Casterbibe Rajya Parivahan Karmchari Sanghatana, vide paras **34-36** observing that:

> "34. It is true that Dharward Disstt. PWD Literate Daily Wages Employees' Assn arising out of industrial adjudication has been considered in Umadevi(3) and that decision has been held to be not laying down the correct law but a careful and complete reading of the decision in Umadevi(3) leaves no manner of doubt that what this Court was concerned in Umadevi(3) was exercise of power by the High Court under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged in contractual, temporary or casual workers not based on proper selection as recognized by the rules of procedure and yet orders of their regularization and conferring them status of permanency have been passed.
>
> 35. Umadevi(3) is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Court (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.
>
> 36. Umadevi(3) does not denude the Industrial and Labour Court of their statutory power under Section 30 read with 32 of the MRTU and PULP Act to order permanency of the workers who have been the victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi(3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair practice on the part of the employer under Item 6 of Schedule IV is established."
>
> (emphasis supplied)

26. Said decision also emphasized that there is no quarrel with the proposition that courts cannot direct creation of posts. Reference was made to (2001) 7 SCC 346 **Mahatama Phule Agricultural University** v. **Nasik Zilla Sheth Kamgar Union**, (2005) 6 SCC 751 **State of Maharashtra** v. **R.S.Bhonsle**, (2001) 7 SCC 356 **Gram Sevak Prashikshan Kendra** v. **Workmen**, (2007) 1 SCC 408 **Indian Drugs & Pharmaceuticals Ltd.** v. **Workmen**, (2008) 1 SCC 683 **Aravali Golf Club** v. **Chander Hass**, (2003) 2 SCC 632 **P.U. Joshi** v. **Accountant General**, to reiterate that creation and abolition of posts regularisation are purely executive functions. The Courts cannot direct the creation of posts. Court cannot arrogate to itself this purely and executive or legislative function. Similarly it is also true that the status of permanency cannot be granted by the Court where no such post exists.

27. In (2008) 1 SCC (L&S) 1101 **Controller of Defence Accounts, Dehradun and Others** v. **Dhani Ram & Ors** it was reiterated that the Scheme relating to temporary status was not ongoing scheme and temporary status could be conferred under the Scheme only subject to fulfillment of the conditions stipulated therein. Furthermore, it does not appear as a general guideline to be applied for the purpose of giving 'temporary' status to all casual workers, **as and when they complete one year's continuous service**. (emphasis supplied)

28. In (2009) 2 SCC 407 **State of Punjab** v. **Bahadur Singh and others,** Umadevi's (3) judgment, particularly para 53 thereof, was further explained & High Court directions to regularize work charged employee who had worked in that capacity for 22 years were quashed & the matter was remitted back for fresh consideration in the light of position explained as well as that irregularity in the appointment can be regularized but not illegality. Furthermore regularization does not mean permanency.

OUR ANALYSIS

29. At the outset we may note that all these **49 cases** fall within the jurisdiction & different Distt. of State of Assam with total number of applicants 161. TAs No 3,7,11,25,27,38, 47,49,59 pertain to Distt. Nagaon, while TAs No 5,40,48,51 to Distt. Jorhat, TAs No 6, 8, 42 to Distt. Barpeta, TAs No 9,30,31,35, 45, 61,62,64 to Kamrup Distt, TAs No 10 & OA No 47 (though filed before Hon'ble High Court as WP (C) No 325206) to Distt. Karimganj, TAs No 13,14,34,50,53,54,55,60,65 & 66 of 2009 to Distt. Dibrugarh, TAs No 28 & 39 to Distt. Nalbari, TAs No 29 & OA 84/2009 to Bongaigaon, TAs No 63, 56,57 & 58 to Tinsukia, TAs No 41,44,52 to Cachar, TA No 36 to Darrang & 43/2009 to Hailakundi Distt.

30. We may also note that there is no dispute on certain factual aspects namely, except in T.A. No.35 of 2009, the committee constituted by the respondents and proceedings conducted by it did not pass any favourable order in respect of applicants requiring the respondents to grant temporary status. Furthermore, in T.A.10/09 "**provisionally**" approved temporary status on 15/22.12.1997 was rescinded on 29.6.98, which aspect had been challenged vide O.A.141/98 but it did not get any favourable

order, rather due to paucity of material the matter had been remanded back, vide common order dated 31.8.99, requiring the respondents to examine each case and to pass necessary order. Ultimately the order passed by the respondents on 31.1.05, is challenged in present proceedings in specific conveyed that their engagement report from the field unit based on certificate relied upon cannot be accepted and the record established that they did not complete 240 days in any year and further that they had not been engaged after 28.6.98. We may further note the fact that validity of Order dated 29.6.98 had been challenged vide O.A.No.141/98 by two applicants namely All India Telecom Employees Union & Nihar Dey and not by the applicants in TA No 10 0f 2009. Could they in such circumstances contend that challenge made in present TA is within time?

31. As far as the contentions raised by Sh. Manik Chanda, Ld. Counsel in TAs No 10 of 2009 is concerned, we noticed fallacy in it inasmuch as that two applicants therein who were conferred temporary status vide order dated 15/22nd Dec, 1997, which status was cancelled on 29.6.98 had never challenged said order. Rather validity of similar order had been challenged vide O.A.No.141/98 by two applicants namely All India Telecom Employees Union & Nihar Dey, which was disposed of vide common order dated 31.8.99 along with various other O.A.s namely107,112,114,118,120,131,135,136,142,145,192,22[illegible]269 & 293 of 1998 requiring the respondents to examine each case and pass reasoned order, because due to paucity of material it was not possible for the Tribunal to come to a definite conclusion. Similarly another contention that they are at par with other persons who were parties to OA No 332/2000 which was allowed vide order dated 5.9.2002, directing the respondents to treat some period as deemed engagement is concerned, we may observe that applicants therein had not been party to any similar case and interim direction of said cases had been issued in their favour at any stage. In such circumstances how they can claim parity? In our considered opinion, there is no similarity between them and question of treating them alike did not arise and there is no violation of Article 14 of the Constitution. As such reliance placed on judgments become totally irrelevant & baseless. On random examination we may observe that bare

perusal of Annexure 1 appended to TA No 5/2009 reveal that good number of persons seems to had worked for 360-365 days in a year. Even as on 1.8.1998 persons were shown to have worked for 240 days, which under no circumstances can be accepted and the Verification Committee rightly rejected the reliance placed by the applicants on such documents. Similar is the fate of other cases, and there is no substance in the arguments advanced by any of them.

32 Initially the Scheme of 1989 which came into force on 1.10.89 vide para 5 provided that temporary status would be conferred on all casual labourers currently employed and who have rendered a continuous service of at least 1 year" (240/206 days in case of office observing 5 days). Later, as a **one-time measure** and on **special consideration**, another circular 12.2.99 was issued and concerned units were directed to create post of regular mazdoor for regularizing the casual labourers who had completed 10 years of service as on 31.3.97 to the extent of numbers indicated in Annexure-A thereof. Similarly, Annexure-II appended thereto conveyed the approval of Telecom Commission to grant temporary status to casual labourers to the extent of numbers indicated to the respective circles detailed therein which figure had been compiled based on information supplied by the circles/units concerned. It also had a caveat that there should not be any variation in the figures and in case there was any change, Heads of Circles should refer the cases to TCHQ explaining the reasons. As noticed hereinabove as per said **Annexure-B**, for **Assam Circle** the figure detailed had been nil **as on 1.8.98**, while for N.E. category the figure was 350. We may also note very significant & important aspect that it is not the case of Applicants that they fall within the category of NE, and therefore figures against NE has no relevance for our purposes. We have already noticed hereinabove that all the cases which are being dealt with by the present common order pertain to Assam Circle and as per the Annexure-B there was no casual labourer who was required to grant temporary status. If this is the factual position, which has otherwise not been contested, disputed, challenged or controverted or proved contrary by the applicants, or any word pleaded on this aspect, how could they claim that they were working as casual labourers within Assam Circle and also entitled to temporary status as on 1.8.98 the date

prescribed by the said circular, remain totally unexplained, highlighted or clarified to this Tribunal. As such this aspect cast serious doubt about the claim laid as a whole.

33. The further question which arises for consideration is whether applicants have satisfied the requirement of circular dated 12.2.99. In others words have they fulfilled 10 years service as casual labour. Pleadings raised in these cases ex-facie would show that such has not been their own case. We may note that as per averments made by them (in Writ Petitions) in TAs all the applicants in TAs No 5, 6, 8, 9, 11, 14, 28, 29, 30, 31, 35, 39, 40, 42, 45, 53, 55, 57, 58,62, 63, 64, 65 & OA No 84 of 2009 were engaged only on or after the year 1989, and therefore under no circumstances they could have completed 10 years of service as casual labour 1.9.1999 as clarified vide DoT Circular dated 1.9.1999. In rest of cases, according to applicants own averment, sizeable number of them had been engaged only after 1989 & some of them were engaged prior to said year, which figure is very marginal/insignificant. According to respondents stand, barring a few, they had disputed engagement from earlier dates but in any case pleaded that they had not satisfied requirement of engagement of 240 days in any year. Though applicant in TA NO [illegible] had satisfied the requirement of 240 days in 12 recruitment month but not in a "year", and in any case he did not satisfy the requirement of DoT circular dated 12th Feb, 1999, and therefore he was also not entitled to any benefits.

34. The next question which also arises for consideration is how to determine one year as prescribed vide para 5 of the Scheme of 1989. The term "**year**" has not been defined under the Scheme. Should it be financial year, calendar year, or 12 months from the date of engagement. We should note that Section 3 (66) of the General Clauses Act, 1897 defines said term "year". It reads thus: "**year means a year reckoned according to the British calendar.**"

The committee, which recommended sole applicant in T.A. NO. 35/09 for conferment of temporary status holding that he had completed 309 days during 1.10.96 to 30.9.1997, thus ex-facie calculated said 240 days based on last 12 last months of engagement. Hon'ble Supreme court

in (2008) 1 SCC (L&S) 1101 **Controller of Defence Accounts, Dehradun and Others** v. **Dhani Ram & Ors.** had in unequivocal terms observed that temporary status cannot be conferred to casual laboruers "**as and when they complete one year's continuous service.**" The aforesaid observation thus provides a guideline that it is not last 12 calendar months or mere completion of one year service of engagement which will make a casual labourer entitled for temporary status. Twin conditions were required to be satisfied namely, "**currently employed** and who **have rendered a continuous service at least one year**, out of which they must have been engaged on work for a period of 240 days (206 days in case of offices observing five day week)". Furthermore this condition ought to have been satisfied as on 1.10.89 i.e. the date on which the 1989 Scheme came into force. Hence the applicants have established that said requirements of the Scheme were satisfied and thus they had acquired the eligibility & entitled to reap the benefits provided under the said Scheme.

35. Now dealing with the legal position we may observe that while devising a scheme of 1989, admittedly judgment of Hon'ble Supreme Court in Daily Rated Casual Labourer of Department of Posts v. Union of India and others, 1988 (1) SCC 122, had been the guiding factor. It is undeniable fact that said judgment has been specifically overruled in State of Karnataka Vs. Umadevi(3). Furthermore, vide para 54 thereof Hon'ble Court went on to observe that all those decisions which run counter to the principles settled in that judgment or in which direction running counter to what has been held therein "**will stand denuded of their status as precedence.**" Thus further issue of public importance & larger ramification which arises for consideration is what is the fate of the Scheme devised by the Department of Telecom. Is it in existence? Could it be enforced through judicial orders/intervention either by this Tribunal or any other judicial forum? Could it be said that mere absence of challenge to said Scheme of 1989 would not make any difference to test the factum of its existence. We may observe at this stage itself the respondents in their reply filed, after Umadevi's had been pronounced, did comment & stated that said Scheme has lost its significance and cannot be enforced, and said contention raised had not been refuted by filing any rejoinder. It is undisputed that said Scheme was issued in

compliance of Hon'ble Supreme Court direction in Daurai case as well as in exercise of powers available to Central Govt. under Article 77 of the Constitution of India. We may note that the said Scheme is not the end product of the exercise of power under proviso to Article 309 of the Constitution. As such it can safely be concluded that it is only administrative in nature and had not taken the shape of statutory rule. In Umadevi(3) (supra), Hon'ble Supreme Court after scanning the provision of Article 14, 16, 32 & 226 as well as its earlier judgments on the subject very strongly emphasized that :

> "only something that is **irregular** for want of compliance with one of the elements in the process of selection which does not go to the root of the process, **can be regularized** and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization," (emphasis supplied)

36. Furthermore, the ratio discernible from **Pinaki Chatterjee** (supra) is that departmental instructions as well as the Scheme issued prior to and contrary to law laid down in **Umadevi's (3)** case could not be applied to grant temporary status as well as regularization. It was held therein by the Apex Court that circular of the Railway Board which had been issued long back 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. Said ratio is aptly & squarely applicable in the facts & circumstances of present cases as the Scheme of 1989 had been issued by the Department of Telecom way back in the year 1989, did not take into consideration the limitation of power of a State to make appointment in complete & brazen disregard of mandatory provisions of recruitment rules, created a new class of employee, recruited from back door. Moreover the very foundation of the said Scheme has been struck by Umadevi's (3) (supra). Said Scheme cannot be given the shape of statutory recruitment rules framed under the exercise of power of Proviso to Article 309 of the Constitution. Thus our inevitable conclusion is that none of the applicants had satisfy the requirement of the Scheme & they cannot seek enforcement of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Department of Telecommunication, 1989 by judicial process.

37. Another aspect which also requires examination is whether this Tribunal should issue some directions to the respondents to adjust the applicants in some manner so that they continue in employment and allow the benefits based on the facts that good number of them have rendered about 2 decades of service, as projected though seriously disputed by the respondents & some of them continue to be in service in some other capacity even as on date. We have sympathy with those who had been working for the respondents & discharged their duties at the time when required & the respondents were in need to engage them, but that does not mean that their claim should be allowed. Before making any further comment on this aspect we may note that the law on said aspect has also been laid down by the apex court, in (2007) 1 SCC 408 **Indian Drugs & Pharmaceuticals Limited** Vs. **Workman**, vide para 16 thereof it was observed that: "We are afraid that the Labour Court and the High Court have passed their orders on the basis of emotions and sympathies, but in ***cases in Court have to be decided on legal principle and not on the basis of emotions and sympathies***". Further more in (2008) 2 SCC 310 **Uttar Haryana Bijli Vitran Nigam Ltd. and others** Vs. **Surji Devi** vide para 16 it was further reiterated that sentiments and sympathies alone can not be a ground for departing from the law and take a view different from what is permissible in law. In **Teri Oat Estates (P) Ltd.** v. **U.T.Chandigarh**, (2004) 2 SCC 130, vide para 36 at page 144, observations were made to the same effect that: "We have no doubt in our mind that sympathy or sentiments by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution, this Court ordinarily would not pass an order which would be in contravention of a statutory provision."

38. In (2007) 12 SCC 779 **Nadia Distt. Primary School Council & another** Vs. **Sristidhar Biswas and others**, it was observed that Court should exercise restraint before passing order saddling the State with financial burden. We may also note that Hon'ble Supreme Court in (2009) 5 SCC 212 **Destruction of Public & Private Properties in Re** Vs. **State of Andhra Pradesh & others** reiterated and followed earlier judgment in **Union of**

India Vs. **Association for Democratic Reforms,** (2002) 5 SCC 294 (at page 309 para 19) wherein it has been observed that: "***It is also established law that no direction can be given, which would be contrary to the Act and the Rules***". When the law is so settled, we felt it would not be justified to ignore the mandate of law. Aforesaid ratio is squarely applicable in present cases. In this view of the matter we do not find any justification in the claim laid by the applicants. It would not be justified to ignore that said mandate merely on grounds of sympathies and emotions holding that the applicants are entitled to temporary status & regularisation irrespective of the aforesaid settled law position.

39. We have also examined as to whether orders passed by the verification committee requires any interference or not. On careful examination of the matter particularly in view of observations made hereinabove, we find that the said committee had duly considered all relevant materials placed before it by either side. Applicants have failed to make out any case establishing any illegality, irrationality or mistake committed by it while considering their claim. Furthermore, we find that directions issued by this Tribunal on earlier occasion had been scrupulously complied with. Orders passed by the respondents are detailed and analytical. Applicants have failed to make out that they have any legal right to claim temporary status and consequently regularization.

In view of discussion made hereinabove, we are of the considered view that TAs as well as OA noticed hereinabove, being without any merits are liable to be dismissed. Accordingly the same are dismissed. No costs.

Sd/- M.K.Gupta
Member (J)
Sd/-M.K.Chaturvedi
Member (A)

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प्रतिलिपि
10/2/2010
अनुभाग अधिकारी
Section Officer (Judl)
Central Administrative Tribunal
Guwahati Bench
Guwahati-5