REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 10563-10569 OF 2017

THE GOVERNMENT OF TAMIL NADU
AND ANR. ETC. ETC. ....APPELLANT(S)

VERSUS

TAMIL NADU MAKKAL NALA
PANIYALARGAL AND ORS. ETC. ETC. ....RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 10570 OF 2017

J U D G M E N T

Rastogi, J.

1. The instant appeals have been preferred at the instance of State of Tamil Nadu assailing the impugned judgment and order passed by the Division Bench of the High Court dated 19th August, 2014 affirming order of the learned Single Judge dated 23rd

January, 2012 in its jurisdiction under Article 226 of the Constitution directing the State Government to create the posts under the designation "Village Level Workers" which is called as "Makkal Nala Paniyalargal" (hereinafter being referred to as "MNP") or by any other name but shall accommodate the persons who were on the rolls of MNP on the date of issuance of G.O.M No. 86 dated 8th November, 2011 against any vacant post in the State Government schools, village Panchayats, town Panchayats, Municipalities, Corporations, Collector Office, village offices or any other Government offices and undertakings of the Government of Tamil Nadu throughout the State of Tamil Nadu, according to the qualification possessed by each candidate, without reference to age in their native, taluk or revenue District. It was further directed that if any one of the MNP who could not be accommodated or is ineligible, the State Government shall pay last drawn salary for the period from 1st December, 2011 to 31st May, 2012.

2. The brief facts of the case culled out from the record and relevant for the present purpose are that the Government of Tamil Nadu introduced a scheme dated 2nd September, 1989 through the

Rural Development Department in the Budget speech of 1989-1990 providing employment to the educated youth in rural areas who have completed 10th standard for various items of work in the village panchayat that can be entrusted to the unemployed youth and took a decision to implement the scheme at the village level and to engage at least two village level workers - one male and one female - who would be engaged in each of the village panchayats in the State. Thus, a total of 25,234 workers were to be engaged throughout the State on a monthly honorarium of Rs.200/- and it entrusted separate responsibilities to male and female workers. The Government also adopted a mechanism to be implemented at the local area where the appointments are to be made for male/female workers at village panchayat level for keeping the transparency while making appointment of unemployed educated youth.

3. It manifests from the record that persons were appointed under the scheme introduced by the State Government under its policy dated 2nd September, 1989. Later, the scheme was disbanded by the Government by order dated 13th July, 1991 on the

premise that the appointments made of MNP are in no way helpful for the execution of programmes at village level except causing additional expenditure of Rs.6 crores per annum to the Government and left the execution of various developmental activities concerned through extension officers at block level.

4. In consequence thereof, the persons who were engaged as MNP pursuant to policy decisions of the Government dated 2nd September, 1989, their services stood terminated/discontinued.

5. Again, by GO of the Rural Development and Panchayat Raj Department (hereinafter referred to as "Department") dated 24th February, 1997, the scheme was restored by the Government in the Budget for the year 1996-1997 for providing employment to 25,000 youths on the terms and conditions earlier introduced pursuant to Circular dated 2nd September, 1989, on an honorarium of Rs.500/- per month for two MNPs in each village panchayat(one male and one female) for assisting in the maintenance of village assets and libraries & implementation of adult literacy programme in villages.

6. The policy decision of the Government which was earlier introduced by Order dated 2nd September, 1989 for all practical

purposes and later restored by the Government vide order dated 24th February, 1997 was again disbanded with immediate effect by order dated 1st June, 2001. The Government again revived the services of MNP and increased the honorarium from Rs.500/- per month to Rs.750/- per month with an addition of Rs.50/- per month as travelling allowance by order dated 12th June, 2006 with a clear understanding that persons who are re-engaged as MNP will not be entitled for any payment from 1st June, 2001 to 31st May, 2006 as they were not in service.

7. At this point of time, in furtherance of order dated 12th June, 2006, the Department vide its order dated 5th December, 2006 came out with a scheme to appoint those who were appointed as Panchayat Assistants and Part Time Clerks working in village Panchayat and that they will be switched over to scale of pay with effect from 1st September, 2006. The Department issued a G.O. dated 27th November, 2008 stating that the Government will consider filling up 50% of vacant posts arising in the cadre of Record Clerk/Office Assistant/Night Watchman and equivalent post from MNP. The District Collectors were directed to prepare the

estimated available vacancies so that MNPs could be accommodated to the extent possible.

8. It has come on record that in the interregnum period, approximately 600 MNPs were absorbed in the State of Tamil Nadu in various village panchayats as Office Assistants/Night watchman. Pending absorption, by an order dated 21st May, 2010, the Department directed the MNPs to continue for two years from 1st June, 2010 till 31st May, 2012.

9. Before their term could expire, the Government again issued order dated 8th November, 2011 to disband MNPs with immediate effect on the premise that that there is surplus staff in panchayat units at village panchayat level to look after the works presently being looked after by MNPs and, therefore, a decision was taken to disband the post of MNP which will save approximately Rs.73 crores.

10. The order passed by the Government dated 8th November, 2011 pursuant to which the scheme was disbanded and in consequence thereof, MNPs who were working stood disengaged/terminated, came to be challenged by the MNPs

through their associations by filing of a writ petition before the High Court under Article 226 of the Constitution.

11. The learned Single Judge of the High Court allowed the writ petition by a common order dated 23rd January, 2012 and while quashing the order dated 8th November, 2011 directed the State of Tamil Nadu to reinstate the members of the associations who have served as MNP. The order of the learned Single Judge came to be challenged by the appellants in writ appeal which came to be dismissed under the order impugned by judgment dated 19th August, 2014 with the following directions:-

(i) The State Government is directed to consider creation of posts either in the name of MNP or in any other name to propagate the evils of consumption of liquor as contemplated under Article 47 of the Constitution of India read with Rule 10(5) of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 for accommodating MNP.

(ii) If the same is not possible on any account, the State Government shall accommodate the persons who were on the rolls of MNP on the date of issuance of G.O.Ms No. 86 dated 8.11.2011 in any one of the vacant post in Government schools, village Panchayats, town Panchayats, Municipalities, Corporations, Village Offices, Taluk Offices and Collector Offices and in various other Government Offices and Undertakings of the Government of Tamil Nadu throughout the State of Tamil Nadu, or in any post as may be created for implementing the new schemes introduced in 2014-2015 Budget and accommodate the MNP, according to the qualification possessed by each candidate, without reference to age in their native Taluk or Revenue District.

(iii) The said exercise shall be commenced immediately and completed on or before 31.10.2014.

(iv) If any one of the MNP who could not be accommodated within the said period as stated supra, though they are eligible to be accommodated, the State Government shall pay last drawn salary, which they have lastly received, from 1.11.2014 till they are accommodated in any of the vacant or newly created post.

12. At the same time, the finding recorded by the learned Single Judge that the action of the State Government was per se mala fide in passing the order dated 8th November, 2011 as directed in Para 33 was held to be unjustified and that became the subject matter of challenge in appeals before this Court.

13. On the first date of hearing when the matter was listed, while issuing notice on 23rd September, 2014, the operation of the judgment and order dated 19th August, 2014 came to be stayed by this Court.

14. It is brought to the notice of this Court that the State Government has introduced the scheme dated 7th June, 2022 to provide employment to the educated unemployed youth under the Mahatma Gandhi National Rural Employment Guarantee Scheme to engage one person for one panchayat to fill up on certain conditions

or such of the unemployed youth on priority who had discontinued as MNP pursuant to order passed by the Government dated 8th November, 2011 on monthly wages of Rs.7500/- per month.

15. It is informed to this Court that majority of the persons who were discontinued pursuant to the order dated 8th November, 2011 and who otherwise fulfil the conditions of eligibility have joined under the scheme introduced by the Government dated 7th June, 2022. Out of the total number of 13,500 MNPs, majority of them have joined and 489 MNPs have not opted the new policy despite opportunity being afforded by this Court.

16. Learned counsel for the appellants submits that creation and abolition of posts rests with the Government and is a matter of Government policy, which can always be exercised in the interest and necessity of internal administration and the Court would be the least competent in the face of scanty material to decide whether the Government acted bonafidely in creating a post or refusing to create a post or its decision suffers from malice (legal or factual) and as long as the decision to abolish the post is taken in good faith, interference by the Court was not warranted.

17. The abolition of post is not a personal penalty against the individual who has served and is an executive decision and the Doctrine of Estoppel will not be applicable against the State in its governmental, public or sovereign function and the only exception is that where it is necessary to prevent fraud or manifest injustice.

18. Learned counsel further submits that these are not the appointments made under the establishment of the State Government against the cadre post whose service conditions are governed by the service rules framed under proviso to Article 309 of the Constitution. The present appointments are made only for the purpose of providing employment to educated youth in rural areas to work as MNP in implementation of various programmes at the village level on an honorarium which has been revised from time to time.

19. The appointments are although made through a process held in the local area through the Committee constituted so that the large number of candidates who are inclined to seek an appointment, there must be some mechanism in place by which candidates could be shortlisted to offer appointment. Such

appointments made have no co-relation with the appointments made by the State Government under its regular establishments in terms of the recruitment rules which are prescribed for various State/subordinate services. Thus, no right could have been conferred/vested in favour of the individual and that apart, the Government has reviewed the whole scheme by introducing employment scheme for rural educated mass, to meet the appointments earlier made and since they are discontinued by order dated 8th November, 2011, the present Government voluntarily came out with the scheme dated 7th June, 2022 to consider such of the unemployed youth who had discontinued to work in the village panchayat as MNP, for almost a decade by that time, be given priority and may be engaged under the Central Government scheme, which was framed under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005(hereinafter being referred to as the "Act 2005") on an honorarium of Rs. 7500/- per month and the State also voluntarily came forward that as their appointment was earlier discontinued, thus for a period of 6 months, i.e. 1st December, 2011 to 31st May,

2012, each of the employee who discontinued and is not interested in seeking re-engagement under the present scheme can always accept his 6 months' wages for the respective period.

20. Learned counsel submits that majority of them have received their wages by this time but the miniscule of persons who are contesting today, either have not encashed or have repaid the money back to the Government and submits that those who are left out and have not joined so far under the present scheme introduced by the Government dated 7th June, 2022, although as per timelines introduced, no fresh engagement can be made but earlier this Court permitted the persons who were disengaged to join and become member of the scheme, still the Government has kept it open and the persons who would like to join, they are always at liberty to re-join in terms of the scheme introduced dated 7th June, 2022 and those who are not inclined, can always accept their 6 months' wages for the period from 1st December, 2011 to 31st May, 2012 at any point of time from the Office of the District Collector if they have not already received so far.

21. In support of the submissions, learned counsel has placed reliance on the recent judgment of this Court in ***State of Gujarat and Others*** *Vs.* ***R.J. Pathan and Others***[1] wherein taking note of the earlier judgment, this Court has expressed that appointments which are made for a fixed term and on a fixed salary in a temporary unit which was created for a particular project, they are not entitled to seek regularization and if such a direction is issued by the High Court for absorption/regularization of the employees who were appointed in a temporary unit which was created for a particular project, are held not in conformity with law and such orders passed by the High Court for regularization, in the facts and circumstances, have not been countenanced by this Court.

22. Per contra, learned counsel for the respondents, while supporting the finding returned by the High Court under the impugned judgment submits that their fate of appointment has always been dependent upon elected Government in power. One Government came with a scheme to provide employment the

1 2022(5) SCC 394

successive Government has disbanded the policy introduced by its predecessors which appears to be only for political reasons.

23. The consistent policy which has come on record is in itself an indicator to show that as and when decision was taken to abandon or abolish the scheme, it was only for political reasons and not based on any substantial or valid reason on record. In the given facts and circumstances, the decision of the High Court in setting aside the order dated 8th November, 2011 was valid and justified and such impugned action of Government was indeed in violation of Articles 14, 16 and 21 of the Constitution of India and rightly interfered by the High Court under the impugned judgment.

24. Learned counsel further submits that there are consistent judgments of this Court where the employees have been allowed to continue for sufficient long time without the intervention of the Court. This Court always comes forward to regularize such employees who had worked uninterruptedly for sufficient long time and that can be traced out from the judgment of this Court in the case of ***Secretary, State of Karnataka and Others*** *Vs.* ***Umadevi***

(3) and Others[2] which has been later followed by this Court in ***Nihal Singh and Others*** *Vs.* ***State of Punjab and Others***[3] and further reiterated by this Court in ***Malathi Das(Retired) now P.B. Mahishy and Others*** *Vs.* ***Suresh and Others***[4]. Taking assistance from the judgments of this Court, learned counsel submits that the High Court has rightly, in the given facts and circumstances, set aside the order dated 8th November, 2011 and in consequence thereof, such of the employees who discontinued because of the policy being disbanded/cancelled by the Government by order dated 8th November, 2011 in sequel deserve to be regularized either on the post of MNP or any other post subject to availability. The High Court was conscious of this fact that there are numerous number of posts where the respondent employees are eligible and they can easily be absorbed and thus, to protect their services which they have rendered for sufficient long time, they have rightly been considered for regularization. The finding which was recorded in the first place by the learned Single Judge and confirmed on legal

2 2006(4) SCC 1
3 2013(14) SCC 65
4 2014(13) SCC 249

principles by the Division Bench of the High Court, at least at this stage, needs no interference.

25. Learned counsel further submits that during the interregnum period between June, 2009 and November, 2011 until the order impugned came to be passed, the Government earlier came up with a scheme that such of the employees who are serving as MNPs may be absorbed into a regular post of Record Clerk/Office Assistant/ Night watchman or any other equal cadre post against 50% of regular vacancies and by an order dated 1st June, 2009 approximately 600 MNPs were absorbed on various posts and since this has been discontinued/disbanded by successive Government by order dated 8th November, 2011, the respondents who were in queue and waiting for their absorption were deprived of their legitimate right of fair consideration and no reason was assigned by the Government while passing the order dated 8th November, 2011 and merely because there was a change of guards, that in itself would not be a ground to abandon the scheme which was in vogue for a long time.

26. The Division Bench of the High Court took a conscious decision to protect the rights, interests and service conditions of such of the employees who have served for sufficient long time but discontinued because of the policy of the rival political groups. But the fact is that the employees became its victim and that appears to be the reason for which the impugned order dated 8th November, 2011 came to be passed and after they have been contesting their rights for almost more than a decade, at least, this Court in the interest of justice, may not interfere, in the peculiar facts and circumstances of the case.

27. Learned counsel, in alternative, submits that if this Court is not inclined to consider their submission, at least the employees who have not been able to take employment so far, may be permitted to accept their 6 months' honorarium for the period between 1st December, 2011 and 31st May, 2012 which comes to principal amount of Rs.25,851/- per MNP, at least, with a reasonable interest, as may be considered to be appropriate, in the facts and circumstances of the case.

28. We have heard learned counsel for the parties and perused the material available on record.

29. If we look into the scheme originally introduced by the Government by Order dated 2nd September, 1989, the object of the scheme was to provide employment to the educated youth in rural areas who have completed 10th standard in implementing several programmes of the Government at the village level which require continuous effort for successful completion. After Government has identified such programmes, they can be entrusted to a village work force of unemployed educated youth for better implementation. The Government took a decision that there should be two village level workers - one male and one female - who will be engaged in each of the village panchayat. They will be called Makkal Nala Paniyalargal(MNP) and be engaged on an honorarium of Rs.200/- per month in the first instance.

30. As far as how the appointment has to be made, a mechanism was put in place that such employees who are in the age bracket of 18 to 30 years with educational qualification of 10th standard (and those who are working in hill/tribal areas, their educational

qualification can be relaxed to 8th standard), their recruitment shall take place through an advertisement in the local area and be considered by a Committee for shortlisting the candidates to be considered for appointment. The mechanism which was put in place in the first instance, by order dated 2nd September, 1989 has looked into various rough weather. It reveals from the record that as and when there was change of political scenario, the successive political party always disbanded/cancelled the policy decision of its earlier Government in power which had introduced a scheme for offering employment to the educated unemployed youth.

31. This can very well be noticed from the records that the Scheme which was introduced by the Government for providing employment to educated unemployed youth in rural areas dated 2nd September, 1989 came to be disbanded by the successive Government by order dated 13th July, 1991 in consequence discontinued the service rendered by such unemployed youth. Immediately thereafter, the successive elected Government restored its policy by order dated 24th February, 1997 and provided employment to the educated youth for rural development programmes in various schemes at the

village panchayat, be it for assisting in the maintenance of village assets and libraries, implementation of adult literacy programme in villages, for their social welfare and also to work for anti-liquor campaign. Such of the youth which put in place to get themselves involved in the scheme introduced in the village panchayat came to be disbanded by order dated 1st June, 2001. Later, it was again introduced by order dated 12th June, 2006 and their honorarium stood increased at later stages and their services stood extended by order 21st May, 2010 for the period from 1st June, 2010 to 31st May, 2012. But it appears that there was a change of guard in the interregnum period and immediately thereafter, the policy was disbanded by order dated 8th November, 2011 which was the subject matter of challenge before the High Court under Article 226 of the Constitution on behalf of the respondents.

32. It has to be noticed that for rural development, major focus of planning had been productive absorption of underemployed and surplus labour force of the rural sector. In order to provide direct supplementary wage-employment to the rural poor, the Central

Government came with a legislation, namely, Act 2005, with salient features as follows:-

(i) The objective of the legislation is to enhance the livelihood security of the poor households in rural areas of the country by providing at least one hundred days of guaranteed wage employment to every poor household whose adult members volunteer to do unskilled manual work.

(ii) The State Government shall, in such rural areas in the State and for such period as may be notified by the Central Government, provide to every poor household guaranteed wage employment in unskilled manual work at least for a period of one hundred days in a financial year in accordance with the provisions made in the legislation.

(iii) Every State Government shall, within six months from the date of commencement of this legislation, prepare a scheme to give effect to the guarantee proposed under the legislation.

(iv) The one hundred days of employment under the legislation will be provided at the wage rate to be specified by the Central Government for the purpose of this legislation. Until such time a wage rate is specified by the Central Government for an area, the minimum wage rate fixed by the State Government under the Minimum Wages Act, 1948 for agricultural labourers shall be considered as the wage rate applicable to that area.

(v) If an eligible applicant is not provided work as per the provisions of this legislation within the prescribed time limit, it will be obligatory on the part of the State Government to pay unemployment allowance at the prescribed rate.

(vi) A Central Employment Guarantee Council at the Central level and State Employment Guarantee Councils at the State level in all States where the legislation is made applicable will be constituted for review, monitoring and effective implementation of the legislation in their respective areas.

(vii) The Standing Committee of the District Panchayat, District Programme Coordinator, Programme Officers and Gram Panchayats have been assigned specific responsibilities in

implementation of various provisions of the legislation at the Gram Panchayat, Block and District levels.

(viii) The Central Government shall establish a fund to be called 'National Employment Guarantee Fund' for the purposes of this legislation. Similarly, the State Governments may constitute State Employment Guarantee Funds.

(ix) Provisions for transparency and accountability, audit, establishment of grievance and redressal mechanisms and penalty of noncompliance are also envisaged.

(x) Provisions for Minimum features of Rural Employment Guarantee Scheme and conditions for guaranteed Rural Employment under a scheme and minimum entitlements of labourers have been laid.

33. Finally, the Act was introduced to provide for the enhancement of the livelihood and security of the poor households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in the financial year to every poor household whose adult members volunteer to do unskilled manual work and for matters connected therewith or incidental thereto under the Act 2005. The State of Tamil Nadu is also included in the Schedule appended to the Act, 2005.

34. Such applicant who is the head of the household or its other adult members who have applied for employment under the scheme be termed as an applicant to join in the projects for the purpose of

providing employment to the applicants for the work taken up under a project as defined under Section 2(n) of the Act, 2005. The expression 'scheme' has been defined under Section 2(p) which means a scheme notified by the State Government under sub-section (1) of Section 4.

35. Chapter II provides guarantee of employment in rural areas. Section 3 refers to guarantee of rural employment to households, the State Government has to provide to every household whose adult members volunteer to do unskilled manual work not less than one hundred days of such work in a financial year. It further provides that every person who had done the work given to him under the Scheme shall be entitled to receive wages at the wage rate for each day of work on weekly basis or in any case not later than a fortnight after the date on which such work is done.

36. Chapter III takes note of employment guarantee schemes and unemployment allowance.

37. Section 4 provides that as for the purposes of giving effect to the provisions of Section 3, every State has to issue a notification to introduce a scheme for providing not less than one hundred days of

guaranteed employment in a financial year to every household in the rural areas covered under the Scheme and whose adult members, by application, volunteer to do unskilled manual work.

38. What will be the conditions for providing employment are referred to under Section 5 of the Act, 2005. The wage rate is to be fixed by the Central Government from time to time in terms of Section 6. If an applicant for employment under the Scheme is not provided such employment within fifteen days of receipt of the application seeking employment, he shall be entitled to a daily unemployment allowance in accordance with Section 7.

39. Chapter IV notifies implementing and monitoring authorities at the central level by Central Employment Guarantee Council and at the State level, by State Employment Guarantee Council as referred to under Sections 10 and 12 of the Act, 2005.

40. After the Act, 2005 came into force, such States which are notified in the Schedule as referred to under Section 1(3) of the Act, 2005 which includes the State of Tamil Nadu, the same was offered to the educated unemployed youth primarily under the Act, 2005.

41. It has not been disputed that the scheme undertaken by the State of Tamil Nadu under the Act, 2005 is still in force.

42. The practice adopted by the Government in the past of which a detailed reference has been made from 1989 onwards and to be more specific, after the introduction of Scheme for providing employment to the educated unemployed youth to work in the village panchayat by order dated 2nd September, 1989, it has undergone a change at various stages and forms.

43. We cannot afford to lose democracy in our country by permitting the political parties empowered to overrule the wisdom of their political opponents with the use of State machinery.

44. So far as the object behind the scheme is concerned, it appears to be very laudable and at least in the interest of poor unemployed educated youth by providing them to serve on the wages certified by the Government from time to time by providing employment under the Scheme introduced by the State Government, at least for not less than one hundred days guaranteed in a financial year who volunteered to do unskilled manual work. At the same time, while the policy decision of the

Government is always open to judicial review on the anvil of Article 14 of the Constitution and is ordinarily not to be interfered unless that is attached with legal or factual malice of the Government, however, in the instant case, the Division Bench of the High Court has set aside the finding so far as the malice which was imputed by the learned Single Judge in passing order dated 8th November, 2011 is concerned. After going through the records, we are of the view that the order dated 8th November, 2011 might have been passed as a policy decision of the Government but the seriatim of facts which have come on record at least cannot be countenanced by this Court.

45. The question which emerges for our consideration is whether the order dated 8th November, 2011 is untenable in the eyes of law, such employees who were discontinued are eligible for reinstatement and regularization of service?

46. Learned Single Judge and Division Bench in their impugned judgments have concurred with the finding that such of the employees who were discontinued by passing of the order dated 8th November, 2011 are not only entitled to reinstatement but deserve

to be regularised in service after creation of post. In our considered view, what is being observed by the Division Bench of the High Court is not legally sustainable in law.

47. There cannot be a quarrel with the proposition that the Courts cannot direct for creations of posts. In the case of ***Divisional Manager Aravali Golf Club and Another*** *Vs.* ***Chander Hass and Another***[5], it has been held as under:-

> **"15.** The court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organisation. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the courts cannot take upon themselves the power of creation of a post. Therefore, the directions given by the High Court and the first appellate court to create the posts of tractor driver and regularise the services of the respondents against the said posts cannot be sustained and are hereby set aside."

48. Later, in ***Maharashtra State Road Transport Corporation and Another*** *Vs.* ***Casteribe Rajya Parivahan Karamchari Sanghatana***[6], this Court held as under:-

> **"41.** Thus, there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive. It is also true that the status of permanency cannot be granted by the Court where no such posts exist and that executive

5 2008(1) SCC 683
6 2009(8) SCC 556

functions and powers with regard to the creation of posts cannot be arrogated by the courts."

49. The respondents were not in employment of the Government or holding a civil post and also not appointed against the cadre post in any of the Government establishment where the service conditions are governed/regulated by the statutory rules framed under the proviso to Article 309 of the Constitution.

50. In fact, the respondents were engaged in a scheme and were paid honorarium and we do find justification that as long as the scheme continues in the State of Tamil Nadu under the mandate of Act, 2005, at least there appears no reason to discontinue such persons who are working under the respective schemes undertaken by the Government in fulfilment of the object of the Act, 2005 unless the later found to be unsuitable for retention in service or has attained the age of superannuation.

51. But as already observed, such employees are not entitled for reinstatement and for regularization of service for the reason that if the order passed on 8th November, 2011 is not sustainable, the respondents and other similarly situated persons engaged could be restored on the same terms as they were placed before passing of

the order dated 8th November, 2011. In other words, as their placement was extended for two years by order dated 21st May, 2010 w.e.f. 1st June, 2010 to 31st May, 2012 at the best, such persons could have been allowed to continue upto 31st May, 2012. In the absence of any further extension been granted, at least there was no right vested in favour of either of the person engaged to seek further continuance under the scheme thereafter.

52. So far as the impugned direction to the State Government for their reinstatement and regularization is concerned, in our considered view, it is completely misplaced and not sustainable in law.

53. The Judgment of this Court relied upon in ***Secretary, State of Karnataka and Others*** *Vs.* ***Umadevi (3) and Others*** (supra) is in reference to such of the employees who were illegally/irregularly appointed in the establishment of the Government and their service conditions are governed under the statutory Rules framed but they have not gone through the process of selection as provided under their respective rules and were allowed to continue on ad-hoc basis for almost more than a decade. This Court deprecated such

practice but as one time measure permitted the Government to regularize such employees who are working against the sanctioned post and permitted by the government without intervention of the Court as referred to under Para 53 of the judgment. The same is reproduced hereunder:-

> **"53.** One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128] , *R.N. Nanjundappa* [(1972) 1 SCC 409] and *B.N. Nagarajan* [(1979) 4 SCC 507] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above-referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

54. At the same time, this Court further observed that in absence of sanctioned post, the State cannot be compelled to create the post and absorb the persons who are continuing in service of the State.

55. In ***Nihal Singh and Others***(supra) on which heavy reliance has been placed, it was a case where appointments were made by the State Government under Section 17 of the Police Act, 1861. Since their appointments were under the Act, 1861 and were allowed to continue for sufficient long time, which was not considered to be illegal or irregular appointment, this Court considered it appropriate to observe that as they are allowed to continue for such a long term, they deserve regularization of service. In the instant case, the respondents were never appointed in the establishment of the Government against a regular sanctioned post, in the absence whereof, judgment may be of no assistance.

56. The later judgment in ***Malathi Das(Retired) Now P.B. Mahishy***(supra) which has been relied upon, it was a case where the employees were working on daily wage basis serving in different departments which are indeed Government establishments. At one stage, the employees approached the High Court claiming regularization of service and the High Court of Karnataka came to their rescue and directed the State Government to regularize service

of such employees who are serving on a daily wage basis in Government departments and finally the SLP was dismissed by this Court. Thereafter, contempt petitions were filed before the High Court and in two phases, the employees were regularized, in the first and second phase of filing contempt petition by the incumbents concerned. But few of the incumbents filed contempt petition which appears to be the third phase, they were not considered for regularization despite the order of the High Court being confirmed by this Court on dismissal of the special leave petition on the premise of the judgment of this Court in ***Secretary, State of Karnataka and Others*** *Vs.* ***Umadevi (3) and Others***(supra). This Court was of the view that once the judgment of the High Court has been affirmed and in two phases on filing contempt petitions, employees have been regularized, there appears no reason to deviate and take away the claim of rest of the employees who are covered by the judgment of the High Court, may be the reason that there was a change in law on the subject after passing of the judgment of this Court in ***Secretary, State of***

Karnataka and Others *Vs.* ***Umadevi (3) and Others***(supra) and this is not the factual matrix in the instant case.

57. We are of the considered view that the direction of the High Court to reinstate after creating the posts and absorb the respondents based on their qualification is not sustainable in law and deserves outright rejection.

58. This Court, in a recent judgment in ***State of Gujarat and Others***(supra) has considered the view expressed by us in paras 10 and 11 as follows:-

> **"10.** The Division Bench has also not appreciated the fact and/or considered the fact that the respondents were initially appointed for a period of eleven months and on a fixed salary and that too, in a temporary unit — "Project Implementation Unit", which was created only for the purpose of rehabilitation pursuant to the earthquake for "Post-Earthquake Redevelopment Programme". Therefore, the unit in which the respondents were appointed was itself a temporary unit and not a regular establishment. The posts on which the respondents were appointed and working were not the sanctioned posts in any regular establishment of the Government.
>
> **11.** Therefore, when the respondents were appointed on a fixed term and on a fixed salary in a temporary unit which was created for a particular project, no such direction could have been issued by the Division Bench of the High Court to absorb them in Government service and to regularise their services. The High Court has observed that even while absorbing and/or regularising the services of the respondents, the State Government may create supernumerary posts. Such a direction to create supernumerary posts is unsustainable. Such a direction is wholly without jurisdiction. No such direction can be issued by the High Court for

> absorption/regularisation of the employees who were appointed in a temporary unit which was created for a particular project and that too, by creating supernumerary posts."

59. The justification has been tendered that such persons who have not been re-engaged by the State Government under its present policy dated 7th June, 2022 are entitled for their honorarium for the period from 1st December, 2011 to 31st May, 2012, we make it clear that such of the employees who have not joined pursuant to the scheme introduced by Government dated 7th June, 2022, they are always at liberty to accept their honorarium for the period of 6 months but as the Government has already offered them honorarium earlier, they are not entitled to any interest on the said principal amount. We are informed that the total amount as per the honorarium of MNP fixed at that time comes to Rs.25,851/-(1st December, 2011 to 31st May, 2012). If an application is filed, the State Government may at least remit the money into the bank account of the individual.

60. We make it clear that such persons who have joined pursuant to the scheme introduced by the Government dated 7th June, 2022 in fulfilment of the object of the Act, 2005 shall remain co-terminus

with the scheme and be allowed to continue as long as the scheme remain in force. At the same time, such persons who have not joined pursuant to the scheme dated 7th June, 2022, they are at liberty to accept their payments for the intervening period of 6 months from 1st December, 2011 to 31st May, 2012 of the principal amount of Rs.25,851/- to the MNP. On such application being filed, the appellants shall make over the money to such MNP through RTGS or any other mode after due verification within three months.

61. In our considered view, the judgment passed by the Division Bench of the High Court for the reasons afore-stated is not sustainable and deserves to be set aside.

62. Consequently, the appeals succeed and are allowed. The judgment impugned dated 19th August, 2014 is hereby set aside with the observation afore-stated. No costs.

63. Pending application(s), if any, shall stand disposed of.

.....J.
(AJAY RASTOGI)

.....J.
(BELA M. TRIVEDI)

NEW DELHI;
APRIL 11, 2023