

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extra-Ordinary Jurisdiction)

S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

W.P. (C) No. 42 of 2016

1. Mr. Mandeep Sunwar,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
2. Ms. Dil Kumari Limboo,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
3. Ms. Ratna Bdr Gurung,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
4. Mr. Jit Bdr Gurung,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
5. Mr. Santa Bir Kami,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
6. Mr. Ongdup Tsh. Lepcha,
Office Assistant,
Roads & Bridges Department,
Government of Sikkim,
West District.

7. Mr. Mani Lall Limboo,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
8. Mr. Gyalpo Bhutia,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
9. Mr. Namgyal Bhutia,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
10. Mr. Nim Tshering Bhutia,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
11. Ms. Chumpa Rai,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
12. Mrs. Pelzong Bhutia,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
13. Mr. Norzing Bhutia,
Jr. Baidar,
Roads & Bridges Department,
Government of Sikkim,
East District.
14. Mr. Bharat Kumar Gurung,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.

15. Mrs. Bimla Gazmer,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
16. Mr. Phurba Sherpa,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
17. Ms. Anita Chettri,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
18. Mr. Sancha Lall Limboo,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
19. Mr. Karna Bdr. Mangar,
Bridges Chawkidar,
Roads & Bridges Department,
Government of Sikkim,
West District.
20. Mr. Pritam Chettri,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
21. Mr. Bal Kr. Chettri,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
22. Mr. Santa Kr. Chettri,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.

23. Mr. Daya Ram Sharma,
Jr. Baidar,
Roads & Bridges Department,
Government of Sikkim,
West District.
24. Mr. Durga Psd. Gurung,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
25. Mr. Phurba Tshering Lepcha,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
26. Mr. Dowden Rai,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
South District.
27. Ms. Budha Rani Subba,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
28. Mr. Dawa Pintso Lepcha,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
29. Mr. Lal Bdr. Tamang,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
30. Mrs. Mamta Bhutia,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.

31. Mr. Lila Ram Shivakoti,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
32. Mr. Prakash Thatal (Darjee),
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
South District.
33. Mr. Jiwan Manger,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
34. Mr. Kharka Bdr. Limboo,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
35. Prem Kr. Mangar,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
36. Mr. Maita Bir Subba,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
37. Mrs. Kaushila Gurung,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
38. Mr. Nim Tshering Bhutia,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,

East District.

39. Mr. Jarman Kami,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
40. Mr. Mahindra Gurung,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
41. Ms. Bina Kumari Limboo,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
42. Mr. Dhan Bdr. Rai,
Masson II,
Roads & Bridges Department,
Government of Sikkim,
West District.
43. Mr. Santa Bdr. Rai,
Jr. Masson II,
Roads & Bridges Department,
Government of Sikkim,
West District.
44. Mr. Pemba Rinzing Sherpa,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
45. Mr. Chung Chung Bhutia,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
46. Mr. Kharka Bir Dahal,
Jr. Supervisor,
Roads & Bridges Department,

Government of Sikkim,
West District.

47. Mr. Deo Man Rai,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
48. Mr. Dhan Bdr Karki,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
South District.
49. Mr. Durga Psd. Rai,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
West District.
50. Mr. Namgyal Bhutia,
Jr. Supervisor,
Roads & Bridges Department,
Government of Sikkim,
East District.
51. Mr. Durga Lall Shanker,
Jr. Bulldozer Operator,
Roads & Bridges Department,
Government of Sikkim,
West District.
52. Ms. Sushma Sharma,
Field Assistant,
Food Security & Agriculture Development Dept.,
Government of Sikkim,
West District.
53. Mr. Om Bikram Rizal,
Jr. Field Assistant,
Food Security & Agriculture Development Dept.,
Government of Sikkim,
East District.
54. Miss Karma Cheday Bhutia,
Office Attendant,

- Food Security & Agriculture Development Dept.,
Government of Sikkim,
East District.
55. Mrs. Laden Lachungpa,
Jr. Field Assistant,
Food Security & Agriculture Development Dept.,
Government of Sikkim,
East District.
56. Ms. Indra Maya Tiwari (Chettri),
Office Assistant,
Food Security & Agriculture Development Dept.,
Government of Sikkim,
East District.
57. Ms. Krishna Kumari Neopaney,
Office Assistant,
Food Security & Agriculture Development Dept.,
Government of Sikkim,
East District.
58. Mr. Durga Kr. Rai,
Jr. Mali,
Forest Environment & Wildlife Management Dept.
Government of Sikkim,
West District.
59. Mr. Garja Man Rai,
Jr. Choukidar,
Forest Environment & Wildlife Management Dept.
Government of Sikkim,
East District.
60. Mr. Karma Tshering Lepcha,
Jr. Mali,
Forest Environment & Wildlife Management Dept.
Government of Sikkim,
East District.
61. Mr. Aita Raj Subba,
Jr. Mali,
Forest Environment & Wildlife Management Dept.
Government of Sikkim,
East District.

62. Mr. Padam Lall Sharma,
Jr. Mali,
Forest Environment & Wildlife Management Dept.
Government of Sikkim,
East District.
63. Mr. Baba Tsh. Bhutia,
Jr. Chowkidar,
Forest Environment & Wildlife Management Dept.
Government of Sikkim,
East District.
64. Mr. Subhas Pradhan,
Jr. Mali,
Forest Environment & Wildlife Management Dept.
Government of Sikkim,
South District.
65. Ms. Phumsang Bhutia,
Jr. Office Attendant,
Rural Management & Development Dept.
Government of Sikkim,
East District.
66. Ms. Kalpana Tamang,
Jr. Office Supervisor,
Rural Management & Development Dept.
Government of Sikkim,
East District.
67. Mrs. Damber Kumari Sharma,
Jr. Office Supervisor,
Rural Management & Development Dept.
Government of Sikkim,
East District.
68. Ms. Goma Devi Dhungel,
Jr. Office Supervisor,
Rural Management & Development Dept.
Government of Sikkim,
East District.
69. Mr. Mani Kumar Rai,
Jr. Fitter,
Rural Management & Development Dept.
Government of Sikkim,
West District.

70. Mrs. Buddha Maya Subba,
Jr. Office Assistant,
Rural Management & Development Dept.
Government of Sikkim,
West District.
71. Ms. Laxmi Mukhia,
Jr. Office Supervisor,
Rural Management & Development Dept.
Government of Sikkim,
West District.
72. Ms. Phalgu Sharma,
Jr. Office Supervisor,
Rural Management & Development Dept.
Government of Sikkim,
East District.
73. Ms. Shanti Sundas,
Jr. Office Supervisor,
Rural Management & Development Dept.
Government of Sikkim,
East District.
74. Ms. Tashi Denka Bhutia,
Jr. Supervisor,
Rural Management & Development Dept.
Government of Sikkim,
East District.
75. Ms. Masina Tamang,
Jr. Supervisor,
Building & Housing Dept.
Government of Sikkim,
East District.
76. Ms. Geeta Gurung,
Jr. Supervisor,
Building & Housing Dept.
Government of Sikkim,
North District.
77. Ms. Dil Kumari Pradhan,
Jr. Supervisor,
Building & Housing Dept.
Government of Sikkim,
North District.

78. Mrs. Urmila Lepcha,
Jr. Office Helper,
Urban Development & Housing Dept.
Government of Sikkim,
East District.
79. Mr. Dil Kumar Subba,
Jr. Safai Karamchari,
Urban Development & Housing Dept.
Government of Sikkim,
East District.
80. Ms. Lhako Phuti Bhutia,
Jr. Supervisor,
Urban Development & Housing Dept.
Government of Sikkim,
South District.
81. Miss Tshering Choden Bhutia,
Jr. Supervisor,
Urban Development & Housing Dept.
Government of Sikkim,
East District.
82. Miss Sita Chettri,
Jr. Safai Karmachari,
Urban Development & Housing Dept.
Government of Sikkim,
East District.
83. Mr. Karna Bdr. Limboo,
Jr. Safai Karmachari,
Urban Development & Housing Dept.
Government of Sikkim,
East District.
84. Mr. Lall Bdr. Darjee,
Jr. Safai Karmachari,
Urban Development & Housing Dept.
Government of Sikkim,
East District.
85. Mr. Shiva Lall Sharma,
Jr. Safai Karmachari,
Urban Development & Housing Dept.
Government of Sikkim,
East District.

86. Mr. Kumar Subba,
Jr. Supervisor,
Urban Development & Housing Dept.
Government of Sikkim,
East District.
87. Mr. Uttar Kr. Darjee,
Jr. Safai Karmachari,
Urban Development & Housing Dept.
Government of Sikkim,
East District.
88. Mr. Guman Singh Limboo,
Jr. Safai Karmachari,
Urban Development & Housing Dept.
Government of Sikkim,
East District.
89. Ms. Dil Maya Sherpa,
Office Attendant,
Horticulture & Cash Crop Development Dept.,
Government of Sikkim,
East District.
90. Mr. Ash Lall Subba,
Office Attendant,
Horticulture & Cash Crop Development Dept.,
Government of Sikkim,
West District.
91. Mr. Dil Kumar Rai,
Jr. Supervisor,
Horticulture & Cash Crop Development Dept.,
Government of Sikkim,
West District.
92. Mr. Ganga Kumar Rai,
Jr. Pipe Fitter,
Water Security & PHED,
Government of Sikkim,
South District.
93. Mr. Til Bdr. Lohar,
Jr. Supervisor,
Irrigation & Flood Control Dept.,
Government of Sikkim,
South District.

94. Mr. Jiwan Kr. Pradhan,
Jr. Supervisor,
Irrigation & Flood Control Dept.,
Government of Sikkim,
South District.
95. Mr. Karma Tsh. Bhutia,
Jr. Pipe Fitter,
Water Security & P.H.E. Dept.,
Government of Sikkim,
East District.
96. Mr. Raj Kr. Rai,
Jr. Pipe Fitter,
Water Security & P.H.E. Dept.,
Government of Sikkim,
South District.
97. Ms. Tshering Doma Lepcha,
Jr. Supervisor,
Rural Management & Development Dept.,
Government of Sikkim,
West District.
98. Mr. Wangyal Lepcha,
Jr. Supervisor,
Rural Management & Development Dept.,
Government of Sikkim,
East District.
99. Mr. Arjun Gurung,
Jr. Supervisor,
PW Department,
Government of Sikkim,
West District.
100. Mr. Florance Gurung,
Female Ward Attendant,
Health Department,
Government of Sikkim,
West District.
101. Mr. Durga Sharma,
Female Ward Attendant,
Health Department,
Government of Sikkim,
West District.

102. Mr. Kaushal Rana,
Jr. Office Supervisor,
Rural Management & Development Dept.,
Government of Sikkim,
East District.
103. Ms. Saraswati Mangar,
Jr. Office Supervisor,
Rural Management & Development Dept.,
Government of Sikkim,
East District.
104. Mr. Sanjeet Subba,
Jr. Office Supervisor,
Rural Management & Development Dept.,
Government of Sikkim,
South District.
105. Mr. Raju Bardewa,
Junior Supervisor,
Urban Development & Housing Dept.,
Government of Sikkim,
East District.
106. Mr. Indra Bdr. Gurung,
Junior Supervisor,
Roads & Bridges Dept.,
Government of Sikkim,
East District.
107. Ms. Tika Hang Subba,
Junior Supervisor,
Urban Development & Housing Dept.,
Government of Sikkim,
East District.
108. Mr. Ganesh Kr. Rai,
Jr. Supervisor,
Rural Management & Development Dept.,
Government of Sikkim,
South District.
109. Ms. Man Maya Subba,
Junior Supervisor,
Roads & Bridges Dept.,
Government of Sikkim,
West District.

110. Mr. Prem Kr. Mangar,
Junior Supervisor,
Roads & Bridges Dept.,
Government of Sikkim,
West District.
111. Mr. Santosh Gurung,
Junior Supervisor,
Roads & Bridges Dept.,
Government of Sikkim,
East District.
112. Mr. Dhan Kr. Rai,
Junior Supervisor,
Roads & Bridges Dept.,
Government of Sikkim,
East District.
113. Mr. Tashi Pema Bhutia,
Jr. Field Assistant,
Food Security & Agriculture Development Dept.,
Government of Sikkim,
East District.
114. Mr. Jamuna Lepcha,
Office Attendant,
Food Security & Agriculture Development Dept.,
Government of Sikkim,
East District.
115. Mr. Rudra Bdr. Upreti,
Jr. Choukidar,
Forest Environment & Wild Life Management Dept.,
Government of Sikkim,
East District.
116. Mr. Indra Bdr. Gurung,
Jr. Supervisor,
Roads & Bridges Dept.,
Government of Sikkim,
East District.
117. Mr. Thakur Singh Basnett Chettri,
Jr. Safaikarmachari,
Urban Development & Housing Dept.,
Government of Sikkim,
East District.

... Petitioners.

versus

1. State of Sikkim,
Represented by and through
the Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim.
2. The Secretary,
Department of Personnel, Administrative
Reforms & Training,
Government of Sikkim,
Gangtok, East Sikkim.
3. The Secretary,
Rural Management and Development Dept.,
Government of Sikkim,
Gangtok, East Sikkim.
4. The Secretary,
Food Security and Agriculture Development Dept.,
Government of Sikkim,
Gangtok, East Sikkim.
5. The Secretary,
Irrigation and Flood Control Department,
Government of Sikkim,
Gangtok, East Sikkim.
6. The Secretary,
Urban Development & Housing Department,
Government of Sikkim,
Gangtok, East Sikkim.
7. The Secretary,
Water Security & Public Health Engineering Dept.,
Government of Sikkim,
Gangtok, East Sikkim.
8. The Secretary,
Forest, Environment and Wildlife Management
Department,
Government of Sikkim,
Gangtok, East Sikkim.

9. The Secretary,
Health Care, Health Services
and Family Welfare Department,
Government of Sikkim,
Gangtok, East Sikkim.
 10. The Secretary,
Housing and Building Department,
Government of Sikkim,
Gangtok, East Sikkim.
 11. The Secretary,
Horticulture and Cash Crop Development Dept.,
Government of Sikkim,
Gangtok, East Sikkim.
 12. The Secretary,
Roads & Bridges Department,
Government of Sikkim,
Gangtok, East Sikkim.
- ... Respondents.

Petition under Article 226 of the Constitution of India

Appearance:

Mr. A. Moulik, Senior Advocate with Ms. K. D. Bhutia
and Mr. Ranjit Prasad, Advocates for the Petitioners.

Mr. J. B. Pradhan, Additional Advocate General with
Mr. Santosh K. Chettri, Ms. Pollin Rai, Assistant
Government Advocates and Ms. Rita Sharma,
Advocate for the State-Respondents.

J U D G M E N T

(15.07.2017)

Satish K. Agnihotri, CJ

The petitioners, working as temporary employees in
Group C and D category in the various departments of the State

Government, have come up with this petition, seeking a direction to the respondent-State to regularise their services under the regular establishment from the date of initial appointment on muster roll basis and also consequential seniority.

2. The facts, in brief, as projected by the petitioners, are that the petitioners were initially appointed as muster roll employees in different departments of the Government of Sikkim. The petitioners possess requisite qualifications as required for the posts. The petitioners, thereafter, were appointed on temporary basis after completion of 10 (ten) years against the sanctioned posts created for the same vide Notification dated 22.02.2014 (Annexure R-4). Now, the petitioners are working as temporary employees. It is further stated that the petitioners have completed more than 10 to 15 years in service and have the requisite qualifications for the posts. Thus, the State Government may be directed to regularise them on completion of 10 (ten) years in service with effect from the initial date of appointment with consequential benefit.

3. Mr. A. Moulik, learned Senior Counsel appearing for the Petitioners, would contend that after sanction of the posts, the petitioners have been appointed on temporary basis. The State Government is in need of the petitioners' services as they

are working against the sanctioned posts. Thus, the petitioners are entitled to be regularised on the posts as they possess the requisite qualifications. Referring to Circular dated 20.08.2014 (Annexure-A1) whereby the Government has decided to regularise the services of the temporary employees, who have completed 15 years and more as on 31.01.2013 working under various departments, Mr. Moulik would submit that as on date, all the petitioners have completed 15 years service and as such the petitioners are entitled to regularisation as per the Circular (supra).

4. Contrasting the submission put forth by learned Senior Counsel for the petitioners, Mr. J. B. Pradhan, learned Additional Advocate General, would contend that the petitioners are not entitled to regularisation under law. Mere working on the post for a long time, subsequently on temporary basis, does not confer any right on the petitioners to claim regularisation as a matter of right. Thus, the petition does not merit any consideration. However, the State Government has decided to consider the case of the petitioners who have completed 15 years and more of service as on 31.01.2013 only against a vacancy, being available as per Circular dated 20.08.2014.

5. Considered the contentions advanced by learned Senior Counsel appearing for the parties, perused pleadings and documents, appended thereto.

6. It is no longer *res integra* that in normal circumstances, the Court cannot direct regularization, particularly, when the appointment, made on temporary, ad-hoc, casual basis, is not in accord with the constitutional scheme of the employment. The constitutional philosophy of employment is enshrined in Article 14 read with Article 16 of the Constitution of India. It contemplates that the public employment has to be made after a proper competition among qualified persons on the basis of invitation through wide publicity, enabling all eligible candidates to make applications for the same. The selection is required to be made in accordance with statutory provisions, on merit, in the spirit of constitutional mandate of equality of opportunity without discrimination on the ground of sex, caste, place of birth, residence and religion. In the case on hand, no party has placed any material on record to establish that the appointment of the petitioners was made through proper selection on the public notice, inviting applications from all the candidates. In such a situation, it is difficult to hold that the appointment of the petitioners was made strictly in accordance with the constitutional scheme of employment.

7. At this stage, it is pertinent to refer to the observations made by the Supreme Court in various cases, on this issue.

8. A Constitution Bench of the Supreme Court in **Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.**¹, propounded the proposition of law as under:-

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

¹ (2006) 4 SCC 1

9. In **Surinder Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mani Parisha & Ors.**², reiterating the constitutional philosophy as observed hereinabove, the Supreme Court held as under:-

" 37. Our constitutional scheme clearly envisages equality of opportunity in public employment. The Founding Fathers of the Constitution intended that no one should be denied opportunity of being considered for public employment on the ground of sex, caste, place of birth, residence and religion. This part of the constitutional scheme clearly reflects strong desire and constitutional philosophy to implement the principle of equality in the true sense in the matter of public employment.

38. In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularization of services of the person who is working either as daily-wager, *ad hoc* employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment."

10. Yet, in **Official Liquidator v. Dayanand**³, the Supreme Court observed as under:-

" 68. The abovenoted judgments and orders encouraged the political set-up and bureaucracy to violate the soul of Articles 14 and 16 as also the provisions contained in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 with impunity and the spoils system which prevailed in the United States of America in the sixteenth and seventeenth centuries got a firm foothold in this country. Thousands of persons were employed/engaged throughout the length and breadth of the country by backdoor methods. Those who could pull strings in the power corridors at the higher and lower

² (2006) 7 SCC 684

³ (2008) 10 SCC 1

levels managed to get the cake of public employment by trampling over the rights of other eligible and more meritorious persons registered with the employment exchanges. A huge illegal employment market developed in different parts of the country and rampant corruption afflicted the whole system. ...”

11. In ***Nand Kumar v. State of Bihar & Ors.***⁴, considering regularization of the daily wagers, the Supreme Court held as under:-

“ **26.** In these circumstances, in our considered opinion, the regularisation/absorption is not a matter of course. It would depend upon the facts of the case following the rules and regulations and cannot be dehors the rules for such regularisation/absorption.”

12. The afore-stated principle was further expounded in ***Amkant Rai v. State of Bihar & Ors.***⁵, wherein the Supreme Court, referring to para 53 of ***Umadevi (3)*** (*supra*), held as under:-

“ **13.** In our view, the exception carved out in para 53 of *Umadevi (3)*³ is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bore any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularization viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of clerk was regularised w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 3-1-2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits to be paid from 1-1-2010.”

⁴ (2014) 5 SCC 300

⁵ (2015) 8 SCC 265

13. In the light of well settled principle of law, as afore-stated, no positive direction can be issued to the State Government to regularize the petitioners only on the sole ground that they have been working for last 10 (ten) to 15 (fifteen) years. The indisputable facts, involved in the case on hand, are that the petitioners were initially appointed on muster roll. Thereafter, after completion of about 10 (ten) years, the Government granted a sanction for creation of posts in various departments exclusively for appointment on temporary basis, belonging to Group-C and Group-D, wherein the petitioners herein have been working, as is manifest from the Notification dated 22.02.2014 (Annexure R-4). Accordingly, the petitioners were appointed on temporary basis. The State Government has further taken decision to regularize the temporary employees, who have been working against sanctioned posts in accordance with guidelines laid down in Circular dated 20.08.2014. As observed hereinabove that no material has been produced by both the parties to establish that the appointment of the petitioners was made in accordance with the constitutional scheme.

14. There is no challenge to the said Circular dated 20.08.2014 and as such I am not inclined to go into the validity of the Circular at this stage. The State Government, as pleaded by the parties, has granted benefit of the Circular to other

employees similarly placed. In such view of the matter, the State Government is obligated to consider cases of the petitioners in accordance with the said Circular dated 20.08.2014 expeditiously as early as possible, preferably, within 3 (three) months.

15. Resultantly, the petition is disposed of. No order as to costs.

Chief Justice
15.07.2017

pm Approved for Reporting : Yes/No.
 Internet : Yes/No.