CASE NO.:
Appeal (civil) 1120 of 2007

PETITIONER:
GURBACHAN LAL

RESPONDENT:
REGIONAL ENGINEERING COLLEGE, KURUKSHETRA & ORS

DATE OF JUDGMENT: 01/03/2007

BENCH:
DR. AR. LAKSHMANAN & TARUN CHATTERJEE

JUDGMENT:
JUDGMENT
(Arising out of SLP (CIVIL) NO. 14579-80/2005)

TARUN CHATTERJEE, J.

Leave granted.

The present dispute arises out of termination of services of Gurbachan Lal (the appellant herein) by the Regional Engineering College, Kurukshetra (the respondent herein).

In 1986, the Department of Science and Technology, Government of India established National Science and Technology Entrepreneurship Development Board (hereinafter called "NSTEDB") to encourage and promote entrepreneurship amongst the science and technology persons. NSTEDB, with the same objective, set up Establishment Development Cells (in short EDC) in various educational institutions. The Scheme as framed by NSTEDB stated that Department of Science and Technology (in short DST) would provide financial assistance for a period of three years or till the end of the 7th Five Year Plan, whichever would be earlier after which the educational institution would be under the responsibility to continue its functioning and that the EDC should merge into the mainstream of the Institution for continuous running along with its faculty and staff. The Institution established the EDC in it and invited applications for the post of Chief Project Coordinator for which the minimum qualifications included that the candidate must be at least a graduate in engineering/ technology or a post graduate in any branch of Science, Mathematics, Economics or Business Administration with ten years' of experience in industries or entrepreneurship development of which minimum five years in a position of responsibility.

In pursuance of this scheme, on 12th April 1989, the Institution advertised for the said post in the EDC for which the appellant applied. However, he was appointed in the post of Senior Project Leader by an appointment letter dated 9th August 1989 which categorically stated as follows:

"1.Appointment: Temporary[emphasis added]
2. Scale of Pay: Rs. 1200-50-1300-60-1900 (unrevised)
3. Initial Pay: You are allowed a basic pay of Rs.1600 in the unrevised scale of pay of Rs.1200-1900. Total emoluments shall be Rs. 4630 excluding HRA. This is

equivalent to the stage of Rs. 3700 in the revised scale Rs. 3700-125-4950-150-5700. The total emoluments are Rs. 4715 excluding HRA.
The approval of the revised pay scale is awaited from the State Government. This is likely to be received shortly. You will be placed at the basic pay of Rs. 3700 in the revised pay scale of Rs. 3700-5700 from the date of your joining. The arrears will be put to you on implementation of the revised pay scale.

4. Allowances: You will receive any allowances admissible under the Rules of the College from time to time.

5. Date of Next Increment: One year after from the date of your joining the post.

6\005 x x x x x

7\005 x x x x x

8\005 x x x x x

9. Leave: You will be governed by the leave rules of the college from time to time.

10. Conduct & Discipline: You will be governed by the conduct and disciplinary rules of the college from time to time.

11. Termination of service: Your service is liable to be terminated by either side without assigning any reason of one month's notice in writing or on payment of on month's pay and allowance in lieu thereof. However, you will not be allowed to leave the service during semester studies."
[emphasis added]

We have examined the terms and conditions of the appointment letter of the appellant, as quoted herein above. Condition no.1 clearly indicates that the appointment of the appellant was purely temporary which can be terminated without assigning any reason by giving one month's notice in writing or on payment of one month's salary and allowances in lieu thereof. It was stipulated in the letter of appointment that the appellant would be entitled to revised pay scale which was awaited from the State Government for the employees of the Institution. However, the appointment letter indicated that he would also receive allowances admissible under the rules of the Institution from time to time. Clause 5 of the appointment letter also indicated that the date of next increment would be one year after the date of joining the post. From a close scrutiny of

the letter of appointment, it is evident that the appointment of the appellant in the above post was temporary which could be terminated by either of the parties without assigning any reason by giving one month's notice or payment of one month's pay and allowances in lieu thereof.

However, condition no. 10 of the appointment letter says that allowances payable to the employee of the Institution under its rules, as applicable from time to time shall also be payable to the appellant.

The Board of Governors of the Institution had approved the creation of the EDC in it on the basis of grant-in-aid released by the Government of India, Ministry of Human Resource Development. It was noted in the Scheme that the fund for EDC was sanctioned up to the end of the 7th Five Year Plan but was likely to continue in the 8th Plan also as a central scheme. It was further resolved that the staff salary and miscellaneous operational expenses shall be met from the grants in aid received under the Scheme of the EDC but ultimately the Institution will have to generate its own resources to continue with it.

Before we proceed further, we may state that the appellant in the writ petition alleged mala fide on the part of the Principal of the Institution. In order to show that the Principal of the Institution had acted in a mala fide manner against him, the appellant alleged the following facts:-

The appellant applied for Ph.D. registration under the Principal of the Institution (herein Respondent No. 5) as the main guide but withdrew because work was not satisfactory and applied for Ph.D. under the guidance of the next senior most professor. The appellant claimed that this upset the Principal of the Institution and he became prejudiced against him which was evident in many instances such as the one on 16th August 1999 when the Principal of the Institution allotted official accommodation in the Institution campus to a junior staff, ignoring the claim of the appellant who was a member of the senior staff. However, we need not proceed further on the question of mala fides on the part of the Principal of the Institution as we find that such ground was not agitated by the appellant either before the Learned Single Judge or the Division Bench of the High Court.

The appellant also stated that on 5th November 1999, a notification was issued by Haryana Government revising the pay scales of teachers working in the Institution. According to the appellant, he was eligible for the revised pay scale but was denied the benefits of it. He made representations in this regard but was not heard.

A writ petition being W.P. No. No. 15371 of 2000 was filed by the appellant on 9th November 2000 before the High Court of the State of Punjab and Haryana at Chandigarh praying for issuing an appropriate writ directing the respondents to pay the revised pay scale with pay fixation and to confirm the appellant as Assistant professor and grant any other relief as may be appropriate.

The Institution stopped the salary of the appellant from May 2001 to which he made representations and prayed for release of his pay. The Principal of the Institution released the salary to the appellant but asked him to arrange for it in future from the concerned authority. It was asserted that owing to the

mental harassment, the appellant suffered heart attack and had to undergo an open heart bye-pass surgery. He claimed reimbursement of Rs. 74,492 towards medical claim but it was stopped by the Principal of the Institution. Representations for release of his salary and reimbursement of medical bill were made by the appellant.

On 31st November 2001, the appellant received 6 months' salary from June, 2001 to November 2001. However, medical reimbursement was not released. The salary of the appellant was stopped from January 2002 for which he filed a representation for its release. The Institution instead of releasing the salary, asked the appellant to approach the funding agency for release of funds.

On 28th February 2002, the appellant received notice for termination of service and no salary was paid to him for the notice period. Another writ petition was filed by the appellant before the High Court being WP no. 4579 of 2002 challenging his termination order.

On 2nd April, 2004, both the Writ Petitions filed by the appellant were allowed by the Learned Single Judge of the High Court by a common judgment. The Learned Single Judge was of the opinion that from the perusal of the documents brought on record, it was evident that there was an obligation on the part of the Institution to absorb the faculty members and other staff of the EDC and that it could not shun its responsibilities after enjoying financial benefits for twelve years and thus was estopped from going back from its obligations. The Learned Single Judge further held that it was the obligation of the Institution to merge the members of EDC in its mainstream. The Learned Single Judge also held that the appellant must be paid his salary in accordance with the revised pay scale.

Aggrieved by the orders in the aforesaid writ petitions, the Institution filed a Letter Patent Appeal being LPA No.138/2004. In this LPA, it was pointed out by the Principal of the Institution that it was the decision of the Board of Governors not to merge EDC with the regular establishment of the Institution. Since the appellant was never appointed in the regular establishment, there was no question of allotment of a quarter. It was also pointed out that since the salaries of the staff of the EDC were being paid out of the financial assistance received from the DST, which was eventually withdrawn, the appellant could not be an employee of the Institution.

It was observed by the High Court that in the present case, the post advertised was that of a Chief Project Coordinator whereas the appellant was appointed as Senior Project Leader on temporary basis in the EDC. The High Court in the LPA had further observed that the appointment of the appellant could not confer any right on him as Assistant Professor, which is a regular post and could be filled only after giving an opportunity to all eligible candidates to apply for the post and after following the relevant rules of the Institution.

In the LPA it was also observed that the appellant could not seek merger of the EDC with the Institution but considering the fact that he had worked for more than ten years with the Institution, it directed that the appellant be granted relaxation in age for the post of Assistant Professor as and when the post is advertised so that he is able to compete with other eligible candidates to seek appointment on regular basis.

Aggrieved by the said order, the appellant filed the special leave petitions in respect of which leave has been granted.

We have heard the learned senior counsel appearing for the parties. Mr. P.P. Rao, learned senior counsel appearing on behalf of the appellant made mainly two-fold submissions. First, Mr. Rao contended that in view of the guidelines framed by the Government of India, as noted herein earlier, the EDC was to be merged with the main stream of the Institution after the financial assistance was withdrawn by the Central Government. Accordingly, Mr. Rao submitted that it could not be said that the scheme came to an end as soon as the financial assistance by the Central Government was withdrawn. Mr. Rao further submitted that it would be evident from the guidelines that it was the duty of the Institution to continue with the scheme after the financial assistance was withdrawn and accordingly the appellant, with the merger of the EDC with the main stream of the Institution, became an employee of the Institution itself. Mr. Rao further submitted that in view of the fact that an undertaking was also filed at the time the scheme was approved by the Central Government, that after the financial assistance was withdrawn by it, the Institution ought to have taken over the liability and continued to run the scheme, it was not open to the Institution to say that it was not in a position to continue with the scheme for financial stringency. Accordingly, Mr. Rao contended that the services of the appellant could not be terminated without following the procedure for termination or dismissal from service like that of the regular employees of the Institution. In support of this contention, Mr. Rao relied on a decision of this Court in the case of State of Maharashtra and Ors. v. Association of Maharashtra Education Services Class II Officers and Ors. [1974 [4] SCC 706]. Mr. Rao had drawn our attention to paragraph 7 of the said decision and contended that it was not open to the Board of Governors of the Institution to depart from the rudiments of the scheme and to device a new mechanism entailing the imposition of fresh conditions as a pre-requisite to eligibility for the higher pay scale.

Secondly, it was contended by Mr. Rao that assuming that the EDC could not be merged with the Institution even then the appellant could not be said to be a temporary employee of the Institution as he acted as Assistant Professor for more than ten years in the same and, therefore, he became a permanent employee of the Institution. Accordingly, it was argued that the procedure for termination of services relating to the employees of the Institution should be followed and as the Board of Governors of the Institution not having followed such procedure of termination in the case of the appellant, the order of termination cannot be sustained.

Mr. Mahabir Singh, learned senior counsel for the respondents refuted the aforesaid two submissions put forth by Mr. Rao. According to Mr. Singh, the EDC came to an end on the stoppage of grant by the Central Government to the Institution. Therefore, the order of termination of service of the appellant who was appointed purely on temporary basis under a Scheme which came to an end on stoppage of grant by the Central Government it could not be said to be bad, illegal and invalid in law and that being the position, it was not open for the appellant to contend that he became a permanent employee of the Institution as he served it for more than ten years.

Mr. Singh, in support of his contention, relying on a Constitution Bench decision of this Court in State of

Karnataka v. Uma Devi [2006 [4] SCC 1] contended that the appointment of the appellant being temporary in nature, as would be evident from Clauses 1 and 11 of the appointment letter, as noted herein earlier would clearly show that the service of the appellant could be terminated by either of the parties by giving one month's notice with pay and allowances and in view of the fact that the appellant was appointed on the basis of a scheme namely the EDC, which had come to an end, the Division Bench of the High Court was fully justified in observing that no occasion could arise for the Learned Single Judge to hold that the appellant had automatically become permanent in the Institution. He further contended that on a plain reading of the guidelines relating to the EDC it could not be said that the Board of Governors of the Institution had no right to direct that in view of the financial difficulties it would not continue with the EDC.

We have considered the arguments advanced by the learned counsel for the parties in depth and in detail. Let us first deal with the submission of Mr. Rao that the Scheme could not come to an end in view of the conditions to the proposal for establishment of the EDC and on stoppage of funds from the Central Government to run the EDC. We are unable to accept this submission of Mr. Rao.

It is true that Clause 4 of the proposal of the establishment of EDC says that it was the responsibility of the Institution to absorb the EDC established along with its faculty and staff, in usual academic stream of the Institution, after expiry of the period of assistance from DST was provided. However, if we read this clause more minutely along with other clauses of the proposal for establishment of EDC, it would be difficult for us to hold that clause 4 of the said proposal can at all be said to be mandatory in nature.

Keeping in mind that the guidelines relating to the proposal of establishment of the EDC was not mandatory in nature, we need to proceed to consider the factual aspects relating to this question. It is true that initially a resolution was taken to continue with the Scheme, but on reconsideration of the same, finally a resolution was taken on 19th November 2001 to the effect that merger with the Institution was not possible in view of financial stringency. However, the Board of Governors of the Institution in that resolution advised that efforts may be made to introduce a Scheme or project such as Industrial Institute Partnership Cell sponsored for the Institution by the All India Council of Technical Education.

However, as argued by Mr. Rao, it was the responsibility of the Institution to take over the EDC and run and merge the same with it. It is an admitted position that the EDC was constituted by the Central Government for which necessary funds were allocated year after year till 31st March 2002. It is also an admitted position that after 31st March 2002 it was made known to the Institution that financial assistance would not be given and it would be for the Institution to merge the EDC with it. The initial recommendation of the advisory committee of the Institution which was formed to find the feasibility of the scheme to continue was considered by the Board of Governors of the Institution and thereafter the Board of Governors decided not to merge the EDC with it. It is in pursuance of this resolution of the Board of Governors that the scheme of EDC could not continue and had come to an end. It can also be said in this connection that the Board of Governors of the Institution were within their jurisdiction to take a

decision whether the EDC, i.e. the scheme was to be merged with the Institution or not. Such a decision had to be taken by the Board of Governors on the basis of the requirement of the Institution by taking into consideration its financial conditions and other relevant factors. It cannot also be denied that the appellant could not claim any vested or enforceable legal right to claim absorption in the Institution as even a regular post in the Institution can be abolished on account of non-availability of work or funds. As noted herein earlier, it was upon the Board of Governors to decide whether to merge the EDC with the Institution or not. It was not for the appellant to approach the High Court under Article 226 of the Constitution claiming any declaration that he was entitled to be absorbed in the Institution in the regular scale of pay even though the Institution had not appointed the appellant on any of the regular posts but such appointment was solely on basis of the scheme. For the reasons aforesaid the order of termination issued to the appellant cannot be said to be bad in law and accordingly we are in agreement with the Division Bench of the High Court which held that the scheme had come to an end with the stoppage of the grant by the Central Government. That being the position the appellant was not entitled to claim absorption in the end with the main stream, i.e. with the Institution nor he would be entitled to say that he became a permanent employee of it.

Reliance can be placed in the case of Managing Director of UP Land Development Corporation v. Amar Singh [2003 (5) SCC 388] in which this court clearly observed as follows:

"In clear and certain terms it is stated that when the project comes to a close, the employees who are working in a project will not get any vested right. In other words, once a project comes to an end, services of the employees also come to an end. The other decisions cited by the Learned Counsel more or less are to the same effect."

In State of Himachal Pradesh v. Nodha Ram, AIR 1997 SC 1445, this court while dealing with the case of a temporary employee appointed on the basis of a project which had been closed down observed as under :

"It is seen that when the project is completed and closed due to non-availability of funds, the employees have to go along with its closure. The High Court was not right in giving the direction to regularize them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularize their services in the absence of any existing vacancies nor can directions be given to the State to create posts in a non-existent establishment. The Court would adopt pragmatic approach in giving directions. The directions would amount to creating of posts and continuing them despite non-availability of the work. We are of the considered view that the directions issued by the High Court are absolutely illegal warranting our interference. The order of the High Court is, therefore, set aside. " (Emphasis supplied)

Similarly in the case of Mahendra L. Jain v. Indore Development Authority & Others, [2005 (1) 639] it has also been held that the employees employed for the purpose of a

Scheme which has been subsequently closed down do not acquire any vested right or enforceable legal right to continue with the scheme nor could such employees approach the court for a declaration to continue with the scheme after the project was over.

That apart, the appellant was not appointed in the post which was advertised, but was appointed as a Senior Project Leader, therefore, the Division Bench was justified in holding that the appellant was not appointed in a sanctioned post. In view of the discussions made hereinabove, the question of regularization of the appellant in the main stream of the Institution could not arise at all nor it could be said that the appellant became a permanent employee of the Institution as the scheme came to an end. Therefore, it may safely be concluded that since the scheme had come to an end as soon as the financial assistance to the Institution was withdrawn and as the Board of Governors of the Institution had decided not to continue with the scheme and not to merge the same with the Institution, it cannot be said that merely because there was a clause in the advertisement that the post of the appellant was likely to continue, the appellant had acquired any right whatsoever to become a permanent employee of the Institution, nor had he acquired any vested right to continue in his position. In any view of the matter, as he was appointed purely on temporary basis and the scheme had already come to an end, the appellant was not entitled to any relief to the extent that he had become a permanent employee of the Institution itself.

One more fact needs our attention which is borne out from the record. It appears that during the pendency of the writ petition before the High Court, a new scheme, namely, Industry Institute Partnership Cell came into existence and under the said Scheme the appellant was offered a fresh assignment which he had already accepted and he is presently associated with the same. Such being the state of affairs now, it would not be open to the appellant to allege that the scheme under which he was appointed initially continued to run even after his accepting the offer under a new Scheme with which he is now associated.

Before parting with this part of the submissions of Mr. Rao, we may also take note of the fact that in the appointment letter of the appellant, it would not be evident that the services of the appellant shall be absorbed in the Institution. At the risk of repetition, we also observed, as noted herein earlier, that the Board of Governors had inherent right to consider the justifiability of continuation of the Scheme or any post or work keeping in mind the requirement of the Institution. In this connection we add that the Board of Governors of the Institution had considered all the relevant factors and thereafter had taken a resolution not to merge the Scheme with the Institution or continue with it. It is always open to the Board of Governors to create a post and also to abolish any post which would not be required to be continued in their opinion.

For the reasons aforesaid, we do not agree with Mr. Rao’s arguments on the first submission.

Coming back to the discussions of this Court in the case of State of Maharashtra v. Association of Maharashtra Education Services Class II Officers (supra) and considering minutely para 7 of the same on which strong reliance was

placed by Mr. Rao, we are of the view that this decision would not be helpful to the appellant. In that decision, this Court was dealing with the true nature of the scheme envisaged in the Report of the University Grants Commission for the year 1966-67 relating to the pay scales of lecturers and professors in the affiliated colleges accepted by the Government of Maharashtra. In that context, this Court in para 7 held that even though the lecturers who held second-class masters degree and approved by the university as postgraduate teachers since 1st April 1966 were entitled to the higher pay scale under the report of the University Grant Commission accepted by the Government of India. In that context, this court held that it was not right for the State Government to depart from the rudiments of that scheme and to device a new mechanism entailing the imposition of fresh conditions as a pre-requisite to eligibility for the higher pay scale.

In the present case, the situation is quite different. As noted herein earlier, the EDC was constituted on the guidelines in respect of which reference has been made earlier. In view of our interpretation of Clause 4 and other clauses of the proposal to establish the EDC, we have already come to a conclusion that the guidelines for vesting of the EDC with the Institution was not mandatory in nature and the scheme came to an end. The question of absorption of the appellant in the end after the closure of the scheme cannot therefore arise at all.

Coming to the question whether the service conditions could be amended to the disadvantage of the employee, as per the facts presented before us it is clear that there existed a contract of employment between the appellant and the Institution. Moreover, the nature of employment was explicitly laid down in the appointment letter, as noted herein earlier, to which the appellant had communicated his acceptance, as temporary. Therefore, it is valid in law for the Institution to terminate the appellant from service in a manner, which did not favour him.

The constitution bench of this court in Secretary, State of Karnataka v. Uma Devi (supra), specifically held that mainly because a temporary employee had continued beyond the term of employment for which he was employed such employee would not be entitled to any right to be made permanent in service if the original appointment was not made by following due process. It was further held that it was not open to the court to prevent regular recruitment at the instance of such employees.

Accordingly, the decisions of this court directing regularization and permanent continuation of temporary employee recruited under a scheme on issuance of direction by court were overruled.

However, the learned senior counsel appearing for the appellant relied on para 53 of the said decision and contended that the appellant had acted as an assistant professor for more than ten years and therefore would be entitled to be absorbed or regularized in the mainstream of the Institution.

In Para 53 of the said decision, this Court observed as follows:
"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N.

Nagarajan (supra), and referred to in paragraph 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 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 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 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 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 regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."
(Underlining is ours)

Having carefully examined para 53 of the Uma Devi's case and also the other relevant paras of the same relating to the absorption/regularization of temporary employees, we are unable to accept the contention of the learned senior counsel appearing on behalf of the appellant.

In para 52 of the Uma Devi's case, this court has made it clear that a mandamus cannot be issued in favour of the employees directing the Government, either State or Central Government, to make those employees permanent since the employees cannot show that they have an enforceable legal right to be absorbed or the Central Government or the State Government, as the case may be, is duty bound to make them permanent.

This is the general observation of this court subject to para 53 of the same, but we are of the view that para 53 which makes a distinction of employees who have been continuously working for more than ten years in a sanctioned post stand on a different footing.

In our view para 53 will not help the appellant although the appellant in the present case continued to work in the EDC for more than ten years. It is true that in that para, this court observed that although the appointment was irregular and not illegal, the State Government or the Central Government, as the case may be, should take steps to regularize the employees who had continued to work for more than ten years. The observation made by the Constitution Bench in para 53 of the Uma Devi case may not be helpful to the appellant because

1. He was appointed on the basis of a scheme which from the appointment letter clearly proves that his appointment was temporary in nature and would come to an end with the closure of the EDC.

2. Since the appellant was not appointed in a duly sanctioned vacant post, we do not think that the observation made by this Court in para 53 would come to his aid at all.

We may also note that observations made by the Constitution Bench in the case of Uma Devi (supra) to the effect that the sovereign government after considering the economic situation in the country and work to be got done, cannot be precluded from making temporary appointments or engaging temporary workers or daily wagers which clearly indicates that the power of the authority to appoint temporary employees was accepted by this Court but the fact remains that such appointment shall remain temporary in nature which can be terminated at any point of time.

In the present case the appellant continued to work for ten years or more but such continuous temporary employment of the appellant cannot vest any legal right in him to continue when the scheme itself on the basis of which he was appointed and was working itself came to an end. It is also incorrect to say that the court would direct continuity of the scheme for the purpose of keeping the appellant in service and in any view of the matter he could not be treated as a permanent employee of the Institution as he was appointed under a scheme and not in the mainstream of the Institution.

At this juncture we may observe that the Constitution Bench held that the recruitment could only be made through a prescribed procedure. In the case of State of Haryana v. Piyara Singh, [(1992) 5 JT 179], a bench of three Hon'ble Judges pointed out that some exigencies of administration may call for temporary appointment to be made and further held that in such a situation efforts should be made to replace such an ad hoc or temporary employee by a regularly selected employee as early as possible. In that situation it would be open to the said employees to compete with others for regular selection or appointment. The decision of this court in the Piyara Singh case (supra) had given reasons when regularization could be made although it was kept in mind that the normal rule was to recruit persons as a regular employee through a prescribed procedure.

Let us trace back to the year 1987 when this Court in the case of Daily Rated Casual Labour Employed under P&T Department V. Union of India, [AIR 1987 SC 2342], in para 6 observed as follows:

"It may be true that the petitioners have not been regularly recruited but many of them have been working continuously for more than a, year in the Department and some of them have been engaged as casual labourers for nearly ten years. They are rendering the same kind of service, which is being rendered by the regular employees doing the same type of work. Clause (2) of Article 38 of the Constitution of India which contains one of the Directive Principles of State Policy provides that "the State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing indifferent areas or engaged in different vocations." Even though the above Directive Principle may not be enforceable as such by virtue of Article 37 of the

Constitution of India, it may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. It is urged that the State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starving wages. It may be that the casual labourer has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that State. The Government should be a model employer. We are of the view that on the facts and in the circumstances of this case the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employee in the corresponding regular cadres particularly in the lowest rungs of the department where the pay scales are the lowest is not tenable. The further classification of casual labourers into three categories namely (i) those who have not completed 720 days of service; (ii) those who have completed 720 days of service and not completed 1200 days of service and (iii) those who have completed more than 1200 days of service for purpose of payment of different rates of wages is equally untenable. There is clearly no justification for doing so. Such a classification is violative of Articles 14 and 16 of the Constitution. It is also opposed to the spirit of Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966 which exhorts all States parties to ensure fair wages and equal wages for equal work. We feel that there is substance in the contention of the petitioners."
(Underlining is ours)
In para 8 of this decision, the Supreme Court held "The question of security of work is of utmost importance. If a person does not have the feeling that he belongs to an organization engaged in production he would not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximization of production. It is again for this reason that managements and the governmental agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonable long period of time."
(underlining is ours)

From the above observation of this Court in Daily Rated Casual Labour Employed under P&T Department Vs. Union

of India (supra), it was made clear that regularization or absorption can be made of temporary employee because unless a sense of belonging arises, the employee will not give his best and consequently production will suffer which in turn will result in economic loss to the nation. Keeping this in mind, this Court directed the government to prepare a scheme on a rational basis for absorbing those who have worked for a continuous period of one year. This court in this decision further observed that non-regularization of temporary employees for a long time was not a wise policy and direction was given to the Central Government to prepare a scheme for the absorption of the casual labourers as far as possible who had been continuously working for more than a year in the department.

Further, in Jacob M. Puthuparambil V. Kerala Water Authority, [(1991) 1 SCC 28], this court, while interpreting Rule 9 of Kerala State and Subordinate Service Rules, 1958 observed as under:

"India is a developing country. It has a vast surplus labour market. Large-scale unemployment offers a matching opportunity to the employer to exploit the needy. Under such market conditions the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. The unorganised job seeker is left with no option but to accept employment on take-it-or-leave-it terms offered by the employer. Such terms of employment offer no job security and the employee is left to the mercy of the employer. Employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent jobs with a view to circumventing the protection offered to the working classes under the benevolent legislations enacted from time to time. One such device adopted is to get the work done through contract labour."
(Underlining is ours)
This court, while interpreting the provisions namely Rule 9 of Kerala State and Subordinate Service Rules, 1958 and keeping the spirit and philosophy of the Constitution to attain socio-economic justice as quoted above, held that employees who were serving in the establishment for long spells and had the requisite qualifications for the job, should not be thrown out but their services should be regularised as far as possible. It was of the opinion that on interpreting the relevant clause, if it was found that services, which had continued for a long time, had to be regularized if the incumbent possessed the requisite qualifications.

At this juncture we may observe that the aforesaid decisions of this court which were overruled by the Constitution Bench decision in which reasons for giving directions to absorb temporary employees were on solid foundation which, however was not dealt with by the constitution bench at the time of overruling them. The reasons given in the aforesaid decisions which stand on solid footing, need to be considered in the light of the right of asking for absorption as permanent employees under the government is a ground which needs to be reconsidered. Be that as it may, the constitution bench decision having overruled the above decisions, we need not delve any further on this aspect of this matter.

Therefore, since the service of the appellant was

temporary in nature; appointed under a scheme which had come to an end and he had joined the service in complete recognition and acceptance of the conditions and further had already accepted fresh assignment on the basis of a new scheme as noted herein earlier, it cannot be said that termination of his service was invalid in law. Therefore, the stand of the appellant that it is not open to the Board of Governors of the Institution to say that they were unable to continue with the EDC and thereby terminating the services of the appellant, does not hold good.

The appellant, as noted herein earlier, was appointed on the basis of the appointment letter and was paid on the basis of such appointment letter till January, 2002. There is no dispute that the appellant was paid his salary and other emoluments as permissible under the rules of the Institution up to December 2001. Only the salary and other emoluments from the month of January 2002 was not paid. The order of termination was passed on 28th February 2002 in which one-month salary with allowances was to be paid in lieu of the termination order which was also not paid. As per the appointment letter, the appellant was covered under the rules of the Institution and salary was paid in accordance with the said rules applicable to the employees of the Institution. Since the appointment letter clearly indicates that the services of the appellant shall be governed by the service rules of the employees of the Institution, we do not find any reason why the appellant should not be paid salary and other emoluments from January 2002 to March 2002. We accordingly direct the authority of the Institution to pay salary and other emoluments from January 2002 to March 2002 with all allowances permissible under the Rules, if not paid in the meantime.

There is yet another aspect of this matter. A claim was made by the appellant for reimbursement of his medical bills to the extent of Rs. 74,492/-. Whether the appellant was entitled to get medical benefits or not, we have to look into the appointment letter of the appellant. From the appointment letter it is clear that whatever benefits the employees of the Institution are entitled to, the appellant is also entitled to such benefits. We have not been shown by the appellant that either the Learned Single Judge of the High Court or the Division Bench of the High Court had dealt with the claim of reimbursement of the medical bill. In this view of the matter, we are unable to go into the question whether the employees of the Institution are eligible to get medical reimbursement. We are thus not in a position to allow the prayer. However, we leave it open to the appellant to claim reimbursement of medical bill if he is entitled under the rules of the Institution allowing the employees to claim reimbursement.

For the reasons aforesaid, we do not find any merit in this appeal excepting that the authority shall pay to the appellant the salary for the period January 2002 to March 2002 with all emoluments permissible under the service rules of the employees of the Institution within three months of the communication of this judgment, if not paid in the meantime. Accordingly, the judgment of the Division Bench of the High Court is hereby affirmed subject to the modifications made herein earlier. The appeal is accordingly disposed of with no order as to costs.