had contended that 4245 posts of Work Charged posts were lying vacant under the Andaman Public Works Department (APWD) and near about 1000 to 2000 Group C posts were lying vacant in the other wings of the Administration, which was not disputed by the Union Government or the Administration. It is submitted that in the Regularisation Scheme framed, the principles carved out in

---

[1] *(2006) 4 SCC 1*
[3] *(2007) 9 SCC 247*
`

*Umadevi (3) (supra)*[1] was taken into account. Moreover, at no point of time any Scheme was framed by the A&N Administration or the Central Government in terms of the judgment of *Umadevi (3) (supra)*[1], as narrated in the order dated December 13, 2023, for the welfare of Daily Rated Employees under the A&N Administration.

46. Mr. Kumar argues that the President of India, under Article 239 of the Constitution, administers the UT through an Administrator, which is a Constitutional function, and the decision arrived at by the Constitutional authority on the basis of an order of the Court to regularise the services of the DRMs, upon obtaining advice of the learned Attorney-General for India, is not simpliciter an executive order but it was in terms of the order of the Court; therefore until and unless the said action of the Administration is arbitrary, the Union Government cannot reject the approval of the Scheme by exercising its power arbitrarily.

47. Based on the arguments of the parties, the following issues are framed for adjudication of the instant appeal:

i) *Whether the judgment dated December 19, 2022 passed by the Division Bench in MA/9/2020 in the earlier round of litigation can be challenged by the A&N Administration;*

ii) *Whether the judgment dated December 19, 2022 passed by the Division Bench in MA/9/2020 is binding on the UoI;*

---

[1] *(2006) 4 SCC 1*

`

iii) *Whether the restrictions imposed in* Umadevi (3) (supra)[1], *followed by* M.L. Kesari (supra)[3], *are exhaustive;*

iv) *Whether the Court can issue a Writ of Mandamus to the State in respect of policy decisions; if so, whether the non-approval of the 2023 Scheme can qualify as a 'policy decision';*

v) *Whether the 2023 Scheme can pass muster on the touchstone of the prevalent labour jurisprudence.*

48. The above issues are decided as follows:

**i) Whether the judgment dated December 19, 2022 passed by the Division Bench in MA/9/2020 in the earlier round of litigation can be challenged by the A&N Administration**

49. Mr. Nataraj, learned ASGI appearing for the A&N Administration, relies on *Namit Sharma (Supra)*[4] and *Vivek Krishna (supra)*[5] to argue that the Court cannot direct a rule-making Authority to make Rules or issue mandamus directing enactment of a law or framing of Rules even under Article 226 of the Constitution of India where the Legislature confers discretion on the rule-making authority to make rules and a policy matter is involved.

---

[1] *(2006) 4 SCC 1*
[3] *(2010) 9 SCC 247*
[4] *(2013) 10 SCC 359*
[5] *(2023) 17 SCC 302*

`

50. However, in view of the earlier round of litigation, which has attained finality, the A&N Administration is debarred by the principle of *res judicata* from raising such issue. The Division Bench, vide judgment dated December 19, 2022 passed in MA/9/2020, had *inter alia* directed that the A&N Administration, being the appellants therein, shall implement the Memorandum dated June 07, 1988 and frame a Scheme of regularisation and every other benefit under the 1988 Circular within the next three months. Conspicuously, no appeal was preferred against the said judgment. Thus, it attained finality.

51. Moreover, such direction was passed only on the submission made by learned Additional Solicitor General (ASG) then appearing for the Administration that the Administration had already commenced implementation of the memorandum dated June 07, 1988, in which context the Division Bench held that "It is therefore ordered that the circular and process of framing of Scheme for regularisation and every other benefit under the aforesaid 1988 circular, duly addressed, would mandatorily and positively be brought into fore within the next three months". To this, learned ASG then representing the Administration offered to use his good offices to prevail upon the Administration in that regard.

52. To get over the said point, Mr. Nataraj cites *Kiran Singh (Supra)*[6] where it was held that a decree passed without jurisdiction is a nullity,

[6] *AIR 1954 SC 340*

`

which can be set up wherever such decree is sought to the enforced, whether in execution or a collateral proceeding. However, it does not lie in the mouth of the A&N Administration (respondent No.3 herein) to challenge the jurisdiction of the Division Bench now, having themselves invoked its jurisdiction by preferring MA/9/2020. At best, the appellants could have argued that the judgment dated December 19, 2022 was erroneous in law. However, the argument that the same was a nullity due to lack of jurisdiction of the Division Bench is not tenable in the eye of law. In *Kiran Singh (Supra)*[6], the Hon'ble Supreme Court was considering the question of nullity on the ground of lack of jurisdiction, which is not available to respondent No.3 in respect of the judgment of the Division Bench. The concerned Division Bench had pecuniary, territorial, as well as subject-matter jurisdiction to decide the Letters Patent/Mandamus/intra-Court appeal from the decision of a learned Single Judge of this Court, being clothed with such determination as per the roster of the relevant date decided by the Hon'ble the Chief Justice of the High Court.

53. Mr. Nataraj, ASGI further argues that the direction to frame a Scheme was *de hors* the prayer made in the writ petition and was not argued or fell for consideration before the Division Bench, as such rendering such direction *obiter dictum*.

---

[6] *AIR 1954 SC 340*

`

54. The concept of *obiter dictum* is one of the facets of the law of precedents. It is well-settled that unless an issue is raised and decided directly, a judgment cannot be a binding precedent on the same. The binding nature of a judgment passed by a superior or coordinate Court/forum flows from Article 141 (for the Supreme Court) and under Article 227, read with Article 215 (for the High Courts) of the Constitution of India, in consonance with the doctrine of Comity of Courts, emanating from the cardinal concepts of uniformity of law and judicial decorum.

55. Such principle, however, does not mitigate the binding effect of a direction passed by competent Court insofar as the parties to the proceedings, or their representatives, or parties claiming through them, are concerned. The present respondent No.3 was itself a party to the proceeding and was the appellant before the Division Bench in MA/9/2020; hence, whatever directions were passed therein are squarely binding on the respondent No. 3, on the principle of *res judicata*.

56. The primary distinction between the law of precedents and the principle of *res judicata* is that whereas the former binds Courts/fora subordinate or coordinate in appellate hierarchy, the latter operates in respect of parties to the self-same litigation. The concept of *obiter dictum* takes off the sting from the precedential value of a judicial decision and, thus, is essentially a corollary of the law of precedents; however, it does not have any manner of application to the principle of *res judicata*, which

`

binds the parties to a litigation to all directions or components of a judicial dictum, whether in the nature of *obiter dictum* or not, passed in such litigation.

57. Hence, the reliance of the A&N Administration on the principle of *orbiter dictum* is entirely misplaced.

58. Even otherwise, this Court cannot accept the contention of the A&N Administration that the direction to frame a Scheme was entirely beyond of the scope of the Division Bench's jurisdiction. In the relevant portion of the judgment dated December 19, 2022, the Division Bench clearly recorded that it was submitted on behalf the Administration itself that the Administration had already commenced implementation of the memorandum dated 07 June, 1988. The Division Bench went on to observe that "it is *therefore* ordered..." that the circular and process of framing of the Scheme for regularisation and every other benefit under the 1988 Circular shall mandatorily and positively be brought into fore within the next three months. It was further recorded in the Division Bench judgment that the learned ASG who represented the Administration at that juncture had offered to use his good offices to prevail upon the Administration in that regard. Thus, it was the assurance of the Administration, given through counsel, which was never disputed subsequently, that was one of the bases of the said direction. Thus, even apart from *res judicata*, the respondent no.3/Administration is also precluded by the principles of estoppel and issue estoppel from

`

reagitating the legality of such direction afresh, particularly after having failed to challenge the same; rather, complying with the same by framing the 2023 Scheme.

59. Secondly, the plinth of the challenge in the writ petition from which the appeal was preferred before the Division Bench was rooted in the OM dated June 07, 1988. In the very first sentence of the judgment dated December 13, 2019 passed by the learned Single Judge, which was challenged before the Division Bench, it was recorded that the writ petitioners had sought a direction upon the authorities to grant the benefit of 1/30$^{th}$ pay of the minimum of the relevant pay scale plus dearness allowances *in terms of the Office Memorandum dated June 07, 1988* to all Daily Rated Employees working under the respondent No.5 on and from the date of their initial engagement. It was recorded in the body of the judgment of the learned Single Judge that the OM dated September 22, 2017, which was challenged in the said writ petition, was *contrary to the OM dated June 07, 1988*, which was the primary ground of such challenge.

60. The learned Single Judge, while passing the judgment dated December 13, 2019, which was the subject matter of challenge before the Division Bench, observed that it would be appropriate to read the memorandum dated September 22, 2017 *so as to conform with the Office Memorandum dated June 07, 1988* and the principle that there must be equal pay for equal work.

`

61. Thus, the anvil on which the impugned OM dated September 22, 2017 was 'read up' by the learned Single Judge was the OM dated June 07, 1988. It cannot, thus, be argued that the OM dated June 07, 1988, which itself was directed to be implemented by framing a Scheme, was alien to the subject matter of dispute in the earlier round of litigation.

62. The concepts of 'reading up' and 'reading down' are devices evolved by Courts to save laws/Executive Circulars/subordinate legislation from being declared *ultra vires* by bringing them in harmony with Constitutional or legal provisions and/or previous subordinate/delegated legislation or settled principles of law as laid down by Constitutional Courts. In the event the 2017 OM was not read down by the learned Single Judge to bring it in consonance with the 1988 OM issued by the concerned Ministry of the UoI, the obvious fallout would be that it would have to be set aside by the Court, being violative of the 1988 OM.

63. A brief examination of the said OM dated June 07, 1988, issued by the Ministry or Personnel, Public Grievances and Pensions (Department of Personal and Training), Government of India, would be fruitful in such context. In the preface thereof, it was recorded that the guidelines stipulated therein in the matter of recruitment of Casual Workers on daily wages basis was on the premise of an earlier judgment of the Hon'ble Supreme Court delivered on the 17th January, 1986 in a writ petition filed by one *Shri Surender Singh and others vs. Union of India.*

`

64. Clause i) of the OM stipulated that persons on daily wages should not be recruited for work of regular nature. Clause ii) provided that recruitment of daily wages may be made only for work which is casual or seasonal or intermittent in nature or for work which is not of full time nature, for which regular posts cannot be created.

65. In Clause iv) thereof, it was mentioned that *where the nature of work entrusted to the casual workers and regular employees is the same*, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of eight hours a day.

66. As opposed thereto, Clause v) stated that in cases *where the work done by a casual worker is different from that of a regular employee*, the casual worker may be paid only the minimum wages notified by the Ministry of Labour or the State Government/Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948.

67. Thus, by 'reading up' the OM dated September 22, 2017 in consonance with the OM dated June 07, 1988, the learned Single Judge premised his order on the 1988 OM itself.

68. Moreover, by directing 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance to be paid to the writ petitioners there, who are the writ petitioners in the present litigation as well, the learned Single Judge implicitly acknowledged that the

`

petitioners were discharging duties equivalent to regular employees. We say so because Clause iv) of the 1988 OM recognized 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance, which was granted by the learned Single Judge, only where the nature of work entrusted to the casual workers and regular employees was the same and the work was rendered for eight hours a day. Hence, since the relief granted was in line with Clause iv) of the 1988 OM, it automatically follows that the writ petitioners qualified under the said clause and were discharging work of similar nature of work as regular employees for eight hours a day.

69. The said judgment of the learned Single Judge was affirmed by the Division Bench, which attained finality due to no further challenge being taken out against the same.

70. Hence, the Division Bench was perfectly justified and had jurisdiction to direct a Scheme to the formulated on the premise of the June 07, 1988 OM, which was issued by none else than the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) of the Government of India.

71. Another ground, which is the common refrain of the Administration and the UoI in the present appeal, is that purportedly the Scheme of 2023 was formulated "under the threat of contempt". With respect, we fail to understand such argument. If we are to accept the same, it would be validating the untenable proposition that a judgment

`

passed by a competent Constitutional Court is not binding on the parties and is otherwise liable to be flouted at will by them, unless a proceeding of contempt is initiated. The State and its instrumentalities are not favoured litigants and decisions of Courts are equally binding on them as ordinary citizens. The expression "threat of contempt" does not lend any validity to the argument that unless there was no such threat the Administration would be at liberty to flout the direction. Threat of contempt or no threat, a judgment of a Division Bench of the High Court is binding on the litigants and the Administration did not do a favour to the Court by complying with the same. Thus, the victim mentality ventilated by the Administration to justify their *volte-face*, after having permitted the previous Division Bench order to attain finality and having complied with the same, cannot be given a premium. In fact, it was only upon such compliance that the respondent No.3/Administration was let off the hook of contempt by the Hon'ble Supreme Court. Thus, the Administration cannot now resile from such position and do a complete U-turn by arguing that such compliance was under some sort of compulsion and that the order is otherwise not binding on it.

72. In Union of *India vs. Iimo Devi*, reported at *(2020) 20 SCC 290,* the Hon'ble Supreme Court observed that the High Court under Article 226 cannot direct the Government or Department to sanction and create posts or formulate a particular regularisation policy or frame any issue, which is the prerogative of the Government and not the function of the Court.

`

73. Regularisation policy regarding temporary/casual labour was stated to be a matter of policy decision in which no mandamus lies.

74. However, the chapter of framing of a Scheme is already a closed one, having attained finality in the earlier round of litigation. The present lis, it is not a framing of a Scheme but the implementation of the same which is sought. Having acceded to the earlier round of litigation and the judgment of the earlier Division Bench having attained finality, the said question cannot be reopened by the Administration, which was directed to frame the Scheme. Accordingly, the ratio regarding framing of Scheme is no longer *res integra* inasmuch as the Administration is concerned.

75. In view of the above findings, this issue is decided against the appellants and the respondent No.3/Administration by holding that the earlier judgment of the Division Bench dated December 19, 2022 passed in MA/09/2020 is squarely binding on the respondent No. 3 and it cannot now resile from such position by challenging the legality of such judgment and/or deny it after having complied with the same by framing the 2023 Scheme.

**ii) <u>Whether the judgment dated December 19, 2022 passed by the Division Bench in MA/9/2020 is binding on the UoI</u>**

76. Mr. Gopala Binnu Kumar, learned counsel appearing for the writ petitioners/ respondent nos. 1 & 2, argues that the learned Attorney-General for India (AGI) had appeared before the Hon'ble Supreme Court

`

in the appeal arising out of the contempt proceeding initiated due to the violation of the order of the Division Bench in the earlier round of litigation. As such, it is submitted that it is within the knowledge of UoI as to such direction to frame the Scheme being passed.

77. It is further argued that by a communication dated August 30, 2023 to the Joint Secretary (UT), Ministry of Home Affairs, Government of India, requesting the concurrence and ratification of the 2023 Scheme, the Secretary (Personnel/Finance) of the A & N Administration had categorically sated that in compliance with the order dated August 14, 2023 passed by the Hon'ble Supreme Court in Civil Appeal No. 5014 of 2023, read with the DoPT's OM dated October 07, 2020, the Scheme was drafted and was approved in principle by the Lieutenant Governor, A & N Islands. In the self-same letter, it was mentioned that in response to the Administration's letter dated August 06, 2023, which was sent to the Ministry of Home Affairs (MHA), New Delhi vide the Administration's email dated August 07, 2023, the MHA had conveyed vide its email dated August 07, 2023 that the request of the UT Administration for allocation of funds of Rs. 300 Crore in RE 2023-2024 for compliance of direction of the Calcutta High Court had been noted by the Ministry and the same would be included in the RE/BE proposals to be sent to the Ministry of Finance (Department of Economic Affairs) for their consideration during pre-budget discussion with Secretary (Expenditure). Simultaneously, multiple high level committee meetings were convened under the chairmanship of the learned Attorney-General for India in his office-cum-

residence in New Delhi on August 07, 2023, August 10, 2023 and August 12, 2023, consequent to which, the learned Attorney-General for India had advised certain modifications, pursuant to which the A & N Administration had issued a fresh order, being Order 2276 dated August 10, 2023 in supersession of its earlier Order 1283 dated May 09, 2023 by introducing such modification.

78. Thus, not only did the Attorney-General for India, a Constitutional functionary, appeared on behalf of the Administration and was fully aware of the direction of this Court, high level committee meetings were held under the aegis of the learned Attorney-General for India and on his advice, modifications were incorporated and the Scheme was finally framed. Hence, respondent nos. 1 & 2 argue that the UoI was all along in the know of the direction of the Court.

79. It is further argued by the writ petitioner/respondent nos. 1 & 2 that the 2023 Scheme was not merely a brain child of the Administration or an Executive fiat but had a judicial colour in view of the same having been framed on the basis of the assurance given to the Hon'ble Supreme Court, as recorded in the several orders passed in the appeal against the contempt proceeding before the Hon'ble Supreme Court.

80. Per contra, Mr. S. D. Sanjay, ASGI appearing for the UoI, argues that the Attorney-General appeared in the matter in the capacity of senior counsel for the Administration and not in his Constitutional

`

capacity, and, in any event, his advices would at best be precisely that, only “advices” which not binding on the Central Government.

81. We agree with the submission of Mr. Sanjay, ASGI that mere appearance of the learned Attorney-General on behalf of the A&N Administration before the Hon’ble Supreme Court cannot be construed to be either the knowledge of the UoI or any involvement of the UoI in the earlier proceeding. However, the chronology of contemporaneous events is to be seen in proper perspective.

82. In its judgment affirming the order of the learned Single Judge in the first writ petition, the Division Bench had directed a copy of its order to be sent to the Ministry of Home Affairs, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) and to the Principal Secretary to the Government of India at New Delhi. Hence, it cannot be said that the UoI did not have knowledge of the earlier proceedings when the contempt matter went up before the Hon’ble Supreme Court. The learned Attorney-General for India appeared for the first time in the matter on behalf of the A&N Administration before the Hon’ble Supreme Court in such backdrop.

83. Moreover, in its order dated August 14, 2023, the Hon’ble Supreme Court was pleased to record the submission of the learned Attorney-General on behalf of the A&N Administration that the Administration had requisitioned funds to the tune of Rs. 300 Crore under the ‘wages head’ which was under consideration before the Union Ministry of Home

`

Affairs. As a follow-up, in the order dated September 09, 2024, it was recorded by the Hon'ble Supreme Court that "the payment which was envisaged in paragraph 11 of the order of this Court dated 14 August 2023 has admittedly been made". The learned Attorney-General's statement in that regard was also noted. Thereafter, the Hon'ble Supreme Court observed that as regards the issue of regularisation, it was common ground that the Department of Personnel and Training of the Union of India was not a party to the earlier proceedings and further that, "in this backdrop", all that needed to be observed at that stage was that "if there is any substantive grievance in regard to the scheme for regularization, it would be open to the respondents to pursue their claims in accordance with law", thus keeping it open to the writ petitioners/respondent nos. 1 and 2 to ventilate their grievance regarding non-implementation of the Scheme if occasion so arose in the then future.

84. The entire turn of events as narrated above goes on to show that the narrative of the Central Government about lack of knowledge and non-involvement in the earlier round of litigation cannot be accepted for several reasons.

85. First, the parent judgment of the Division Bench was to be communicated to the Ministry of Home Affairs, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) and Principal Secretary to the Government of India as per the direction

`

incorporated in the Division Bench judgment itself. The purpose of such direction was obviously to inform the concerned Ministry of the Government of India about the purport of the judgment. Despite having knowledge thereof, no challenge was preferred by the Government against the judgment, although law permits even a non-party to prefer an appeal with leave of the appellate court if aggrieved.

86. Secondly, at the contempt stage, the learned Attorney-General for India appeared in the Supreme Court, albeit for the A&N Administration. His role as a Constitutional functionary in the said proceeding is sought to be discounted by projecting him merely to have acted in the capacity of counsel for the A&N Administration. It might have been a plausible proposition if the facts were not otherwise.

87. Apropos such submission of Mr. Sanjay, learned ASGI appearing for the UoI, the Constitutional functions of the Attorney-General for India are to be seen in the context of Article 76 of the Constitution of India. Clause (2) of Article 76 stipulates that it shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under the Constitution or any other law for the time being in force.

88. The role of the learned Attorney-General for India in the present case has to be tested in the backdrop of Article 76(2) of the Constitution.

`

89. The chronology of events which immediately preceded the Hon'ble Supreme Court's order dated August 14, 2023, as disclosed in the affidavit of the A&N Administration (then represented by the learned Attorney-General for India), is as follows:

(a) Multiple high level committee meetings were convened under the chairmanship of the learned Attorney-General for India in his office-cum-residence in New Delhi on August 07, 2023, August 10, 2023 and August 12, 2023.

(b) The learned Attorney-General for India advised certain modifications.

(c) Pursuant to the advice of the learned Attorney-General, the A&N Administration issued a fresh order, being Order 2276 dated August 10, 2023, in supersession of its earlier Order 1283 dated May 09, 2023, by introducing such modifications.

(d) In Order 2276 dated August 10, 2023, Clause "g" of the superseded Order 1283 was, *inter alia*, withdrawn, which stated that "*the applicant has to submit an Undertaking to the effect that the enhanced wages to be granted by the department shall not bestow any right upon him for regularization of service against any vacant post in future or any additional wages for any previous period before the date of issue of this Administration's Order*."

`

(e) In addition to the withdrawal of Clause "g", another clause, that is, Clause "h", which fixed the implementation date to be the date of the issue of Order 1283, was also withdrawn.

(f) Order 2276 stipulated the date for enhanced wages to be from September 01, 2017 and, for release of the arrears with effect from September 07, 2017 to May 08, 2023 in respect of the then 4010 DRMs, the Administration requisitioned funds to the tune of approximately Rs. 300 Crore under the 'wages' head in the RE 2023-24.

(g) By a communication dated August 07, 2023, the concerned Ministry of the Government of India "acknowledged in the affirmative" the said requisition.

90. The above developments are taken only from the affidavit filed by the A&N Administration before the Supreme Court, parts of which were extensively quoted by the Hon'ble Supreme Court in its order dated August 14, 2023.

91. Admittedly, funds to the tune of Rs. 300 Crore, which was recorded in the order of the Hon'ble Supreme Court dated August 14, 2023 to have been requisitioned by the Administration, was duly paid by the Government of India without demur.

92. The common thread throughout the proceeding, in and outside Court, was the legal advice of the learned Attorney-General for India. Such 'legal advice' [apropos Article 76 (2), Constitution], in the present

case, permeated not only to advice to the Administration but governed the contemporaneous acts of the Government of India as well. We say so because before the requisition was made, necessary modifications were made to the Order 1283 dated May 09, 2023 only on the advice of the learned Attorney-General and, in supersession of Order 1283, Order 2276 dated August 10, 2023 saw the light of day. It is on the strength of Order 2276 that the requisition of Rs. 300 Crore was made.

93. At least when the requisition for Rs. 300 Crore was made to the Government of India and thereafter, when it was approved by the Ministry of Home Affairs and the payment was made to the A&N Administration, the Ministry of Finance must have been in the loop before sanctioning the disbursal of such substantial amount. In the deliberations preceding the approval of the requisition on the part of the concerned Ministries, Order 2276, which was the very plinth of the requisition, must have been the cynosure of attention.

94. In Order 2276 itself, Clause "g" of Order 1283 was also withdrawn, which read: "*the applicant has to submit an Undertaking to the effect that the enhanced wages to be granted by the department shall not bestow any right upon him for regularization of service against any vacant post in future or any additional wages for any previous period before the date of issue of this Administration's Order*".

95. We cannot also lose sight of the fact that the concerned Ministries of the Government of India acted in hot haste in approving and

`

disbursing the amount of Rs. 300 Crore to purge the contempt of the high functionaries of the A&N Administration by promptly acceding to the requisition of the Administration on the strength of Order 2276, which also withdrew the Administration's insistence upon undertakings by the DRMs to waive their right of regularization. Such act on the part of the concerned Ministries of the Government of India amounted to tacit acceptance of Order 2276 as well.

96. It is the learned Attorney-General for India under whose direct legal advice, both in and out of court, the entire process of disbursal materialized, despite the quantum involved being huge by any standard and also coming from the public exchequer, exhibiting a rare harmony between the acts of the concerned Ministries of the Government of India and the A&N Administration. Thus, one cannot be so naïve as to accept the proposition that the role of the learned Attorney-General for India in the entire chain of events was restricted merely to the capacity of legal advisor for the Administration and not the Government of India.

97. In such view of the matter, not only is the Government of India in a position to feign ignorance of the pith and substance of the issues involved and orders passed in the earlier round of litigation, including the component of regularization implicit in the Administration's requisition based on Order 2276, but it is also estopped from reopening the issue after having acted in concert with the Administration to facilitate compliance of the Division Bench's judgment passed in the

`

earlier round of litigation for the purpose of purging the contempt of the Administration.

98. The standards governing the Union Government have to be judged on a much higher pedestal than ordinary citizens. Thus, it is cannot maintain double standards, on the one hand facilitating compliance of a part of the Division Bench judgment by the A&N Administration to save the skin of the latter from contempt by disbursing at break-neck speed the uber-high amount of Rs. 300 Crore from the public exchequer (thereby in effect acceding to the said judgment), and on the other, denying to comply with the rest of the judgment on the ground of 'policy decision' and the consequent drain on the public exchequer.

99. If the Union of India, acting through the Central Government, was aggrieved with the parent Division Bench judgment which gave rise to the contempt, nothing prevented it from preferring a challenge against the same before the Supreme Court with leave to prefer such challenge, since it was not a party to the proceeding. However, despite having definite knowledge of the proceeding at least at the stage of sanctioning the A&N Administration's requisition for Rs. 300 Crore, the Union of India not only did not challenge the Division Bench judgment, but proactively acceded to it by according approval to the requisition of the Administration in pursuance of the Division Bench judgment.

`

100. Thus, on such count alone, the UoI is bound by the judgment of the Division Bench passed in the earlier round of litigation, despite not being a party thereto.

101. Moreover, there is a more fundamental premise to the present issue than meets the eye.

102. The direction of the Division Bench dated December 19, 2022 passed in MA/9/2020, which has attained finality, was not on a standalone footing but issued on the specific premise of an OM dated June 07, 1988 issued by the Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel & Training), Government of India, that too on the basis of the Administration's submission that the same was being effect to. In the said OM itself, certain guidelines were given which are also ample indicators of the policy of the Central Government in respect of the subject matter thereof. As discussed earlier, the OM categorically mentioned that persons on daily wages should not be recruited for work of regular nature and that recruitment of daily wagers may be made only for work which is casual or seasonal or intermittent in nature or for work which is not of full time nature, for which regular posts cannot be created.

103. Clause iv) of the OM categorically stipulated that where the nature of work entrusted to the casual workers and regular employees is the same, they would be paid at the rate of 1/30$^{th}$ of the pay at the

`

minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.

104. The policy which is reflected from the said OM is that even in the perception of the Government of India, daily wagers who were recruited for work of regular nature would stand on different footing than daily wagers who had been recruited for work of a casual or seasonal or intermittent in nature or not a full-time nature, for which regular posts cannot be created.

105. Thus, this issue cannot be decided in a black-and-white 'yes' or 'no'. As such, we hold that the UoI, though not a party to the earlier round of litigation, is bound by the judgment of the Division Bench in that round, having acceded to the same by facilitating compliance of a part thereof by disbursing Rs. 300 Crore on the basis of the Administration's requisition based on its Order 2276 (which also tacitly legitimized the DRMs' right to regularisation) and having not preferred any challenge thereto with leave, thus allowing the same to attain finality, despite having full knowledge of the same.

**iii) Whether the restrictions imposed in *Umadevi (3) (supra)*[1], followed by *M.L. Kesari (supra)*[3], are exhaustive**

106. In *Umadevi (3) (supra)*[1], the concept of 'equal pay for equal work' was held to be different from the concept of conferring permanency on

[1] (*2006) SCC 4 1*

`

those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. Although it was recognized that the Hon'ble Supreme Court, in various decisions, had applied the principle of equal pay for equal work and had laid down the parameters for the application of that principle, still it was held that the said decisions are based on the concept of equality enshrined in our Constitution in the light of the Directive Principles in that behalf. But that the acceptance of that principle cannot lead to a position where the Court could direct that appointments to be made without following the due procedure established by law, be deeming them to be permanent or issuing directions to treat them as permanent. Doing so, it was held, would be negation of the principle of equality of opportunity.

107. It was further observed that it is not as if the person who accepts an engagement, either temporary or casual in nature, is not aware of the nature of his employment but accepts such employment with open eyes. It was further held that on the ground of unequal bargaining position alone, it would be appropriate to jettison the Constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently since by doing so, it will be creating another mode of public appointment which is not permissible.

`

108. Throughout the said judgment, the underlying tenor was that persons engaged in temporary or casual employment cannot be equated with regular employees.

109. In paragraph 48 of *Umadevi (3) (supra)*[1], it was observed that no right can be founded on an employment on daily wages to claim that such employee should be treated at par with a regularly recruited candidate and that there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis to claim that they have a right to be absorbed in service. That the right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed, since it would be treating unequals as equals. The financial implication on the State was also taken note of.

110. *Umadevi (3) (supra)*[1] refused the right to employment to be brought within the concept of right to life or be included as a fundament right in the context of engagement which happened through backdoor. The plinth of the said judgment was that the employees who came through the backdoor route cannot be equated with regular employees, appointed in terms of the extant rules.

---

11 [1] *(2006) 4 SCC 1*

`

111. *M.L. Kesari (supra)*[3] consolidated such position further, however, enumerating the crux of *Umadevi (3)*[1] in paragraph nos. 7 to 13 thereof, which are set out below:

> *"7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi (3) [(2006) 4 SCC 1], if the following conditions are fulfilled:*
>
> *(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.*
>
> *(ii) The 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 will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.*
>
> *8. Umadevi (3) [(2006) 4 SCC 1] casts a duty upon the Government or instrumentality concerned, to take steps to regularise the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi (3) [(2006) 4 SCC 1] directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10-4-2006).*
>
> *9. The term "one-time measure" has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi (3) [(2006) 4 SCC 1] , each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularise their services.*
>
> *10. At the end of six months from the date of decision in Umadevi (3) [(2006) 4 SCC 1] , cases of several daily-wage/ad hoc/casual*

[3] (2010) 9 SCC 247
[1] (2006) 4 SCC 1

`

*employees were still pending before courts. Consequently, several departments and instrumentalities did not commence the one-time regularisation process. On the other hand, some government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision in Umadevi (3) [(2006) 4 SCC 1] , will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six-month period mentioned in para 53 of Umadevi (3) [(2006) 4 SCC 1] has expired. The one-time exercise should consider all daily-wage/ad hoc/casual employees who had put in 10 years of continuous service as on 10-4-2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi (3) [(2006) 4 SCC 1] , but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi (3) [(2006) 4 SCC 1] , the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of Umadevi (3) [(2006) 4 SCC 1] , are so considered.*

*11. The object behind the said direction in para 53 of Umadevi (3) [(2006) 4 SCC 1] is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3) [(2006) 4 SCC 1] was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in Umadevi (3) [(2006) 4 SCC 1] ] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi (3) [(2006) 4 SCC 1] or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi (3) [(2006) 4 SCC 1] as a one-time measure.*

*12. These appeals have been pending for more than four years after the decision in Umadevi (3) [(2006) 4 SCC 1] . The appellant (Zila Panchayat, Gadag) has not considered the cases of the respondents for regularisation within six months of the decision in Umadevi (3) [(2006) 4 SCC 1] or thereafter.*

`

> *13. The Division Bench of the High Court has directed that the cases of the respondents should be considered in accordance with law. The only further direction that needs to be given, in view of Umadevi (3) [(2006) 4 SCC 1] , is that the Zila Panchayat, Gadag should now undertake an exercise within six months, as a general one-time regularisation exercise, to find out whether there are any daily-wage/casual/ad hoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfil the requirements mentioned in para 53 of Umadevi (3) [(2006) 4 SCC 1] . If they fulfil them, their services have to be regularised. If such an exercise has already been undertaken by ignoring or omitting the cases of Respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said one-time exercise within three months. It is needless to say that if the respondents do not fulfil the requirements of para 53 of Umadevi (3) [(2006) 4 SCC 1], their services need not be regularised. If the employees who have completed ten years' service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularisation in suitable lower posts."*

112. A composite reading of the said two judgments makes it clear that the distinction was drawn between "illegal" and "irregular employees". Two tests were laid down for considering an employee to be irregular, as opposed to illegal, one being that an employee had to be in continuous service for more than 10 years without the protection of any interim orders of Courts or Tribunal and the other that the employee ought to have the prescribed minimum qualifications.

113. However, the law has undergone much evolution post-*Umadevi (3) (supra)*[1] and the said judgment has been discussed, considered and explained in several subsequent judgments. The UoI contends that since the subsequent judgments were delivered by 2-Judge Benches, they cannot dilute the position cemented by *Umadevi (3) (supra)*[1]. However, we are unable to accept such argument, since the later Benches did not

---

[1] *(2006) 4 SCC 1*

`

"dilute", distinguish or attempted to undermine *Umadevi (3) (supra)*[1] but merely elaborated and explained the same in the context of changing realities of society.

114. In *Jaggo vs. Union of India*, reported at *2024 SCC OnLine SC 3826*, cited by the petitioners/respondent Nos. 1 & 2, the Hon'ble Supreme Court observed that the decision in *Umadevi (3) (supra)*[1] does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment, it was explained, sought to prevent backdoor entries and illegal appointments that circumvent Constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of "sanctioned functions" for a considerable period, the need for a fair and humane resolution becomes paramount.

115. The following paragraphs of *Jaggo (supra)*[7] are germane in the context.

> *"20. It is well established that the decision in Umadevi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this*

[1] *(2006) 4 SCC 1*
[7] *2024 SCC OnLine SC 3826*

`

*Court in Vinod Kumar v. Union of India[5], it was held that held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgment have been reproduced below:*

> *"6. The application of the judgment in Umadevi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Umadevi (supra).*
>
> *7. The judgment in the case Umadevi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case…"*

*21. The High Court placed undue emphasis on the initial label of the appellants' engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment : continuous, long-term service, indispensable duties, and absence of any mala fide or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.*

*22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.*

`

*23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration[6] encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.*

*24. The landmark judgment of the United State in the case of Vizcaino v. Microsoft Corporation[7] serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.*

*25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:*

- ***Misuse of "Temporary" Labels:*** *Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*

- ***Arbitrary Termination:*** *Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*
- ***Lack of Career Progression:*** *Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*

`

> • ***Using Outsourcing as a Shield:*** *Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.*
>
> • ***Denial of Basic Rights and Benefits:*** *Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.*
>
> *26. While the judgment in Umadevi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Umadevi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.*
>
> *27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country."*

116. It is evident from the above extract that the Hon'ble Supreme Court, sitting in a 2-Judge Bench composition, did not criticize or differ

`

from *Umadevi (3) (supra)*[1], but merely explained the moot spirit of the same and flagged the broader systemic issue that in the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. It was further observed that Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices.

117. Thus, the sheer injustice and denial of basic human rights by dint of unfair human exploitation of the unorganized labour sector was called out in *Jaggo (supra)*[7].

118. The same principle was reiterated in *Shripal & Another vs. Nagar Nigam Gaziabad*, reported at *(2025 SCC OnLine SC 221*, and followed in *Dharam Singh and others vs. State of UP*, reported at *2025 SCC OnLine SC 1735.* In the last above-mentioned decision, the Hon'ble Supreme Court held that *Umadevi (3) (supra)*[1] draws a distinction between illegal appointments and irregular engagements and does not endorse the perpetuation of precarious employment where the work itself is permanent and the State has failed, for years, to put its house in order. It was further held, by relying on the previous two judgments referred to above, that the Hon'ble Supreme Court has emphatically cautioned that

---

[1] *(2006) 4 SCC 1*
[7] *2024 SCC OnLine SC 3836*
`

*Umadevi (3) (supra)*[1] cannot be deployed as a shield to justify exploitation through long-term "ad hocism" the use of outsourcing as a proxy, or the denial of basic parity where identical duties are exacted over extended period.

119. In *Shripal (supra)*[8], the Hon'ble Supreme Court observed that if certain muster rolls were not produced in full, the employer's failure to furnish such records despite directions allows an adverse inference under well-established labour jurisprudence. Indian labour law, the Hon'ble Supreme Court held, strongly disfavours perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature.

120. In the above triad of post- *Umadevi (3) (supra)*[1] judgments, the Hon'ble Supreme Court touched the areas which were not dealt with specifically by the Hon'ble Supreme Court in *Umadevi(3) (supra)*[1], in the process adumbrating the core features of *Umadevi(3) (supra)*[1].

121. We have to take into account the fact that *Umadevi (3) (supra)*[1] was dealing with merely some of the species of cases which were eligible for regularisation, being treated at par with regular workers. In such limited context, the Hon'ble Supreme Court considered the case those temporary workers who were engaged against sanctioned posts and had devoted at least ten years' continues service without any benefit of an order of court and met the minimum educational qualifications, and granted the benefit

---

[1] *(2006) 4 SCC 1*

[8] *2025 SCC OnLine SC 221*

`

of regularisation to them, labelling their engagements as "irregular", as opposed to "illegal".

122. The following extracts from *Shripal (supra)*[8] are also relevant in the context.

> *"12. The evidence, including documentary material and undisputed facts, reveals that the Appellant Workmen performed duties integral to the Respondent Employer's municipal functions specifically the upkeep of parks, horticultural tasks, and city beautification efforts. Such work is evidently perennial rather than sporadic or project-based. Reliance on a general "ban on fresh recruitment" cannot be used to deny labor protections to long-serving workmen. On the contrary, the acknowledged shortage of Gardeners in the Ghaziabad Nagar Nigam reinforces the notion that these positions are essential and ongoing, not intermittent.*
>
> *… … …*
>
> *14. The Respondent Employer places reliance on Umadevi (supra)[2] to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Umadevi itself distinguishes between appointments that are "illegal" and those that are "irregular," the latter being eligible for regularization if they meet certain conditions. More importantly, Umadevi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.*
>
> *15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records—despite directions to do so—allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite "temporary" employment practices as done by a recent judgment of this court in Jaggo v. Union of India[3] in the following paragraphs:*

[8] *2025 SCC OnLine SC 221*

`

*"22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.*

*.....*

*25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:*

*• Misuse of "Temporary" Labels : Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labelled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*

*• Arbitrary Termination : Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*

*• Lack of Career Progression : Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*

*• Using Outsourcing as a Shield : Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.*

*• Denial of Basic Rights and Benefits : Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This*

`

> *lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.".*

123. Thus, *Jaggo (supra)*[7], *Shripal (supra)*[8] followed by *Dharam Singh (supra)*[9] were pointers in the direction that *Umadevi (3) (supra)*[1] cannot be used as a shield to justify exploitative engagements persisting for years without regular recruitment.

124. The UoI, in the present appeal, places much reliance on paragraph no. 54 of *Umadevi (3) (supra)*[1], where it was clarified that those decisions which run counter to the principle settled in *Umadevi (3) (supra)*[1], or in which directions running counter to what was held therein, would stand denuded of their status as precedents.

125. However, the said observation cannot apply prospectively, freezing the law laid down by the Supreme Court for all time to come, nor was it specifically held to be so, but can only be applicable to the judgments which held the field on that date.

126. Judicial opinion, like legislation, evolves over time in consonance with the lived realities of Society. A cryogenic approach, freezing in time for ever the law laid down by the Supreme Court in a particular time and context, cannot be read into the law of precedents. The law of the land and its interpretations, whether it emanates from legislative or judicial

---

[7] *2024 SCC OnLine SC 3826*
[8] *2025 SCC Online SC 221*
[9] *2025 SCC OnLine SC 1735*
[1] *(2006) 4 SCC 1*

`

sources, cannot form a static monolithic behemoth but must be dynamic, evolving with the times and the evolving mores of the polity. If the Constitution of India, which is the *grundnorm* of the entire body of law in the country, can be a 'living document', there is no reason why precedents cannot be.

127. Thus, by exploring the grey areas untouched and unforeseen in *Umadevi (3)(supra)*[1], the Hon'ble Supreme Court only facilitated the evolution of law in *Jaggo (supra)*[7], *Shirpal (supra)*[8] and *Dharam Singh(supra)*[9].

128. Thus, by no stretch of imagination can it be said that the post-*Umadevi (3)(supra)*[1] judgments, having been delivered by lesser-strength Benches of the Supreme Court and being contrary to the said judgment, are bad law.

129. A composite reading of the above triumvirate of judgments amply elucidates the progression of law since *Umadevi (3) (supra)*[1] in the field. Thus, the proposition laid down in *Umadevi (3) (supra)*[1], *and M.L.Kesari (supra)3,* read in the context of the subsequent explanation given to them by the Hon'ble Supreme Court, brings us to current position of law in that regard.

---

[1] *(2006) 4 SCC 1*
[7] *2024 SCC OnLine SC 3826*
[8] *2025 SCC OnLine SC 221*
[9] *2025 SCC OnLine SC 1735*
[3] *2010 9 SCC 247*

`

130. *Umadevi (3) (supra)*[1], as pointed by the subsequent judgments, could not have been exhaustive, having dealt with only one of the genres of irregular appointment. There are certain other situations where daily rated wagers may also be entitled to similar benefit as given in *Umadevi (3)(supra)*[1].

131. The law, as it stands now, in the light of above discussions, may be summarized as follows:-

*(i) Regularisation, per se, is a not a fundamental right; Courts cannot issue blanket writs of mandamus to the Executive to regularise all casual/contractual employees;*

*(ii) As a general proposition governing employment, backdoor entries are discouraged, particularly in public service, and the State and its instrumentalities are supposed to adopt fair, transparent, and inclusive means, adhering to the rules framed by them, if any, in matters of employment;*

*(iii) However, the cliché 'backdoor entry' cannot by wielded by the State as a shield to mask perpetual temporary engagement of a workforce to discharge sanctioned functions of perennial nature which are integral and essential to the functioning of the concerned Department/instrumentality of the State;*

*(iv) "Irregular", not "illegal", employees are entitled to regularisation.*

*(v) The term "irregular" has been expanded since Umadevi (3) (supra) by judicial pronouncements of the Hon'ble Supreme Court, and now includes the following tests:*

*(a) The employee must possess the prescribed minimum qualification;*

---

[1] *(2006) 4 SCC 1*

`

(b) *The engagement should be against sanctioned "posts" or sanctioned "functions";*

(c) *The engagement should be for a substantial length of time in work of a perennial nature.*

(d) *The works performed, to be eligible for regularisation, has to be integral and essential to the functioning of the employer.*

132. By granting the 1/30th pay minimum pay scale plus dearness allowance benefits, this Court, in the earlier round of litigation, had proceeded on the premise of the 1988 OM issued by the Union of India itself, which recognized the Daily Wage Employees' entitlement to such relief on the premise of having done work equivalent to regular employees for eight hours a day for a continuous period without Court intervention. Thus, the employees who are represented by the respondent nos. 1 to 2 herein otherwise fulfil the criteria as indicated above to be entitled to regularisation.

133. Hence, this issue is decided against the appellants and it is held that *Umadevi (3) (supra)*[1], insofar as it stipulated the criteria for eligibility to regularisation, was not exhaustive but left it open for other categories of persons, as explained in *Jaggo (supra)*[7], *Shripal (supra)*[8] *and Dharam Singh (supra)*[9], also to be included within the zone of consideration for such purpose.

---

[1] *(2006) 4 SCC 1*
[7] *2024 SCC Online SC 3826*
[8] *2025 SCC Online SC 221*
[9] *2025 SCC Online SC 1735*

`

**iv) <u>Whether the Court can issue a writ of mandamus to the State in respect of policy decisions; if so, whether the non-approval of the 2023 Scheme can qualify as a 'policy decision'</u>**

134. The UoI relies on *Bhagwan and others (supra)*[10], in paragraph no. 28 of which it was held that the Court should refrain from interfering with policy decisions, which might have a cascading effect and financial implications. It was further observed that whether to grant certain benefits to the employees is to be left to an expert body.

135. In *State of Bihar and another (Supra)*[11], it was reiterated that there is no obligation on the part of the State to disburse a grant, which is the discretion of the State. Such conclusion was arrived at while considering whether pension could be directed to be given. The Hon'ble Supreme Court held that pension is a voluntary act and not enforceable by a writ of mandamus.

136. Other judgments cited on behalf of the UoI on such proposition reiterate the above position and, as such, are not discussed at length in order to avoid being unnecessarily repetitive.

137. Thus, under normal circumstances, Courts refrain from passing directions or issuing writs of mandamus to implement policy decisions of the State.

---

[10] *(2022) 4 SCC 193*
[11] *(2019) 3 SCC 803*

`

138. The question which thus arises is whether the non-approval of the 2023 Scheme is actually a policy decision. On a careful scrutiny, we find that even in *Vivek Krishna (supra)*[5], the Hon'ble Supreme Court observed that policy matters are never interfered with, *unless patently arbitrary, unreasonable or violative of the Article 14 of the Constitution of India.* (Emphasis supplied).

139. Thus, although a policy decision is generally not interfered with by the Courts, it is not an absolute bar set in stone and if there is clear infraction of fundamental or basic rights, in particular the right to equality enshrined in Article 14 of the Constitution, or the decision is arbitrary or unreasonable, there is a window of interference by Courts.

140. It has to be kept in mind that merely because financial implications are involved, each and every decision of the State cannot be labelled as a "policy decision", since the implementation of any beneficial scheme comes with a financial burden on the public exchequer.

141. The one-off grant of sanction to a Scheme cannot be placed on the high ground of a 'policy decision' of the Government. Whenever any decision is taken or any Scheme is implemented by the Government, being it on the direction of Court or of its own, some financial implication is always involved. Thus, mere financial consequence cannot be an indicator of whether a decision is a matter of policy or not. To be a 'policy', there has to be conscious plan of action agreed upon or chosen

[5] *(2023) 17 SCC 302*

`

by a Government, which has to be of a general nature and not confined to specific cases.

142. Another aspect of the matter cannot be overlooked. The Constitution casts certain duties on the Government as the protector of the fundamental and basic human rights of its citizenry. In such backdrop, if implementation of a Scheme on the direction of a Court involves the fulfillment of such duty of the State or enforcement of a fundamental right or a basic human right of the citizens, the shield of 'policy decision' is not available to the Government as a defence against such implementation.

143. In *Jaggo (supra)*[7] as discussed above, the Hon'ble Supreme Court took into consideration the consistent advocacy of the International Labour Organization (ILO), of which India is a founding member, for employment stability and the fair treatment of the worker. The Hon'ble Supreme Court further elaborated that the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, but these are increasingly becoming a mechanism to evade long-term obligations owed to employees. In the present case, the writ petitioners/respondent nos. 1 and 2 espouse the cause of a section of people who have been given the benefit of 1/30$^{th}$ pay along with dearness allowance in recognition of the fact, in terms of the 1988 OM of the Department of Personnel and Training of the Union Government, that

[7] *2024 SCC Online SC 3826*

`

they were not discharging merely casual or seasonal or intermittent nature of work which is not of a full-time nature for which regular posts cannot be created, but were working for 8 hours of a day and the nature of the work entrusted was equivalent to that of regular employees.

144. As recognised in *Jaggo (supra)*[7], if an employee is consistently engaged in work equivalent to a regular employee over years, discharging functions for which, although regular employment could be granted, has not been so done by the concerned Department, and the work is essential and integral to be functioning of the Department, such an employee comes within the purview of the expanded scope of regularisation as laid down in the triumvirate of post-*Umadevi (3)* judgments referred to above. Hence, although a policy decision is not *per se* justiciable, if there are involved elements of implementation of fundamental or basic human rights and/or compliance with the fundamental duties of the State as the *parens patriae* of the citizens, the same transcends the realm of a mere policy decision and enters into the domain of the mandate of the Constitutional vision of giving access to justice and equality before the law for all.

145. The "equal pay for equal work" principle was diluted in *Umadevi (3) (supra)*[1] in the specific context of the appointments being on purely *ad hoc* and temporary basis. However, if the backdoor is the only door open before the employees in view of the Government and/or its

---

[7] *2024 SCC Online SC 3826*
[1] *(2006) 4 SCC 1*
`

instrumentalities not engaging regular employees for work equivalent to that done by regular employees for years together, and continue to renew the contracts of the Daily Rated Wagers over and over again, the Government/its instrumentalities cannot take advantage of their own wrong in refusing regularisation to such employees in the concerned posts. Hence, although the implementation of the 2023 Scheme will be attended by certain financial implications on the part of the Government, it cannot be said that the matter is confined to a mere policy decision. Thus, the defence of 'policy decision' is not applicable in the present case.

146. In *Indian Drugs (supra)*[2], the Hon'ble Supreme Court deprecated judicial activism except in extreme and exceptional situations and observed that the Court cannot arrogate to itself the powers of the Executive or the Legislature. In paragraph no. 41 of the said report, it was held that the Supreme Court's directions for regularisation passed in certain cases would not operate as precedents unless law was specifically laid down therein.

147. However, in the trilogy of *Jaggo (supra)*[7], *Shripal (supra)*[8] *and Dharam Singh (supra)*[9], law has clearly been laid down by the Hon'ble Supreme Court within the contemplation of Article 141 of the

---

[2] *(2007) 1 SCC 408*
[7] *2024 SCC Online SC 3826*
[8] *2025 SCC Online SC 221*
[9] *2025 SCC Online SC 1735*

`

Constitution of India. The propositions laid down therein are not confined to the facts of the respective cases but are binding precedents.

148. Hence, it would not be judicial activism for this Court to act in consonance with the said judgments; rather, it would be judicial impropriety if those, being subsequent judgments specifically considering, elaborating and expanding *Umadevi (3) (supra)*[1], are derogated from.

149. Thus, we hold that although ordinarily the Court cannot issue a writ of mandamus to implement policy decisions, approval of the 2023 Scheme is not restricted to a 'policy decision' but has ramifications in ensuring the concerned workmen their dues in terms of judicial pronouncements and their fundamental right of equality with regular appointees discharging similar functions.

**v) <u>Whether the 2023 Scheme can pass muster on the touchstone of the prevalent labour jurisprudence</u>**

150. As discussed above, in view of the section of DRMs who are represented by the respondent nos. 1 and 2 having discharged work against sanctioned functions of a perennial nature which are integral and essential to the functioning of the employer for a substantial length of time, they cannot be put at par with mere temporary/casual/seasonal workers but have to be given the status equivalent to regular employees.

---

[1] *(2006) 4 SCC 1*

`

For all practical purpose, if an employee has been continued voluntarily by the Government or its Department in regular service, it cannot be said that the employee has been working as a mere casual worker. In the present case, the DRMs concerned have been identified by the respondent No.3-Administration itself to fulfill the said condition, and, as such, cannot be denied regularisation. The 2023 Scheme, if granted, does not pertain to any policy decision of the UoI at all but is in discharge of the Constitutional obligation of the UoI to fulfill the Constitutional vision of equality among equals, since the Daily Rated Workers satisfy the tests as recognised in *Jaggo (supra)*[7] and the line of judgments following the same and have also been recognized by the UoI to fulfill such parameters by disbursing their dues of 1/30$^{th}$ of regular pay and dearness allowance in line with the 1988 OM issued by the Department of Personnel and Training, Government of India.

151. Hence, the grant of approval of the 2023 Scheme cannot be labelled merely as a policy decision.

152. Let us now consider the 2023 Scheme itself in the above context. The Scheme is set out in full hereinbelow:-

> *"1.* ***Short Title and Commencement*** *-*
>
> *i. This Scheme shall be called Andaman & Nicobar Islands Casual and Labourers/Daily Rated Mazdoors (DRMs) (Engagement Regularization) Scheme-2023.*
>
> *ii. The Scheme shall come into force from the date of its publication in the Official Gazette of A&N Administration.*

[7] *2025 SCC OnLine SC 3826*

`

2. *The Casual Labourers/Daily Rated Mazdoors who fulfill the following criteria are eligible for regularization under this Scheme:-*

a. *The Casual Labourers/Daily Rated Mazdoors should have put in at least 10 years of continuous service as on 01.08.2023 without availing the protection of any interim order of Courts or Tribunals.*

b. *The initial appointment of such Casual Labourers/Daily Rated Mazdoors should not be illegal appointment even if irregular.*

c. *Such Casual Labourers/Daily Rated Mazdoors should possess the prescribed minimum educational qualification and age as prescribed in the Recruitment Rules prevalent at the time of his/her engagement in A&N Administration.*

*The Department of Personnel & Training, Ministry of Personnel, PG & Pensions, Govt. of India, New Delhi's vide OM No. 49014/7/2020-Estt.(C) dated 07.10.2020 has adopted principles for regularization of Casual Labourers/Daily Rated Mazdoors that "they should have put in 10 years of continuous service as on 10.04.2006 and engaged against sanctioned posts". Hon'ble High Court at Calcutta, Circuit Bench at Port Blair vide Order dated 19.12.2022 in MA/9 of 2022 has categorically removed the distinction between the DRMs working against sanctioned post or otherwise.*

4. *The Personnel Department, A & N Administration shall publish the Provisional list of Casual Labourers/Daily Rated Mazdoors based on the data uploaded, in the DRMs Portal by the various departments and claims/objections shall be invited through their respective Heads of Departments, within 30 days from the date of publishing the provisional*

*lists.*

5. *Every Casual Labourers/Daily Rated Mazdoors who fulfills the conditions as stated in clause 2 (a, b & c) above should "concurrently" file his/her claims and objections to their respective Head of Departments within 30 days of publishing of the provisional list as per clause 6 below.*

6 *List of documents to be submitted by Casual Labourers/ Daily Rated Mazdoors to the concerned Head of Departments so as to ensure their eligibility are as under:*

a. *Self attested / Certified copies of all engagement orders in chronological order in support of his / her claim about fulfilling minimum criteria i.e; at least 10 years of continuous service as on 01.08.2023 (starting from 01.08.2013 or earlier).*

b. *Attested copies of minimum essential educational qualification in Support of his / her claim about fulfilling minimum educational qualification as on date of initial engagement as Casual Labourers/Daily Rated Mazdoors in this U,T. Administration on or before 01.08.2013.*

c. *Attested copies of documentary evidence in Support of his/ her date of birth such as Birth Certificate / PAN / EPIC /Aadhar etc.*

`

*d. Attested copies of any other documents in support of his / her claim or eligibility.*

*7. The concerned Heads of Department(s) shall verify the educational qualification, age as on initial engagement as Casual Labourers/Daily Rated Mazdoors in this U,T Administration, initial date of engagement with reference to the engagement order / any valid document and shall certify the eligibility of the claims of each and every Casual Labourers/Daily Rated Mazdoors before forwarding it to the Assistant Secretary (Personnel), Secretariat, A & N Administration.*

*For the purpose, 3 types of lists shall be prepared by the concerned Heads of Department(s) as per Annexure I, II & III (Attachment) within next 15 days i.e; after expiry of stipulated 30 days period of claims and objections as stated above at clause 4.*

*8. The Personnel Department, A & N Administration after processing claims and objections, will finalize the list of employees eligible for regularization with the approval of Hon'ble Lt. Governor, A & N Islands.*

*The Personnel Department, A &s N Administration will prepare another list of Casual Labourers/Daily Rated Mazdoors who have been provided the benefit of 1/30th of minimum Pay plus DA but not eligible for regularization in terms of the stipulations of this scheme stated in clause-2 (a, b & c) above: They will, however, be provided age relaxation in all future recruitments up to a period of their engagement as Casual Labourers/Daily Rated Mazdoors, in A&N Administration.*

*Those Casual Labourers/Daily Rated Mazdoors available in the list who fail to get absorbed through regular selection process may continue as such, depending upon the genuine requirement of the department for Such engagement.*

*If the total number of Casual Labourers/Daily Rated Mazdoors being regularized under the Scheme is more than the available vacant posts, then equal number of (supernumerary posts would be created to accommodate all such Casual Labourers/Daily Rated Mazdoors for regularization, These supernumerary posts will however be co- terminus with the remaining service of the regularized Casual Labourers/Daily' Rated Mazdoors and shall cease to exist thereafter.*

*The Department of Personnel, A & N Administration will be the Nodal department for the implementation of this Scheme.*

*This regularization Scheme shall be implemented only after seeking concurrence and ratification from Department of Personnel and Training, Ministry of Personnel, Public Grievances & Pensions, Govt. of India.*

*9. Al Departments/Autonomous Bodies under Andaman & Nicobar Administration shall ensure that there is no more engagement of Casual Labourers/Daily Rated Mazdoors for attending to work of a*

`

*regular nature, failing which accountability will be fixed upon the concerned official."*

153. Sub-clause (a), (b) and (c) of Clause 2 of the Scheme clearly stipulate the eligibility criteria for regularisation which are in consonance with *Umadevi (3) (supra)*[1]. However, the unnumbered paragraph immediately following sub-clause (c) provides that the distinction between the DRMs working against sanctioned posts or otherwise has been thereby removed. However, in view of *Jaggo (supra)*[7] and the string of judgments of the Hon'ble Supreme Court following the propositions laid down therein, regularisation is not restricted to employment against "sanctioned posts", which is only one of the valid modes as recognised in *Umadevi (3) (supra)*[1], but can also happen when the Daily Rated Workman performs "sanctioned functions" of the employer. Thus, if such minor clarification is deemed to stand incorporated within the category of "irregular" engagements, which already features in the 2023 Scheme in terms of the *Umadevi (3)* pronouncement, even such slight crease in the Scheme can easily be ironed out.

154. Even otherwise, sufficient checks and safeguards have been introduced in the Scheme itself, by incorporating in it a scrutiny mechanism to assess the eligibility of individual DRMs on a case-to-case basis. Thus, the Scheme does not provide a blanket mechanism, as

---

[1] *(2006) 4 SCC 1*
[7] *2024 SCC OnLine SC 3826*

`

argued by the UoI, for regularising all and sundry who work as casual labourers.

155. Thus, the impugned judgment, directing the Department of Training and Personnel, Government of India, to implement the 2023 Scheme which has been notified in August, 2003, is otherwise tenable in the eye of law, with the small rider that the Scheme has to be 'read up' in consonance with the trio of judgments starting from *Jaggo (supra)*[7].

156. Thus, in the event the term "irregular" featuring in Clause 2, sub-clause (b) of the Scheme is modified to read into it the criteria as discussed in paragraph no. 131 above, there cannot remain any further hitch in approving the same.

**Conclusion**

157. In the light of the above observations, the Court is of the opinion that the impugned judgment ought to be modified in the context indicated above, by taking into account the tests formulated in paragraph no. 131 of the instant judgment.

158. Accordingly, MAT/70/2026 is disposed of by modifying the impugned judgment dated February 19, 2026 passed in WPA/547/2024 by passing the following direction:

(i) The Appellants, through the Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, Government of India (represented in the present

`

appeal by its Secretary, being appellant no. 2), shall, within 90 (ninety) days from date, accord approval to the Scheme of 2023, as notified by the respondent No. 3 in August, 2023, by reading up the said Scheme to the extent that immediately after sub-clause (c) of Clause-2, the following proviso shall be inserted:

"Provided that the term "irregular appointment" in sub-clause (b) above shall include employees:

(i) who possess the prescribed minimum qualifications;
(ii) whose appointment shall be against "sanctioned posts" or "sanctioned functions";
(iii) whose engagement as DRM (Daily Rated Mazdoor) has been for a substantial length of time in work of a perennial nature; and
(iv) the nature of work performed by whom is integral and essential to the functioning of the employer."

159. For the sake of clarity, the revised Clause 2 of the 2023 Scheme shall read as follows:

**"2. The Casual Labourers/Daily Rated Mazdoors who fulfill the following criteria are eligible for regularization under this Scheme:-**

**a. The Casual Labourers/Daily Rated Mazdoors should have put in at least 10 years of continuous service as on 01.08.2023 without availing the protection of any interim order of Courts or Tribunals.**

---

[7] *2024 SCC Online SC 3826*

`

**b. The initial appointment of such Casual Labourers/Daily Rated Mazdoors should not be illegal appointment even if irregular.**

**c. Such Casual Labourers/Daily Rated Mazdoors should possess the prescribed minimum educational qualification and age as prescribed in the Recruitment Rules prevalent at the time of his/her engagement in A&N Administration.**

**Provided that the term "irregular appointment" in sub-clause (b) above shall include employees:**

**(i) who possess the prescribed minimum qualifications;**

**(ii) whose appointment shall be against "sanctioned posts" or "sanctioned functions";**

**(iii) whose engagement as DRM (Daily Rated Mazdoor) has been for a substantial length of time in work of a perennial nature; and**

**(iv) the nature of work performed by whom is integral and essential to the functioning of the employer."**

160. CAN/2/2026 is also disposed of consequentially.

161. There will be no order as to costs.

162. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**( SABYASACHI BHATTACHARYYA, J.)**

I agree

**( SMITA DAS DE, J. )**

`