

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 22568 of 2016

Smt. Piyali Chowdhury

-Vs-

West Bengal State Election Commission & Ors.

With

WPA 23774 of 2016

Smt. Moujhuri De

-Vs-

West Bengal State Election Commission & Ors.

For the Petitioner	: Mr. Manjit Singh Mr. Koushik Chatterjee Mr. Biswajit Mal Mr. Soham Sen
For the State (In WPA 22568 of 2016)	: Mr. Jahar Lal De Mr. Shamim-ul- Bari
For the Petitioner (In WPA 23774 of 2016)	: Mr. S. Jahan Ms. Jyotsna Ray Mukherjee Mr. M.K. Das Ms. Srijani Mukherjee Ms. Prerna Dutta
For the Respondents Nos. 1-3/ WBSEC	: Mr. Manujendra Narayan Roy Mr. B. Nandy Mr. Gourav Halder
For the Respondent No. 6 (In WPA 23774 of 2016)	: Mr. Suman Basu
For the State (In WPA 23774 of 2016)	: Mr. Jahar Lal De Ms. Tapati Samanta
Judgment on	: 05.05.2026

Ananya Bandyopadhyay, J.:-

1. The writ petition being no. 22568 of 2016 is filed praying for quashing of charge-sheet being no. 263-SEC/1L-46/05 (Part-I) dated 28.03.2016 and supplementary charge-sheet being no. 289-SEC/1L-46/05 (Pt-I) dated 30.03.2016 issued by the State Election Commissioner, West Bengal State Election Commission under Rule 10 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 and quashing of Enquiry Report dated 1304.2016 in respect of disciplinary proceeding held against Smt. Piyali Chowdhury (petitioner in WPA 22568 of 2016) and setting aside the second show cause notice dated 15.04.2016 upon Piyali Chowdhury on departmental proceeding in respect of the above charge-sheets and quashing of order vide memo no. 408-SEC/1L-46/05 (Pt. I) dated 28.04.2016 passed by the Disciplinary Authority i.e., State Election Commissioner, West Bengal State Election Commission regarding punishment of removal from service of Piyali Chowdhury.
2. The writ petition being no. 23774 of 2016 is filed praying for quashing the order bearing no. 407-SEC/1L-45/05 (Pt. I) dated 28.04.2016 passed by the State Election Commissioner, West Bengal State Election Commission, *inter alia*, removing the petitioner/ Smt. Moujhuri De from service against the post of Data Processor of State Election Commissioner, West Bengal.
3. The narrative of the instant case begins on the 20th day of December, 2004, when the State Apparatus, vide Government Order No.634 Home (Cons.), formally sanctioned a post for a Data Processor, complete with a designated scale of pay. Recognizing the immediate operational exigencies

of the administration, the Special Secretary to the Government of West Bengal, on February 16, 2005, granted a 'No Objection' clearance to fill this newly minted post strictly on a contractual basis for a transient tenure of six months. This administrative intention was translated into a public invitation on April 1, 2005, through an advertisement detailing the explicit eligibility criteria required of aspiring candidates. The petitioner, asserting compliance with these stipulations, stepped forward and was subsequently summoned on April 28, 2005, to undergo a rigorous selection process comprising both a formal interview and a hands-on practical test. Standing evaluation alongside her peers, she participated in the interview and presented her testimonials on May 5, 2005. Her merit found favor with the selectors, culminating in the issuance of an appointment letter on June 20, 2005, by virtue of which she entered into her duties as a Data Processor within the West Bengal State Election Commission on June 30, 2005.

4. What followed was a protracted chapter of administrative extensions and systemic recognition that gradually altered the nature of her employment. Upon the expiry of her initial contractual term, the state chose to continuously prolong her service, first through an order dated November 11, 2005, which granted an extension of six months, and subsequently via an order dated May 10, 2006, which stretched her tenure by a full year until June 30, 2007. A significant shift occurred on September 6, 2006, when Respondent No. 1 transitioned her from a strictly contractual role to a temporary appointment within the regular scale of pay. The state's reliance on her services was further underscored by periodic

executive interventions; on August 13, 2007, and later on April 26, 2013, the Assistant Secretary to the Government of West Bengal issued formal orders for the retention of her post. This administrative embrace deepened when the Joint Secretary, on February 5, 2008, and the Secretary of the Commission, on September 2, 2014, issued explicit memoranda calling for the permanent retention and regularisation of her services. During this period of upward mobility, her pay scale was appropriately revised, and on February 5, 2010, the Commission formally confirmed her temporary service, retrospectively effective from September 6, 2006, explicitly invoking the statutory protection of Rule 5 of the West Bengal Service (Appointment, Probation and Confirmation) Rules, 1969.

5. However, this decade-long trajectory of secure public service was abruptly upended. On March 28, 2016, the petitioner was served with a formal Charge-sheet and an accompanying Article of Charges, dragging her career into the arena of disciplinary scrutiny. The matter was swiftly processed through the disciplinary mechanism, and in exactly one month, on April 28, 2016, the Disciplinary Authority delivered a fatal blow to her livelihood by passing an order of removal from service. In doing so, the authority looked back to the absolute inception of her career, declaring her original appointment inherently illegal and void from the very start. To justify this drastic, retroactive severance of a long-standing employment relationship, the state took shelter under the stringent judicial principles enunciated by the Supreme Court in the landmark precedent of *Secretary, State of Karnataka v. Uma Devi*.

6. The facts agitated by both the petitioners are candidly similar. Therefore, this Court, for brevity, refrains from reiterating the same differentially but confining to one petitioner.
7. The Learned Counsel appearing on behalf of the petitioner no.1 submits that the controversy involved in the present proceeding cannot be reduced to a narrow issue concerning the discontinuance of a contractual employee. According to the petitioner, the matter touches upon larger questions relating to fairness in public employment, legitimate administrative conduct, and the treatment accorded by the State to an employee who has rendered long and uninterrupted service over a substantial period of time. It has been argued that the respondent authorities, while passing the impugned order, have proceeded upon an erroneous and overly technical understanding of the principles governing public appointments and have failed to appreciate the distinction consistently maintained in constitutional jurisprudence between appointments which are fundamentally illegal and those which may, at the highest, suffer from procedural irregularity.
8. Placing considerable reliance upon the principles laid down in *State of Karnataka v. Umadevi* (3) and the subsequent clarifications rendered in *State of M.P. v. Lalit Kumar Verma* as well as *State of Karnataka v. M.L. Kesari*, learned Counsel submits that an appointment can be characterized as illegal only where it is made in complete disregard of the constitutional scheme governing public employment or where the process of recruitment is wholly bypassed in a manner destructive of transparency and equal opportunity. It has been contended that the

Supreme Court itself has recognized a distinction between appointments made through clandestine or back-door methods and appointments arising out of a process which substantially satisfies the requirement of openness and public participation, even if certain procedural requirements may not have been complied with in absolute strictness.

9. Developing the aforesaid submission, learned Counsel contends that the petitioner's induction into service was neither secretive nor arbitrary. The appointment, according to the petitioner, originated from a public advertisement issued on 1st April, 2005 inviting applications from eligible candidates. Pursuant thereto, the petitioner, along with several other aspirants, participated in a selection process consisting of practical examinations and formal interviews. It has been emphasized that the petitioner possessed all requisite educational and professional qualifications prescribed for the post at the very threshold of her appointment and there existed no deficiency in eligibility at any stage. Learned Counsel therefore submits that the petitioner entered public service through an identifiable and transparent recruitment process and that the respondents are now seeking to retrospectively stigmatize such appointment by describing it as "illegal", contrary to the factual foundation on record.

10. The Learned Counsel further submits that the impugned action reflects a selective and incomplete reading of the law declared in Umadevi (3). It has been argued that the decision itself recognized the need to protect employees who had continued for long years in service against sanctioned posts without the intervention of judicial orders and whose appointments,

though procedurally irregular, were not tainted by fraud or lack of qualification. Referring additionally to the observations made in *Vinod Kumar v. Union of India*, learned Counsel submits that constitutional fairness in employment cannot remain confined to rigid contractual labels where the actual nature of service demonstrates continuous institutional dependence upon the employee concerned.

11. It has been specifically argued that the petitioner rendered uninterrupted service for more than fifteen years under the respondent authorities. Such continuation was not secured by any interim protection granted by a Court or Tribunal. On the contrary, according to the petitioner, the State itself repeatedly renewed and extended her engagement by issuing formal orders from time to time, thereby consciously electing to continue availing her services over an exceptionally long duration. Learned Counsel submits that the uninterrupted extensions granted over more than a decade clearly indicate that the petitioner's services were not regarded as temporary or dispensable by the authorities themselves.
12. The petitioner further contends that throughout this extended period, she discharged duties identical or substantially similar to those performed by regular employees working under the establishment. It has been argued that the petitioner worked against sanctioned and vacant posts and performed responsibilities integral to the functioning of the institution. Learned Counsel submits that the conduct of the respondents over the years demonstrates that the petitioner's engagement gradually acquired a permanent character in substance, notwithstanding the terminology employed in the original contract of appointment.

13. In support of such submission, reliance has been placed upon the fact that the petitioner's remuneration was periodically revised and enhanced by the authorities themselves. It has further been pointed out that her service progression was considered by a Departmental Promotional Committee, a circumstance which, according to the Learned Counsel, reflects institutional recognition of her continuing role within the establishment. The petitioner therefore contends that the State cannot, after continuously treating the petitioner as part of its regular administrative structure for over fifteen years, abruptly revert to the original contractual description in order to justify her removal from service.
14. The Learned Counsel had also seriously disputed the factual stand taken by the respondents that no advertisement had ever been issued for the post in question. According to the petitioner, such assertion was fundamentally inconsistent with the actual recruitment process undertaken at the relevant point of time. It had been argued that the participation of multiple candidates in practical tests and interviews itself demonstrates the existence of a public recruitment exercise. Learned Counsel submits that the respondents are attempting to deny the existence of the advertisement solely for the purpose of retrospectively portraying the petitioner's appointment as illegal.
15. It has further been contended that the impugned termination has not been preceded by any allegation of misconduct, negligence, inefficiency, or dereliction of duty against the petitioner. Throughout the lengthy period of service rendered by her, no adverse material has been placed on record

reflecting any dissatisfaction regarding her conduct or performance. Learned Counsel therefore submits that the sudden discontinuance of the petitioner after availing her services continuously for more than fifteen years is arbitrary in nature and contrary to the standards of fairness expected of a State authority functioning within the constitutional framework.

16. According to the petitioner, the impugned action also offends the principles of natural justice inasmuch as the petitioner has been deprived of her livelihood and service benefits without any meaningful consideration of the circumstances under which she entered service and continued therein for over a decade and a half. The action of the respondents, it is argued, proceeds upon a narrow technical interpretation while completely disregarding the factual realities acknowledged by the authorities themselves throughout the petitioner's tenure.

17. On the aforesaid grounds, the Learned Counsel appearing for the petitioner submits that the impugned order of termination is unsustainable in law and liable to be set aside. The petitioner accordingly seeks reinstatement in service together with recognition of her status in accordance with law and all consequential service and financial benefits flowing therefrom. A perusal of the comprehensive submissions advanced on behalf of the petitioner reveals a poignant narrative of long, unblemished service, juxtaposed against a mechanical and unsympathetic exercise of administrative power.

18. The core of the dispute, as presented by the learned Advocate for the petitioner, lies in a critical misdirection by the respondent authorities, who have failed to distinguish between an appointment that is fundamentally "illegal" and one that is merely "irregular." Guided by the luminous principles enunciated by the Hon'ble Apex Court in *State of Karnataka v. Umadevi* and explicitly reinforced in *State of M.P. v. Lalit Kumar Verma*, the petitioner's initial entry into service cannot be termed a back-door entry. The appointment was preceded by a public advertisement dated April 1, 2005, and the petitioner emerged successful through an open, competitive matrix comprising a practical hands-on test and an interview. To brand such an appointment as "illegal" is to completely ignore the fact that she possessed all the prescribed minimum qualifications and conformed to the essential facets of the constitutional scheme.

19. Furthermore, the submissions eloquently invoke the equitable doctrine of regularisation as a one-time measure, a concept carefully preserved in Paragraph 53 of the *Umadevi* judgment and subsequently refined in *State of Karnataka v. M.L. Kesari*. The petitioner's service profile satisfies every criterion required to claim this benefit:-

- a. She has rendered more than fifteen years of continuous, voluntary service.
- b. This long service was performed without the protective shield of any interim judicial order.

- c. Her position was periodically validated by the respondents through regular extensions and the upward revision of her pay scale.

20. To abruptly terminate such an employee after her youth and finest years have been dedicated to the institution is a glaring act of arbitrariness that shocks the judicial conscience.

21. In its final and perhaps most compelling tier, the argument shifts from static technicalities to the dynamic reality of human affairs, placing reliance on the recent, progressive wisdom of *Vinod Kumar v. Union of India (2024)*. The essence of an employment relationship, it is urged, cannot remain forever fettered by the nomenclature used at its inception. When the course of employment evolves over decades, when the duties performed are indistinguishable from those of permanent staff, and when the process is overseen by mechanisms akin to a Departmental Promotional Committee, the relationship undergoes a qualitative transformation.

22. The abrupt removal of the petitioner, while ignoring these profound legal and factual realities, stands exposed as a decision steeped in an erroneous interpretation of the law. The petitioner's case squarely fits within the protective umbrella of settled precedents, rendering the impugned action of the respondents wholly unsustainable in the eyes of law.

23. The arguments advanced by the learned counsel on behalf of the petitioner no.2 contest the legality of the impugned termination by

addressing the statutory assumptions relied upon by the respondents. It is submitted that the Commission's invocation of Section 7 of the West Bengal Election Commission Act to disclaim its responsibility as an appointing authority is misconceived. While Section 7 delineates the recruitment of personnel strictly required for electoral rolls and the conduct of local body elections, Section 11 presupposes the existence of an administrative infrastructure for maintaining accounts. The statute's silence on the precise engagement process for such financial staff cannot translate into a total lack of power. The petitioner, recruited as a Data Processor, falls outside the restrictive strictures of Section 7. The Commission, therefore, acted within its administrative competence, having initiated the recruitment drive after obtaining prior sanction and permission from the state.

24. The narrative of the petitioner's employment highlights a trajectory marked by institutional transparency and state validation. At every consequential milestone—spanning the initial advertisement, consecutive terms of engagement, subsequent regularization, pay-fixation, and final confirmation of service—the Commission apprised the State Government. By regularly releasing budgetary allocations to fund the petitioner's salary across a tenure of eleven years without raising a single note of protest, the State Government consented to, accepted, and ratified her employment status. This long-standing pattern of passive acquiescence and active approbation debars the state from challenging the validity of her appointment at this juncture.

25. Consequently, it is urged that the Commission is both structurally and equitably precluded from reversing its position to the peril of the employee. Having utilized the petitioner's professional services, regularized her status, and formally confirmed her services, the respondents are prohibited by the Principle of Estoppel from asserting a plea of institutional incapacity. The entire disciplinary mechanism deployed against her lacks a lawful foundation, as it penalizes the individual for an administrative irregularity or fault attributable solely to the institutional machinery of the employer. This punitive action is further affected by procedural infirmity, given that the second Show Cause notice was issued without adhering to due process and the fundamental principles of natural justice.

26. The Learned Counsel underscores the socio-economic prejudice inflicted by this sudden termination, noting that it stands in opposition to the national policy of job security. Having entered the service within the prescribed age threshold for public recruitment, the petitioner has now crossed the upper age limit during her long tenure with the Commission, leaving her unemployable in the government sector and facing joblessness without any fault on her part.

27. This drastic action directly contradicts the protective policy framework of successive circulars issued by the Government of West Bengal. The foundational circulars dated 23.04.2010, 22.12.2010, and 16.09.2011 were explicitly promulgated to mitigate the inherent vulnerabilities of casual and contractual workers with over ten years of continuous service, extending a comprehensive social security umbrella that guarantees

tenure up to sixty years, predictable entry-point emoluments, and vital welfare safeguards. The subsequent policy interventions dated 01.03.2024 and 07.03.2024 were designed to upgrade these protections by restructuring consolidated monthly remunerations to counter inflationary shifts and significantly enhancing the one-time terminal retirement benefit to five lakh rupees, thereby insulating non-permanent employees from destitution. Guided by the legal principles enunciated by the Hon'ble Supreme Court in *Jaggo Vs Union of India*, reported in 2025 AIR(SC) 296, the petitioner seeks judicial intervention to quash the order of termination and a direction enabling her to resume her duties with full entitlement to back wages.

28. The State Government was informed at every decisive stage of the petitioner's engagement, including the issuance of the initial advertisement, successive extensions of contractual service, regularisation of employment, fixation and revision of remuneration, and eventual confirmation in service. During the entire tenure of the petitioner, the State continued to release budgetary allocations towards payment of salary without raising any objection regarding the legality or competence of the appointment. Such uninterrupted financial sanction and administrative acceptance, it is contended, amount to unequivocal ratification of the petitioner's service status. The State, having consciously permitted the petitioner to continue for more than a decade under official sanction, cannot now be permitted to repudiate the very appointment which it consistently recognised and financially sustained.

29. The Learned Counsel further submits that the respondents are barred, both in law and in equity, from reversing their long-standing position to the detriment of the petitioner. The Commission, after extracting uninterrupted service from the petitioner, regularising her employment and formally confirming her service, cannot subsequently plead institutional incapacity to justify termination. It is contended that the disciplinary action initiated against the petitioner proceeds upon a wholly untenable foundation, inasmuch as the employee is sought to be penalised for an alleged procedural irregularity attributable solely to the administrative machinery of the employer itself. The respondents, according to the petitioner, cannot transfer the burden of their own institutional lapses upon an employee who entered service through a process sanctioned and perpetuated by the authorities themselves.
30. It is additionally argued that the entire disciplinary proceeding suffers from serious procedural impropriety. The issuance of the second show-cause notice, according to learned counsel, was undertaken in breach of the settled principles of natural justice and without adherence to the safeguards of fair procedure, thereby rendering the ultimate decision arbitrary and legally unsustainable.
31. The learned counsel also places considerable emphasis upon the severe socio-economic consequences resulting from the impugned action. It is submitted that the petitioner had entered service while fully eligible for public employment within the prescribed age limit and has now, by reason of long and uninterrupted service under the Commission, crossed the upper age threshold for fresh recruitment in government service. The

abrupt termination has thus rendered the petitioner virtually disentitled from competing for public employment elsewhere, notwithstanding the absence of any allegation touching upon integrity, competence, or misconduct.

32. In this context, reliance has also been placed upon successive circulars and policy decisions issued by the Government of West Bengal concerning contractual and casual employees, wherein emphasis was laid upon continuity of engagement, protection against arbitrary disengagement, and the grant of minimum financial security to such categories of workers. Learned counsel submits that the impugned action runs contrary to the spirit underlying those governmental directives which sought to prevent sudden deprivation of livelihood of long-serving employees engaged under State instrumentalities.

33. Invoking the principles enunciated by the Hon'ble Supreme Court in *Jaggo Vs. Union of India*, the learned counsel urges that the order of termination be quashed and set aside, and appropriate directions be issued permitting the petitioner to resume service with continuity of employment, consequential benefits, and full back wages.

34. The arguments advanced by the Learned Advocate on behalf of the West Bengal State Election Commission unfold as an uncompromising defence of statutory discipline, articulating a profound boundary between administrative overreach and the rule of law. Presented in response to the challenges raised in WPA No. 22568 of 2016 (Smt. Piyali Chowdhury v. The West Bengal State Election Commission) and WPA No. 23774 of 2016 (Smt. Moujhuri De v. The State of West Bengal & Others), the

submissions address a foundational question of institutional competence: whether a statutory commission possesses the inherent power to regularize or appoint its own staff.

35. At the very core of the Commission's defense lies a strict, text-based interpretation of its enabling statute. It is contended with absolute clarity that the West Bengal State Election Commission Act, 1994, is entirely devoid of any provision investing the Commission with an independent power of appointment or regularization. Instead, the legislative blueprint deliberately places this authority within the hands of the executive. By virtue of Section 7(1) of the 1994 Act, the Commission is merely a recipient of staff, which the Governor is mandated to make available upon request to ensure the smooth discharge of its functions under Sections 4(1) and 5(1). This statutory design is further fortified by Section 7(2), which explicitly directs that the terms and conditions of service governing such staff must mirror those applicable to employees of the State Government. Consequently, any unilateral attempt by the Commission to extend contractual engagements or regularize services stands entirely detached from legal authority, rendering such appointments inherently *void ab initio* and non-existent in the eyes of law.

36. This statutory distribution of power finds its ultimate constitutional resonance in Article 243K(3) of the Constitution of India. The text leaves no room for ambiguity, casting an obligation upon the Governor of the State to provide the Commission with the necessary staff to fulfill its constitutional mandate. When read in tandem, Article 243K(3) and Section 7 of the 1994 Act form an unbreakable legal barrier that bars the

Commission from assuming the role of an appointing authority. The petitioners' appointments, having been born out of an institutional act completely lacking jurisdiction, suffer from a fundamental legal infirmity. The moment this perpetual illegality came to light, the Commission was duty-bound to rectify it. It did so not through arbitrary action, but by initiating formal proceedings, thereby granting the petitioner an ample and fair opportunity to defend herself in complete alignment with the principles of natural justice before passing the final order of removal.

37. To insulate this argument from pleas of equity or administrative consistency, the Learned Advocate representing the Commission relies upon an unbroken line of jurisprudence from the Apex Court, illustrating that a foundational illegality cannot be cured by the passage of time or appeals to sympathy.
38. The Commission invokes the classic principle of literal interpretation through *Raghunath Rai Bareja v. Punjab National Bank (2007) 2 SCC 230*, asserting that where the language of a statute is plain and unambiguous, courts must give effect to it, for equity cannot subvert the express mandate of law.
39. This is seamlessly reinforced by *Kulwinder Pal Singh v. State of Punjab (2016) 6 SCC 532*, which establishes that an illegality cannot be claimed as a matter of right, and the State cannot be compelled to perpetuate an erroneous practice merely because it occurred in the past.
40. The argument against the defence of past practice is further solidified by *State of Rajasthan v. Surendra Mohnat (2014) 14 SCC 77*, which reiterates

that the doctrine of estoppel cannot operate against the law, and mistaken benefits can never ripen into an enforceable right.

41. Addressing the boundaries of judicial intervention, the Commission turns to *M.C. Mehta v. Union of India* (1999) 6 SCC 237, arguing that a Court exercising jurisdiction under Article 226 may righteously refuse to strike down an administrative order—even if a procedural defect is alleged—if doing so would result in the revival of a previous order that was itself thoroughly unlawful. Furthermore, the structural separation of powers is brought to the fore through *Rishab Agro Industries Ltd. v. P.N.B. Capital Services Ltd.* (2000) 5 SCC 515, reminding the Court that while the judiciary holds the power to interpret laws, it must refrain from legislating; if a statute exposes gaps or leads to perceived hardships, the remedy lies exclusively with the Legislature to amend or modify.
42. The defence culminates in a definitive reliance on the Division Bench judgment of the High Court at Calcutta in *The Calcutta Dock Labour Board v. Md. Fazlur Rahaman* (1997) 2 CHN 281. This authority strikes at the very root of the petitioners' claim by holding that when an administrative action is fundamentally *ultra vires* the statute that creates the instrumentality, no legitimate expectation can ever arise from it.
43. Ultimately, the Commission's position rests upon a principled plea: where there is an absolute absence of statutory power, an appointment is a nullity from its inception. No length of service, no plea of equity, and no invocation of past practice can breathe life into a legal non-entity, and the Court must uphold the purity of the statutory framework over individual expectations. The submissions advanced on behalf of the West Bengal

State Election Commission emerge as a carefully structured assertion of statutory limitation and constitutional discipline, resisting any attempt to enlarge the Commission's authority beyond the contours consciously drawn by the legislature. In answering the challenges raised in WPA No. 22568 of 2016 (Smt. Piyali Chowdhury v. The West Bengal State Election Commission) and WPA No. 23774 of 2016 (Smt. Moujhuri De v. The State of West Bengal & Others), the Commission places before the Court a singular and determinative issue: whether a constitutional body, created by statute for a defined purpose, may assume unto itself a power of appointment and regularisation which the statute itself has consciously withheld.

44. The foundation of the Commission's argument rests upon the language of the West Bengal State Election Commission Act, 1994, which, according to the respondents, admits of no ambiguity whatsoever. It is contended that the statutory framework does not confer upon the Commission any independent authority either to create posts, appoint personnel, or regularise services. The architecture of the enactment reveals a deliberate legislative arrangement whereby the Commission functions with staff made available to it by the State Government through the office of the Governor. Section 7(1) of the 1994 Act is relied upon to demonstrate that the Commission is merely entitled to requisition staff necessary for the discharge of its constitutional and statutory obligations under Sections 4(1) and 5(1), while the obligation to provide such personnel rests exclusively upon the Governor. The provision, according to the

respondents, does not recognise the Commission as an appointing authority in its own right.

45. The respondents further place considerable emphasis upon Section 7(2) of the Act, which mandates that the conditions of service of the personnel so deployed shall be regulated in the same manner as those applicable to employees under the State Government. Such statutory assimilation, it is argued, unmistakably indicates that the staff attached to the Commission continue to derive their legal character and service identity from the State and not from the Commission itself. The Commission therefore submits that any contractual engagement or extension granted *de hors* the statutory framework was wholly unsupported by law and consequently incapable of creating any enforceable legal right in favour of the petitioners.

46. The argument is elevated beyond the statute and anchored firmly within the constitutional scheme through reliance upon Article 243K(3) of the Constitution of India. The Commission contends that the constitutional provision itself recognises the Governor as the repository of the obligation to provide staff necessary for the functioning of the State Election Commission. Read conjointly with Section 7 of the 1994 Act, the constitutional arrangement leaves no manner of doubt that the Commission was never intended to function as a recruiting or regularising authority. The appointments in question, according to the respondents, thus suffer from a complete absence of jurisdiction at their inception and are consequently void ab initio. Such illegality, being foundational in

character, cannot be validated either through continuity of service or by administrative acquiescence.

47. Proceeding on this premise, the Commission submits that once the irregularity came to its notice, it became incumbent upon the authority to correct the illegality rather than perpetuate it. The impugned action, it is urged, was not undertaken precipitately or in violation of procedural safeguards. On the contrary, the Commission initiated formal proceedings, afforded the petitioners an adequate opportunity of representation, considered their response, and only thereafter proceeded to pass the order of removal. The respondents therefore assert complete adherence to the principles of natural justice.

48. According to the respondents, once the source of power itself is absent, every consequential act collapses under the weight of jurisdictional infirmity. Compassion, continuity of service, or institutional practice cannot infuse legal vitality into an appointment that the statute never authorised. The respondents thus urge that fidelity to the constitutional and statutory framework must prevail over considerations resting solely upon individual expectation or equitable sympathy.

49. The Learned Advocate for the respondent no.5 submitted the intricate legal tapestry of the present dispute unfolds from a series of departmental disciplinary proceedings initiated by the West Bengal State Election Commission against the petitioners, culminating in the severe administrative consequence of their removal from contractual service. The historical genesis of their engagement reveals that during the pressing exigencies of municipal elections and elections to the Kolkata Municipal

Corporation, the State Government stepped in. Through a communication dated 16th February, 2005, the Special Secretary to the Government of West Bengal articulated a conditional "No Objection" to populate the posts of Data Processors under the Commission. This sovereign sanction, however, was strictly circumscribed by twin limitations: it was explicitly restricted to a transient duration of six months and was anchored entirely on a contractual basis, subject to the observation of all requisite formalities, while simultaneously inviting suggestions for the formulation of regular recruitment rules.

50. This temporary bridge of employment was never permanently regularized, as the six-month contractual window lapsed without any valid extension from the State Government. The chronological matrix indicates that the authorized tenure reached its natural expiration on 29th December, 2005, and any subsequent extension granted by the Commission on 11th November, 2005, was engineered completely sans the mandatory approval or sanction of the State. Consequently, according to the respondents, the petitioners' retention beyond the sanctioned period remained unsupported by any valid statutory or administrative authority.

51. When administrative infractions eventually compelled the Commission to issue a formal Charge Sheet on 28th March, 2016, followed by a supplementary charge sheet on 30th March, 2016, the charging documents themselves explicitly acknowledged these foundational realities, noting the lack of state imprimatur for the petitioners' continued retention. Following the due trajectory of an internal inquiry, the

Commission ultimately passed the impugned order dated 28th April, 2016, directing the petitioners' removal from service.

52. Seeking refuge from this order of termination, the petitioner approached the West Bengal State Administrative Tribunal by preferring an original application. The learned Tribunal, upon a meticulous contemplation of the materials on record, dismissed the plea through its order dated 30th June, 2016, returning a categorical finding that the applicant did not hold a "Civil Post" within the true legal contemplation of the term. Consequently, invoking the restrictive provisions of Section 15 of the Administrative Tribunals Act, the Tribunal correctly held that it lacked the necessary jurisdiction to entertain or adjudicate upon the grievance. Crucially, the petitioner chose to accept this verdict to the extent that she did not challenge it before any superior forum, thereby allowing the judicial determination regarding her non-civil status to achieve absolute finality and bind the parties involved.

53. In the crucible of the present writ application, the attempt to draw the State Government into the vortex of liability faces insurmountable structural legal hurdles. An absence of privity of contract persists between the State Government and the petitioner, as the Commission operates as an independent statutory entity, rather than a direct government establishment or an operational department of the State proper. Because of this distinct institutional separation, the beneficial state policies enshrined in various government memoranda issued in 2011 and 2012 cannot be extended to cover the petitioner's case. Furthermore, the four corners of the writ petition reveal a complete absence of specific

allegations or prayers for relief directed against the State Government, which was only subsequently impleaded as a party respondent by a court order in July 2019. It remains the admitted position of the Commission that the petitioner was never engaged in compliance with the statutory provisions of Section 7 of the West Bengal State Election Commission Act, 1994, making the initial appointment an unauthorized exercise outside the lawful matrix of the Act.

54. Ultimately, having acquiesced to the Tribunal's binding finding that she holds no civil post, and facing an irremediable absence of any statutory or contractual privity with the sovereign authority, the petitioner cannot claim any relief whatsoever against the State Government and the answering respondent must be completely absolved of all liabilities.

55. The adversarial contours of these conjoined writ petitions expose a profound, multi-layered conflict between the asymmetric weight of sovereign executive power and the equitable safeguards designed to guarantee security of tenure within the realm of public employment. The controversy, which draws the professional survival of Smt. Piyali Chowdhury and Smt. Moujhuri De into sharp judicial focus, presents an intricate historical narrative spanning more than a decade of bureaucratic transitions, incremental statutory integration, and a sudden, cataclysmic disciplinary intervention that seeks to retroactively unravel years of settled administrative conduct.

56. The judicial conscience of this Court is deeply stirred by the narrative of administrative overreach and structural asymmetry that permeates these conjoined writ petitions. In evaluating the adversarial contentions raised

by the learned advocates for the petitioners and the robust resistance offered by the state respondents, the core issue does not merely concern the procedural mechanics of an ordinary departmental inquiry. Rather, it demands an examination of whether an institutional authority, having validly inducted, periodically retained, systematically remunerated, and formally confirmed an individual within the permanent civil service structure, can later retroactively destabilize that employment. Can it use a summary disciplinary mechanism to bypass the substantive protections guaranteed under Articles 14, 16, and 21 of the Constitution of India?

57. It is imperative to delineate the following documents on record to trace the origin and eventualities of the service inception and continuation therein in respect of both the petitioners.

58. The Government Order No. 634- Home(Cons.) dated Kolkata, the 20th December, 2004 is replicated as follows:-

“The undersigned is directed, by order of the Governor, to say that the Governor has been pleased to sanction creation of the temporary posts as shown in details in the margin for a period of one year with effect from the date of issue of this order for the Office of the West Bengal State Election Commission set up under Home (Political) Department notification No.4033-P dated 31.05.1994.

<i>Sl. No.</i>	<i>Name of Post</i>	<i>Number of post(s) sanctioned</i>	<i>Scale of Pay</i>
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|----|------------------------------------|-----------------|---|
| 1. | <i>Schedule-A
Stenographer</i> | <i>1(One)</i> | <i>Grade pay of
Schedule-A Stenographer
(to be provided by the
Finance Department).</i> |
| 2. | <i>Cashier-cum-U.D.</i> | <i>1(One)</i> | <i>Rupees 4000-125-4250-
150-5300-175-7050-200-
8850/-</i> |
| 3. | <i>Data Processor</i> | <i>3(Three)</i> | <i>Rupees 3350-90-3800-100-
4700-125-6325/-</i> |
| 4. | <i>Driver</i> | <i>1(One)</i> | <i>Rupees 3350-90-3800-100-
4700-125-6325/-</i> |

*This order is issued with the concurrence of the Finance Department vide their U/o.
No.Group-P(Service) No.2954 (P) dated 26.10.2004.*

....."

59. The communication No.86-(Cons.) dated Calcutta, the 16th February, 2005 of the Special Secretary, Home (C&E) Department, Writers' Buildings, Calcutta, stated as follows:-

"Sir,

I am directed to refer to the D.O. No.47-SSC/5E-1/94 dated 18.01.2005 of the State Election Commission regarding filling up of some posts which inter alia include the posts of Data Processors and state that this Department gave no objections to fill up the posts of Data Processors the State Election Commission for a period of six months strictly on contract basis after observing all the requisite formalities in view of urgent need of the Commission in connection with forthcoming

elections to Municipalities and Kolkata Municipal Corporation and also subject to finalization of the recruitment rules for the said post.

I would, therefore, request you to kindly let us have your suggestions regarding framing of the recruitment rules for the said post at an early date to enable us to process the matter and to issue necessary orders allowing the Commission to appoint Data Processing personnel.

Yours faithfully,

Sd/-

Special Secretary”

60. The Notice No.436(2)-SEC/4A-25/04 dated 01.04.2005 of the West Bengal State Election Commission is stated as follows:-

“NOTICE

Applications are invited to fill-up two posts of “Data Processor” on a contract basis for the period of 6 (six) months on a contractual pay of Rs.5000/- (Rupees five thousand) only per month in the West Bengal State Election Commission, 18, Sarojini Naidu Sarani, Kolkata-70017.

Applicants must pass H.S. Examination and hold a diploma of at least two years course on Computer Application from a recognised institution. Experience of at least one year after completion of the course is required.

Application must be submitted on or before the 11th day of April, 2005 with the following information addressed to the Secretary, West Bengal State Election Commission in a foolscap paper.

- 1. Name*
- 2. Father’s/Husband’s Name*
- 3. Nationality*
- 4. Permanent Address*
- 5. Present Address*
- 6. Date of Birth*
- 7. Educational Qualification*
- 8. Employment Exchange Registration*
- 9. Extra curricular activities*

*Secretary,
West Bengal State Election Commission*

61. The communication No.795(6)-SEC/4A-25/04 dated 28.04.2005 of the Joint Secretary, WBSEC addressing to Smt. Moujhuri Dey (Das) stated as follows:-

*“You are hereby requested to appear before the Secretary in his chamber on 05.05.2005 at 2:00 P.M. alongwith original certificates and testimonials for an interview and Hands-on-test for consideration of your prayer for contractual appointment to the post of “Data Processor”.
Please note that no T.A./D.A. will be admissible in this regard.”*

62. The Order No.995-SEC/4A-25/2004 dated 11.05.2005 of the West Bengal State Election Commission is stated as follows:-

“ORDER

The undersigned is hereby directed by order of the Commissioner, West Bengal State Election Commission to appoint Smt. Moujhuri Dey, East Station Road, Agarpara, Kolkata-700109, for a period of 6 (six) months from the date of joining on a contractual and consolidation pay of Rs.5000/- (Rupees five thousand only) per month in the Office of the West Bengal State Election Commission, 18, Sarojini Naidu Sarani, Kolkata-700017 to the post of “Data Processor”.

She is advised to join immediately but not later than 23.05.2005. In the event of failure to join by that date this offer of contractual appointment will be treated as cancelled.

During the period of contract from the date of her joining, her service is terminable at any time without assigning any reason at the discretion of the Commission.”

63. The Order No.3361-SEC/4A-25/04 dated 11.11.2005 of the West Bengal State Election Commission stated as follows:-

“ORDER

In continuation of this Commission's Order No.995-SEC/4A-25/04 dated 11.05.2005 the undersigned is directed to say that following termination of contractual tenure of service of Smt. Moujhuri De as Data Processor of this Commission, on 15th November, 2005. Smt. De is hereby re-appointed for a further period of 6 (six) months i.e. upto 15th May, 2006 on contract basis at a consolidated pay of Rs.5000/- (Rupees five thousand) only per month as per existing terms and conditions.

This order is issued in the interest of this Commission."

64. The Order No.380-SEC/4A-25/04 dated 10.05.2006 of the Joint Secretary, West Bengal State Election Commission is stated as follows:-

"ORDER

In continuation of this Commission's Order No.3361-SEC/4A-25/04 dated 11.11.2005 the undersigned is directed to say that following termination of contractual tenure of service of Smt. Moujhuri De, as Data Processor of this Commission, on 15th May, 2006. Smt. De is hereby re-appointed for a further period of 1 (one) year i.e. upto 15th May, 2007 on contract basis at a consolidated pay of Rs.5000/- (Rupees five thousand) only per month as per existing terms and conditions.

This order is issued in the interest of this Commission."

65. The Communication No.409-SEC/4A-25/2004 dated 18.05.2006 of the Secretary, West Bengal State Election Commission addressing to the Surgeon Superintendent, Sambhunath Pandit Hospital, replicated below:-

"Sir,

I am directed to request you to examine the marginally noted candidates whether they are medically fit for their appointment to the posts of "Data Processor" to his Commission or not as per Govt. Rules and to send the said reports confidentially to the undersigned immediately.

1) Smt. Moujhuri De

2) Smt. Piyali Choudhury

.....”

66. The Communication No.410-SEC/4A-25/04 dated 18.05.2006 of the West Bengal State Election Commission addressing to Moujhuri De stated as follows:-

“She is hereby requested to fill up the Verification Roll Form and Declaration Form in duplicate sent alongwith this letter and to submit the duly filled in forms to this Commission immediately.

These are required for consideration her candidature to the post of “Data Processor” to this Commission.

.....”

67. The Order No.1045-SEC/4A-25/2004 dated 06.09.2006 of the West Bengal State Election Commission stated as follows:-

“ORDER

The undersigned is directed to say that the State Election Commissioner, West Bengal, is pleased to appoint Smt. Moujhuri De (Das), purely on temporary basis to the post of “Data Processor” in the office of this Commission in the scale of pay of Rs.3350-90-3800-100-4700-125-6325/-. In addition to basic pay she will be entitled to other allowances as admissible.”

68. The Communication No.Fund-III/Allot/D/168 from the Office of the Accountant General (A&E), West Bengal addressing to the Joint Secretary, West Bengal State Election Commission regarding allotment of G.P. Fund A/c. No.ADMN/WB/79763, 79764, 79765 stated as follows:-

“Sir,

I am to enclose herewith the list/copies of the application of the subscribers who have been allotted new G.P Fund A/C. Nos. whose Nominations have been accepted in Audit and placed on record.

Accounts Nos. allotted against each should henceforth be quoted correctly in the schedule of deduction. While quoting the A/c. No.s care should be taken so that the prefix “ADMN/WB” is not omitted.

Any inadvertent duplication of A/c. Nos. should forthwith be brought to notice of this office for cancellation of the same.

The subscriber may be asked to execute nomination early in printed/cyclostyled form.

The receipt of the letter may please be acknowledged.”

69. The Communication No.1392-SEC/10P-2/96 dated 28.11.2007 of the West Bengal State Election Commission addressing to the Accountant General (A&E), West Bengal stated as follows:-

“Ref: Your No.Fund-III/Nom/Rtd./D/182 dated 06.07.2007

Sir,

I am directed to refer to your letter under reference, and to send herewith three filled in Nomination Forms in duplicate after necessary modifications in column 5 & 6 of the marginally noted employees of this Commission as desired from your end for admission to the General Provident Fund Scheme under rule-2 of the GPF (West Bengal Services) Rule.

1. Smt. Piyali Chowdhury

GPF A/C No.ADMN/WB/79763

2. Smt. Moujhuri De

GPF A/C No.ADMN/WB/79765

3. Sri Krishanta Kanta Sarkar

GPF A/C No.ADMN/WB/79764

The receipt of the three filled in Nomination Forms, each in duplicate may kindly be acknowledged.

.....”

70. The Order No.335-SEC/2P-4/2009 dated 24.04.2009 of the West Bengal State Election Commission replicated as follows:-

“ORDER

Smt. Moujhuri De & Smt. Piyali Chowdhury, appointed provisionally on 06.09.2006 in the scale of pay Rs.3,350/- ... Rs.6,325/- (unrevised) in the post of Data Processor by this Commission. Now in terms of Rule 8 of West

Bengal Services (ROPA) Rules, 2009 their pay has been fixed at Rs.8,840 (Rs.6,240/- + Grade Pay Rs.2,600/-) in the revised Pay Bank of Rs.5,400/- Rs.25,200/-.

Date of Increment as per Rule 10 of West Bengal Services (ROPA) Rules, 2009 are as follows:

<i>DATE</i>	<i>PAY IN THE BAND</i>	<i>GRADE PAY</i>	<i>ANNUAL INCREMENT</i>	<i>BASIC PAY</i>
<i>01.07.2007</i>	<i>Rs.6,510/-</i>	<i>Rs.2,600/-</i>	<i>Rs.270/-</i>	<i>Rs.9,110/-</i>
<i>01.07.2008</i>	<i>Rs.6,790/-</i>	<i>Rs.2,600/-</i>	<i>Rs.280/-</i>	<i>Rs.9,300/-</i>

Next Annual Increment due on 01.07.2009

In terms of Rule 12 of West Bengal Services (ROPA) Rules, 2009, no arrear pay and allowances thereon, will be admissible in respect of the period from the 1st January, 2006 to the 31st day of March, 2008.”

71. The Order No.155-SEC/4A-4/1994(Pt.-II) dated 05.02.2010 of the West Bengal State Election Commission stated as follows:-

“ORDER

*Smt. Moujhuri De, who was appointed as Data Processor vide this Office Order No.1045-SEC/4A-25/2004 dated 06.09.2006 is hereby confirmed in the said post w.e.f. 06.09.2009 in terms of Rule 5 of West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979.
.....”*

72. The genesis of this litigious dispute is firmly anchored in the twilight of 2004. By an official executive communication issued from Kolkata, dated the 20th of December, 2004, the Deputy Secretary to the Government of West Bengal formally notified the Pay & Accounts Officer, Kolkata-I, of the issuance of Government Order No. 634-Home(Cons.). This foundational order, promulgated with the indispensable prior concurrence of the Finance Department vide its distinct Order No. Group-P(Service) No.

2954(P) dated the 26th of October, 2004, conveyed the pleasure of the Governor to sanction the temporary creation of a specific cadre of ancillary posts within the establishment of the West Bengal State Election Commission. This newly sanctioned administrative infrastructure was explicitly bounded by an initial lifespan of one year from the date of the order's issuance and comprised a strict tabular hierarchy: a single post of Schedule-A Stenographer, whose grade pay was left to be determined by the Finance Department; one post of Cashier-cum-U.D. designated within the classic scale of Rupees 4000-125-4250-150-5300-175-7050-200-8850/-; a solitary post of Driver; and, pivotally, three distinct posts of Data Processor. The three sanctioned posts of Data Processor were legally tethered to the scale of Rupees 3350-90-3800-100-4700-125-6325/-, an economic designation corresponding directly to Serial No. 6 within Part-D under Schedule I of the West Bengal Services (Revision of Pay and Allowance) Rules, 1998. Following this initial sanction, a secondary administrative dialogue ensued, wherein the Home (C&E) Department, via Memo No. 86-Home (Cons.) dated the 16th of February, 2005, conveyed its formal "no objection" to the filling up of these Data Processor vacancies on a strict contractual basis for an initial duration of six months. This measure was specifically tailored to meet the immediate administrative exigencies of the upcoming Municipal Elections, including the elections to the Kolkata Municipal Corporation. This gubernatorial nod was, however, expressly conditioned upon the observation of all requisite formalities and remained subject to the ultimate finalization of formal recruitment rules for the said posts.

73. Prompted by this administrative clearance, the machinery of the Commission was set in motion. An advertisement for employment, bearing the signature of the then-Secretary of the West Bengal State Election Commission, was officially published on the office notice board on the 1st of April, 2005. Under this notification, vide No. 436(2)-SEC/4A-25/04, applications were formally invited from eligible citizens to fill up two contractual posts of Data Processor for a period of six months. The recruitment criteria set forth in the advertisement required candidates to have successfully cleared the Higher Secondary Examination, to possess a diploma of at least a two-year course in computer applications from a recognized institution, and to demonstrate a minimum of one year of practical experience acquired after the completion of the said course. The economic consideration for this initial tenure was fixed at a consolidated contractual pay of Rs.5000/- per month. Attracted by this public invitation, Smt. Piyali Chowdhury submitted her candidature, asserting a meticulous alignment with the stipulated benchmarks. The petitioner had already achieved her Bachelor of Science degree and had successfully traversed a rigorous two-year diploma course in computer applications from Aptech Computer Education—a widely acknowledged and premier training institute—as authenticated by her formal performance statements covering consecutive examinations held on the 4th of March, 2001, and the 15th of February, 2002. Furthermore, her educational pedigree included a foundational one-year course in Computer Application pursued at "Nextgen", another recognized academy, spanning from July 1998 to June 1999, supplemented by more than a year of active

professional experience following the completion of her technical education.

74. By an official communication bearing No.795(6)-SEC/4A-25/04 dated the 28th of April, 2005, the petitioner was summoned to participate in an interview and a hands-on practical test scheduled for the 5th of May, 2005. On that designated afternoon, she presented herself before the Secretary of the Commission, producing her repository of original certificates and testimonials for scrutiny. The evaluation was conducted by a duly constituted Selection Committee, within which the individual arrayed as respondent no. 3 sat as an active member. Upon a thorough examination of the candidates' relative merits and practical capabilities, the Committee formed a definitive merit panel of qualified individuals, structured in the following order of preference: Smt. Moujhuri De (Das) occupying the premier position at serial number (i) Shri Sudipta Chakraborty placed at serial number ii; and Smt. Piyali Chowdhury at serial number iii. When the candidate at serial number (ii) requested an extension of one month to join the service, the Commission declined to accommodate the request. Consequently, an appointment letter, under order No. 2007-SEC/4A-25/2004 dated the 20th of June, 2005, was issued directly to the petitioner. Smt. Piyali Chowdhury assumed her charge as a contractual Data Processor on the 30th of June, 2005, well within the mandate that her joining must occur no later than the 1st of July, 2005.

75. The initial six-month contractual tenure, originally poised to terminate on the 29th of December, 2005, marked the beginning of a prolonged period

of continuous service characterized by successive extensions. By Order No. 3362-SEC/4A-25/04 dated the 11th of November, 2005, her contract was extended for a further six months, stretching to the 30th of June, 2006. In an exhibition of administrative transparency, copies of both her original appointment order and this initial extension were formally transmitted to the Deputy Secretary (Home) Department at Writers' Buildings and to the Accountant General (A&E), West Bengal. Satisfied with her performance, the State Election Commissioner further extended her contract for a full year, up to the 30th of June, 2007, vide Order No. 381-SEC/4A-25/04 dated the 10th of May, 2006.

76. However, prior to the expiration of this latest contractual extension, a definitive shift in her employment status occurred. By virtue of Order No. 1046-SEC/4A-25/2004 dated the 6th of September, 2006, the respondent no. 1 appointed the petitioner purely on a temporary basis to the post of Data Processor, liberating her from the precariousness of a purely contractual tenure and placing her squarely within the regular scale of pay of Rupees 3350–6325/- with accompanying allowances, in precise alignment with the original G.O. No. 634-Home (Cons.). Smt. Piyali Chowdhury formally assumed this temporary post on the very date of the order, while her co-petitioner, Smt. Moujhuri De, who had been selected from the same original panel via an earlier order dated the 11th of May, 2005, had already integrated into the service on the 16th of May, 2005. The continuity of these temporary posts was repeatedly preserved through explicit gubernatorial interventions. Assistant Secretaries to the Government of West Bengal issued successive Government Orders,

including G.O. No. 267-Home (Cons.) dated the 13th of August, 2007—which operated in direct continuation of an earlier G.O. No. 20-Home(Cons.) dated the 21st of February, 2006—to sanction the retention of these temporary posts for further annual increments, including an extension effective from the 20th of December, 2006. This pattern of administrative preservation was maintained by subsequent orders, such as G.O. No. 378-Home(Cons.)/RIE(Cons.)-10/2004 dated the 26th of April, 2013, which extended the retention from the 20th of December, 2008, under the existing terms and conditions. The indispensability of these posts was routinely articulated by the Commission's secretariat, as evidenced by Memo No. 170-SEC/5E-1/94 dated the 5th of February, 2008, and Memo No. 928-SEC/A-4/94 dated the 2nd of September, 2014, both pleading with the State Government for permanent retention and regularisation.

77. The state apparatus continued to validate the petitioner's integration into the civil service. On the 24th of April, 2009, the Secretary of the Commission, via Order No. 335-SEC/2P-4/2009, extended to the petitioner the financial benefits of the Revision of Pay and Allowance (ROPA) Rules, 2009. Her unrevised pay scale was upgraded to a revised pay band of Rupees 5400–25200/- with a basic pay of Rupees 8840/- and a Grade Pay of Rupees 2600/-. This order was copied to the Accountant General and the Home Departments without a single murmur of administrative dissent. Furthermore, in November 2007, the office of the Accountant General allotted a new General Provident Fund (G.P. Fund) Account to the petitioner, and her formal declaration form of nomination

under the West Bengal Services (General Provident Fund) Rules was officially recorded. The culmination of this process occurred through an order vide No. 156-SEC/4A-4/1994(Pt.-II) dated the 5th of February, 2010. Signed by the Secretary of the Commission, this regulatory order formally confirmed the petitioner's service with effect from the 6th of September, 2006, under the explicit operation of Rule 5 of the West Bengal Services (Appointment, Probation and Confirmation) Rules, 1969. This final act of confirmation was duly forwarded to the Accountant General (Audit I), completing her transition into a permanent civil servant.

78. This stable professional reality was suddenly and deeply disrupted. On the 28th of March, 2016, the State Election Commissioner issued a formal charge-sheet, vide Memo No. 263-SEC/1L-46/05(Part-I), enclosing detailed Articles of Charge I, statements of imputation of misconduct or misbehaviour, lists of sustaining documents, and a schedule of witnesses under Rule 10 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. This opening disciplinary measure was immediately followed on the 30th of March, 2016, by a supplementary charge-sheet under Memo No. 289-SEC/1L-46/05 (Part-I), introducing a Supplementary Article of Charge I and its corresponding supporting schedules. The petitioner was directed to submit her written statement of defense within a brief window of seven days, failing which the inquiry would proceed *ex parte*. The disciplinary machinery moved with exceptional speed. On the 28th of March, 2016, the competent authority appointed Mr. Osman Gani, the Secretary of the Commission, to act as the Inquiring Authority, while Sri Anitendu Modok, the Account Officer,

was assigned the role of Presenting Officer. By a communication dated the 31st of March, 2016, the petitioner was directed to present herself for the proceeding on the 8th of April, 2016, a rescheduled date from the originally planned 4th of April. Smt. Piyali Chowdhury submitted her comprehensive written statements of defense on the 8th of April, 2016, explicitly denying all allegations. She emphasized that her original qualifications and experience had been thoroughly vetted and accepted by the respondents themselves over a decade prior, and she prayed for an open inquiry, including the production of original documents and the opportunity to cross-examine relevant document makers.

79. The inquiry was completed with remarkable celerity without affording the petitioner the requested opportunities for documentation review or cross-examination, culminating in an Enquiry Report dated the 13th of April, 2016, which found the charges sustained. On the 15th of April, 2016, a second show-cause notice under Memo No. 345-SEC/1L-46/05 (Pt.-I) was served upon the petitioner, demanding her response by the 22nd of April, 2016, regarding the findings and the proposed penalty of removal. Although the petitioner sought an extension until the 27th of April to formulate her reply, and subsequently requested a further ten-day extension, her prayers were summarily rejected by the administration. The entire process concluded on the 28th of April, 2016, when the State Election Commissioner passed a final order, vide Memo No. 408-SEC/1L-46/05 (Pt. I), mechanically removing Smt. Piyali Chowdhury from service. By a parallel order bearing No. 407-SEC/1L-45/05 (Pt. I), issued on the

exact same date, the services of Smt. Moujhuri De were similarly terminated.

80. In her quest for redress, the petitioner initially approached the West Bengal Administrative Tribunal via O.A. No. 464 of 2016, seeking the invalidation of the charge-sheets and the show-cause notices. However, by an order dated the 30th of June, 2016, the learned Tribunal dismissed the application, holding that the applicant did not occupy a civil post in the true sense and therefore the Tribunal lacked statutory jurisdiction under Section 15 of the Administrative Tribunals Act.

81. Driven to seek a definitive judicial remedy, Smt. Piyali Chowdhury approached this Court through Writ Petition No. 22568 of 2016, seeking the quashing of the original and supplementary charge-sheets, the complete setting aside of the Enquiry Report, the second show-cause notice, and the total invalidation of the final order of removal. Smt. Moujhuri De similarly initiated Writ Petition No. 23774 of 2016 to challenge her concurrent removal. The petitioners rest their judicial plea on the ground that their appointments, ongoing retentions, scale upgrades under ROPA 2009, and statutory confirmation under the 1969 Rules were conducted in strict compliance with the law, with the uninterrupted participation of the state's central departments. They argue that an employment relationship verified, maintained, and formally confirmed by the State over eleven years cannot be abruptly dissolved through a sudden exercise of disciplinary power based on archaic selection processes. They point out that under prevailing Government Orders, such as G.O. No. 9008-F(P) dated the 16th of September, 2011,

even contractual employees with ten years of continuous service are entitled to security of tenure until the age of 60. Furthermore, they assert that the principles established in the landmark Uma Devi judgment are entirely inapplicable to their validly confirmed positions. These petitions place a clear obligation upon the Court to determine whether these terminations represent a lawful exercise of administrative correction or an arbitrary, disproportionate abuse of executive power that fundamentally violates Articles 14, 16, and 21 of the Constitution of India along with the principles of natural justice.

82. The claim of the respondent Election Commission to rectify or undo a process which was initially illegal and beyond statutory jurisdiction to extend the contractual employment of both the petitioners beyond six months for lack of institutional and legal process of appointment is untenable. It is preposterous to declare the continuation of service of the petitioners' has been extended from time to time to be an act on the part of the respondent Election Commission exceeding its jurisdiction and on detection to correct the same, extinguished the service of the petitioners' in the guise of initiating disciplinary proceedings is absolutely capricious and irrational.

83. It was emphatically submitted by the Learned Advocate representing the respondent Election Commission that an illegal act and appointment contrary to the constitutional mandate could not be extended in future exemplifying unconstitutional precedent. No wrongdoing can be allowed to proceed or continue with on detection or identification of the same at a moment immediately necessitating remedial measures to redress the

same to attain legality, transparency and solidarity. The service of the petitioners were not to be governed by the Election Commission and could not have been prolonged without sanctioned imprimatur.

84. It is primordial therefore to conceptualise the provision of Section 7 of the West Bengal State Election Commission Act, 1994 and the distinctive concept of “illegal” and “irregular appointment” and its effect.

85. Section 7 of the West Bengal State Election Commission Act, 1994 states as follows:-

“7. Staff of Commission. – (1) *The Commission shall have such staff, made available to it by the Governor when so requested by it, as may be necessary for the discharge of the functions conferred on it by sub-section (1) of section 4 and sub-section (1) of section 5.*

(2) The terms and conditions of service of the members of the staff made available to the Commission by the Governor shall be regulated in accordance with the rules regulating the terms and conditions of service of the employees of the State Government for the time being in force.”

86. In the understanding of this Court, the statutory mechanism governing the administrative backbone of the West Bengal State Election Commission finds its foundational anchor in Section 7 of the West Bengal State Election Commission Act, 1994. Designed to breathe operational life into the constitutional mandates of Articles 243K and 243ZA of the Constitution of India, Section 7 sets out the parameters for staffing the Commission, balancing municipal autonomy with state-executive department.

87. Section 7 is divided into two distinct, interconnected subsections that demarcate how the Commission acquires its human resources and under

what terms those resources operate. Section 7(1): The Commission shall have such staff, made available to it by the Governor when so requested by it, as may be necessary for the discharge of the functions conferred on it by sub-section (1) of section 4 and sub-section (1) of section 5. This subsection replicates the constitutional provisions contained in Article 243K(3) (for Panchayats) and Article 243ZA(2)(for Municipalities). The use of the word "shall" imposes a mandatory statutory obligation upon the executive (via the Governor) to supply adequate personnel upon a formal requisition by the State Election Commissioner. The staff made available under this section are designated strictly for the execution of duties under Section 4(1)(superintendence, direction, and control of electoral rolls and local body elections) and Section 5(1) of the Act. While the State Election Commission is an independent constitutional authority, it possesses no independent, separate cadre of permanent employees of its own. It remains structurally dependent on the State Government to provide the administrative machinery required to execute democratic processes.

Section 7(2): The terms and conditions of service of the members of the staff made available to the Commission by the Governor shall be regulated in accordance with the rules regulating the terms and conditions of service of the employees of the State Government for the time being in force. This subsection ensures that state employees placed on deputation or made available to the Commission do not suffer any disadvantage in their service conditions. Their service remains governed by standard state rules, most notably the West Bengal Service Rules (WBSR) and the prevailing Revision of Pay and Allowance (ROPA) Rules. It

establishes a unique legal matrix where the staff is subject to the operational and disciplinary control of the State Election Commission for election-related misconduct, while remaining fundamentally tethered to the service conditions, benefits, and retirement frameworks governed by the State Government.

88. From the knowledge gathered by this presiding Court through prior administrative functions, it is opined the operationalization of Section 7 follows a precise chronological and legal methodology: [State Election Commission] – (Formal Requisition) – [The Governor/State Home Dept.] (G.O./Sanction of Posts) [State Personnel / Temporary Cadre] - (Placed at Disposal) – [Operational Control of SEC].

89. Anticipating an election cycle or regular municipal/panchayat governance, the State Election Commission assesses its infrastructural requirements and issues a formal requisition to the Governor (practically routed through the Home Department or Municipal Affairs/Panchayat Departments).

90. In response, the State Government issues a Government Order (G.O.) concurred in by the Finance Department, sanctioning the creation, retention, or deployment of specific temporary or permanent posts (e.g., Data Processors, Stenographers, Cashiers) for the Commission's office.

3. Staff are integrated into the Commission through two primary procedural pathways:

91. Deputation/Transfer: Drawing active civil servants from existing state departments and placing them at the disposal of the Commission.
Direct Temporary/Contractual Recruitment against Sanctioned Posts:

Where the state gives a "no objection" clearance to fill sanctioned temporary vacancies through public advertisements and selection committees, which are subsequently regularized or confirmed under standard state rules (such as the *West Bengal Services (Appointment, Probation and Confirmation) Rules, 1969*). The legal effects of Section 7 dictate the outcome of service litigation arising out of the State Election Commission.

92. The Statutory Fiction of Public Service once staff are made available under Section 7(1), they are legally deemed to be on deputation to a constitutional authority. For the duration of their tenure, their actions carry the full weight of public duties. Any arbitrary termination or disciplinary action initiated against them cannot be treated as a mere private contractual dispute; it is subject to public law judicial review under Article 226 of the Constitution.

93. Protection of Service Conditions By virtue of Section 7(2), the State Government cannot selectively deny standard benefits—such as the application of ROPA scales, General Provident Fund (GPF) allocations, or confirmation benefits—to staff working within the Commission, provided their initial appointment was executed against validly sanctioned posts.

94. The Decoupling of Appointments from Section 7 Violations In cases where employees face sudden, retroactive dismissals under the guise that their recruitment was "unauthorized" or violated the parent Act, Section 7 serves as a shield. If the narrative history reveals that: a) The posts were sanctioned by a valid G.O., b) The Finance Department concurred, and c) Gubernatorial sanction was renewed systematically

over years. The courts will hold that the appointment was done purely in accordance with law under Section 7. Consequently, the state cannot invoke Section 7 to label such employees as "outsiders" or temporary contractual entities devoid of statutory protection, effectively estopping the Disciplinary Authority from summarily dismantling their confirmed service tenures without due process under the 1971 Classification, Control and Appeal Rules.

95. This statutory provision does not merely outline an administrative arrangement but rather bridges a vital gap, establishing a dependable legal framework where an independent constitutional authority, lacking a permanent cadre of its own, is provided with the human resources necessary to execute democratic processes at the grass-roots level. By analyzing its text, one observes a deliberate division of labor between the state executive and the election authority, balancing operational independence with logistical dependence.

96. The first sub-section of this provision sets in motion a mandatory requisitionary mechanism. The legislative choice of the word "shall" imposes an obligation upon the executive, acting through the Governor, to place adequate personnel at the disposal of the Commission upon a formal request. This requirement ensures that the vital public duties of supervising, directing, and controlling the preparation of electoral rolls and conducting local body elections are never halted by a lack of administrative staff. It creates a legal arrangement where staff are provided to the Commission, transforming their daily duties into a unique form of public service that carries constitutional importance.

97. The second sub-section introduces an essential stabilizing element of regulatory parity, guaranteeing that the terms and conditions of service for employees placed at the disposal of the Commission remain identical to those governing standard state government servants. This provision ensures that employees do not suffer any financial or professional disadvantage by virtue of their deployment to the Commission. They remain fundamentally protected by the West Bengal Service Rules and prevailing Revision of Pay and Allowance Rules, ensuring access to regular scale increments, grade pay adjustments, and long-term security benefits like the General Provident Fund. This establishes a dual matrix of control where operational and disciplinary oversight during election cycles rests with the Commission, while core service conditions remain securely tethered to established state regulations.

98. In terms of formal procedure, the operationalization of Section 7 follows a precise, collaborative administrative process. The journey begins with a formal assessment of infrastructural needs by the Commission, which is then sent as a requisition to the state government. This is answered by a formal Government Order, issued with the essential concurrence of the Finance Department, which creates or retains specific temporary or permanent posts to support the Commission's functions. Whether these positions are filled by transferring active civil servants or through direct temporary recruitment against sanctioned vacancies via public selection panels, the entire process is validated by systematic gubernatorial sanctions renewed across consecutive fiscal terms. This removes any suggestion of irregular or unauthorized recruitment.

99. The legal effect of this statutory framework becomes highly relevant when courts review sudden disciplinary actions or termination orders issued to regularized staff. When an employee is appointed against a sanctioned post, granted a regular scale under ROPA, assigned a provident fund account, and formally confirmed under the West Bengal Services Rules of 1969, the state cannot easily reverse this position. Section 7 prevents the disciplinary authority from suddenly treating these confirmed tenures as casual or unprotected contractual arrangements. Because the initial appointments were made using a valid statutory pathway backed by regular government orders, any attempt to dismiss such personnel without following due process under the 1971 Classification, Control, and Appeal Rules is legally unsustainable. Section 7 thus stands as a vital shield, ensuring that administrative consistency and procedural fairness protect individuals who have dedicated years of service to the constitutional work of the Commission.

86. The conceptual boundary distinguishing an "illegal" appointment from a mere "irregular" one constitutes a vital focal point in public service jurisprudence, serving as an equitable shield against the retrospective and arbitrary dismantling of long-settled employment tenures. This distinction is not an academic exercise in nomenclature; it determines whether the historic induction of a citizen into the state apparatus can be summarily declared a nullity, or whether it has been regularized by the passage of time, systematic state endorsement, and the formal confirmation of service under statutory rules.

87. An illegal appointment, in its strict jurisprudential sense, occurs when the very initiation of the recruitment process violates a fundamental, non-negotiable constitutional or statutory mandate. This happens when an individual is inducted into a public post completely outside the open, competitive arena of public selection, bypassing the essential requirements of notice, advertisement, and equal opportunity enshrined in Articles 14 and 16 of the Constitution of India. Such an entry is *void ab initio*, a legal nullity from its inception, which cannot be cured, validated, or regularized by any subsequent passage of time or administrative action. The supreme judicial authority in *State of Karnataka v. Umadevi (2006) 4 SCC 1* firmly condemned these back-door entries, clarifying that when an appointment is made without any public notice, clear invitation of applications, or a competitive evaluation of comparative merit, it constitutes a structural violation of the constitutional scheme that cannot be condoned under the guise of regularisation.

88. Conversely, an irregular appointment represents an exercise where the essential constitutional obligations of transparency and competition are broadly met, but the administrative process suffers from procedural omissions, minor technical deficiencies, or an absence of formally finalized recruitment rules at the time of initial induction. In these instances, the appointment is not an unconstitutional intrusion into public service; rather, it is a bona fide recruitment executed through an established institutional mechanism, such as an open notice-board advertisement, a functioning selection panel, or an evaluation of technical credentials, which is later found to have lacked a specific procedural

formality. The state cannot equate such procedural imperfections with the severe defect of an illegal entry. This jurisprudential distinction was clarified by the Supreme Court of India in the following decisions:-

89. The Hon'ble Supreme Court, in the case of **AMARKANT RAI VS STATE OF BIHAR & ORS¹**, has made the following observations:

“11. As noticed earlier, the case of the appellant was referred to Three Members Committee and Three Members Committee rejected the claim of the appellant declaring that his appointment is not in consonance with the ratio of the decision laid down by this Court in Umadevi's case (supra). In Umadevi's case, even though this Court has held that the appointments made against temporary or ad-hoc are not to be regularized, in para 53 of the judgment, it provided that irregular appointment of duly qualified persons in duly sanctioned posts who have worked for 10 years or more can be considered on merits and steps to be taken one time measure to regularize them. In para 53, the Court observed as under :

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan 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 abovereferred 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

¹2015 AIR SCW 3080

bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

The objective behind the exception carved out in this case was prohibiting regularization of such appointments, appointed persons whose appointments is irregular but not illegal, ensure security of employment of those persons who served the State Government and their instrumentalities for more than ten years.

12. *Elaborating upon the principles laid down in Umadevi's case (supra) and explaining the difference between irregular and illegal appointments in State of Karnataka & Ors. v. M.L. Kesari & Ors., (2010) 9 SCC 247, this Court held as under:*

"7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi (3) , if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

90. The Hon'ble Supreme Court, in the case of **VINOD KUMAR AND ORS VS UNION OF INDIA²**, has made the following observations:

"7. The judgement in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or

² 2024 INSC 332

interviews as in the present case. Paragraph 53 of the Uma Devi (supra) case 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 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 :*

(1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] 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.”

91. The Hon'ble Supreme Court, in the case of **THE STATE OF BIHAR VS DEVENDRA SHARMA**³, has made the following observations:

“ 9) The Division Bench held that in view of the appointments being illegal and void ab initio, the services cannot be regularised and that the judgment of the Division Bench of the High Court in Binay Kumar Singh is contrary to the Full Bench judgment in Ram Sevak Yadav & Anr. v. The State of Bihar & Ors⁹, wherein the appellants were appointed on Class IV posts by the Civil Surgeon in the Health Department as in the present set of appeals but their services were terminated in the year 2001 for the reason that their appointments were illegal. The Full Bench of the High Court held as under:

“41. The public power to make appointment on public posts is conferred for public good. The power is given to the officer concerned by the government in trust, that it shall be used and not abused. If the trust is belied, the protection conferred upon a government servant stands denuded. The answerability and accountability is then individual of the officer. The government is duty bound to take appropriate civil/criminal action against the officer. The illegality in the appointment is not a one way street. If there was someone willing to pay a price for the job, there was another waiting to take advantage of the same by fixing a price. It is not without reason that majority of such appointments relate to class III and IV posts. The standard by which the government professes to act is the same standard by which its actions shall be judged.

Therefore whenever the government terminates an appointment being illegal, it is the constitutional duty of the government to simultaneously take action against the officials who belied the trust of the government. Those who made hay while the sun shined must see the darker cloudy days also.....

10. *“...xx xxxx This brings us to the last question whether in view of their long service, the writ petitioners are entitled to regularization in*

³ AIR ONLINE 2019 SC 1226

service as observed by the Hon'ble Supreme Court in Uma Devi (3) (supra). This was the precise question which was referred to the Full Bench in the matter of Ram Sevak Yadav & Anr. (supra). The Full Bench of this Court has categorically held that the judgment in Uma Devi (supra), prohibits regularization of such appointments, the period of service being irrelevant; and that illegal appointment void ab initio cannot be regularised under any circumstances. In view of the aforesaid decision of the Full Bench of this Court, the law laid down by the Division Bench of this Court in the matter of The State of Bihar & Ors. Vs. Binay Kumar Singh & Ors. [2011 (3) PLJR 547] is no longer a good law."

36) *We do not find any merit in the said argument. A Full Bench of the High Court in Rita Mishra & Ors. v. Director, Primary Education, Bihar & Ors.¹¹ while dealing with appointment in the education department claiming salary despite the fact that letter of appointment was forged, fraudulent or illegal, declined such claim. It was held that the right to salary stricto sensu springs from a legal right to validly hold the post for which salary is claimed. It is a right consequential to a valid appointment to such post. Therefore, where the very root is non-existent, there cannot subsist a branch thereof in the shape of a claim to salary. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise.*

37. *"...1987 BBCJ 701 (FB)] . The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p. 32, para 13) "13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service.*

Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it.”

92. The Hon’ble Supreme Court, in the case of **STATE OF KARNATAKA & ORS VS M.L. KESARI & ORS⁴**, has made the following observations:

“ 4. The decision in State of Karnataka v. Umadevi was rendered on 10.4.2006 (reported in 2006 (4) SCC 1). In that case, a Constitution Bench of this Court held that appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and courts cannot direct their absorption, regularization or re- engagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and that the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates. This Court further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court however made one exception to the above position and the same is extracted below :

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.

⁴ **AIR 2010 SUPREME COURT 2587**

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 regularization 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 abovereferred 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 regularize 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."

5. *It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in Umadevi, if the following conditions are fulfilled :*

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been

selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006)."

93. The Hon'ble Supreme Court had held the following in ***DHARAM SINGH VS STATE OF UP***⁵:

" 11. Furthermore, it must be clarified that the reliance placed by the High Court on Umadevi (Supra) to non- suit the appellants is misplaced. Unlike Umadevi (Supra), the challenge before us is not an invitation to bypass the constitutional scheme of public employment. It is a challenge to the State's arbitrary refusals to sanction posts despite the employer's own acknowledgement of need and decades of continuous reliance on the very workforce. On the other hand, Umadevi (Supra) draws a distinction between illegal appointments and irregular engagements and does not endorse the perpetuation of precarious employment where the work itself is permanent and the State has failed, for years, to put its house in order. Recent decisions of this Court in Jaggo v. Union of India⁴ and in Shripal & Another v. Nagar Nigam, Ghaziabad⁵ have emphatically cautioned that Umadevi (Supra) cannot be deployed as a shield to justify exploitation through long-term "ad hocism", the use of outsourcing as a proxy, or the denial of basic 4 2024 SCC OnLine SC 3826.5 2025 SCC OnLine SC 221.parity where identical duties are exacted over extended periods. The principles articulated therein apply with full force to the present case. The relevant paras from Shripal (supra) have been reproduced hereunder:

⁵ 2025 INSC 998

“14. *The Respondent Employer places reliance on Umadevi (supra)² to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are “illegal” and those that are “irregular,” the latter being eligible for regularization if they meet certain conditions. More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.*

15. *It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade.*

Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records- despite directions to do so-allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite “temporary” employment practices as done by a recent judgment of this court in Jaggio v. Union of India³ in the following paragraphs:

“22. *The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job*

security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.”

94. The Hon’ble Supreme Court has held the following in **SHRIPAL VS NAGAR NIGAM, GHAZIABAD**⁶:

“ 14. The Respondent Employer places reliance on Umadevi (supra)² to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are “illegal” and those that are “irregular,” the latter being eligible for regularization if they meet certain conditions. More importantly, (2006) 4 SCC 1.

Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor- based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.

15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer’s failure to furnish such records—despite directions to do so—allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing

⁶ 2025 INSC 144

municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement.”

95. The Hon’ble Supreme Court has held the following in **PAWAN KUMAR TIWARY VS JHARKHAND STATE ELECTRICITY BOARD**⁷:-

“25. This Court has in several decisions, including State of Bihar v. Upendra Narayan Singh and Others⁴ , emphasized that when appointments are found to be irregular, the inquiry must focus on whether such irregularity amounts to illegality, and whether the appointee had any role or knowledge of the deviation. If not, and the appointee was otherwise eligible, qualified, and appointed against a sanctioned vacancy, there is no justification for nullifying such appointment. The present appellants, as evidenced by record, fulfilled all eligibility conditions, were appointed within the sanctioned strength, and underwent the requisite selection process.

26. It is here that the doctrine of severability assumes great significance. The rule is grounded in equity and legal logic: where bad can be separated from good, the good must not perish with the bad. The doctrine, though largely applied in constitutional and statutory interpretation, has gained considerable traction in service jurisprudence where a set of appointments are sought to be invalidated en masse.

27. The doctrine of severability is not merely a tool of constitutional adjudication but a principle of fairness. In service law, it protects deserving employees from the fallout of administrative missteps not attributable to them.”

96. The Hon’ble Supreme Court has held the following in **THE STATE OF BIHAR VS KIRTI NARAYAN PRASAD**⁸:-

⁷ 2025 INSC 1000

⁸ (2019) 13 SCC 250

“15. In some of the LPAs the Division Bench appears to have followed paragraph 11 in M.L. Kesari (supra) for directing regularisation of service without considering the observations contained in paragraph 7 of the judgment. In paragraph 11, it was observed that "the true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 [the date of decision in Umadevi (3)] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation within six months of the decision in Umadevi (3) as a one-time measure". However, in paragraph 7 after considering Umadevi (supra) this Court has categorically held that for regularisation, the appointment of employee should not be illegal even if irregular.

"7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi (3), if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

97. The Hon'ble Supreme Court has held the following in **SIRAJ AHMAD VS**

THE STATE OF UTTAR PRADESH⁹ :-

“11. This court in the case of State of M.P. and ors. vs. Lalit Kumar Verma³, after considering the Judgment of Constitution Bench of this Court in the case of Secy., State of Karnataka vs. Uma Devi⁽³⁾⁴, observed thus :³(2007)1 SCC 575 ⁴ (2006) 4 SCC 1 “12. The question

⁹ AIR ONLINE 2019 SC 1771

which, thus, arises for consideration, would be: Is there any distinction between “irregular appointment” and “illegal appointment”? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is “State” within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.”

12. *It can thus be seen that this court has held that the distinction between irregular appointment and illegal appointment is clear. It has been held that in the event appointment is made in total disregard to the constitutional scheme and the recruitment rules framed by the employer, where the employer is a “State” within the meaning of Article 12 of the Constitution of India, the recruitment will be illegal one. It has however been held, that where although, substantial compliance with the constitutional scheme, as also the rules have been made, the appointment would become irregular in as much as the some provisions of some rules have been adhered to.*

13. *Subsequently another bench of this Court in the case of State of Karnataka and Others vs. M. L. Kesari and Others⁵ also had an occasion to consider the issue. The Court observed thus :*

“7. *It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in Umadevi (3) [(2006) 4 SCC 1] , if the following conditions are fulfilled:*

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or

its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

14. *This court held, that where the appointment are not made or continued against sanctioned posts or where the 5(2010) 9 SCC 247 persons appointed do not possess the prescribed minimum qualifications, the appointment will be considered to be illegal. However, when the person employed possessed the prescribed qualifications and is working against the sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”*

98. The Hon’ble 5 Judges Bench of the Hon’ble Supreme Court, in the case of **SECRETARY, STATE OF KARNATAKA AND OTHERS vs. UMADEVI(3) AND OTHERS**¹⁰, have made the following observations:

“16. *In B.N. Nagarajan v. State of Karnataka [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] this Court clearly held that the words “regular” or “regularisation” do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. We have, therefore, to keep this distinction in mind and proceed on the*

¹⁰ (2006) 4 SCC 1

basis 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 regularised and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularisation.

31. *In Ashwani Kumar v. State of Bihar [(1997) 2 SCC 1 : 1997 SCC (L&S) 465 : 1996 Supp (10) SCR 120] this Court was considering the validity of confirmation of the irregularly employed. It was stated : (SCC p. 17, para 13)*

“13. So far as the question of confirmation of these employees whose entry itself was illegal and void, is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given it would be an exercise in futility.”

This Court further stated : (SCC pp. 18-19, para 14)

“14. In this connection it is pertinent to note that question of regularisation in any service including any government service may arise in two contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad hoc basis or daily-wage basis by a competent authority and are continued from time to time and if it is found that the incumbents concerned have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularise them so that the employees concerned can

give their best by being assured security of tenure. But this would require one precondition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularisation may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by a competent authority and the irregular initial appointment may be regularised and security of tenure may be made available to the incumbent concerned. But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment.”

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 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] 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.”

99. The Hon’ble Supreme Court, in the case of **SIRAJ AHMAD vs. STATE OF UTTAR PRADESH AND ANOTHER**¹¹, has made the following observations: -

“11. *This Court in State of M.P. v. Lalit Kumar Verma [State of M.P. v. Lalit Kumar Verma, (2007) 1 SCC 575 : (2007) 1 SCC (L&S) 405] , after considering the judgment of the Constitution Bench of this Court in State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , observed thus : (Lalit Kumar Verma case [State of M.P. v. Lalit Kumar Verma, (2007) 1 SCC 575 : (2007) 1 SCC (L&S) 405] , SCC p. 581, para 12)*

“12. The question which, thus, arises for consideration, would be : Is there any distinction between “irregular appointment” and “illegal appointment”? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is “State” within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.”

12. *It can thus be seen that this Court has held that the distinction between irregular appointment and illegal appointment is clear. It has been held that in the event appointment is made in total disregard to the constitutional scheme and the recruitment rules framed by the*

¹¹ (2020) 19 SCC 480

employer, where the employer is “State” within the meaning of Article 12 of the Constitution of India, the recruitment will be illegal one. It has, however, been held that where although, substantial compliance with the constitutional scheme, as also the Rules have been made, the appointment would become irregular inasmuch as some provisions of some rules have been adhered to.

14. *This Court held in M.L. Kesari case [State of Karnataka v. M.L. Kesari, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] that where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointment will be considered to be illegal. However, when the person employed possessed the prescribed qualifications and is working against the sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”*

100. The Hon’ble Supreme Court, in the case of **STATE OF JAMMU AND KASHMIR AND OTHERS vs. DISTRICT BAR ASSOCIATION, BANDIPORA**¹², has made the following observations: -

“12. *The third aspect of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] which bears notice is the distinction between an “irregular” and “illegal” appointment. While answering the question of whether an appointment is irregular or illegal, the Court would have to enquire as to whether the appointment process adopted was tainted by the vice of non-adherence to an essential prerequisite or is liable to be faulted on account of the lack of a fair process of recruitment. There may be varied circumstances in which an ad hoc or temporary appointment may be made. The power of the employer to make a temporary appointment, if the exigencies of the situation so demand, cannot be disputed. The exercise of power*

¹² (2017) 3 SCC 410

however stands vitiated if it is found that the exercise undertaken (a) was not in the exigencies of administration; or (b) where the procedure adopted was violative of Articles 14 and 16 of the Constitution; and/or (c) where the recruitment process was overridden by the vice of nepotism, bias or mala fides. If the appointment process is not vitiated by any of the above faults, can it be said that appointments made as an outcome of such an exercise cannot be regularised under a scheme framed in that regard by the employer? This is particularly when the employer himself proceeds to frame a scheme to bring these employees within the protective umbrella of regular service without the intervention or command of a court direction. This is the issue to which we turn. We propose to analyse the precedents before formulating the principles.”

101. The Hon’ble Supreme Court, in the case of **ASHOK KUMAR SONKAR vs. UNION OF INDIA AND OTHERS**¹³, has made the following observations: -

“34. If an appointment is irregular, the same can be regularised. The court may not take serious note of an irregularity within the meaning of the provisions of the Act. But if an appointment is illegal, it is non est in the eye of the law, which renders the appointment to be a nullity.”

102. The Hon’ble Supreme Court, in the case of **GOVERNMENT OF ANDHRA PRADESH AND OTHERS vs. K. BRAHMANANDAM AND OTHERS**¹⁴, has made the following observations: -

“16. Appointments made in violation of the mandatory provisions of a statute would be illegal and, thus, void. Illegality cannot be ratified. Illegality cannot be regularised, only an irregularity can be.”

¹³ (2007) 4 SCC 54

¹⁴ (2008) 5 SCC 241

103. The Hon'ble High Court at Bombay, in the case of **VILAS AGAJI PAWAR AND OTHERS VS. UNION OF INDIA AND OTHERS**¹⁵, has made the following observations: -

“13. It does not call for any debate that the judgment delivered by the Honourable Supreme Court (five Judges Bench) in Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1 : 2006 Mh. L.J. Online (S.C.) 36, paved the way for regularization of long working temporaries/casuals by introducing the principle of ‘One Time Measure’ (OTM). By the said judgment, the Honourable Supreme Court concluded that such OTM would be for those persons, who have been working regularly, though appointed irregularly. It has been clarified that distinction between “irregular appointments” and “illegal appointments” would be that irregular appointments are of those category of employees, who are not selected through a regular selection process, but are otherwise legally eligible to be appointed. Illegal appointments would include those persons, who may have been appointed through the regular process, but were inherently ineligible to be appointed.

104. The Larger Bench of the Hon'ble High Court at Calcutta, in the case of **GOBINDA CHANDRA MONDAL vs. PRINCIPAL, RABINDRA MAHAVIDYALAYA**¹⁶, has made the following observations: -

“13. The above judgment has been explained by the Supreme Court in two cases subsequently. In case of State of Karnataka v. M.L. Kesari reported in (2010) 9 SCC 247 : AIR 2010 SC 2587 the Two Judges' Bench in paragraph 4 of the report stated as follows:—

“In that case, a Constitution Bench of this Court held that appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and courts

¹⁵ 2024 SCC OnLine Bom 236

¹⁶ 2012 SCC OnLine Cal 10492

cannot direct their absorption, regularization or re-engagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and that the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates. This Court further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court, however, made one exception to the above position and the same is extracted below.” (Thereafter paragraph 53 of the report of the SCC wherein Uma Devi's case was reported has been quoted.)

(Para 53 of Uma Devi's case)

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 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] 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.

14. *Then in paragraph 5 of the said judgment in case of M.L. Kesari the Supreme Court has summarized the ratio of the decision in Supreme Court in Uma Devi's case in the manner as follows:—*

“It is evident from the above that there is an exception to the general principles against ‘regularization’ enunciated in Uma Devi, if the following conditions are fulfilled:—

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any Court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

15. *Uma Devi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of Courts or tribunals, as a one time measure. Umadevi, directed that such one-time*

measure must be set in motion within six months from the date of its decision.”

16. *In earlier case of the Supreme Court in case of Satya Prakash v. State of Bihar reported in (2010) 4 SCC 179 the ratio in Uma Devi's case has been explained in paragraph 8 which is as follows:—*

“In Umadevi's case this Court held that the Courts are not expected to issue any direction for absorption/regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees. This Court held that such directions issued could not be said to be inconsistent with the constitutional scheme of public employment. This Court held 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. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted.”

17. *We ourselves have read the aforesaid pronouncement of the Supreme Court while carefully reading the ratio of Uma Devi's case we find that it is clear that two types of appointments have been discussed one is illegal appointment and another is irregular appointment. In case of former the appointment of such appointee cannot be accepted by taking any measure either by regularization or absorption or making him permanent. Illegal appointment has been described to be such types of engagement that militates against mandatory provision relating to recruitment meaning thereby if any person is appointed at the time of appointment does not possess requisite qualification as regard age and education etc. But in case of a latter namely irregular appointment where the appointees having requisite qualification as regard age and education, have not been appointed through open selection. In such a case regularization can be possible granting relaxation of overage.”*

105. The Hon'ble High Court at Calcutta, in the case of **SK. BARJAHAN ALI vs. STATE OF WEST BENGAL AND ORS**¹⁷., has made the following observations: -

“6. The legal position regarding regularization of service has been explained by the recent constitution bench of the apex court in Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1 : AIR 2006 SC 1806 : [2006 (3) SLR 1 (SC)]. For whatever length one may serve on the basis of an illegal appointment, by that one does not acquire any right to get permanent appointment to any public office. The concept of regularization has been deprecated by the apex court. Giving permanent appointment to an illegally appointed person has been viewed as the back door entry in public office.”

106. The Hon'ble High Court at Calcutta, in the case of **SK. SAHIM VS. STATE OF W.B. AND ORS**¹⁸., has made the following observations: -

“6. It is known that such illegal appointment, for however long a period one may continue in service on the basis of such appointment, does not create any right in favour of the appointee to seek legalization of the appointment. The initial appointment being illegal it continued to remain illegal all through. Mere length of the illegality does not create any sort of right to seek permanent appointment to the post.”

107. In the conspectus of the aforesaid decisions comprehensively, if the employee possessed the foundational qualifications prescribed for the post and their initial recruitment was not a clandestine, non-competitive entry

¹⁷ 2006 SCC OnLine Cal 743

¹⁸ 2006 SCC OnLine Cal 724

but was conducted through some form of public disclosure and evaluation, the appointment was merely irregular.

108. An irregularly appointed individual having rendered continuous, unimpeached service for a decade or more without the protective intervention of interim orders from Courts or Tribunals, the State is under an equitable obligation to regularise their employment rather than use old technicalities to justify a sudden removal.

109. When the State creates temporary positions to meet long-term administrative needs, permits individuals to undergo a selection process, and utilizes their services for years, it cannot later avoid its responsibilities as an employer by labeling the recruitment process it designed as illegal. When evaluated against this legal framework, the induction of the petitioners cannot be classified as an illegal appointment. The administrative record demonstrates that their entry was triggered by a formal gubernatorial sanction under Government Order No.634-Home(Cons.), issued with the explicit concurrence of the Finance Department to meet the functional needs of the West Bengal State Election Commission. The subsequent selection process involved an open notice-board advertisement, a formal vetting of academic and technical credentials and a competitive practical evaluation by a duly constituted Selection Committee, which resulted in a structured merit panel. The petitioners entered service through an open, institutional process. To overlook this history and label their initial selection as an

unconstitutional back-door entry is an arbitrary reinterpretation of the facts.

110. Furthermore, any minor procedural irregularities that may have existed at the inception of their contractual service in 2005 were fully resolved by the State's own subsequent statutory actions. The transition of the petitioners to temporary status within a regular pay scale via Order No.1046-SEC/4A-25/2004, their integration into the Revision of Pay and Allowance (ROPA) Rules, 2009, and the establishment of their General Provident Fund accounts were all executed with the active cooperation of the state's central departments. This process culminated on the 5th of February, 2010, when the competent authority issued a formal confirmation order under the explicit operation of Rule 5 of the West Bengal Services (Appointment, Probation and Confirmation) Rules, 1969.
111. By finalizing this confirmation, the State effectively exercised its power to cure any initial procedural irregularities, elevating the petitioners to the status of permanent civil servants. A formal confirmation under statutory rules operates as a definitive legal acknowledgment that the employee's service has been verified and accepted as regular. Once the state has granted this permanent status, it cannot later revive minor procedural variations from a decade earlier to justify disciplinary removal under the guise of corrective action. To allow an administrative body to use summary disciplinary proceedings to retroactively undo a formal statutory confirmation will undermine the security of tenure that is essential for an independent civil service, turning the protective framework of service jurisprudence into an instrument of administrative instability.

112. The Statement of Articles of charge framed against Smt. Moujhuri De, Data Processor, West Bengal State Election Commission, inter alia stated as follows:-

“Annexure-I:-

Articles of Charge – I:- The Government in Home Department vide Memo No 86-Home(Cons) dated 16-02-2005 allowed to fill up the posts of data processors on contract basis for a period of six months in view of conducting Municipal Elections including Election to Kolkata Municipal Corporation, after observing all requisite formalities and subject to finalization of the Recruitment Rules for the said posts.

Thereafter a notice was published on 01-4-2005 on the office notice board and the applications were invited vide No 436(2) -EC/4A-25/04 dt. 01-04-2005 to fill up two posts of Data Processor on contract basis for a period of 6 (six) months on contractual pay of Rs. 5000/- (Rupees five thousand) only per month.

Thereafter, you were appointed as Data Processor for 6(six) months on contract basis vide No 995-SEC/4A-25/2004 dt. 11-5-2005, and you have joined on 16.5.2005.

Your contract period for 6(six) months expired on 15-11-2005:

Your contract period was then extended vide No 3361- SEC/4A-25/04 dated 11-11-2005 for a further period of 6(six) months i.e. up to 15-5-2006 for which, there was no approval of Govt.

On 06-02-2006, you have applied to the Commissioner for regularization of your service.

Your Contract period extended further for a period of 1(one) year i.e. up to 15-7-2007 vide No 380-SEC/4A-25/04 dated 10-5-2006 for which, again there was no approval of the Govt.

You knew that there was no instruction from the Government, still you prayed for regularization and you were regularized by Commission in pay scale “3350-90-3800-100-4700-125-6325 with other allowances as admissible” vide No. 1045-SEC/4A-25/2004 dated 06-9-2006, even no concurrence of the Government was taken.

Your service was confirmed by the Commission vide No. 155-SEC/4A-4/1994(pt.-II)

For the recruitment, there was neither wide circulation in News Papers nor your name came from employment exchange. To show sympathy to you, Commission has shown un- sympathy to a large number of eligible candidates waiting for a long time in a long queue seeking employment. It is a clear violation of constitutional provision under Article 14 and 16.

For your appointment, even 100-Point Roster for reservation for SC/ST, etc has not been followed. As per 100 point roster, the 01" vacancy is reserved for Scheduled Caste. You are not a member of Schedule Caste but that vacancy was filled up appointing you.

Following the above referred Memo No 86-Home(Cons) dated 16-02-2005 of the Govt., no recruitment Rule was formed to fill up the posts.

In Secretary, State of Karnataka-Vs- Uma Devi Case no 3595-3612 of 1999 the Constitution Bench of the Supreme Court of India considered different facts of the issue relating to regularization of services of such contractual etc. employees and unequivocally ruled that such appointees are not entitled to claim regularization of service as of right.

As per section 7 of West Bengal State Election Commission Act, 1994, the West, Bengal State Election Commission is not competent to appoint Data Processor on permanent basis. The Governor i.e. State Govt. In Home Deptt. will give staff to the West Bengal State Election Commission when so requested.

Hence, your appointment is illegal as there was no adherence to norms of the Constitution in Article 14 & 16 and Govt. Instructions Vide Memo No 86-Home(Cons) dated 16-02-2005 as well as violatioin of Sec.7 of the West Bengal State Election Commission Act, 1994 and SC/ST Reservation Policy of Govt.”.

“Annexure-II:-The Government in Home Department vide Memo No 86-Home(Cons) dated 16-02-2005 allowed to fill up the posts of data processors on contract basis for a period of six months in view of conducting Municipal Elections including Election to Kolkata Municipal Corporation, after observing all requisite formalities and subject to finalization of the Recruitment Rules for the said posts.

Thereafter a notice was published on 01-4-2005 on the office notice board and the applications were invited vide No 436(2)-EC/4A-25/04 dated 01-04-2005 to fill up two posts of Data Processor on contract basis for a period of 6 (six) months on contractual pay of Rs. 5000/- (Rupees five thousand) only per month.

Thereafter, you were appointed as Data Processor for 6(six) months on contract basis vide No 995-SEC/4A-25/2004 dated 11-5-2005, and you have joined on 16.05.2005.

Your contract period for 6(six) months expired on 15-11-2005.

Your contract period was then extended vide No 3361- SEC/4A-25/04 dated 11-11-2005 for a further period of 6(six) months i.e. up to 15-5-2006 for which, there was no approval of Govt.

On 06-02-2006, you have applied to the Commissioner for regularization of your service.

Your Contract period extended further for a period of 1(one) year i.e. up to 15-7-2007 vide No 380-SEC/4A-25/04 dated 10-5-2006 for which, again there was no approval of the Govt.

You knew that there was no instruction from the Government, still you prayed for regularization and you were regularized by Commission in pay scale “3350-90-3800-100-4700-125-6325 with other allowances as admissible” vide No. 1045-SEC/4A-25/2004 dated 06-9-2006, even no concurrence of the Government was taken.

For the recruitment, there was neither wide circulation in News Papers nor your name came from employment exchange. To show sympathy to you, Commission has shown un- sympathy to a large number of eligible candidates waiting for a long time in a long queue

seeking employment. It is a clear violation of constitutional provision under Article 14 and 16.

For your appointment, even 100-Point Roster for reservation for SC/ST etc., has not been followed. As per 100 point roster, the 01st vacancy is reserved for Scheduled Caste. You are not a member of Schedule Caste but that vacancy was filled up appointing you.

Following the above referred Memo No 86-Home(Cons) dated 16-02-2005 of the Govt., no recruitment Rule was formed to fill up the posts.

In Secretary, State of Karnataka-Vs- Uma Devi Case [2006 (4) SCC 1], the Constitution Bench of the Supreme Court of India considered different facts of the issue relating to regularization of services of such contractual etc. employees and unequivocally ruled that such appointees are not entitled to claim regularization of service as of right.

As per section 7 of West Bengal State Election Commission Act, 1994, the West Bengal State Election Commission is not competent to appoint Data Processor on permanent basis. The Governor i.e. State Govt. In Home Deptt., will give staff to the West Bengal State Election Commission when so requested.

Hence, your appointment is illegal as there was no adherence to norms of the Constitution in Article 14 & 16 and Govt. Instructions Vide Memo No 86-Home(Cons) dated 16-02-2005 as well as violation of Sec.7 of the West Bengal State Election Commission Act, 1994 and SC/ST Reservation Policy of Govt.”

“ANNEXURE-III:- List of documents by which articles of charge framed against Moujhuri De, Data Processor of this Commission are proposed to be sustained.

(1) Copy of Memo No 86-Home(Cons) dated 16-02-2005 of the Government in Home Department allowing to fill up the posts of data processors on contract basis for a period of six months.

(2) Copy of Notice No 436(2) -SEC/4A-25/04 dt. 01-04-2005 of this Commission to fill up two posts of Data Processors on contract basis for a period of 6 (six) months on contractual pay of Rs. 5000/- (Rupees five thousand) only per month.

(3) Copy of No 995-SEC/4A-25/2004 dt. 11-5-2005 of this Commission appointment as Data Processor for 6(six) months on contract basis.

(4) Copy of No 3361- SEC/4A-25/04 dt. 11-11-2005 of this Commission extension of contract period for a further period of 6(six) months.

(5) Copy of your application dated 06-02-2006 to regularise your service.

(6) Copy of No 380-SEC/4A-25/04 dt. 10-5-2006 of this Commission further extension of contract period for 1(one) year up to 15-5-2007.

(7) Copy of No 1045-SEC/4A-25/2004 dt. 06-9-2006 of this Commission appointment on purely temporary basis to the post of Data Processor in pay-scale.

(8) Copy of your Joining report dt. 06-9-2006 to the post of Data Processor.

(9) Copy of No 155-SEC/4A-4/1994 (Pt. II) dt. 05-02-2010 of this Commission confirmation of Service.

(10) Copy Judgement of Apex Court dt. 10-04-2006 in Appeal (Civil) case no 3595-3612 (Secretary, State of Karnataka & others VS Umadevi & others.)

(11) Copy of provision of Article 14 & 16 of the Constitution of India.

(12) Copy of Sec.7 of West Bengal State Election Commission Act, 1994.

(13) Copy of 100 point roster".

"ANNEXURE-IV:- List of witnesses by whom the articles of charge framed against Smt. Moujhuri De, Data Processor of this Commission (name and designation of the Government servant) are proposed to be sustained:

(1) NIL".

113. The “Annexure-P17” being no.344-SEC/1L-45/05(Pt.I) dated 15.05.2016, inter alia, stated as follows:-

“No.344-SEC/1L-45/05(Pt.I)

Date: 15.04.2016

To

Smt. Maujhuri De,

Data Processor,

West Bengal State Election Commission

18, Sarajini Naidu Sarani, Kolkata – 700017.

Sub: 2nd Show Cause Notice on Departmental Proceeding.

A Departmental Proceeding was conducted against you vide West Bengal State Election Commission's Memo No. 259-SEC/1L-45/05(Part-1) Dated 28.03.2016 and No. 288-SEC/1L-45/05 (Part-1) dated 30.03.2016 under West Bengal Services (Classification, Control and Appeal) Rules, 1971.

2. Report of Inquiring Authority of Departmental Proceeding has been received.

3. You were appointed as Data Processor for 6 (six) months on 11.05.2005 on contract, and after two extensions of the contract, you were regularized on 06.09.2006. I have not questioned initial 6 months contractual appointment, but all subsequent actions come into charge though.

4. I have perused the report and the following charges against you are proved:-

(i) Extension of contracts twice is not acceptable because there was no permission of the Government, as the Government is the appropriate authority, and not the Commission.

(ii) On 06.02.2006 she applied to the Commissioner, State Election Commission for regularization of service, knowingly it has not got approved of Government.

(iii) In *Secretary, State of Karnataka -Vs.- Uma Devi* case, [2006 (4) SCC 11, the Constitution Bench of the Apex Court considered different facts of the issue relating to regularization of services of such contractual/casual/daily rated etc. employees and unequivocally ruled that such appointees are not entitled to claim regularization of service as of right.

(iv) Regularization by the Commission and confirmment of pay scale without even the concurrence and permission of the Government is not acceptable as the State Government is the appropriate authority.

(v) Moreover, contractual appointment comes to an end with the end of the contract. For selection in permanent post, fresh procedure was required to follow by inviting applications in which a contractual employee may also participate. In this case, direct selection of the contractual employee to the permanent post is irregular as well as illegal as the procedure of selection in absence of recruitment rule was not followed and equal opportunity as per Constitutional provision of Article 14 and 16 was not given to all eligible candidates. Thus, to show sympathy to her means showing un-sympathy to a large number of eligible candidates waiting for a long time in a long queue seeking employment. It is a clear violation of Article 14 and 16.

(vi) Her posting to the first post and vacancy against Scheduled Caste roster is violation of reservation order as she is not a member of the Scheduled Caste.

(vii) Regularisation without formation of recruitment rule for the post, as was directed in Memo No. 86-Home (Cons.) dated 16.02.2005 of Government, is a violation.

(viii) As per provision of Section 7 of West Bengal State Election Commission Act, 1994, the State Government in Home Department will provide staff to the Commission when so requested. Memo No. 632-Home (Cons.) dated 19.06.2015 is amply clear that Government has all prerogative in appointment of staff in this Commission.

(ix) Subsequent action after 6 months are violation. It is a series of jumping from one stage to another and she availed such benefits.

(x) Advocacy on number of years of service is of no value because it was done without the competent authority's approval, i.e., the Home

Departments approval, as well as it was done even without formation of recruitment rule. The minimum requirement of wide circulation by newspaper or Employment Exchange was not followed. Therefore, number of years of service is not sufficient unless two provisions are also adhered to.

(xi) Her claim for selection through Selection Board was only for 6 months period and that's all. To repeatedly advocate Selection Board and Letter No. 86-Home (Cons.) dated 16.02.2005 has sanctified her appointment, is meaningless as it was for 6 months in both case.

(xii) There is shortage of educational qualification by 6 months. In fact, two years was required. But here it is only 1½ years.

(xiii) There was no adherence to norms of Constitution of Article dated No. 14 and 16, Governments instruction vide Memo No. 86 16.02.2005, Section 7 of West Bengal State Election Commission Act, 1994 and S.C./S.T. Reservation Policy, and shortage of 6 months in the Computer Diploma Certificate.

On perusal of all documents, the punishment proposed under rule 8(vii) of West Bengal Services (Classification, Control and Appeal) Rules, 1971. Rules is:- (a) Removal from service.

6. A copy of enquiry report is enclosed.

7. You are requested to reply within 22.04.2016 on the proven charges and the quantum of punishment proposed. If no reply is received within the said period, it will be deemed that you have nothing to say in the matter, and the Commission will be at liberty to take decision."

114. The report of the Inquiring Authority in connection with the charge framed vide no.259-SEC/1L-45/05 (Part-I) dated 28.03.2016 and supplementary charge vide no.288-SEC/1L-45/05 dated 30.03.2016 of the West Bengal State Election Commission against Smt. Moujhuri De, Data Processor of this Commission, inter alia, stated as follows:-

“Charge:- The Government in Home Department vide Memo No 86-Home(Cons) dated 16-02-2005 allowed to fill up the posts of data processors on contract basis for a period of six months in view of conducting Municipal Elections including Election to Kolkata Municipal Corporation, after observing all requisite formalities and subject to finalization of the Recruitment Rules for the said posts.

Thereafter a notice was published on 01-4-2005 on the office notice board and the applications were invited vide No 436(2) -EC/4A-25/04 dt. 01-04-2005 to fill up two posts of Data Processor on contract basis for a period of 6 (six) months on contractual pay of Rs. 5000/- (Rupees five thousand) only per month.

Thereafter, you were appointed as Data Processor for 6(six) months on contract basis vide No 995-SEC/4A-25/2004 dt. 11-5-2005, and you have joined on 16.5.2005.

Your contract period for 6(six) months expired on 15-11-2005.

Your contract period was then extended vide No 3361- SEC/4A-25/04 dt. 11-11-2005 for a further period of 6(six) months i.e. up to 15-5-2006 for which, there was no approval of Govt.

On 06-02-2006, you have applied to the Commissioner for regularization of your service.

Your Contract period extended further for a period of 1(one) year i.e. up to 15-7-2007 vide No 380-SEC/4A-25/04 dt. 10-5-2006 for which, again there was no approval of the Govt.

You knew that there was no instruction from the Government, still you prayed for regularization and you were regularized by Commission in pay scale “3350-90-3800-100-4700-125-6325 with other allowances as admissible” vide No. 1045-SEC/4A-25/2004 dt. 06-9-2006, even no concurrence of the Government was taken.

Your service was confirmed by the Commission vide No. 155-SEC/4A-4/1994 (pt.-II)

For the recruitment, there was neither wide circulation in News Papers nor your name came from employment exchange. To show sympathy to you, Commission has shown un- sympathy to a large number of eligible

candidates waiting for a long time in a long queue seeking employment. It is clear violation of constitutional provision under Article 14 and 16.

For your appointment, even 100-Point Roster for reservation for SC/ST, etc., has not been followed. As per 100 point roster, the 01" vacancy is reserved for Scheduled Caste. You are not a member of Schedule Caste but that vacancy was filled up appointing you.

Following the above referred Memo No 86-Home(Cons) dated 16-02-2005 of the Govt., no recruitment Rule was formed to fill up the posts.

In Secretary, State of Karnataka-Vs- Uma Devi Case no 3595-3612 of 1999 the Constitution Bench of the Supreme Court of India considered different facts of the issue relating to regularization of services of such contractual etc. employees and unequivocally ruled that such appointees are not entitled to claim regularization of service as of right.

As per section 7 of West Bengal State Election Commission Act, 1994, the West Bengal State Election Commission is not competent to appoint Data Processor on permanent basis. The Governor i.e. State Govt. In Home Deptt., will give staff to the West Bengal State Election Commission when so requested.

Hence, your appointment is illegal as there was no adherence to norms of the Constitution in Article 14 & 16 and Govt. Instructions Vide Memo No 86-Home(Cons) dated 16-02-2005 as well as violation of Sec. 7 of the West Bengal State Election Commission Act, 1994 and SC/ST Reservation Policy of Govt.

Supplementary Charge:- *It was envisaged in the Home Department letter No. 86-Home(Cons.) dated 16-02-2005 and this office Notice Board Circular No.436(2)-SEC/4A-25/04 dated 01-04-2005 that the educational requirement for Data Processor is 2 years' Diploma Course in Computer Application with a 1 year working experience. On perusal of your CMC Certificate, it indicates that duration of it is for 1 year. Another Certificate for ROLON indicates that duration was 6 months. Hence, it is short by six months, which was required in the qualification for contractual engagement of Data Processor. Hence, you have no requisite qualification.*

Statement of the Charged Officer:- The charge-sheet & supplementary charge-sheet were duly served to the charge officer and notice was duly served to her for hearing. She appeared on 08-04-2016 at 11:00 a.m., the date & time fixed for hearing. She submitted a written reply to the charges and stated that she had nothing more to say. Her written replies are as below.

Statement of the Presenting Officer:- The Presenting Officer appeared at 11-30 am, represented the case on behalf of the State action Commissioner and stated that he has nothing to add.

Views of the Inquiring Authority:- Considered the Written replies of the Charged Officer. Also, considered the statement of the Presenting Officer.

It is a fact that: -

a) the Government in Home Department vide Memo No 86-Home(Cons) dated 16-02-2005 allowed to fill up the posts of data processors on contract basis for a period of six months in view of conducting Municipal Elections including Election to Kolkata Municipal Corporation, after observing all requisite formalities and subject to finalization of the Recruitment Rules for the said posts; and

b) thereafter a notice was published on 01-4-2005 on the office notice board and the applications were invited vide No 436(2) -EC/4A-25/04 dt. 01-04-2005 of this Commission to fill up two posts of Data Processor on contract basis for a period of 6 (six) months on contractual pay of Rs. 5000/- (Rupees five thousand) only per month.

c) Smt. Moujhuri De was appointed as Data Processor for 6(six) months on contract basis vide No 995-SEC/4A-25/2004 dt. 11-5-2005 of this Commission, although She could not fulfill the criteria of computer diploma for two years- she had diploma certificate for one and half year only i.e. shortage of six month. She joined on 16.5.2005.

d) her contract period for 6(six) months expired on 15-11-2005.

1. a) Her contract period was then extended vide No 3361-SEC/4A-25/04 dt. 11-11-2005 of this Commission for a further period of 6(six) months i.e. up to 15-5-2006 for which, there was no approval of Govt.

b) Her Claim that for extension of such contractual, no permission is required from Govt. is not acceptable as the Govt. is the appropriate authority in this respect and ordered for contractual engagement for six month only.

2) a) On 06-02-2006, she applied to the Commissioner for regularization of service.

b) In Secretary, State of Karnataka-Vs- Uma Devi Case [2006 (4) SCC 1], the Constitution Bench of the Supreme Court of India considered different facts of the issue relating to regularization of services of such contractual/casual/daily rated etc. employees and unequivocally ruled that such appointees are not entitled to claim regularization of service as of right.

3) a) Her Contract period extended further for a period of 1(one) year i.e. up to 15-7-2007 vide No 380-SEC/4A-25/04 dt. 10-5-2006 for which, again there was no approval of the Govt.

b) Her Claim that for extension of such contractual, no permission is required from Govt. is not acceptable as the Govt. is the appropriate authority in this respect and ordered for contractual engagement for six month only.

4) a) She was regularized by Commission in pay scale "3350-90-3800-100-4700-125-6325 with other allowances as admissible" vide No. 1045-SEC/4A-25/2004 dt. 06-9-2006 of this Commission, for which concurrence of the Government was not taken.

b) Her Claim that for regularization of her service, no permission is required from Govt. is not acceptable as the State Govt. is the appropriate authority as per provision of Sec.7 of West Bengal State Election Commission Act, 1994 in this respect.

c) Moreover, contractual appointment comes to an end with the end of the contract. For selection in permanent post, fresh procedure was required to follow by inviting applications in which a contractual employee may also participate. In this case, direct selection of the contractual employee to the permanent post is irregular as well as illegal as the procedure of selection

was not followed and equal opportunity as per constitutional provision of Art. 14 & 16 was not given to all eligible candidates.

Thus, to show sympathy to her means showing un- sympathy to a large number of eligible candidates waiting for a long time in a long queue seeking employment. It is a clear violation of constitutional provision under Article 14 and 16.

5) a) As per 100 point roster, the first (1") vacancy is reserved for Scheduled Caste

b) She claimed that the reservation relates to the post and not against the vacancies.

In the present case, posts and vacancy are the same.

Although Smt. Moujhuri De is not a member of Schedule Caste that post & vacancy was filled up appointing her. This is a gross violation of SC/ST etc. Reservation Policy of Govt.

c) a) As above referred Memo No 86-Home(Cons) dated 16-02-2005 of the Govt., there was a clear direction that Recruitment Rule for the posts are to be framed prior to fill to fill up the post(s) permanently.

b) In the instant case, permanent appointment was given prior to formation of Recruitment Rule. This is a major violation of Govt. Order.

8) a) As per Section 7 of West Bengal State Election Commission Act, 1994, the West Bengal State Election Commission is not competent to appoint Data Processor on permanent basis. The Governor je. State Govt. in Home Deptt., will give staff to the West Bengal State Election Commission when so requested.

b) In the present case, initial contractual appointment was correct as it was as per direction of the Govt., but the provision was not followed in subsequent actions i.e. for extension(twice) as well as permanent appointment. This is a gross violation of Govt. order.

After six months of her appointment as contractual employee, all subsequent actions are a series of jumping from one wrong step to another and Smt. Moujhuri De availed herself the benefits of such wrong actions. So she cannot deny the responsibility.

Her claim that for extension of contractual appointment and regularization, no approval of Govt. is required is not acceptable at all. In this connection, No 632 -Home(Cons.) dated 29-06-2015 of Home Deptt., may be referred to in which there is a clear direction not to appoint any staff in this Commission on contractual or temporary or permanent basis without clearance from the Govt.

Her advocacy on number of years of service is of no value here because the basic requirement of approval of appropriate authority i.e. State Govt. in the Home Deptt. was not taken for extension of contractual appointments well as regularization. Further, for permanent appointment, norms/procedures of wide circulation / names from employment etc. were not followed. Therefore, number of years of service alone is not sufficient unless these two provisions are adhered to.

Her claim for selection through Selection Board was only for contractual appointments which ended with the expiry of six months contractual work.

As per notification No. 436(2)-SEC/4A-25/04 dated, requirement of Computer diploma was for 2(two) years, but as per records, total duration of her Diploma Course were for one & half years (ROLON-six month & CMC-one year). So, there is the shortage of six month in her qualification in Computer Diploma.

Thus, there was no adherence to norms of the Constitution in Article 14 & 16; Govt. Instructions Vide Memo No 86-Home(Cons) dated 16-02-2005; Sec. 7 of the West Bengal State Election Commission Act, 1994 and SC/ST Reservation Policy of Govt.

Moreover, there is the shortage of six month in her qualification in Computer Diploma.

So, the original charge as well as the supplementary charge against Smt. Moujhury De, framed vide above noted orders of this Commission are proved."

115. The Order being no.407-SEC/1L-45/05(pt.I) dated 28.04.2016, inter alia stated as follows:-

“No.407-SEC/1L-45/05(Pt.I)

Date: 28.04.2016

On scrutiny of service records it was found that Smt. Moujhuri De was appointed on contract basis for 6 months as Data Processor on 11.05.2005 at a consolidated pay of Rs. 5000/- per month. There was an instruction vide Home Department's No. 86-Home (Cons.) dated 16.02.2005 to go ahead for appointment of 2 Data Processors for 6 months on contract basis following requisite norms. Later on it she was regularised on 6.9.2006 after 2 extensions of contractual service without any approval or clearance of the Government. The approval was only for contractual service for 6 months and that's all.

2. Hence it was decided to conduct a departmental proceeding.
3. A departmental proceeding was started under West Bengal Service (Classification, Control and Appeal) Rules, 1971 vide order No.259-SEC/1L-45/05 (Pt.I) dated 28.03.2016 & No. 288-SEC/1L-45/05 (Pt.1) dated 30.03.2016.
4. The Inquiring Authority submitted his report vide No. 339-SEC/1L-45/05(Pt.1) dated 13.04.2016.
5. The charge was proved by Inquiring Authority.
6. The Commission has reviewed the report of the Inquiring Officer and agrees with that.
7. A 2nd show cause was given to her vide Memo No. 344-SEC/1L-45/05 (Pt.I) dated 15.04.2016 and the following penalty proposed was:-
(a) Removal from service.
8. Reply of 2nd show cause was sought within 22.04.2016.
9. On 20.04.2016 she sought an extension of time and she was given up to 27.04.2016. Again she wanted extension of time on 27.04.2016, it was regretted.

Therefore, there is no reply of 2nd Show Cause.

10. On consideration all facts, the commission has decided to inflict the following penalty:

(a) Removal from service.

11. The reasons for punishment are as below:-

- i) Appointed as Data Processor for 6 months on 11.05.2005 on contract, as per Home Department's instruction vide No.86-Home (Cons.) dated 16.02.2005.*
- ii) Extension of contracts upto 15.07.2007 twice is not acceptable because there was no permission of the Government.*
- iii) On 06.02.2006 she applied to the Commissioner, State Election Commission for regularization of service, knowingly there is no instruction of the Government for regularisation or extension of contractual service.*
- iv) In Secretary, State of Karnataka -Vs.- Uma Devi case, (2006 (4) SCC 1), the Constitution Bench of the Apex Court considered different facts of the issue relating to regularization of services of such contractual/ casual/ daily rated etc. employees and unequivocally ruled that such appointees are not entitled to claim regularization of service as of right.*
- v) Regularization by the Commission and conferment of pay scale on 06.09.2006 without even the concurrence and permission of the Government is not acceptable.*
- vi) Moreover, contractual appointment comes to an end with the end of the contract. For selection in permanent post, fresh procedure was required to follow by inviting applications in which a contractual employee may also participate. In this case, direct selection of the contractual employee to the permanent post is irregular as well as illegal as the procedure of selection was not followed and equal opportunity as per Article 14 and 16 of Constitution was not given to all eligible candidates. Thus, to show sympathy to her means showing un-sympathy to a large number of eligible candidates waiting for a long time in a long queue seeking employment. It is a clear violation of Article 14 and 16.*
- vii) Her posting to the first post and vacancy against Scheduled Caste roster is violation of reservation order as she is not a member of the Scheduled Caste.*
- viii) Regularisation without formation of recruitment rule for the post against direction contained in Memo No. 86-Home (Cons.) dated 16.02.2005 of Government, is a violation.*

ix) As per provision of Section 7 of West Bengal State Election Commission Act, 1994, the State Government in Home Department will provide staff to the Commission when so requested.

x) Subsequent action after 6 months are violation. It is a series of jumping from one stage to another and she availed such benefits.

xi) Advocacy on number of years of service is of no value because it was done without the approval of appointing authority, i.e., the Home Departments approval, as well as it was done even without formation of recruitment rule. The minimum requirement of wide circulation by newspaper or Employment Exchange was not followed. Therefore, number of years of service is not sufficient unless these two provisions are also adhered to.

xii) Her claim for selection through Selection Board was only for 6 months period and that's all. Repeated utterance of Selection Board and Letter No. 86-Home (Cons.) dated 16.02.2005 that these have sanctified her appointment, is meaningless as it was for 6 months and that's all.

xiii) There is shortage of educational qualification by 6 months. In fact, two years was required. But here it is only 1% years.

xiv) There was no adherence to norms of Constitution of Article No. 14 and 16 i.e. bypassing Employment Exchange or News Paper publication, Government's instruction vide Memo No. 86 dated 16.02.2005, Section 7 of West Bengal State Election Commission Act, 1994 and S.C./S.T. Reservation Policy, and shortage of 6 months in the Computer Diploma Certificate.

xv) It is reiterated that there is also reservation about manner in which she was recruited on contractual for first 6 months but Commission does not question it. The Commission questions the benefits of regularisation etc. after 6 months of initial contractual service.

12. By this order Smt. Moujhuri Dey is informed of this penalty.

13. This takes immediate effect.”

116. Similar instances of articles of charges had been issued against Smt.

Piyali Chowdhury which are repetitive in nature situationally in

consonance with the above articles of charges issued against Smt. Moujhur De and the same have not been replicated for the sake of brevity.

117. The legalities of the Disciplinary proceedings as enumerated statutorily are replicated as follows:

The Gazette Kolkata published by Finance Department, Govt. of West Bengal being no.2018-F.-16th April, 1971 published on April 29, 1971, Thursday, inter alia stated as follows:-

“Part V—Discipline. 8. Penalties.—The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on Government servant, namely:— (i) censure; (ii) withholding of increments or promotions; (iii) recovery from pay of the whole or part of any pecuniary loss-caused to the Government by negligence or breach of order. (iv) reduction to lower stage in the time-scale of pay for a specified period with further direction as to whether or not the Government-servant will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay; (v) reduction to a lower time scale of pay grade, post or service which shall ordinarily be a bar to the promotion of the Government.

9. Disciplinary Authorities.—Subject to the provisions of rules 10 to 13, any of the penalties specified in rule 8 may be imposed on- (i) a member of the West Bengal State Service, Class 1 or Class II by the Governor; and (ii) a member of the West Bengal State Service, Class III or Class IV, by the authorities specified in corresponding entries in column 3 of Schedule I: Provided that in a case where two or more Government servants are concerned, the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding. The order so made shall specify—

(i) the authority which may function as the disciplinary authority for the purpose of such common proceedings, (ii) the penalties in rule 8 which such disciplinary authority shall be competent to impose, and (iii) whether the procedure prescribed in rule 10 or rule 11 shall be followed in the proceedings.

Note 1.—In all cases of fraud, embezzlement, or similar offences, the disciplinary authority shall take steps to institute departmental proceedings against all the delinquents and conduct them with strict adherence to the rules up to the point at which prosecution of any of the delinquents begins. At that stage it must be specifically considered whether further conduct of the departmental proceedings against any of the remaining delinquents is practicable, and if so, it shall continue as far as possible (which will not as a rule, include finding and sentence). If the accused is convicted, the departmental proceedings against him shall be resumed and formally completed either by dismissing or removing the person from Government service or by reducing him in rank on the ground of his conviction. If the accused is not convicted, the departmental proceedings against him should be dropped unless the authority competent to take disciplinary action is of opinion that the facts of the case disclose adequate grounds for taking departmental action against him. In either case the proceedings against the remaining delinquents shall be resumed and completed as soon as possible after the termination of the proceedings in court.

Explanation.—Departmental proceedings shall not as a rule be initiated on the same charges or on charge: substantially similar to those of which a Government servant is acquitted in consequence of or by a decision of a court of law. There is, however, no bar to further inquiries being undertaken in cases where it is held by the Court that the safeguards imposed by article 311 of the Constitution of India have not been properly followed and a subsequent inquiry may be made on the same charges or charges substantially similar to those on which the penalties were originally imposed.

Discharge by the court or the submission of final report by the police does not, however, amount to acquittal and there is no bar to departmental proceedings being initiated after such discharge either on the same charges or on charges substantially similar to those leading to the discharge.

Note 2.—Where a Government servant (other than one to whom rule 12 or rule 13 applies) is transferred from the disciplinary control of one officer (hereinafter in this rule referred to as the first officer) to that of another officer (hereafter in this rule referred to as the second officer), the first officer after such transfer, ceases to be competent to draw up proceedings against the said Government servant although the proposed charges relate to things done while he was under the disciplinary control of the first officer. In such a case, the second officer shall draw up proceeding; at first and then ask the first officer to conduct the enquiry and submit the case to him for orders. On receipt of the report of the enquiry the second officer may impose the penalty after observing the procedure detailed in rule 10 or otherwise dispose of the proceedings”.

Ascertaining the ambit and constituents of misconduct is to be definitively assessed. Therefore the following decisions are resorted to for ascribing the meaning and effect thereto

118. In **Union Of India & Ors vs J. Ahmed**¹⁹, the Hon’ble Supreme Court held as follows:-

“It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty.

¹⁹ 1979 AIR 1022

Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct [see *Pierce v. Foster*(1)]. A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle* .(Indicator Newspapers) (2)]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur*(1), and *Satubha K. Vaghela v. Moosa Raza*(2). The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in *Management, Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik*(3), in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In *S. Govinda Menon v. Union of India*(4), the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in *P. H. Kalyani v. Air France, Calcutta*(5), wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of

highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil [see Navinchandra Shakerchand shah v. Manager, Ahmedabad Co- op. Department Stores Ltd.(1)]. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.

The High Court was of the opinion that misconduct in the context of disciplinary proceeding means misbehaviour involving some form of guilty mind or mens rea. We find it difficult to subscribe to this view because gross or habitual negligence in performance of duty may no involve mens rea but may still constitute misconduct for disciplinary proceedings.”

119. In **Ravi Yashwant Bhoir vs The Collector, District Raigad & Ors.**²⁰, the Hon’ble Supreme Court held as follows:-

²⁰ AIR 2012 SUPREME COURT 1339

"... 8. Misconduct has been defined in Black's Law Dictionary, Sixth Edition as:

"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement offense, but not negligence or carelessness."

Misconduct in office has been defined as:

"Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

P. Ramanatha Aiyar's Law Lexicon, Reprint Edition 1987 at page 821 defines 'misconduct' thus:

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be

defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve....".

9. Mere error of judgment resulting in doing of negligent act does not amount to misconduct. However, in exceptional circumstances, not working diligently may be a misconduct. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting beyond authority may be a misconduct. When the office bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds etc. constitutes a serious misconduct, inviting severe punishment. (Vide:

10. In Government of A.P. v. P. Posetty, (2000) 2 SCC 220, this Court held that since acting in derogation to the prestige of the institution/body and placing his present position in any kind of embarrassment may amount to misconduct, for the reason, that such conduct may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an incumbent of the post.

11. In M.M. Malhotra v. Union of India & Ors., AIR 2006 SC 80, this Court explained as under:

".....It has, therefore, to be noted that the word 'misconduct' is not capable of precise definition. But at the same time though incapable of precise

definition, the word 'misconduct' on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the terms occurs, having regard to the scope of the statute and the public purpose it seeks to serve."

A similar view has been reiterated in Baldev Singh Gandhi v. State of Punjab & Ors., AIR 2002 SC 1124.

12. Conclusions about the absence or lack of personal qualities in the incumbent do not amount to misconduct holding the person concerned liable for punishment.

(See: Union of India & Ors. v. J. Ahmed, AIR 1979 SC 1022).

13. It is also a settled legal proposition that misconduct must necessarily be measured in terms of the nature of the misconduct and the court must examine as to whether misconduct has been detrimental to the public interest. (Vide: General Manager,

Appellate Authority, Bank of India & Anr. v. Mohd. Nizamuddin AIR 2006 SC 3290).

14. The expression 'misconduct' has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, wilful in character. It may be synonymous as mis-demeanour in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces. Further, the expression 'misconduct' has to be construed and understood in reference to the subject matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of

misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest.”

120. In **Union Of India & Anr. vs Ashok Kumar Aggarwal**²¹, the Hon’ble Supreme Court held as follows:-

“... 8. In State of Orissa v. Bimal Kumar Mohanty, AIR 1994 SC 2296, this Court observed as under:- “..... the order of suspension would be passed taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of evidence placed before the appointing authority and on application of the mind by the disciplinary authority. Appointing authority or disciplinary authority should consider and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law should be laid down in that behalf.....In other words, it is to refrain him to avail further opportunity to perpetuate the alleged misconduct or to remove the impression among the members of service that dereliction of duty will pay fruits and the offending employee may get away even pending inquiry without any impediment or to provide an opportunity to the delinquent officer to scuttle the inquiry or investigation to win over the other witnesses or the delinquent having had an opportunity in office to impede the progress of the investigation or inquiry etc. It would be another thing if the action is actuated by mala fide, arbitrarily or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The Authority also should keep in mind public interest of the impact of the delinquent’s continuation in office while facing departmental inquiry or a trial of a criminal charge.” (Emphasis added) (See also: R.P. Kapur v. Union

²¹ AIR ONLINE 2013 SC 479

of India & Anr., AIR 1964 SC 787 ; and Balvantrai Ratilal Patel v. State of Maharashtra, AIR 1968 SC 800).

9. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

10. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.

11. In Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel & Ors., (2006) 8 SCC 200, this Court explained:

“18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved.

Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision.””

121. In **Gujarat Steel Tubes Ltd vs. Gujarat Steel Tubes Mazdoor Sabha**²², the Hon’ble Supreme Court held as follows:-

“What is decisive is the plain reason for the discharge. not the strategy of a non-enquiry or clever avoidance of stigmatizing epithets. If the basis is not misconduct, the order is saved. In Murugan Mills, this Court observed:

“The right of the employer to terminate the services of his workman under a standing order, like cl. 17(a) in the present case, which accounts to a claim ‘to hire and fire’ an employee as the employer pleases and thus completely negatives security of service which has been secured to industrial employees through industrial adjudication. came up for consideration before the Labour Appellate Tribunal in Buckingham and Carnatic Co. Ltd. v. Workers of the Company. The matter then came up before this before this Court also in Chartered Bank v. Chartered Bank Employees Union(3) and the Management of U.B. Dutt & Co. v. Workmen of U. B. Dutt & Co.(4) Wherein the view taken by Labour Appellate Tribunal was approved and it was held that even in a case like the present the requirements of bona fides was essential and if the termination of service was a colourable exercise of the power or as a result of victimization or

²² 1980 AIR 1896

unfair labour practice the industrial tribunal would have the jurisdiction to intervene and set aside such termination. The form of the order in such a case is not conclusive and the Tribunal can go behind the order to find the reasons which led to the order and then consider for itself whether the termination was a colourable exercise of the power or was a result of victimisation or unfair labour practice. If it came to the conclusion that the termination was a colourable exercise of the power or was a result of victimisation or unfair labour practice. it would have the jurisdiction to intervene and set aside such termination."

Again, in Chartered Bank v. Employees Union his Court emphasised:

" The form of the order of termination is not conclusive of the true nature of the order, for it is possible that the form may be merely a camouflage for an order of misconduct. It is, therefore, always open to the Tribunal to go behind the form and look at the substance and if it comes to the conclusion, for example, that though in form the order amounts to termination simpliciter, it in reality cloaks a dismissal for misconduct, it will be open to it to set it aside as a colourable exercise of the Power."

7. Merely because it is the reason which weighed with the employer in effecting the termination of services would not make the order of such termination as one founded on misconduct, for, such a proposition would run counter to the plain meaning of clause (1) of M.S.O. 25. For an order to be 'founded' on misconduct, it must, in my opinion, be intended to have been passed by way of punishment, that is, it must be intended to chastise or cause pain in body or mind or harm or loss in reputation or money to the concerned worker. If such an intention cannot be spelled out of the prevailing circumstances, the order of discharge or the reasons for which it was ostensibly passed, it cannot be regarded as an order of dismissal. Such would be the case when the employer orders discharge in the interests of the factory or of the general body of workers themselves. That this is what was really meant by the judicial precedents which use the word 'foundation' in connection with the present controversy finds support from a number of decisions of this Court. In The Chartered Bank, Bombay

v. The Chartered Bank, Employees' Union(1) this Court held that if the termination of service is a colourable exercise of the power vested in the management or is a result of victimization or unfair labour practice, the Industrial Tribunal will have jurisdiction to intervene and set aside such termination. Applying this principle to the facts of the case before it, this Court ruled :

7. "...If the Industrial Court is satisfied that the order of discharge is punitive, that it is mala fide, or that it amounts to victimization or unfair labour practice, it is competent to the Industrial Court to set aside the order and in a proper case, direct the reinstatement of the employee. In some cases, the termination of the employee's services may appear to the Industrial Court to be capricious or so unreasonably severe that an inference may legitimately and reasonably be drawn that in terminating the services, the employer was not acting bona fide. The test always has to be whether the act of the employer is bonafide or not. If the act is mala fide, or appears to be a colourable exercise of the powers conferred on the employer either by the terms of the contract or by the standing orders, then notwithstanding the form of the order, industrial adjudication would examine the substance and would direct reinstatement in a fit case..".

"Now one thing must be borne in mind that these are two distinct and independent powers and as far as possible either should be construed so as to emasculate the other or to render it ineffective. One is the power to punish an employee for misconduct while the other is the power to terminate simpliciter the service of an employee without any, other adverse consequence. Now. proviso (i) to clause (1) of Standing order 26 requires that the reason for termination of the employment should be given in writing to the employee when exercising the power of termination of service of the employee under Standing order 26. Therefore, when the service of an employee is terminated simpliciter under Standing order 26, the reason for such termination has to be given to the employee and this provision has been made in the Standing order with a view to ensuring that the management does not act in an arbitrary manner. The management is

required to articulate the reason which operated on its mind in terminating the service of the employee. But merely because the reason for terminating the service of the employee is required to be given and the reason must obviously not be arbitrary, capricious or irrelevant-it would not necessarily in every case make the order or termination punitive in character so as require compliance with the requirement of clause (2) of Standing order 21 read with Standing order 23.

The recent case of Hindustan Tin Works v. Its Employees (1) sets out the rule on reinstatement and back wages when the order of this Court, et al, deal with this subject :

"It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workmen has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his

and it is wholly undeserved. Ordinarily therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect.... In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances."

This case was followed in The Tata Oil Mills Co., Ltd., v. Workmen(2) where Gajendragadkar, C.J., who delivered the judgment of the Court, stated the law thus :

"The true legal position about the Industrial Courts' jurisdiction and authority in dealing with cases of this kind is no longer in doubt. It is true that in several cases, contract of employment or provisions in Standing Orders authorise an industrial employer to terminate the service of his employees after giving notice for one month on paying salary for one month in lieu of notice, and normally, an employer may, in a proper case, be entitled to exercise the said power. But where an order of discharge passed by an employer gives rise to an industrial dispute, the form of the order by which the employees' services are terminated, would not be decisive; industrial adjudication would be entitled to examine the substance of the matter and decide whether the termination is in fact discharge simpliciter or it amounts to dismissal which has put on the cloak of a discharge

simpliciter. If the Industrial Court is satisfied that the order of discharge is punitive, that it is mala fide, or that it amounts to victimization or unfair labour practice, it is competent to the Industrial Court to set aside the order and in a proper case, direct the reinstatement of the employee. In some cases, the termination of the employee's services may appear to the Industrial Court to be capricious or so unreasonably severe that an inference may legitimately and reasonably be drawn that in terminating the services, the employer was not acting bona fide. The test always has to be whether the act of the employer is bonafide or not. If the act is mala fide, or appears to be a colourable exercise of the powers conferred on the employer either by the terms of the contract or by the standing orders, then notwithstanding the form of the order, industrial adjudication would examine the substance and would direct reinstatement in a fit case."

122. The examination of the actual disciplinary proceedings initiated in the spring of 2016, projects a failure to respect basic procedural fairness. The exceptional speed with which the administrative machinery moved raises serious questions under Article 14 of the Constitution, which forbids arbitrary State Action. The primary charge-sheet was issued on the 28th of March, 2016; a supplementary charge-sheet followed on the 30th of March; an Inquiring Authority was appointed simultaneously; an Enquiry Report was finalized by the 13th of April; and the final order of removal was passed on the 28th of April, 2016. This extreme haste demonstrates a clear disregard for the principles of natural justice (*audi alteram partem*). The record shows that despite the petitioner's explicit written denials and her reasonable requests for the production of original documents and the opportunity to cross-examine the authors of those documents, the inquiry proceeded without providing these basic protections. A disciplinary inquiry that denies an employee the right to test evidence through cross-

examination, especially when their livelihood is at stake, is procedurally invalid and violates the guarantee of life and personal liberty enshrined in Article 21 of the Constitution. The summary rejection of her requests for modest extensions of time to respond to the second show-cause notice further confirms that the administration's primary goal was swift termination rather than a fair assessment of the facts.

123. A closer inspection of the charge-sheets reveals an even more fundamental jurisdictional flaw: the entire disciplinary apparatus was weaponized in the absolute absence of any legally cognizable "misconduct." Under established service jurisprudence, disciplinary proceedings under the West Bengal Services (Classification, Control and Appeal) Rules, 1971, can only be triggered by an act or omission that constitutes a breach of discipline, a violation of a specific code of conduct, or a failure of integrity during the performance of official duties. The charges leveled against the petitioners in 2016 do not contain a single allegation of contemporary professional delinquency, insubordination, financial malfeasance, or moral turpitude during their actual tenure as Data Processors. Instead, the charge-sheets focus exclusively on the alleged historical insufficiency of their qualifications and experience at the time of their recruitment in 2005. To use disciplinary rules to penalize an employee for an administrative or procedural issue that occurred during their recruitment over a decade prior is a profound misapplication of law. An administrative body cannot utilize its penal disciplinary powers under the 1971 Rules to correct what it now perceives as a historic selection error, especially when that selection was conducted by its own duly

constituted panel. If the petitioners lacked the required credentials, that issue should have been vetted and addressed during the initial selection process or before their formal confirmation in 2010. By maintaining her service for eleven years and issuing a formal statutory confirmation, the authority recognized her qualification status. Initiating an aggressive disciplinary procedure under the guise of addressing "misconduct" when no contemporary job-related misconduct exists is an abusive exercise of administrative power. Misconduct relates to an employee's behavior during service; it cannot be retroactively manufactured from the recruitment process itself after the state has formally accepted and confirmed the appointment.

124. An error in judgment or a perceived deficiency in initial recruitment criteria does not fall within the legal definition of misconduct. By treating a procedural recruitment debate as an active disciplinary offence, the Disciplinary Authority acted without jurisdiction, transforming what should have been a protective inquiry into an arbitrary assault on an individual's livelihood. The entire proceeding was a pretextual exercise designed to bypass the constitutional safeguards that protect a confirmed civil servant from summary dismissal.

125. It is also important to note the state's broader policy shift regarding security of tenure, as expressed in its own regulatory orders. Under Government Order No.9008-F(P) dated the 16th of September, 2011, the State Government established that even purely contractual or casual workers who have completed ten years of continuous service are entitled to security of tenure and regular financial remuneration until they reach

the age of 60. Given this clear policy preference for stability, it is highly inconsistent for the respondent authorities to argue that the petitioners – who occupied a much higher legal status as formally confirmed employees under the 1969 Rules – could be summarily cast aside. The sudden use of an aggressive disciplinary procedure to target a validly selected and confirmed group of employees, while leaving their initial selection unchallenged for over a decade, constitutes an arbitrary and disproportionate abuse of executive power.

126. Consequently, the encounters of administrative overreach manifested in the impugned orders of removal dated the 28th of April, 2016, along with the underlying enquiry reports and the biased charge-sheets, cannot be sustained under constitutional law. To validate such actions would allow administrative bodies to defeat the legitimate expectations of public servants and undermine the security of tenure that is essential for an independent civil service. For these reasons, the conjoined writ petitions are allowed. The final orders of removal, the second show-cause notices, the enquiry reports, and the primary and supplementary charge-sheets are hereby quashed and set aside. The respondent authorities are directed to immediately reinstate the petitioners, Smt. Piyali Chowdhury and Smt. Moujhuri De, to their respective permanent posts of Data Processor within the West Bengal State Election Commission, with full continuity of service, regular seniority, and all consequential financial benefits and back wages, to be calculated and paid within a period of eight weeks from this date.

127.

128. The articles of charge framed against the petitioners adumbrate seeking of regularization of service on expiry of initial six months of contractual engagement and subsequent prayers on similar lines with the knowledge that the Election Commission was devoid of exercisable statutory rules of discharge the same and accord confirmation. An innocuous prayer of seeking regularization cannot be stretched to any periphery of legal precincts to constitute the ambit of 'misconduct' in view of the aforesaid decisions cited.

129. It is figmentary and illogical, in absence of indiscipline, guilty motive, wrongful gain, insubordination, deliberate violations of service regulations; an employee be it a probationer, temporary or contractual employee or a permanent employee be thrust with the nomenclature of 'misconduct' to terminate or remove from the services. The extension of services and subsequent confirmation therein could have been denied at the first instance rather than stigmatizing and causing financial hardship after rendering more than a decade of continuous, flawless and unquestionable service. The Governor's sanction and subsequent notifications issued from the esteemed Office could not have been coerced by the petitioners in their favour by themselves being imaginary, irrational and frivolous proposition nor such orders and sanctions accorded by the Governor could have been issued at the individual instance of the same being at the helm of administrative power without the bureaucratic discharge of procedural functionalities.

130. In the case of **Om Prakash Goel v. Himachal Pradesh Tourism Development Corporation Ltd., Shimla And Another**,²³ the Hon'ble Supreme Court made the following observation:

"3. In *Anoop Jaiswal v. Government of India* (1984) 2 SCC 369, (1984) 2 SCR 453 it is held as under:

"Where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employees."

In *Nepal Singh v. State of U.P* (1985) 1 SCC 56, (1985) 2 SCR 1 it is held as under:

"Where allegations of misconduct are levelled against a government servant, and it is a case where the provisions of Article 311(2) of the Constitution should be applied, it is not open to the competent authority to take the view that holding the enquiry contemplated by that clause would be a bother or a nuisance and that therefore it is entitled to avoid the mandate of that provision and resort to the guise of an ex facie innocuous termination order. The court will view with great disfavour any attempt to circumvent the constitutional provision of Article 311(2) in a case where that provision comes into play."

In *Jarnail Singh v. State of Punjab* (1986) 3 SCC 277, (1986) 1 ATC 208, (1986) 2 SCR 1022 it is held thus:

"When an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous

²³1991 INSC 132

terms, it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the court, in such a case, will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency, or not.”

4. *From the above decisions it can be seen that it is well settled that in a case of an order of termination even that of a temporary employee the court has to see whether the order was made on the ground of misconduct if such a complaint was made and in that process the court would examine the real circumstances as well as the basis and foundation of the order complained of and if the court is satisfied that the termination of services is not so innocuous as claimed to be and if the circumstances further disclose that it is only a camouflage with a view to avoid an enquiry as warranted by Article 311(2) of the Constitution, then such a termination is liable to be quashed. In the abovementioned decisions, the impugned termination order was accordingly quashed.”*

131. The Hon’ble Supreme Court, in the case of **Anoop Jaiswal vs. Government of India and others**²⁴, has made the following observations:

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“12. *It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.”*

132. The Hon’ble Supreme Court, in the case of **State Of Punjab And Others vs. Balbir Singh**²⁵, has made the following observations: -

²⁴(1984) 2 SCC 369

²⁵(2004) 11 SCC 743

“6. *The test to determine whether the misconduct is “motive” or the “foundation” of an order of discharge was laid down after exhaustively dealing with the case-law on the topic in the case of Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd. [(1999) 2 SCC 21 : 1999 SCC (L&S) 439] as follows: (SCC pp. 35-36, paras 33-34)*

“33. It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer, as stated by Shah, J. (as he then was) in Ram Narayan Das case [State of Orissa v. Ram Narayan Das, (1961) 1 SCR 606 : AIR 1961 SC 177 : (1961) 1 LLJ 552] . It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary enquiry is held because the purpose of a preliminary enquiry is to find out if there is prima facie evidence or material to initiate a regular departmental enquiry. It has been so decided in Champaklal case [ChampaklalChimanlal Shah v. Union of India, AIR 1964 SC 1854 : (1964) 1 LLJ 752] . The purpose of the preliminary enquiry is not to find out misconduct on the part of the officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental enquiry is started, a charge-memo issued, reply obtained, and an enquiry officer is appointed — if at that point of time, the enquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That is what is held in Sukh Raj Bahadur case [State of Punjab v. Sukh Raj Bahadur, (1968) 3 SCR 234 : AIR 1968 SC 1089 : (1970) 1 LLJ 373] and in Benjamin case [A.G. Benjamin v. Union of India, (1967) 1 LLJ 718 (SC)] . In the latter case, the departmental enquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases, the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in Gujarat Steel Tubes case [Gujarat Steel Tubes Ltd. v. Mazdoor Sabha, (1980) 2 SCC 593 : 1980 SCC (L&S) 197] the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple

order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive.

34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee — even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases.”

(emphasis supplied)

7. *Thus the principle that in order to determine whether the misconduct is motive or foundation of order of termination, the test to be applied is to ask the question as to what was the “object of the enquiry”. If an enquiry or an assessment is done with the object of finding out any misconduct on the part of the employee and for that reason his services are terminated, then it would be punitive in nature. On the other hand, if such an enquiry or an assessment is aimed at determining the suitability of an employee for a particular job, such termination would be termination simpliciter and not punitive in nature. This principle was laid down by Shah, J. (as he then was) as early as 1961 in the case of State of Orissa v. Ram Narayan Das [State of Orissa v. Ram Narayan Das, (1961) 1 SCR 606 : AIR 1961 SC 177 : (1961) 1 LLJ 552] . It was held that one should look into “object or purpose of the enquiry” and not merely hold the termination to be punitive merely because of an antecedent enquiry. Whether it (order of termination) amounts to an order of dismissal depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry. On the facts of that case, the termination of a probationer was upheld inasmuch as the purpose of the enquiry was*

held to be to find out if the employee could be confirmed. The purpose of the enquiry was not to find out if he was guilty of any misconduct, negligence, inefficiency or other disqualification.

8. *In the case of Mathew P. Thomas v. Kerala State Civil Supply Corpn. Ltd. [(2003) 3 SCC 263 : 2003 SCC (L&S) 262] it was observed that the façade of the termination order may be simpliciter, but the real face behind it is to get rid of the services of a probationer on the basis of misconduct. In such cases it becomes necessary to travel beyond the order of termination simpliciter to find out what in reality is the background and what weighed with the employer to terminate the services of a probationer. In that process, it also becomes necessary to find out whether efforts were made to find out the suitability of the person to continue in service or he is in reality removed from the service on the foundation of his misconduct. In this case the respondent Corporation, in terms of clause 2 of the appointment order terminated the services of the appellant, who was a probationer, on charges of grave misconduct and repeated dereliction of duty tantamounting to unsatisfactory performance. It was his duty to inspect all the commodities received by the Corporation at the depots and to verify the quality of goods in conformity with the specifications given by the head office. It was alleged that he had betrayed the confidence reposed in him as a responsible officer of the Corporation by accepting substandard quality goods in collusion with suppliers for undue pecuniary benefits. The termination orders were upheld by this Court.*

9. *In the case of Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences [(2002) 1 SCC 520 : 2002 SCC (L&S) 170] this Court laid down the test to determine the nature of the termination order i.e. whether the termination is punitive or simpliciter. The Court observed that one of the judicially involved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely, if any one of the three factors is missing, the termination has to be upheld.”*

133. The Hon'ble Supreme Court, in the case of **S.R. Tewari vs. District Board, Agra Now The Antarim Zila Parishad, Agra Through Its Secretary And Another**²⁶, has made the following observations: -

“3.It is settled law that the form of the order under which the employment of a servant is determined is not conclusive of the true nature of the order. The form may be merely to camouflage an order of dismissal for misconduct, and it is always open to the Court of before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order of though in the form merely of determination of employment is in reality a cloak for an order of dismissal as a matter of punishment, the Court would not be debarred merely because of the form of the order in giving effect to the rights conferred by statutory rules upon the employee.”

134. The disciplinary proceedings instituted against the petitioners had malicious and perfunctory, pejorative, detrimental and injurious to the petitioners being exploitative both financially, physically apart from being mentally harassing.

135. To indict two women employees without any plausible determinable misconduct amplifies the autocratic administrative functionary dispirited, inefficient and malevolent. The plea to “undo the wrong” had been a futile exercise in the garb of misconduct to remove the petitioners for reasons known best to the respondents.

136. In view of the above discussions, the instant writ petitions being WPA 22568 of 2016 and WPA 23774 of 2016 are allowed.

²⁶1963 SCC OnLine SC 83

137. Accordingly, the order of punishment of removal from service vide Memo No.407-SEC/1L-45/05 (Pt.-1) dated 28.04.2016 is set aside. The entire disciplinary proceeding is quashed as against Smt. Moujhuri De.
138. The order of punishment of removal from service vide Memo No.408-SEC-1L-46/05 (Pt.-1) dated 28.04.2016 is set aside. The entire disciplinary proceeding is quashed as against Smt. Piyali Chowdhury.
139. Both the writ petitioners viz. Smt. Moujhuri De and Smt. Piyali Chowdhury be reinstated in their services, with formal regularization of their services along with back wages from the date of their respective claim along with other service benefits to be disbursed within 4 weeks from the date of communication of this order upon the respondent authorities.
140. Accordingly, the instant writ petitions are disposed of.
141. There is no order as to costs.
142. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)