CASE NO.:
Appeal (civil) 5074 of 2006

PETITIONER:
Chief Commissioner of Income Tax,Bhopal & Ors.

RESPONDENT:
M/s. Leena Jain & Ors.

DATE OF JUDGMENT: 20/11/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 23504 of 2004)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the order passed by a Division Bench of the Madhya Pradesh High Court at Jabalpur in Writ Petition No. 1974 of 1998. Appellants had challenged the composite order dated 13.11.1997 passed in OA No. 691 of 1995 and O.A. No.89 of 1996 passed by the Central Administrative Tribunal, Jabalpur Bench, at Jabalpur (in short the 'CAT'). The respondents moved the CAT under Section 19 of the Administrative Tribunals' Act, 1985 (in short the 'Act') seeking regularization of their services.

Stand of the respondents before the CAT was that they have been performing their duties as Data Entry Operators on contract basis and were being paid at a rate of Rs.10 per hour up to the maximum of Rs.50 per day. Since they have been working since a long period they sought for regularization placing reliance on the factum of long rendition of service.

In response, present appellants contended that the respondents were not departmental employees and their grievances cannot be agitated before the CAT. Placing reliance on some other decisions by the CAT, the stand of the present appellants was turned down and direction was given for considering the cases of appointment on regular basis.

A writ petition was filed before the High Court, which was dismissed by the impugned order.

In support of the appeal learned counsel for the appellants submitted that the decision of the High Court is contrary to law as laid down by the Constitution Bench of this Court in Secretary, State of Karnataka and Others v. Uma Devi and Others [2006 (4) SCC 1]. Learned counsel for the respondents on the other hand submitted that since the CAT had relied on an earlier judgment, High Court rightly did not find any distinguishable feature, and the appeal, therefore, deserves to be dismissed.

The question of regularization on the ground of long rendition of service was the subject matter in Uma Devi's case

(supra). The said issue has been elaborately dealt with in the judgment. It was inter alia held as follows:

"33. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency an ad hoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment.

xxx xxx xxx

45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the Page 1946 constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while

accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College (1962) Supp. 2 SCR 144. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown

that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent."

In view of what has been stated in Uma Devi's case (supra), we deem it proper to remit the matter to the High Court to consider the case afresh in the light of the said decision.

The appeal is allowed to the aforesaid extent with no orders as to costs.