engaged for any work after 28.6.98. It was further stated that they did not complete 240 days in any year and do not fulfill the essential condition for grant of temporary status under departmental scheme. Validity of such orders is challenged in present T.A. Learned counsel contended that in the meantime four similarly situated persons had preferred O.A. Nos. 332/2000. Out of said four persons, two of them were granted temporary status along with applicants vide order dated 15th/22.12.1997. Said O.A. had been allowed vide order dated 5.9.2001 in the light of judgment of O.A.No.28/2001 wherein vide interim order dated 2.7.98 the respondents were directed not to disengage and they were treated in **deemed service** w.e.f. 2.7.98 till 26.9.2000 when their individual representations were rejected. In such circumstances, it was contended that applicants being similarly situated should have also been treated similarly and alike & aforesaid period should also have been taken into consideration for determining the period of their engagement. Vide order dated 31.1.2005, the committee had not recommended them for conferment of temporary status holding that they had not been engaged for any work after 28.6.1998. Learned counsel contended that order passed in the case of O.A.28/01 as well as 332/2000 decided on 24.8.2001 & 5.9.01 respectively have attained the finality and therefore, binding upon the respondents. Ld. Counsel forcefully contended that applicants in TA NO 10 of 2009 being placed similarly to applicants in OA No 332/2000 & 28 of 2001, are entitled to be treated at par. Applicants in aforesaid OAs had been granted temporary status, which is still enjoyed by them, and therefore there is no justification to treat them differently. It was vehemently contended that **deemed period** was taken into consideration in respect of applicant in said OA, while similar treatment had not been accorded to applicants. Thus invidious discrimination had been committed, which is violative of Article 14 of the Constitution. In support of said contention reliance was placed on following judgments:

i) (1990) 4 SCC 613 Lt. Governor of Delhi v. Dharam Pal

ii) (2006) 6 SCC 548 Anand Regional Cooperative Oil Seed Grover Union Ltd. v. Saileh Kumar Harshad Bhai Shah

iii) (2007) 7 SCC 689 Commissioner, Karnataka Housing Board v C. Muddaiah

iv) (2007) 11 SCC 92 U.P.Electricity Board v. Puran Chand Pandey

v) 2008 (1) SLR 146 b. Radha krishan v Registrar CAT, Chennai.

13. Shri A. Dasgupta, Ld. Counsel appearing for sole applicant in T.A.35/09 contended that applicant was initially engaged on 5.8.96 and suddenly disengaged on 30.9.97. He had completed 240 days based on calendar year. Earlier, he had approached this Tribunal vide O.A.467/2001 which was disposed of vide order dated 26.8.02 requiring the respondents to pass appropriate order: "**for conferment of temporary status**", holding that he had completed 240 days. Said judgment has attained finality. Therefore it was incumbent upon respondents to confer him temporary status in the light of the Scheme. When no action had been taken to implement aforesaid directions, he filed M.P.44/04 and in its reply thereto, the respondents had stated that they were taking steps in terms of direction dated 26.8.02 and a responsible committee has already been constituted which shall consider applicant's claim. However vide communication dated 14.6.05, findings of the responsible committee dated 8.6.05 had been conveyed which confirmed that he had completed 240 days during 12 calendar months and his claim has also been referred to Corporate office of BSNL for consideration and conferment of temporary status and further he will be communicated on said subject as soon as a decision was received. Learned counsel contended that the said hope has been belied and no status has been conferred till date, which amounts to contempt of this Tribunal.

14. In reply to aforesaid, learned proxy counsel appearing for Mr. Y. Doloi, Counsel for respondents contended that applicant had not impleaded necessary parties as he had impleaded only the Task Force N.E. Telecom and not the officials of Assam Circle. Furthermore, vide their reply it was stated that applicant had never worked in any Task Force of BSNL. Assam Circle and N.E. Task Force are different branches of BSNL having their own, separate & different jurisdiction, neither similar nor overlapping to each other. Applicant seems to had been engaged by Kamrup SSA which fall within the jurisdiction of Assam Telecom Circle. Therefore no relief can be granted, emphasized learned counsel for the respondents. We may note that no rejoinder has been filed by the applicant though reply was filed by respondents on 2.7.07.

15. Shri M. Khataniar, Ld. Proxy Counsel appearing for Shri P.N. Goswami, Counsel for the applicants in T.A. No 6/09 contended that the 2 applicants had joined in Jan, 1993 and Jan, 1995 respectively and continuously working since then and therefore, they having satisfied the requirement of the Scheme are entitled to relief as prayed for. In reply filed by the respondents it was stated that they have never been engaged by the respondents as casual labourers or otherwise at any point of time. Certificates appended by them were prepared by some Trade Union personnel of doubtful integrity. The matter has been referred to police and therefore, the fake and forged certificate cannot be relied upon while considering their claim. Vide reply para (x) it was stated: "**the scheme under reference has become inoperative and as the same has been declared unconstitutional with retrospective effect by the Hon'ble Supreme Court**". No rejoinder has been filed to the reply filed by the respondents.

We may note that Ld. Counsel appearing in other cases have in principle adopted aforesaid contentions, and in such circumstances we are not burdening the records.

RESPONDENTS' STAND

16. By filing reply the respondents contested the claim made and stated that moot question raised in these petitions is whether the applicants are entitled to the benefit of "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989" or not. Said scheme provides that the casual labourer who has completed at least 240 days in engagement as casual labourer in the department in 12 calendar months and had been on continuous employment as on 10.89 would be entitled to temporary status under said Scheme circulated through the Govt. of India Deptt. Of Telecom circular dated 7.11.89. The Department of Telecom issued another O.M. dated 12.2.1999 whereby the power to engage casual labourer from the office of DOT had been withdrawn on account of the bar imposed for recruitment of casual labourers vide letter dated 22.6.1988 as well as misuse of said authority. Another circular was issued on 12.2.99 whereby clarification was issued to the extent that a casual labourer who had already been conferred with temporary status

and completed 10 years of service were to be regularized as per vacancies in Annexure 'A' appended thereto. By the said circular it was also clarified that those casual labourers who were engaged by the department in spite of the banned order were to be given temporary status strictly against the places and vacancies indicated vide Annexure 'B' appended thereto. Since some anomalies still existed with regard to the date from which the benefits as mentioned in earlier circular dated 12.2.99 would be applicable, Department of Telecom issued circular dated 1.9.99 and clarified the date of conferment of such class of casual labourers which would be effective from 1.9.99 and in case of regularization to the temporary status casual labourer eligible as on 31.3.1997 would be from 1.4.97. Vide Government of India DoT letter dated 17.10.90 it was also clarified that part time casual labourers are not entitled to temporary status/regularisation under the aforesaid scheme. On merits it was stated that applicants had never completed 240 days of employment in any single year. The certificates issued by the Contractors have no relevance and binding upon the respondents. Vide common order dated 31.8.99, this Tribunal, passed in O.A. Nos.107, 112, 114, 118, 120, 131, 135, 136, 141, 142, 145, 192, 223, 269 and 293 of 1998 vide para 7, in specific concluded that: "**due to the paucity of material it is not possible for this Tribunal to come to a definite conclusion. We therefore feel that the matter should be re-examined by the respondents themselves taking into consideration of the submission**" of parties. The applicants were also directed to file individual representation besides direction to the respondents to "**scrutinize and examine each case in consultation with the records**" and thereafter pass a reasoned order on merits of each case. In compliance thereto, the respondents constituted a high powered expert verification committee to verify the departmental records and also the records of the applicants supporting their respective claims. Their claim had been meticulously examined and it was found that applicants had never completed 240 days in a year during the course of their engagement. The respondents are not answerable or responsible in any manner or responsible for their engagement and their relationship with the job of the contractor.

17. Shri B.C. Pathak, learned counsel for the respondents in sizeable number of cases forcefully contended that in Umadevi's judgment (supra) the very foundation of the scheme i.e. judgment in Daily Rated Casual Labourer has been overruled. It was emphasized that applicants engaged as casual labourer were not employed against any sanctioned post. Similarly, they were not engaged in accordance with the rules in vogue. Their appointments being illegal cannot be regularised. Furthermore, the Scheme of 1989 was one-time measure except in the circumstance clarified vide circular dated 12.2.99. Applicants have no legal and vested right for regularization. Furthermore illegal acts of officials earlier of DOT and now of BSNL cannot be legitimized. Learned counsel further emphasized that the Scheme of 1989 is no longer in operation after the Constitution Bench judgment in Umadevi's(3). Illegality cannot be perpetuated by grant of temporary status and consequently regularization, as prayed for. Reliance was placed on P&T Financial Handbook Vol. I & III to contend that payment to labourers hired for contingencies prescribed therein had to be made under Rule 331 of Vol. I and the maximum period for which a managerial labourer can be hired cannot exceed 100 days. Reliance was also placed on Appendix 'A' appended thereto to contend that list of items have been prescribed and classified under the term "other contingencies" which included wages and allowances of labourer or mazdoor employed casually. Reliance was placed on series of judgments namely: 1997 3 SLJ 86(CAT- Allahabad **Vikram Singh and others** v. **UOI**) to contend that part time casual labourers are not entitled to regularization. To similar effect reliance was placed on 1992 (2) SLJ 513 (CAT-HP **Karam Singh and others** v. **State of HP and others**) and 1992 (1) SCC 489 **State of Punjab and others** v. **Surendra Kumar and others**. To another contention raised that said scheme is a one-time and not an ongoing process, reliance was placed on 2002 (4) SCC 573 **UOI** v. **Mohan Pal and others** and 2006(1) SLJ 64 (SC) **Union of India** v. **Gagan Kumar**. To a further contention that onus to prove working for 240 days in a year lies on workman, reliance was placed on 2007 (13) SCC 343 **Ranip Nagar Palika** v. **Babuji Gabhaji**. (2009) 7 SCC 205 **GM, Uttaranchal Jayanthan** v. **Luxmi Devi & Ors**, was relied upon to contend that Umadevi's (3) judgment is retrospective in operation. Further reliance was placed on following rulings:-

i) (2004) 7 SCC 112 **A.Umarani** v. **Registrar, Co-operative Societies & Ors**. to contend that if appointment is illegal, the same cannot be regualrised.

ii) (2008) Suppl GLT 164 **BSNL** v. **Ashim Kr. Das**- casual labour cannot be regularized automatically.

iii) AIR 1997 SC 2120 **State of Harayana** v. **Surender Kumar & Ors**. court will not legitimize illegal acts of officers.

iv) AIR 1996 SC 2173 **State of UP** v. **Harish Chandra**- No mandamus can be issued to refrain the authorities from enforcing law or to act contrary to law.

v) (2007) 6 SCC 694 **UCO Bank & Ors** v. **R.L.Capoor**- illegality cannot be perpetuated.

vi) 1988 (1) SLR 360 (P&H)(DB) **Sarabjit Singh** v. **Pubjab University, Patiala**. - wrong appointment cannot be perpetuated by misinterpreting the provisions of statute.

vii) (2001) 7 SCC 1 **Steel Authority of India Ltd** v. **National Union** & (2002) 4 SCC 609 **M.C.Greater Mumbai** v. **Shramik Sangh & ors.**

viii) AIR 1990SC 10 **S.S.Rathore** v. **State of M.P.** – repeated representations do not extend the period of limitation.

ix) (1999) 8 SCC 304 **R.C.Shamra** v. **Udham Singh Kamal & Ors**- repeated representations do no give fresh cause of action.

18. Placing on records the findings of Verification Committee, it was highlighted that none of the applicants had completed 240 days of service in one year. It also recorded another aspect namely that none of them had been in engagement with the Department since June, 1998 and therefore they were not entitled to grant of temporary status even as per the extended circular dated 12.2.1999.

ISSUES ARISING FOR CONSIDERATION:-

19. Basically two important legal issues of larger public interest arise for consideration namely:- 1. Whether the applicants have satisfied the requirement of 1989 Scheme. & 2.Whether they could legally enforce their claim seeking implementation of Casual Labourers (Grant of Temporary

Status and Regularisation) Scheme of Department of Telecommunications, 1989 particularly after the judgment in Umadevi's(3).

20. Before proceedings further it would be expedient to notice the legal position, which is as follows:

LEGAL POSITION:-

21. [illegible]ng to regularization had been elucidated in detail by the Constitution Bench in **State of Karnataka v. Umadevi (3)** (2006) 4 SCC 1 Hon'ble Court adverted to the theme of constitutionalism in a system established on the rule of law, expanded meaning given to the doctrine of equality in general and equality in the matter of employment in particular, multifaceted problems including the one relating to unwarranted fiscal burden on the public exchequer created on account of the directions given by the Courts for regularization of the services of persons appointed on purely temporary or adhoc basis or engaged on daily wages or as casual labourers, referred to about three dozen judgments. Ratio laid down therein could be summarized as follows:

1. Merely because a temporary employee or a casual wage worker is continued for a time beyond the terms 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. Merely because an employee had continued under cover of an order of the court, described as "**litigious employment**" be not entitled to any right to be absorbed or made permanent in the service.
2. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that: a) the person concerned has worked for some time and in some cases for considerable length of time, and b) he was not in a position to bargain-not at arm's length. But on that ground alone, it would not 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. By doing so, it will be creating another mode of public appointment which is not permissible.

3. Articles 14, 16 & 309 were inserted in Constitution so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons, who got appointed casually or those who have come through the backdoor, cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment.

4. A regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or some other consideration. Regular appointment must be the rule.

5. 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 requirement of Article 14 read with Article 16 of the Constitution if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.

22. Vide para 18, in Umadevi's judgment it was further observed that:

"**Without keeping the above distinction in mind and without discussion of the law** on the question or the effect of the directions on the constitutional scheme of appointment, **this Court in Daily Rated Casual Labour** v. **Union of India directed the Government to frame a scheme for absorption of daily-rated casual** labourers continuously working in the Posts and Telegraphs Department for more than one year. This **Court seems to have been swayed by the idea that India is a socialist republic and that implied the existence of certain important obligations which the State had to discharge.** While it might be one thing to say that the daily-rated workers, doing the identical work, had to be paid the wages that were being paid to those who are regularly appointed and are doing the same work, it would be quite a different thing to say that a socialist republic and its executives, is bound to give permanence to all those who are employed as casual labourers or temporary hands and that too without a process of selection or without following the

mandate of the Constitution and the laws made thereunder concerning public employment."

(emphasis supplied)

23. Ultimately vide para 54 in Umadevi's (supra) Hon'ble Supreme Court in no uncertain term declared that: "**those decision which run counter to the principle settled in this decision, or in which directions running counter to what we had held herein, will stand denuded of their status as precedents.**"

24. In **U.P. SEB** v. **Pooran Chandra Pandey** (2007) 11 SCC 92, two-Judge Bench, taking recourse to observation made in seven-Judge Bench in **Maneka Gandhi** v. **Union of India** (1978) 1 SCC 248, that reasonableness and non-arbitrariness is part of Article 14 of the Constitution & Government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated, concluded that said law is of general application, which aspect had not been dealt with in Umadevi's case, decided by five-Judge Bench. Therefore Umadevi's decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution. It was observed therein that it is well settled that a smaller Bench decision cannot override a larger Bench decision of the Court. But said view had not been approved by three-Judge Bench decision in **Official Liquidator** v. **Dayanand** (2008) 10 SCC 1, holding that limited issue which fell for consideration (in Pooran Chandra Pandey) was whether the daily-wage employees of the society, the establishment of which was taken over by the Electricity Board along with the employees, were entitled for regularization in terms of the policy decision taken by Board and whether the High Court committed an error by invoking Article 14 of the Constitution for granting relief to the writ petitioners. It had no occasion to make any adverse comment on the binding character of the constitution Bench judgment in Umadevi's case.

24. In (2009) 5 SCC 193 **Pinaki Chatterjee and others** v. **UOI & Ors**, it was clarified that departmental instructions issued prior to and contrary to law laid down in **Umadevi's (3)** case, (2006) 4 SCC 1, could not be applied to grant regularization. Appellants therein were appointed in Group C posts in the Electrical Department of the Railway Electrification Project and

despite working for a long time their services were not regularized, had approached this Tribunal seeking direction to finalise their absorption in service, which OA had been disposed of vide judgment & order dated 5.7.2001 observing that their claim to be regularized in Group C posts as asserted was not acceptable, instead they were required to be regularized in Group D. Challenge made to said findings were not acceded, by the High Court, and in such circumstances matter reached before the Hon'ble Supreme Court. They were basically relying upon circular of Railway Board dated 11.5.1973. It was held by the Apex Court that said circular letter of the Railway Board which had been issued long back, however did not take into consideration the limitation of power of a State to make appointment in total disregard of mandatory provisions of the recruitment rule and or the constitutional provisions. Reliance was also placed on three-Judge Bench decision in **Official Liquidator** v. **Dayanand** (2008) 10 SCC 1, wherein vide para 90-91 it was observed that:

> "**The learned Single Judges and Benches of the High Courts refuse to allow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. .... Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individual and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle those who are required to lay down the law.**"

25. In (2009) 9 SCC 514 **State of Punjab & others** v. **Surjit Singh and others**, vide para 30 it was clarified that para 55 of the judgment in **Umadevi's**(3) (supra), did not lay down any law and directions issued thereunder were of limited controversy. Umadevi's(3) case (supra) was further explained & distinguished in (2009) 8 SCC 556 **Maharashtra SRTC** v.