IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.42490 OF 2025

1. University of Mumbai
2. The Registrar, University of Mumbai **...Petitioners**

V/s.

1.Sunil Tanga Pagare
2. Nilesh Sambhaji More,
3. Prashant Murkar
4. Santosh Dagadu Kawde
5. Raksha Ramakant Sawant
6. Sandip Digambar Kamble
7. Bhushan R. Vinchu
8. Sameer Chandrakant Jadhav
9.Ramesh Ramchandra Deshmukh
10. Priyanka Bala Morajkar
11. Hemlata Dattaram Salvi
12. Dnyaneshwar Shivram Nadekar
13. Bhagirathi Madhukar Kamble
14. Sneha Yatin Shinde
15. Gautam Shivram Gaikwad
16. Sanjay Life Returns
17. Shaikh Toufiq Badshah
18. Sheela Shantaram Mohite
19. Nagesh Mahadev Jadhav
20. Sachin Devrao Somware
21. Yogita Barku Kemble
22. Yogesh Prakash Patil
23. Hemant Manohar Salvi
24. Omkar Bharat Shedge
25. Ragji Prathamesh Damodar
26. Nilesh Prabhudas Ghagare
27. Vivek Ravji Mhatre
28. Sushil Suresh Kaluskar
29. Kiran Sambhaji Patil

30. Vinod Hirabhai Vora
31. Vishnu Kashinath Sonawane
32. Chetan Anand Gaware
33. Abhijit Sambhaji Dhokare
34. Ankesh Arjun Rambade
35. Sujata Shridhar Ramje
36. Pragati Jaywant Paghare
37. Kanchan Gajanan Gadge
38. Gopal Vithoba Sutar
39. Pooja Kishor Pawar
40. Chhaya Vijay Bhogle (Deceased)
41. Vishakha Milind Mhaske
42. Rambhuwal Ramkumar Chauhan
43. Gayatri Anil Mayekar
44. Tejas Mahendra Owhal
45. Deepak Hirabhai Vora
46. Vishal Dashrath Lembhe
47. Shilpa Ajit Pethe
48. Prakash Dashrath Kurjekar
49. Bhavik Dinesh Solanki
50. Pankaj Lokesh Kumar
51. Janardan R. Kandekar
52. Sushil Gajanan Indulkar
53. Ahmed Shamsuddin Sayed
54. Sanjay Vishwanath Sawant
55. Amruta Premchand Kamble
56. Dhanashree Satyawan Shedge
57. Anita Kadu Wakode
58. Nitin Gulab Dhotre
59. Atish Arjun Kadam
60. Manishwa M. Sawant
61. Kirsan Vasant Burte
62. Haresh Ramchandra Bagave
63. Sushama Latikesh Bane
64. Vinayak Malikarjun Gajakosh
65. Sushant Shripat Gurav
66. Gajanan Kondiba Gavale
67. Harshada Sunil Paste
68. Santosh Shivaji Patil
69. Sagar Kishor Taware

70. Nilesh Amrao Gangawane
71. Sitaram Biroje Bodke
72. Akshay Sadanand Shinde
73. Aniket Ramesh Patil
74. Akshay Anil Tambe
75. Archana Ashok Bagwe
76. Bhagwan Mahadev Kate
77. Sandeep Damodar Magar
78. Rajesh Prakash Salvi
79. Vijay Laxman Gurav
80. Rajkumar Premkumar Kashyap
81. Gauri Mayur Neharkar
82. Ashwini Nishakant Mhatre
83. Santosh Bhikaji Shirwadkar
84. Sachin Jagan Singh
85. Yuvaraj Bhagwan Sawant
86. Neha A. Ujjainwal
87. Abhishek Sanjay Pujare
88. Priyanka Bapusaheb Torane,
89. Kamlesh Dattaram Ghanekar,
90. Anil A. Ujjinwal
91. Neha Appaso Thombare
92. Swapnil H. Wagh
93. Digambar Eknath Rikame
94. Janardhan K. Sabne
95. Avdut Pundalkik Varekar
96. Shailesh M. Bankar
97. Akash Bhaskar Magare
98. Pradnya Nagesh Mohite
99. Chetan Subhash Patil
100. Tushar Gajanan Mahadik
101. Sneha Sadanand Jourat
102. Kailash Bhaskar More
103. Snehal Sanjay Ratwadkar
104. Shobha Zumber Kamble
105. Pooja Blessing Festival
106. Varsha Amit Mane
107. Suchita Manoj Patil
108. Shweta Shantaram Redekar **...Respondents**

WITH

WRIT PETITION (L) NO.23571 OF 2026

1. University of Mumbai
2. The Registrar, University of Mumbai **...Petitioners**

V/s.

1.Sunil Tanga Pagare
2. Nilesh Sambhaji More,
3. Prashant Murkar
4. Santosh Dagadu Kawde
5. Raksha Ramakant Sawant
6. Sandip Digambar Kamble
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32. Chetan Anand Gaware
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34. Ankesh Arjun Rambade
35. Sujata Shridhar Ramje
36. Pragati Jaywant Paghare
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106. Varsha Amit Mane
107. Suchita Manoj Patil
108. Shweta Shantaram Redekar **...Respondents**

Mr. J.P. Cama, *Senior Advocate with Mr. Suraj Kaushik & Mr. Rajat Dedhia for the Petitioners.*

Mr. S.C. Naidu *with Mr. Manoj Gujar, Mr. T.R. Yadav, Ms. Divya Yajurvedi & Mr. Pradeep Kumar i/b.M/s. C.R. Naidu & Co. for Respondent Nos.1 to 36, 38, 39, 41 to 57, 59 to 68, 70 to 83, 85 to 108.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 1 OCTOBER 2026.

Judgment pronounced on: 21 OCTOBER 2026

JUDGMENT:

1) These Petitions are filed by the University of Mumbai challenging the orders passed by the Industrial Court, Mumbai, directing grant of permanency to 108 temporary employees and permitting them to withdraw the deposited amounts. ***Rule*** in both the Petitions. The learned counsel appearing for Respondents waives the service of Rule. The Petitions are taken up for final disposal with the consent of the learned counsel appearing for parties.

CHALLENGE IN THE PETITIONS

2) University of Mumbai (**University**) is aggrieved by the judgment and order dated 15 September 2025 passed by the learned Member, Industrial Court, Mumbai, directing grant of permanency to 108 employees w.e.f 1 July 2022 together with benefits of perquisites and wages applicable to the permanent employees. Accordingly, the University has filed Writ Petition (L) No.42490 of 2025 challenging the judgment and order dated 15 September 2025 passed in Complaint (ULP)

No.215 of 2022. During pendency of the Complaint, the Industrial Court had restrained the University from terminating the services of the Complainants. However, the University did not continue them after 1 September 2022. The Industrial Court therefore directed continuation of services of the Complainants by way of further interim order. The Industrial Court further directed deposit of wages every month during pendency of the Complaint. When the interim order was challenged before this Court the University was directed by this Court vide order dated 22 December 2023 to deposit an amount of Rs.2,04,58,832/- towards wages for 16 months in the Industrial Court. Accordingly, the amount as directed by this Court was deposited by the University and it went on depositing wages of 108 employees every month. After the Complaint was allowed, the employees applied for withdrawal of the amount deposited alongwith accrued interest, which had swollen to Rs.4,60,80,243/-. By order dated 24 June 2026, the Industrial Court has apportioned the said amount of Rs.4,60,80,243/-amongst the employees and directed its registry to transfer the same in their accounts. Order dated 24 June 2026 has been challenged by the University by filing Writ Petition (L) No.23571 of 2026.

FACTS

3) The Petitioner is a public University governed by the provisions of Maharashtra Public Universities Act, 2016 (**the Universities Act**). It was earlier governed by the provisions of Bombay University Act, 1974 and later by Maharashtra Universities Act, 1994. According to the Petitioner-University, it cannot employ any person on permanent basis unless the

posts are sanctioned and the procedure laid down for appointment is mandatorily required to be followed. It is contended that under the provisions of the Maharashtra Universities Act, 1994, the Petitioner is not empowered to create permanent posts without the approval of the State Government but is empowered to create posts for a specified period. While permanent sanctioned posts approved by the State Government are filled up by scrupulously following due recruitment process, the Petitioner-University can engage employees on temporary basis without following due recruitment process.

4) It is contended by the Petitioner-University that two recruitment processes were undertaken by it in the years 2008 and 2013 to fill up regular posts in its establishment. It is Petitioner's contention that it has engaged a large number of employees to perform non-teaching work against temporary posts sanctioned through University funds. It is contended that such temporary engagements were made for fixed term tenures and on consolidated salaries and that appointments came to an end with efflux of time. The temporary employees were re-engaged after giving them breaks depending on requirements of the University by issuance of fresh appointment letters. It is therefore, contended that there are two sets of employees in the University viz. (i) those who are appointed against regularly sanctioned posts and who are paid through grant received from the State Government and (ii) employees, who are temporarily engaged by the University and paid through its funds. It appears that two recruitment processes were implemented by the University in the years 2008 and 2013 for filling up

regularly sanctioned posts and several temporary employees participated in the said process.

5) A complaint of unfair labour practices under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**M.R.T.U & P.U.L.P. Act**) was filed by 108 employees of the Petitioner-University under Item 4(a) of Schedule II and Items 5 and 9 of Schedule IV of the M.R.T.U & P.U.L.P. Act is filed. 108 temporary employees sought wages, benefits and perquisites on par with permanent employees on the rolls of the University w.e.f. 1 July 2022.

6) The Industrial Court passed ad-interim order dated 29 August 2022 on Application at Exhibit- U2 directing the Petitioner not to discharge or otherwise terminate the services of the Complainants without following due process of law. However, it appears that as per the last appointment order dated 30 June 2022, the last day of employment of the Respondents was 30 August 2022. The Petitioner-University did not issue fresh appointment orders after 1 September 2022 and accordingly services of the Respondents came to an end w.e.f. 30 August 2022. The Industrial Court thereafter decided the application at Exhibit-U2 and by interim order dated 16 November 2022, it held that the Petitioner-University had *prima facie* committed unfair labour practices under Items 5 and 6 of Schedule IV of the M.R.T.U & P.U.L.P. Act and directed the Petitioner not to terminate the services of the Respondents without following due process of law till final disposal of the Complaint. The Industrial Court further directed the Petitioner to pay wages to the Respondents from 1

September 2022 till they were allowed to report to duties. It appears that the Petitioner-University did not issue fresh appointment orders even after passing of order dated 16 November 2022. The Respondent thereafter took out Application at Exhibit U-13 for seeking further interim orders. By order dated 20 April 2023, application at Exhibit U-13 was partly allowed by the Industrial Court directing the Petitioner to deposit wages /salary of Respondents from 1 September 2022 to 31 December 2022 in the Industrial Court with further directions to deposit the wages in the Court every month till disposal of the Complaint. The Petitioner-University challenged interim orders passed by the Industrial Court by filing Writ Petition No.13500 of 2023 in this Court. By order dated 22 December 2023, this Court recorded undertaking given by the Petitioner-University to deposit amount of Rs.2,04,58,832/- being wages for 16 months. This Court further directed Petitioner-University to continue depositing wages in the Industrial Court every month. This Court granted liberty to the Respondents to apply for withdrawal of the deposited amount before the Industrial Court. Directing the Industrial Court to decide the main Complaint within 12 months, the Writ Petition No.13500 of 2023 was disposed of. Accordingly, the Petitioner-University deposited amount of Rs.2,04,58,832/- in the Industrial Court and continued depositing wages every month.

7) Complaint was resisted by the Petitioner-University by filing written statement. Parties led evidence in support of their respective claims. By judgment and order dated 15 September 2025, the Industrial Court has partly allowed Complaint (ULP) No.215 of 2022. The Industrial Court has declared that the Petitioners have indulged in unfair labour

practices under Items 5 and 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act and directed the Petitioner-University to cease and desist from committing such unfair labour practices. The Industrial Court has further directed grant of permanency to 108 temporary employees with further directions to pay them wages, allowances, benefits and perquisites applicable to the permanent employees w.e.f. 1 July 2022. Further direction is issued to provide leave benefits, increments, permissions etc. as applicable to the aided employees. The Petitioner-University is aggrieved by judgment and order dated 15 September 2025 and has accordingly filed Writ Petition (L) No.42490 of 2025.

8) The Respondents have filed Application at Exhibit U-114 in Complaint (ULP) No.215 of 2022 seeking withdrawal of the deposited amount. The Industrial Court passed order dated 24 June 2026 apportioning the total deposited amount of Rs.4,60,80,243/- amongst 102 complainants and directing the registry to transfer the said amount alongwith proportionate interest in the respective bank accounts of the concerned employees. The balance amount was directed to be invested in the fixed deposit receipts. The Petitioner-University is aggrieved by order dated 24 June 2026 and has filed Writ Petition (L) No.23571 of 2026.

9) By order dated 5 August 2026 passed in Writ Petition (L) No.42490 of 2025 registry of Industrial Court was directed not to disburse the amounts. The said interim order was vacated in Writ Petition (L) No.42490 of 2025 vide order dated 11 August 2026 with liberty to the Petitioner to move Writ Petition (L) No.23571 of 2026 for stay of the order dated 24 June 2026. By order dated 13 August 2026 passed in Writ

Petition (L) No.23571 of 2026, this Court granted stay to the order dated 24 June 2026 on withdrawal of the deposited amount before the Industrial Court. Both the Petitions are taken up for analogous hearing and for final disposal by consent of the learned counsel appearing for the rival parties.

SUBMISSIONS

10) Mr. Cama, the learned Senior Advocate, appearing for the Petitioner-University submits that the Industrial Court has grossly erred in granting relief of permanency in favour of the Respondents though the said relief was never prayed for in the Complaint. That the Complaint was filed only for grant of equal wages at par with permanent employees. That the relief of permanency was not claimed in the Complaint. The Industrial Court wanted to grant relief of equal wages, but has erroneously held that since grant of permanency is a precondition for grant of equal wages, it has proceeded to grant the relief of permanency, which was not even prayed for in the Complaint. That the impugned order clearly travels beyond the prayers in the Complaint.

11) Mr. Cama further submits that the Respondents are otherwise not entitled to grant benefits of permanency. That their initial engagements were made on temporary and fixed term basis. That no recruitment procedure was followed and the Respondents are mere backdoor entrants. That their appointments were not effected in pursuance of any advertisement. That 17 of them participated in regular selection process held in the year 2013-14 but they either failed to get selected or could

not secure merit position. That what could be achieved by clearing selection process is sought to be achieved through the mode of permanency. He submits that similar Writ Petition filed by temporary workers has been dismissed by the Division Bench of this Court on 6 January 2015 and the order has been upheld by the Hon'ble Apex Court. That mere rendering of long services cannot be a reason for grant of permanency. In support, he relies on judgments of the Apex Court in ***Secretary, State of Karnataka and Others V/s. Umadevi and Others*** [1] and ***State of Punjab and Others Vs. Jagjit Singh and Others*** [2]. By relying on judgment of the Apex Court in ***State of Haryana and Another Vs. Tilak Raj and Others*** [3] he contends that even relief of equal pay for equal work cannot be granted as there is no complete and absolute identity between the two sets of employees. That the Respondents do not perform same duties and responsibilities as that of regular employees. He relies on judgment of this Court in ***Medical Superintendent, Rural Hospital and Anr. Vs. Rajashree Lakshman Yadav*** [4] in support of his contention that permanency cannot be granted to backdoor entrants merely on the strength of their continuance in service for a longer duration. He relies on judgment of this Court in ***Sangli Miraj Kupwad Cities Municipal Corporation,Sangli through its Commissioner Vs. Mahapalika Kamgar Sabha*** [5] in support of his contention that permanency cannot be granted in absence of regularly sanctioned posts. He relies on judgment of Division Bench of this Court in ***Mahesh Madhukar Wagh and others Vs. State of Maharashtra and others*** [6] in support of his contention that

1 (2006) 4 SCC 1
2 (2017) 1 SCC 148
3 (2003) 6 SCC 123
4 2025 I CLR 397
5 2012 III CLR 167
6 2019 (6) Mh.L.J. 8

contract professors appointed on a temporary basis for a specific period under the Universities Act are held to be not entitled to benefits of permanent teachers.

12) Mr. Cama further submits that no case is made out of any unfair labour practice under Item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act as Industrial Court has not recorded a finding that the Petitioner-University had any 'objection' for continuing temporary workers without grant of benefit of permanency. He takes me through the evidence to demonstrate that there are no vacant posts nor identical work. The Industrial Court has granted permanency by applying the test of equal pay for equal wages. That the University does not receive any financial assistance from the State to pay wages to the temporary workers. That the University does not need services of the temporary workers. That the State Government has directed the University to reduce its work force by 30% by adopting information technology. That physical manpower is not necessary on account of digitalisation of educational activities. That question papers are no longer required to be physically carried to colleges, etc. and that same are electronically transmitted. That the case does not involve termination and the University has merely not continued workers after the end of their tenures. That services of the Respondents are not replaced by other temporary workers. That the services are discontinued since need of the University has come to an end. The University does not have funds to bear salary of temporary workers. Mr. Cama accordingly prays for setting aside the impugned judgment and order of the Industrial Court.

13) Mr. Naidu, the learned counsel appearing for the Respondents opposes both the Petitions. He submits that the Respondents did seek relief of permanency in the form of declaration of unfair labour practice under Item 6 of Schedule IV of M.R.T.U & P.U.L.P. Act. That absence of separately worded prayer for permanency does not denude the Industrial Court of jurisdiction to grant consequential relief required to effectively remedy the established unfair labour practice under Item 6 of Schedule IV of the M.R.T.U & P.U.L.P. Act. That the Petitioner-University clearly understood that the Respondents were claiming permanency and accordingly opposed the same in their written statements and led evidence for justifying the denial of permanency. That substance prevails over form and he relies on judgment of the Apex Court in ***Parimal Chandra Raha and Others V/s. Life Insurance Corporation of India and Others***[7]. That the Respondents specifically averred in the Complaint that they are entitled for grant of permanent status. That the Tribunal has recorded a finding that the Petitioners are engaged in unfair labour practices within the meaning of Item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act and that the finding in paragraph 63 of the impugned judgment cannot be read in isolation and needs to be read in conjunction with other findings supporting permanency in the judgment. That Section 30(1)(b) of the M.R.T.U. & P.U.L.P Act empowers the Court to direct the employer to cease and desist from unfair labour practices and to take such affirmative action as will effectuate the policy of the Act. That once declaration of unfair labour practice under Item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act is made, granting permanency status is a direct, mandatory and consequential relief. That therefore technical

7 1995 Supp(2) SCC 611

interpretation cannot defeat statutory substantive justice under Section 30 (1)(b) of the M.R.T.U. & P.U.L.P. Act. That Section 30 of the M.R.T.U. & P.U.L.P. Act provides for a two-fold scheme of adjudication of unfair labour practice and grant of remedial relief by way of affirmative action.

14) Mr. Naidu further submits that there is otherwise intrinsic connection between Item 6 of Schedule IV of the M.R.T.U. & P.U.L.P Act and the power to grant permanency. That since Item 6 of Schedule IV prohibits employment of workers as *badlis*, temporary or casuals with the object of depriving them of the status and privileges of permanent employees, permanent status does not become an extraneous or collateral issue. He relies on Section 27 of the M.R.T.U. & P.U.L.P Act prohibiting unfair labour practice and Section 30(1)(b) providing for remedial mechanism. That where wrong is done by keeping employee temporary for years granting permanent status is the exact affirmative action required to undo that wrong. That statutory expression 'such affirmative action' is of wide amplitude as held by the Apex Court in ***Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya Parivahan Karmchari Sanghatana***[8]**.** He relies on judgment of this Court in ***Conservator of Forests Vs. Savala Dhondiba Pise*** [9] where this Court has granted consequential relief of permanency in absence of prayer. He also relies on judgment of this Court in ***Divisional Forest Manager, Forest Development Corporation of Maharashtra Ltd. Thane Vs. Vinayak Kurne*** [10] in support of his

8 (2009) 8 SCC 556
9 Writ Petition No.3274 of 2002 decided on 8 September 2010.
10 Writ Petition No.3208 of 2011 decided on 27 September 2011.

contention that industrial adjudicator has power to grant consequential relief to achieve socially beneficial purpose.

15) Mr. Naidu further submits that Industrial Court was otherwise justifiable in granting permanency to the Respondents. He submits that the Respondents have established existence of permanent posts. That witness of the Petitioner-Dr. Ashok Hema Farde gave emphatic admissions about 742 posts lying vacant. That the witness was confronted with 108 appointment letters, which clearly disclosed existence of vacant posts. The Respondents evaded and avoided to give answers to the documents but admitted that every Head of Department to whom the employees were attached were supervising their work. That the Petitioners have deliberately suppressed / not filed those documents available with them. That the Industrial Court analysed evidence on record and has recorded an emphatic finding about appointment of the Respondents being against the vacant posts. That the said finding is firmly grounded on the cogent evidence on record and does not suffer from perversity. That once existence of permanent posts is established, the relief of regularisation cannot be denied. In support, he has relied upon judgments of the Apex Court in ***Vinod Kumar and Others Vs. Union of India and Others*** [11], ***Raj Kiran Singh and Ors.V/s. Union of India and Ors.*** [12] ***Dharam Singh & Ors. Vs. State of U.P. and Anr.***[13], ***Shripal & Anr. Vs. Nagar Nigam, Ghaziabad*** [14] and ***Jaggo Vs. Union of India and Others*** [15] ***Raj.***

11 (2024) 9 SCC 327
12 2024 INSC 621
13 Civil Appeal No.(S).8558 of 2018
14 Civil Appeal No.8157 of 2024
15 2024 SCC OnLine SC 3826

16) Mr. Naidu further submits that findings recorded by the Industrial Court holding the Petitioner guilty of unfair labour practices under Item 5 of Schedule IV of the M.R.T.U. & P.U.L.P. Act is fully sustainable as paying the consolidated or meager wages to the Respondents while extending regular pay scale benefits to permanent staff performing identical duties constitutes partiality and favouritism. He submits that power of the Industrial Court under Section 30 of the M.R.T.U. & P.U.L.P. Act to grant affirmative relief of permanency remained completely unfettered by Constitution Bench judgment of the Apex Court in ***Umadevi*** (supra) as authoritatively settled in ***MSRTC Vs. Casteribe Rajya Parivahan Karmchari Sanghatana*** (supra). That the Respondents are working against existing sanctioned vacant posts in the University as is clearly established by the documentary evidence. He submits that the expression 'for years' has been interpreted by this Court to mean 'two years' in ***Chief Officer, Sangli Municipal Council Vs. Dharamsingh Hiralal Nagarkar*** [16].

17) Mr. Naidu further submits that the bogie of the State not granting sanction for filling up sanctioned posts is nothing but to decline permanent status to the Respondents. That Section 8 of the Universities Act govern the extent of control of State Government on University which does not mandate prior approval of the State Government to recruit employees on permanent basis on existing sanctioned vacant posts. The Tribunal appreciated this position in paragraph 54 of the judgment by holding that University can fill up existing vacancies by exercising power under Section 8(2)(i) of the Universities Act. So far as

16 1991 Mh.L.J. 981

absence of advertisement is concerned, Mr. Naidu submits that employer cannot be permitted to take benefit of his own wrong. That the alleged non-receipt of State Government financial aid or formal sanction cannot operate as a bar to defeat the workmen's claim for permanency. He relies on judgments of this Court in ***Mumbai Vidyapeeth Kamgar Sanghatana Vs. University of Mumbai***[17] and ***University of Mumbai V/s. Parag Bhaskar Ghag and Others*** [18] in which it is held that University possesses wide autonomous authority under the Universities Act to create non-teaching support staff and to meet their pay scales out of its own internal general funds.

18) So far as Writ Petition (L) No.23571 of 2026 is concerned, Mr. Naidu submits that the Respondents be permitted to withdraw the deposited amount. He further submits that deposit of monthly salary is erroneously stopped by the University from the date of the impugned judgment (i.e. 15 September 2025). That since the Respondents have succeeded in the Complaint, they must receive wages till they are reinstated as permanent workers. On above broad submissions, Mr. Naidu prays for dismissal of both the Petitions.

CONSIDERATION OF SUBMISSIONS, REASONS AND ANALYSIS

19) Jurisdiction of the Industrial Court was invoked by 108 temporary non-teaching staff of the University of Mumbai by filing a Complaint under Section 28 of the M.R.T.U. & P.U.L.P. Act alleging commission of

17 2019 SCC OnLine Bom 801
18 Writ Petition No.6932 of 2022, decided on 9 May 2025.

unfair labour practices under Item 4(a) of Schedule II and Items 5 and 6 of Schedule IV of the M.R.T.U & P.U.L.P. Act. The 108 temporary employees were engaged by the Petitioner-University from various dates beginning from the year 2004. The Industrial Court has spelt out the details of 108 Complainants before it in paragraph 38 of its judgment indicating the dates of their respective initial engagements, departments in which they joined and their designations. For facility of reference, the said details in respect of 108 Complainants before the Industrial Court, who are also the Respondents in the present Petitions, are reproduced below:

No.	Name of the Employee	Date of Joining	Joining of Department	Designation
1.	Sunil Tanga Pagare,	10.10.2004	CRO Unit	Hamal
2.	Nilesh Sambhaji More,	07.04.2006	College Tribunal	Peon
3.	Prashant Murkar,	16.03.2006	Department of Student Welfare	Peon
4.	Santosh Dagadu Kawde,	28.08.2006	Idol	Peon cum Hamal
5.	Raksha Ramakant Sawant,	01.02.2007	Examination Section	Jr Ty Clerk
6.	Sandip Digambar Kamble,	23.11.2007	Examination Section	Jr. Ty Clerk
7.	Bhushan R. Vinchu,	03.04.2008	Examination Section	Peon
8.	Sameer Chandrakant Jadhav,	11.12.2008	Phule Ambedkar Chair	Peon
9.	Ramesh Ramchandra Deshmukh,	16.08.2008	Dlle	L. G. Steno
10.	Priyanka Bala Morajkar,	23.01.2008	IT	Jr. Ty Clerk
11.	Hemlata Dattaram Salvi,	09.06.2008	Department of Student Welfare	Sweeper
12.	Dnyaneshwar Shivram Nadekar,	03.10.2008	CAP Cell	Peon Cum Hamal
13.	Bhagirathi Madhukar Kamble,	25.03.2008	Examination Section	Jr. Ty Clerk
14.	Sneha Yatin Shinde,	18.08.2009	Department of Student Welfare	Deo
15.	Gautam Shivram Gaikwad,	01.12.2009	ACEE	Project Assistant
16.	Sanjay Dunda Bambale,	01.10.2009	Examination Section	Jr. Ty Clerk
17.	Shaikh Toufiq Badshah,	23.03.2009	CAP Cell	Peon

18.	Sheela Shantaram Mohite,	02.11.2010	Department of Student Welfare	Jr. Ty Clerk
19.	Nagesh Mahadev Jadhav,	15.07.2010	Idol	Peon Cum Hamal
20.	Sachin Devrao Somware,	13.09.2010	J. N. Library	Peon
21.	Yogita Barku Kemble,	18.02.2010	Employment Bureau	Jr. Ty Clerk
22.	Yogesh Prakash Patil,	02.10.2010	Department of Student Welfare	Peon
23.	Hemant Manohar Salvi,	15.04.2010	J. N. Library	Hamal
24.	Omkar Bharat Shedge,	10.06.2011	UG	Peon
25.	Ragji Prathamesh Damodar,	10.10.2011	Examination Section	Peon Cum Hamal
26.	Nilesh Prabhudas Ghagare,	04.05.2011	Garware Institute	Driver
27.	Vivek Ravji Mhatre,	08.02.2012	Department of Student Welfare	Peon
28.	Sushil Suresh Kaluskar,	02.05.2012	Account Section (Bill Unit)	Jr. Ty Clerk
29.	Kiran Sambhaji Patil,	30.08.2012	Dept. of Lifelong Learning & Extention	Technical Assistant
30.	Vinod Hirabhai Vora,	01.04.2013	Department of Student Welfare	Hamal
31.	Vishnu Kashinath Sonawane,	08.03.2013	Department of Student Welfare	Peon
32.	Chetan Anand Gaware,	10.10.2003	Examination Section	Peon
33.	Abhijit Sambhaji Dhokare,	02.06.2014	Lokkala	Peon
34.	Ankesh Arjun Rambade,	03.06.2014	Account Section	Peon
35.	Sujata Shridhar Ramje,	01.04.2014	Affiliation	Peon
36.	Pragati Jaywant Paghare,	12.09.2014	Affiliation	Deo
37.	Kanchan Gajanan Gadge,	03.07.2014	Security Office	Security
38.	Gopal Vithoba Sutar,	01.07.2014	Campus Development Unit	Helper to Carpenter
39.	Pooja Kishor Pawar,	05.08.2015	Eligibility	Peon
40.	Chhaya Vijay Bhogle,	30.06.2015	NSS	Jr. Ty. Clerk
41.	Vishakha Milind Mhaske,	15.04.2015	CAP Cell	Sweeper
42.	Rambhuwal Ramkumar Chauhan	03.09.2015	Security Office	Security
43.	Gayatri Anil Mayekar,	02.03.2015	Dept. of Sanskrut	Jr. Ty. Clerk
44.	Tejas Mahendra Owhal,	20.03.2015	NSS	Peon
45.	Deepak Hirabhai Vora,	01.04.2015	JSH	Hamal
46.	Vishal Dashrath Lembhe,	24.04.2015	Internation Cooperation	Peon
47.	Shilpa Ajit Pethe,	19.11.2015	CCF	Programmer
48.	Prakash Dashrath Kurjekar,	23.05.2015	History	Research Assistant
49.	Bhavik Dinesh Solanki,	04.06.2015	Department of Student Welfare	Hamal
50.	Pankaj Lokesh Kumar,	13.07.2015	J N Library	Sweeper
51.	Janardan R. Kandekar,	02.10.2015	J N Library	Hamal

52.	Sushil Gajanan Indulkar,	22.09.2015	Department of Philosophy	Peon
53.	Ahmed Shamsuddin Sayed,	05.01.2016	College Tribunal	Peon
54.	Sanjay Vishwanath Sawant,	07.04.2016	VC Office	Jr. Ty. Clerk
55.	Amruta Premchand Kamble,	02.01.2016	CAP Cell Department	Sweeper
56.	Dhanashree Satyawan Shedge,	20.07.2016	COE	Programmer
57.	Anita Kadu Wakode,	02.01.2016	Account Section	Jr. Ty. Clerk
58.	Nitin Gulab Dhotre,	09.07.2016	Thane Sub Centre	Hamal Cum Sweeper
59.	Atish Arjun Kadam,	19.12.2016	WDC	Hamal
60.	Manishwa M. Sawant,	09.12.2014	Biotechnology	Sweeper
61.	Kirsan Vasant Burte,	02.08.2016	Department of Student Welfare	Jr. Ty. Clerk
62.	Haresh Ramchandra Bagave,	01.04.2016	Idol	Peon Cum Hamal
63.	Sushama Latikesh Bane,	02.07.2016	Eligibility	Jr. Ty. Clerk
64.	Vinayak Malikarjun Gajakosh,	01.06.2016	CAP Cell	Peon
65.	Sushant Shripat Gurav,	01.04.2016	CAP Cell	Jr. Ty. Clerk
66.	Gajanan Kondiba Gavale,	07.06.2016	CAP Cell	Office Assistant
67.	Harshada Sunil Paste,	04.06.2016	CAP Cell	Jr. Ty. Clerk
68.	Santosh Shivaji Patil,	01.07.2016	DLLE	Peon Cum Hamal
69.	Sagar Kishor Taware,	11.04.2016	CAP	Jr. Ty. Clerk
70.	Nilesh Amrao Gangawane,	11.04.2016	CAP	Jr. Ty. Clerk
71.	Sitaram Biroji Bodke,	02.09.2016	Revaluation Unit	Jr. Ty. Clerk
72.	Akshay Sadanand Shinde,	07.07.2016	Registrar Office Fort	Peon
73.	Aniket Ramesh Patil,	14.06.2016	G.A.D. Kalina	Jr. Ty. Clerk
74.	Akshay Anil Tambe,	03.11.2016	CAP	Peon
75.	Archana Ashok Bagwe,	02.11.2016	CAP	Jr. Ty. Clerk
76.	Bhagwan Mahadev Kate,	26.09.2016	Establishment Section	Jr. Ty. Clerk
77.	Sandeep Damodar Magar,	01.01.2016	G.A.D. Kalina	Hamal
78.	Rajesh Prakash Salvi,	01.03.2016	G.A.D. Kalina	Hamal
79.	Vijay Laxman Gurav,	18.06.2016	G.A.D. Kalina	Hamal
80.	Rajkumar Premkumar Kashyap,	11.01.2016	Idol	Fitness Trainer
81.	Gauri Mayur Neharkar,	02.01.2017	Sanskrut	Jr. Prof. Lib. Assistant
82.	Ashwini Nishakant Mhatre,	15.03.2017	Department of Student Welfare	Jr. Ty. Clerk
83.	Santosh Bhikaji Shirwadkar,	09.08.2017	Security Ish	Security

84.	Sachin Jagan Singh,	03.01.2017	JSH	Hamal
85.	Yuvaraj Bhagwan Sawant,	01.11.2017	Security	Watchman
86.	Neha A. Ujjainwal,	03.01.2017	J. N. Library	Hamal Cum Sweeper
87.	Abhishek Sanjay Pujare,	03.01.2017	J. N. Library	Peon Cum Hamal
88.	Priyanka Bapusaheb Torane,	03.01.2017	J. N. Library	Jr. Prof. Lib. Assistant
89.	Kamlesh Dattaram Ghanekar,	20.08.2017	Thane Sub Centre	Hamal Cum Sweeper
90.	Anil A. Ujjinwal,	01.04.2017	Department of Economics	Hamal
91.	Neha Appaso Thombare,	02.11.2017	Confucius Institute University of Mumbai	Peon
92.	Swapnil H. Wagh,	19.04.2017	Dispatch Section	Peon
93.	Digambar Eknath Rikame,	05.05.2017	College Tribunal, Fort	Driver
94.	Janardhan K. Sabne,	01.04.2017	Dispatch Section	Peon
95.	Avdut Pundalkik Varekar,	16.06.2017	Account Section, Kalina	Jr. Ty. Clerk
96.	Shailesh M. Bankar,	21.03.2017	Idol	Jr. Ty. Clerk
97.	Akash Bhaskar Magare,	21.03.2017	Idol	Peon
98.	Pradnya Nagesh Mohite,	31.03.2018	Statistical Unit	Jr. Ty. Clerk
99.	Chetan Subhash Patil,	02.05.2018	Cap Cell	Peon
100	Tushar Gajanan Mahadik,	03.07.2018	Ratnagiri Sub Centre	Jr. Ty. Clerk
101	Sneha Sadanand Jourat,	03.07.2018	Ratnagiri Sub Centre	Jr. Ty. Clerk
102	Kailash Bhaskar More,	12.04.2018	Nano Sciences	Sweeper
103	SnehalSanjay Ratwadkar,	01.08.2018	Madam Kama Girls Hostel	Security
104	Shobha Zumber Kamble,	26.07.2018	Security Office	Security
105	Pooja Barku Mhaske,	02.02.2018	Security Office, Kalina	Security
106	Varsha Amit Mane,	04.08.2018	Department of German	Stenographer
107	Suchita Manoj Patil,	01.03.2018	Department of Biophysics	Lab Assistant
108	Shweta Shantaram Redekar,	08.12.2020	CCF	Programmer

20) It appears that the University used to issue separate orders for granting fresh appointments to the non-teaching staff from time to time. The Petitioners have placed on record the last engagement order dated 30 June 2022 in respect of 265 non-teaching staff appointing them for the period from 4 July 2022 to 30 August 2022. It appears that the previous tenure of their appointments was upto 30 June 2022. They were

given break of three days from 1 July 2022 to 3 July 2022 and thereafter they were re-engaged from 4 July 2022. The last working day indicated in the order dated 30 June 2022 was 30 August 2022. After 30 August 2022, the Petitioner-University did not issue any further continuation order of the said 265 employees, including the Respondents.

21) As observed above, the Respondents apparently sensed the plans for proposed action of the University not continuing their services beyond 30 August 2022 and accordingly approached the Industrial Court by filing Complaint (ULP) No.215 of 2022 on 25 August 2022. In that Complaint ad-interim relief was granted in favour of the Respondents on 29 August 2022 restraining the Petitioner-University from terminating their services. University has taken a stand that it did not violate the ad-interim order dated 29 August 2022 since appointments of the Respondents by order dated 30 June 2022 were made only for a period upto 30 August 2022. The University thus did not issue any orders of discontinuation of services of the Respondents. It also did not issue fresh orders for their continuation. Resultantly, the Respondents were not re-appointed after 30 August 2022 and in that sense, lost their jobs w.e.f. 1 September 2022.

22) As observed above, the Industrial Court has thereafter passed a common interim order below Exhibits U-2 and U-9 on 16 November 2022 directing the Petitioner-University to pay wages to the Respondents from 1 September 2022 till they are allowed to report for duties. By order dated 20 April 2023, Industrial Court directed deposit of wages every month during pendency of the Complaint. In accordance with orders

passed by this Court in Writ Petition No.13500 of 2023 on 22 March 2023, the Petitioner-University has deposited wages payable to the Respondents till disposal of the Complaint.

23) The Industrial Court has allowed the Complaint filed by the Respondents by its judgment and order dated 15 September 2025. It would be apposite to reproduce the operative part of the Industrial Court's order, which reads thus:

> ORDER
>
> i)Complaint is partly allowed.
>
> ii)It is hereby declared that the respondents have indulged in unfair labour practices under Items 5 & 6 of Schedule-IV of the MRTU & PULP Act, 1971, against complainants.
>
> iii) Respondents are hereby cease and desist from committing such unfair labour practices henceforth.
>
> iv) The respondents shall grant permanency to the complainants in the employment and pay them wages, allowances benefits and perquisites applicable to the permanent employees w.e.f. 01st July, 2022.
>
> v) The respondents shall further provide the leave benefits, annual, grade increments, promotions as per the rules applicable to the aided employees to the complainants.
>
> vi) No Orders as to costs.

24) Thus, the Industrial Court has recorded a finding that the Petitioner-University has indulged in unfair labour practices under Items 5 and 6 of the Schedule IV of the M.R.T.U & P.U.L.P. Act. While directing the Petitioner-University to cease and desist from committing such unfair labour practices, the Industrial Court has directed grant of permanency to the Respondents in the employment and to pay them

wages, allowances, benefits and perquisites as applicable to the permanent employees w.e.f. 1 July 2022. The Petitioner is also directed to provide leave benefits, annual grade increments and promotions as per Rules applicable to aided employees to the Complainants.

25) I now proceed to determine whether the Industrial Court is justified in granting the above reliefs in favour of the Respondents.

GRANT OF PERMANENCY IN ABSENCE OF A PRAYER

26) The first point sought to be raised by Mr. Cama is that the Industrial Court has granted relief in favour of the Respondents, which was never prayed by them in the Complaint. He contends that the prayers in the Complaint were restricted to only equal wages on par with permanent employees and that prayer for permanency was never made. It would therefore be necessary to consider the prayers raised in Complaint (ULP) No.215 of 2022, which are as under:

> (a) that the Hon'ble Court may be pleased to hold and declare that the Respondents have engaged in and are guilty of unfair labour practices within the vice of item Nos. 4 (a) of Schedule II and Item 5, 6 and 9 of Schedule IV of the Act and the Respondent University be directed to cease and desist from engaging acts of unfair labour practice and withdraw the unfair labour practices into which they enaged in;
>
> (b) that the Hon'ble Court may be pleased to hold and declare that all the Complainants are entitled to wages, allowances, benefits and perquisites at par with the permanent employees on the roll of the Respondent University and entitled to draw wages, benefits and perquisites in respective pay scales applicable to the Complainants in accordance with their designations and nature of work;

> (c) that the Respondent University may be directed to pay wages, benefits and perquisites to each of the Complainants at par with the permanent employees on the roll of the University with effect from 1st July, 2022;
>
> (d) that the Respondents may be directed to extend leave with wages, annual grade Increments, promotions as per the rules applicable to the aided employees to the Complainants;
>
> (e) cost of the complaint and incidental to the Complainants may be quantified and the Respondent University be directed to pay the cost to the Complainants;
>
> (f) any other or future reliefs as this Hon'ble Court may deem fit and proper to meet the ends of justice.

27) Perusal of the above prayers would indicate absence of a specific prayer claiming permanency to the Respondents. In prayer clause (b), the Respondents prayed for a declaration that they are entitled to wages, allowances, benefits and perquisites on par with permanent employees on the rolls of University and that they are entitled to draw wages, benefits and perquisites in the respective pay scales applicable to the designations and nature of work of the respective Complainants. In prayer clause (c) the Respondents have sought direction against the Petitioner-University to pay benefits, wages and perquisites on par with permanent employees on the rolls of the University w.e.f. 1 July 2022. In prayer clause (d) Respondents prayed for extension of benefits such as leave wages, annual grade increments and promotions. Thus, no specific prayer seeking permanency in service was indeed sought by the Respondents.

28) Faced with the above fact situation, Mr. Naidu submits that in prayer clause (a) of the Complaint, the Respondents sought a declaration

that the Petitioner- University was guilty of unfair labour practices under Item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. He therefore contends that the Complaint contains a prayer for grant of permanency.

29) To consider whether the Complaint filed by the Respondents envisaged a prayer for grant of permanency, it would be necessary to quickly analyse the statutory scheme of the M.R.T.U & P.U.L.P. Act. Chapter VI of the Act deals with unfair labour practices. Section 26 of the M.R.T.U. & P.U.L.P. Act provides that unfair labour practices mean any of the practices listed in Schedules II, III and IV. Under Schedule-II, the unfair labour practices on the part of the employers relating to unionized activities by workers /employees are enumerated. In the present case, the Respondents had alleged unfair labour practice under Item 4(a) of Schedule II of the M.R.T.U. & P.U.L.P. Act, which relates to discharge and punishing an employee because he urged other employees to join or organise union. However, the Industrial Court has not declared that the Petitioner-University has committed unfair labour practice under Item 4(a) of the Schedule II of the M.R.T.U. & P.U.L.P. Act. Schedule IV of the M.R.T.U. & P.U.L.P. Act enumerates general unfair labour practices on the part of the employers. For the purpose of the present case, unfair labour practices under Items 5 and 6 of the Schedule IV of the M.R.T.U. & P.U.L.P. Act are relevant. Items 5 and 6 of the Schedule IV of the M.R.T.U. & P.U.L.P. Act are in respect of the following unfair labour practices:

SCHEDULE IV

General Unfair Labour Practices on the part of employers

1. ...

xxx

5. To show favouritism or partiality to one set of workers, regardless of merits.
6. To employ employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.

30) Under Section 27 of the M.R.T.U. & P.U.L.P. Act, there is prohibition on engaging in unfair labour practices. Section 27 of the Act provides thus:-

27. Prohibition on engaging in unfair labour practices:-

No employer or union and no employees shall engage in any unfair labour practice.

31) Section 28 of the M.R.T.U. & P.U.L.P. Act prescribes a procedure for dealing with complaints relating to unfair labour practices. Under Section 30 of the M.R.T.U. & P.U.L.P. Act powers of Industrial and Labour Courts are delineated in cases involving engagement of unfair labour practice. Section 30 of the M.R.T.U. & P.U.L.P. Act provides thus:

30. Powers of Industrial and Labour Courts:-
(1)Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order -

(a)declare that an unfair labour practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;

(b)direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without backwages, or the payment of reasonable

compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;

(c)where a recognised union has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all or any of its rights under sub-section (1) of section 20 or its right under section 23 shall be suspended.

(2)In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision:

Provided that, the Court may, on an application in that behalf, review any interim order passed by it.

(3)For the purpose of holding an enquiry or proceeding under this Act, the Court shall have the same powers as are vested in Courts in respect of -

(a)proof of facts by affidavit;

(b)summoning and enforcing the attendance of any person, and examining him on oath;

(c)compelling the production of documents; and

(d)issuing commissions for the examination of witnesses.

(4)The Court shall also have powers to call upon any of the parties to proceedings before it to furnish in writing, and in such forms as it may think proper, any information, which is considered relevant for the purpose of any proceedings before it, and the party so called upon shall thereupon furnish the information to the best of its knowledge and belief, and if so required by the Court to do so, verify the same in such manner as may be prescribed.

32) Thus, under Section 30(1)(a) of the M.R.T.U. & P.U.L.P. Act, the Industrial / Labour Courts can declare that an unfair labour practice has been engaged in by conducting adjudication in that regard. Provisions of Section 30(1)(b) are prohibitory in nature, under which Industrial /Labour Court can direct a person to cease and desist from unfair labour practice and to take affirmative action as is considered necessary to

effectuate the policy of the Act. Thus, jurisdiction exercised by the Labour and Industrial Courts under Section 30(1)(b) of the M.R.T.U. & P.U.L.P. Act is prohibitory and remedial in nature. Scheme of the Act is thus that the Industrial and Labour Courts first adjudicate as to whether the unfair labour practices are committed or not. Once that adjudication is made, the Industrial /Labour Court can prohibit the person committing the unfair labour practices from committing the same. Additionally, under Section 30(1)(b) of the Act, the Industrial/ Labour Courts can direct taking of remedial measures in the form of an 'affirmative action', which may be necessary to effectuate the policy of the Act. Under Item 6 of the Schedule IV of the M.R.T.U. & P.U.L.P. Act, employment of employees as badlis, casuals or temporary or to continue them as such for years, with the object of depriving them of status and privileges of permanent employees is unfair labour practice. Thus, once an adjudication of commission of unfair labour practice under Item 6 of the Schedule IV of the M.R.T.U. & P.U.L.P. Act is made in exercise of powers under Section 30(1)(a), the Industrial/ Labour Court has further power under Section 30(1)(b) not just to prohibit commission of unfair labour practice, but also to direct a remedial measure by directing taking of affirmative action as is necessary to effectuate the policy of the Act.

33) Thus Section 30(1)(b) of the M.R.T.U. & P.U.L.P. Act is both negative and positive. The provision first contemplates negative action to prohibit the employer from continuing commission of unfair labour practice and thereafter the provision contemplates a positive action or affirmative action as is necessary for the purpose of negating the effect of unfair labour practices. Thus, once an adjudication of engagement of

unfair labour practice under Item 6 of the Schedule IV of the M.R.T.U. & P.U.L.P. Act is proved, the Tribunal has necessary powers under Section 30(1)(b) of remedial / positive / affirmative action to negate the effect of such unfair labour practice. The affirmative action is obviously to grant permanency.

34) In my view, therefore in a given case, where an employee omits to raise a specific prayer for permanency, but seeks a declaration of commission of unfair labour practice under Item 6 of the Schedule IV of the M.R.T.U. & P.U.L.P. Act, the Industrial adjudicator is not prohibited from granting benefit of permanency. I am supported in my view by the observations made by the Apex Court in paragraphs 31 and 32 of the judgment in ***MSRTC Vs. Casteribe Rajya Parivahan Karmchari Sanghatana*** (supra) in which it is held thus:

> 31. The purpose and object of MRTU & PULP Act, inter alia, is to define and provide for prevention of certain unfair labour practices as listed in Schedule II, III and IV. MRTU & PULP Act empowers the Industrial and Labour Courts to decide that the person named in the complaint has engaged in or is engaged in unfair labour practice and if the unfair labour practice is proved, to declare that an unfair labour practice has been engaged in or is being engaged in by that person and direct such person to cease and desist from such unfair labour practice and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate policy of the Act.
>
> 32.The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years , with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. **Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial**

> **and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.**
>
> **(Emphasis added)**

35) Thus, as held by the Apex Court in ***MSRTC Vs. Casteribe Rajya Parivahan Karmchari Sanghatana*** (supra) once an unfair labour practice on the part of the employer is established, the Industrial Court is empowered to issue preventive as well as positive directions to the erring employer.

36) In ***Conservator of Forests Vs. Savala Dhondiba Pise*** (supra) co-ordinate Bench of this Court has dealt with a situation where declaration of engagement in unfair labour practice under Item 6 of the Schedule IV of the M.R.T.U. & P.U.L.P. Act was alleged but prayer for permanency was omitted. This Court held that the consequential relief of permanency could be granted by the Industrial Court once commission of unfair labour practice under Item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act is established. This Court held in paragraph 22 of the judgment thus:

> 22. There is no dispute that each of the workers have completed 240 days in service and that each of them were employed from 1990 and had worked for at least 7 years before their services were terminated. There is sufficient evidence on record to indicate that these workmen were employed for work which was perennial in nature despite which they had not been accorded the status of permanent workmen. The Industrial Court in my view, has not committed any error while declaring that the Petitioners had indulged in an unfair labour practice under Item 6 of Schedule IV. The submission of the learned AGP, that though a declaration has been granted that the Petitioners had committed unfair labour practices under Item 6, the Industrial Court could not have granted any consequential relief as the workmen had not sought a prayer for permanency, is without any substance. Once such a declaration is granted the Petitioners would naturally have to be directed to treat them as permanent workmen and to pay wages and other benefits in consonance with their status. Section 30 of the MRTU and PULP Act empowers the

> Industrial Court to take such affirmative action as is necessary, including payment of compensation, in order to effectuate the policy of the Act, once it finds that any person has indulged in or is engaging in an unfair labour practice.

37) In ***Divisional Forest Manager, Forest Development Corporation of Maharashtra Ltd., Thane V/s. Vinayak Kurne*** [19] this Court has held that when the industrial law is intended to achieve a socially beneficial purpose, an interpretation, which would advance the same and defeat the mischief must be placed on their provisions. In that case as well, there were pleadings relating to unfair labour practice and this Court held that once unfair labour practice was established, the Court could always grant the consequential benefit of permanency. This Court held in paragraphs 22 and 28 of the judgment as under:

> 22. ... There is absolutely nothing on record to indicate that such direction has been issued or that direction issued would amount to directing the Petitioners to create any post for the Respondent and make substantive appointment therein. The pleadings are in relation to unfair labour practice on the part of the Petitioners and while holding that the practices adopted were illegal and unfair, it was directed by the Courts below that the benefits of permanency ought to be given to the workman who has put in more than 15 years of service and that oral termination of his services was vitiated in law. If on the basis of the material on record, it is evident that the Respondent has put in more than 15 years of services and his case that he has completed service of 240 days in every year, is not falsified, then, directing that he should be reinstated in service with back wages, and modifying that direction considering that the Respondent is still in service of the Petitioners, does not amount to infringing or acting contrary to the constitutional guarantee of equality in public employment and the mandate flowing from Articles 14 and 16 of the Constitution of India, which is the main plank of the argument before me. **Having found that the Courts below acted within their limits while adjudicating the complaints of** unfair labour practice and complied with the principles of labour and industrial jurisprudence, then, all the more the argument of Mr.Malpathak cannot be accepted.

19 Writ Petition No.3208 of 2011 decided on 27 September 2011

> 28 Thus, when the Industrial Laws are intended to achieve a socially beneficial purpose, then, the interpretation which would advance the same and defeat the mischief must be placed on their provisions. In the result, both Writ Petitions fail. Rule is discharged in each one of them, but without any order as to costs.
>
> (Emphasis added)

38) Even otherwise, it is well settled principle that the Courts must consider substance of the pleadings and not the form. In ***Parimal Chandra Raha*** (supra) a relief was sought for payment of minimum wages on the principle of equal pay for equal work. The Apex Court held in paragraph 8 of the judgment as under:

> 8. A preliminary objection was raised to the framing of the first issue by Shri Sanghi appearing for the respondent- Corporation, as pointed out at the outset, that be appellants had not claimed any such relief in the writ petition itself and hence they cannot widen the scope of the petition and ask for the relief in question in this appeal. We have referred in extenso to the averments made in the writ petition, earlier. They show in unmistakable terms that the appellants approached the High Court with a specific plea that they are the employees of the respondent- Corporation and as such, they should be paid the minimum wages which are being paid to it other regular employees. The relief of minimum wages paid to the other regular employees of the Corporation on the basis of the principle of equal pay for equal work is thus claimed on the ground that they are also the regular employees of the Corporation. Thus, the relief claimed includes in it the basis of the relief, viz., their status as the **regular employees of the Corporation. It is unnecessary to restate here the law regarding the interpretation of the pleadings.** They have to be read as a whole and construed accordingly. **Thus construed, the relief claimed leaves no doubt that it is based on the claim for the status of the regular employees of the Corporation. We, therefore, find no substance in the preliminary objection.**
>
> (Emphasis added)

39) It is also well settled that Court can also take into consideration the manner in which the case is understood by the opposite party for ascertaining whether particular plea/ relief is raised or not. In ***Ram Sarup***

Gupta (DEAD) by LRs Vs. Bishun Narain Inter College and Others [20] the Apex Court has held in paragraph 6 of the judgment as under:

> 6. The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the license was irrevocable as contemplated by Section 60(b) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and mate rial facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair split- ting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings, instead; the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. **Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal**. ...
>
> (Emphasis added)

40) In the present case, the Petitioners clearly understood the fact that the relief of permanency was claimed in the Complaint. The Respondents had specifically averred in the Complaint that they are entitled to permanent status in various paragraphs such as 3(a), 3(b), 3(c), 3(g), 3(h), 3(l), 3(m) and 3(n). In the written statement in paragraph 3(f), the

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Petitioner-University has averred that '*It is necessary to examine whether the Complainants are eligible to be confirmed for permanency or regularization'.* Again, in paragraph 3(r) of the written statement Petitioners averred that '*The Respondents state that, the Complainants have sought the directions from this Hon'ble Court to grant regularization and wages on par with permanent employees.'* Thus, Petitioners clearly understood the case that the permanency was sought by the Respondents and accordingly raised their defence. The Petitioners walked a step further and led evidence through their witness Dr. Ashok Hema Farde to establish that the Respondents are not entitled for regularization/permanency.

41) In view of the above discussion, I am unable to accept the objection raised on behalf of the Petitioners that it was not open for the Industrial Court to grant the relief of permanency in absence of a specific prayer seeking permanency in prayer clauses. As observed above, omission to pray for the relief of permanency does not prevent the Industrial Court from directing grant of affirmative action under Section 30(1)(b) of the M.R.T.U. & P.U.L.P. Act once it is established that unfair labour practice under Item 6 of the Schedule IV of the M.R.T.U. & P.U.L.P. Act is committed. The objection in this regard is accordingly rejected.

WHETHER COMMISSION OF UNFAIR LABOUR PRACTICE UNDER ITEM 6 OF SCHEDULE IV OF MRTU & PULP ACT IS ESTABLISHED?

42) As observed above, to employ the employees as badlis, casuals or temporaries and to continue them as such for years with the object of

depriving them of status and privileges of permanent employees constitutes unfair labour practice under Item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. Thus, to establish unfair labour practice under Item 6 of Schedule IV of the Act it needs to be demonstrated that (i) employees are employed as badlis, casuals or temporaries (ii) that they are continued as such for years (iii) that there is object on the part of the employer in doing so for depriving them of status and privileges of permanent employees. It is only after all the three ingredients of Item 6 are established that unfair labour practice can be held to be established.

43) In the present case, the Respondents are required to be employed by the Petitioner-University on temporary basis for fulfilling the need of manpower in various departments. This need for manpower was felt by the University on account of variety of reasons. The main reason appears to be non-grant of permission by the State Government to fill up the vacant posts arising out of promotions, retirements, etc. Additionally, the University needed additional manpower at the relevant time over and above its sanctioned strength. To appreciate the concept of employment of manpower by a public university under the provisions of the Universities Act, it would be apt to refer to the provisions of Section 8 thereof. Section 8 of the Universities Act provides for control of the State Government on University and provides thus:

> **8. Control of State Government on Universities.**—
> (1) Without prior approval of the State Government, the university shall not,—
>
> (a) create new posts of teachers, officers or other employees;

(b) revise the pay, allowances, post-retirement benefits and other benefits of its teachers, officers and other employees;

(c) grant any special pay, allowance or other extra remuneration of any description whatsoever, including ex-gratia payment or other benefits having financial implications, to any of its teachers, officers or other employees;

(d) divert any earmarked funds received for any purpose other than that for which it was received;

(e) transfer by sale or lease of immovable property;

(f) incur expenditure on any development work from the funds received from the State Government or University Grants Commission or any person or body for the purposes other than the purposes for which the funds are received;

(g) take any decision regarding affiliated colleges resulting in increased financial liability, direct or indirect, for the State Government.

(2) The university shall be competent to incur expenditure, in consonance with the policies and directives of the State Government issued from time to time, from the funds received from,—

(a) various funding agencies without any share or contribution from the State Government;

(b) contributions received from individuals, industries, institutions, organizations or any person whosoever, to further the objectives of the university;

(c) contributions or fees for academic or other services offered by the university for aided and self-supporting academic programmes;

(d) development fund, or any other fund established by the university; for the purposes of,—

(i) creation of posts in various cadres;

(ii) granting pay, allowances and other benefits to the posts created through its own funds provided those posts are not held by such persons, who are holding the posts for which government contribution is received;

(iii) starting any academic programmes on self-supporting basis;

(iv) granting remunerations or incentives to its employees for performing any task assigned to them other than their regular duties and responsibilities;

(v) incurring expenditure on any development work and on welfare activities of its students and employees:

Provided that, there is no financial liability, direct or indirect, immediate or in future, on the State Government.

44) Thus, under Section 8(1) of the Universities Act, it is impermissible for a University to create new posts of teachers, officers and other employees without prior approval of the State Government. However, under Section 8(2), the University is competent to incur expenditure in consonance with policies and directives of the State Government, from the funds received from various sources for the purpose *inter-alia* of creation of posts in various cadres. Thus, under Section 8 of the Universities Act, there can be twin types of posts in a University viz. (i) posts created after prior approval of the State Government and (ii) posts created through the fund of the University. Under Section 134 of the Universities Act, various funds can be established by a University and the provision reads thus:

134. University funds.—

(1) The university shall establish the following funds, namely :—
(a) general fund;
(b) salary fund,—
(i) for all posts approved by the State Government;
(ii) for all other posts separately;
(c) trust fund;
(d) development and programme fund;
(e) contingency fund;

(f) any other fund which, in the opinion of the university, is deemed necessary to establish.

(2) The following shall form part of, or be paid into, the general fund:

(a) non-salary contribution or grant, received from the State Government or Central Government or University Grants Commission ;

(b) all incomes of the university from any source whatsoever, including income from fees, other fees and charges;

(c) any sums borrowed from the banks or any other agency, with the permission of the State Government;

(d) sums received from any other source or agency.

(3) The salary fund shall consist of all amounts received from the State Government, Central Government or University Grants Commission or any other endowment or contribution received towards full or part payment of the salary and allowances. No amount from this fund shall be utilized for the purpose other than payment of salary and allowances.

(4) All income or moneys from trusts, bequests, donations, endowments, subventions and similar grants shall form part of the trust fund.

(5) (a) The development and programme fund of the university shall consist of all infrastructure development grants received from the State Government, all contributions made by the University Grants Commission for development and research grants received from other funding agencies of the Central Government, United Nations and its affiliates, other international agencies, industry, banks and financial institutions or any person or institution;

(b) no amount from this fund shall be appropriated to any other fund of the university or expended for any other purpose;

(c) the development and programme fund shall be utilized in the manner consistent with the object of the programme and as per guidelines of the funding agency on expenditure and audit, to be granted and approved by the Management Council.

(6) The university shall have and maintain a contingency fund under a separate head of the university accounts which shall be used only for the purpose of meeting any unforeseen expenditure.

> (7) Surplus money at the credit of these funds, including accruals thereto, which cannot immediately or at any early date be applied for the purposes aforesaid shall, from time to time, be deposited in the Nationalized or Scheduled Banks or invested in any other Equity or securities issued by the Corporations having financial participation of the State Government.

45) Under Section 134(2) of the Universities Act, salary contribution received from the State Government/Central Government/University Grants Commission forms part of general fund. Similarly, all incomes of the University from various sources, including income from fees, forms part of the general fund. There is a separate salary fund to be maintained by the University for two types of posts (i) posts approved by the State Government and (ii) other posts. Under Section 134(3) of the Universities Act, salary fund consists of all amounts received from the State Government or contributions received towards payment of salary. There is a prohibition from utilisation of the amount in the salary fund for the purposes other than payment of salary and allowances. Thus, combined reading of Sections 8 and 134 of the Universities Act, would indicate that there are two types of posts in a University, viz. posts approved by the State Government and posts created by the University through its own funds.

46) So far as posts approved by the State Government are concerned, it appears that the last staffing pattern sanctioned by the State Government was vide Government Resolution dated 26 April 2010, by which total number of 1319 posts are sanctioned/approved by the State Government for Mumbai University. The University has corresponded with the State Government from time to time for increase in the

sanctioned strength. It appears that by letter dated 28 September 2017, Petitioner University sent a proposal for sanctioning 1463 posts (additional 144 posts) taking into consideration the number of students.

47) According to Mr. Cama, the last recruitment conducted by the University in respect of the posts falling vacant out of sanctioned staffing pattern was in the year 2013. He submits that after the year 2013, the State Government did not permit the University to fill up even sanctioned posts. It appears that on account of promotions, retirements, deaths, etc. several posts have fallen vacant even within the sanctioned staffing pattern. University's witness-Dr. Ashok Hema Farde gave an admission during the course of cross-examination that as on 14 April 2025, 742 promotional and recruitment posts were vacant out of 1319 sanctioned posts. Mr. Cama has also placed on record (as directed by this Court) current position of sanctioned and working strength, which indicates that as against 1319 sanctioned posts, 535 posts are occupied whereas 784 posts are vacant.

48) In the above manner, large number of vacancies have occurred in the University even in respect of State sanctioned posts, which the University has not been able to fill up, possibly due to absence of approval by the State Government. The issue of need of State Government's approval is being dealt with in the latter part of the judgment. Suffice it to observe at this stage that inability to fill-up regularly sanctioned posts could be one of the reasons why University was required to engage temporary hands to fulfill the need of manpower.

49) However, from the dates of initial joining of the Respondents, it appears that one of them was engaged on 10 October 2004, three of them were engaged in the year 2006, two were engaged in the year 2007, seven were engaged in the year 2008 and this is how engagements continued every year right upto 2018. Thus, embargo on filling of vacant sanctioned posts by the State Government alone is not the reason for engagement of temporary hands by the University. This is where provisions of Section 8(2) of the Universities Act come into play. As observed above, the University has the power to create posts in various cadres through its own funds.

50) Thus, the broad scheme of the Universities Act appears to be such that the State Government provides for salaries for some of the required staff by sanctioning the posts, whereas the University is expected to manage its affairs by creating balance needed posts as and when necessary by paying salaries through its own funds. Thus, there is acomposite arrangement of manpower in a University where the State Government does not bear the entire burden of paying salaries to the University staff. The Universities have their own income sources and are expected to provide for partial manpower requirement. Thus, the Universities are not fully funded bodies and are expected to consider its financial ability while undertaking various educational programs.

51) In the present case, it appears that since the Petitioner-University was unable to manage its activities only through the staff sanctioned by the State Government, it decided to hire additional manpower from time to time to cater to the increasing need of the manpower. This is how

some additional temporary posts were created by the University because it possessed funds to bear the salary burden.

52) While the University has the power to create posts in various cadres under Section 8(2)(i), it is not necessary that such posts must be created on permanent basis. In fact, the very idea behind permitting Universities to create posts in various cadres through its own fund is to provide them with necessary flexibility. Creation of posts by the State Government is a complex process taking several years. In a given case, a University may decide to start a particular educational programme and it would have to await sanction of additional staff by the State Government. Therefore, in the event the University has the required funds to take care of the program that it desires to introduce, the University has the flexibility of hiring manpower required for execution of that program. Introduction of a new educational program may sometimes be an arduous exercise. When a new program is introduced or a new activity is undertaken, the University may not be sure about its continuance forever. Therefore, the University needs the flexibility to hire the manpower on a temporary basis to execute particular project. Also, dynamics of education are changing at a rapid speed. It is not always possible to foresee the exact manpower that would be required in future for the programs undertaken by the University. Considering the limited resources of fund generation for a University, it may not be able to bear a permanent burden of payment of salary by creation of regular posts. Therefore, some flexibility is needed for the University to engage temporary hands to immediately undertake the planned activity. In that sense, the University is justified in creating temporary posts and hiring

the needed manpower on such temporarily created posts. Section 8(2) thus empowers the Universities to create temporary posts and just because a post is created under Section 8(2) of the Universities Act, it does not necessarily mean that the same must necessarily be a permanent post.

53) In view of the above discussion, it becomes difficult to accept a proposition that Petitioner-University has engaged in unfair labour practices under Item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act by engaging the Respondents on temporary basis or by continuing them for a long time on temporary basis. As observed above, all the three ingredients of Item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act need to be established for constituting an unfair labour practice. In the present case, it is difficult to hold that the University had an objective in its mind to deliberately deprive the Respondents of status or privileges of permanent employees. On the other hand, scheme of the Universities Act is such that it provides the necessary freedom and flexibility to a University to create temporary posts and to hire manpower based on contemporaneous needs. It therefore cannot be contended, by any stretch of imagination, that when a University governed by the provisions of the Universities Act hires temporary employees or continues them for certain length of time, it commits an unfair labour practice under Item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act.

54) Reliance by Mr. Naidu on judgment of this Court in ***Chief Officer, Sangli Municipal Council Vs. Dharamsingh Hiralal Nagarkar*** (supra) in support of his contention that continuation of temporary employment

for two years constitutes fulfillment of requirement of expression "for years" is inapposite. The law has developed after the judgment in ***Chief Officer, Sangli Municipal Council Vs. Dharamsingh Hiralal Nagarkar.*** It is now well-established principle after the judgment of the Division Bench of this Court in ***Municipal Council Tirora and Another V/s. Tulsidar Baliram Bindhade***[21] that an industrial adjudicator has no jurisdiction to direct creation of posts on establishment of a State instrumentality. Therefore, merely by reason of completion of 2 or 3 years of temporary service in a State instrumentality, an industrial adjudicator cannot make a declaration that unfair labour practice under Item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act is committed with a view to claim benefit of permanency. If the argument of Mr. Naidu about continuance in temporary service for two years is accepted as continuation 'for years', the same would turn the ratio of Constitution Bench judgment in ***Umadevi*** on its head. Neither such interpretation can now be accepted nor Industrial Court can direct grant of permanency to temporary employees in establishment of State instrumentalities on completion of couple of years of service.

55) In view of the above discussion, I am of the view that the Industrial Court has erred in holding that there is unfair labour practice under item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act on the part of the Petitioner-University merely by reason of engagement of Respondents as temporary employees or even by continuing them for a substantially long time. This however is subject to the exception recognised in paragraph

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53 of the judgment in ***Umadevi*** (supra), which aspect is being dealt with in greater details in the latter part of the judgment.

METHOD OF RECRUITMENT OF RESPONDENTS

56) There is no dispute to the position that proper selection process was not followed by the University while making temporary engagements of the Respondents. No advertisements were issued in the newspapers. Mr. Naidu has relied on evidence in support of his contention that notices were displayed on notice boards of the concerned departments of the University while filling up posts of peon /hamals. This, in my view is not sufficient compliance of the provisions of Articles 14 and 16 of the Constitution of India. The Respondents were also subjected to composite selection process. It appears that they are engaged in an informal manner. Accordingly, it is held that method of their initial recruitment is irregular. This aspect is not properly appreciated by the Industrial Court while directing conferment of permanency on the Respondents.

57) It also appears that several of the Respondents participated in the selection process conducted by the Petitioner-University for regular appointments thereby admitting the position that they need to clear proper selection process for seeking regularization. While some of the temporary employees may have been selected in the regular selection process, 17 of the Petitioners who participated in the regular selection process in the year 2013 either failed in the selection or could not secure merit position. This is what happens when proper selection process is

implemented for filling up public posts. Once a proper selection process is implemented, healthy competition amongst all eligible persons occur. In the present case, Respondents were initially engaged based on publication made on notice board of various departments of the University. When recruitment is conducted based on such privately published notices, usually kith and kin of those already in service tend to apply as outsiders do not even notice issuance of an advertisement. In my view, therefore, the Respondents have been irregularly appointed without being subjected to proper selection process.

EXISTENCE OF VACANT POSTS

58) There is no material on record to hold that at the time of initial engagement of each of the Respondents, sanctioned vacant posts existed. As observed above, there are two types of posts in the Petitioner-University viz., (i) posts approved by the State Government and (ii) those which are created by the University through its own funds. There is no concrete material on record to indicate that for each of the Respondents, sanctioned vacant posts were available at the time of their initial engagements. So far as posts created through University funds are concerned, again there is no material that regular posts were created by the University at the time of initial engagement of the Respondents. It therefore becomes difficult to hold conclusively that sanctioned vacant posts existed at the time of initial engagements of each of the Respondents.

59) However, there is sufficient material on record to infer that when the Industrial Court adjudicated the Complaint, there were large number of vacancies in the establishment of University. University's witness- Dr. Ashok Hema Farde, Deputy Registrar, HRDC Department, gave specific admission during the course of his cross-examination that as on 1 August 2025, 742 promotional and recruitment posts were vacant. These vacant posts are the ones sanctioned by the State Government. Mr. Cama, after taking instructions from the representative of his client present in Court, has fairly submitted that as of today, there are 242 class-II posts, 156 class-IV posts (total 398 posts) vacant. Upon directions issued by this Court, the Petitioner University has placed on record information about sanctioned and working strength as on 1 September 2026. Letter dated 1 September 2026 addressed by the University to Joint Director of Higher Education indicates that as against 1319 sanctioned posts, 535 posts were occupied and 784 posts are vacant. These 784 posts include 59 posts of Group A, 55 posts of Group B, 452 posts of Group C and 218 posts of Group-D. Thus, as of now, there are large number of vacancies of State approved posts in the University. Therefore, though corresponding posts may not be vacant at the time of initial engagements of Respondents, there are more than 808 posts vacant as on the date.

60) However, this Court cannot adopt piecemeal approach by taking into consideration only the cases of the Respondents in the present Petition. It appears that there are other similarly placed temporary employees, who have litigated before this Court in the past. In ***Mumbai Vidyapeeth Kamgar Sanghatana Vs. University of Mumbai*** (supra) it

appears that there were 938 temporary employees. However, University has placed on record status of total number of temporary employees, who are involved in litigations before various Courts. The information is as under:

A. Details of Pending Court Cases of 1253 temporary employees in the Hon'ble Supreme Court (Year 2018-2019):-

Sr.No.	Hon'ble Supreme Court cases (General staff	Total Temporary Employees in SLP	Working	Not Working
1	Supreme Court SLP No. 20872-73/2019 (High Court Writ Petition No. 2995 of 2018 Lod. No. 1141 of 2018)	12	11	01
2	Supreme Court SLP No. 20829-30/2019 (High Court Writ Petition No.2992 of 2018 Lod. No. 1149 of 2018)	13	13	00
3	Supreme Court SLP No. 20747-48/2019 (High Court Writ Petition No. 14039 of 2018 Lod. No. 20567 of 2018)	06	05	01
4	Supreme Court SLP No. 20127-28/2019 (High Court Writ Petition No. 2976 of 2018 Lod. No. 1837 of 2018)	938	698	240
5	Supreme Court SLP No. 20161-62/2019 (High Court Writ Petition No. 2487 of 2018 Lod. No. 12 of 2019)	155	91	64
6	Supreme Court SLP No. (High Court Writ Petition No. 523 of 2018(24 Temp. Employees) (16 working in which 8 are in ULP No.273 & 8 are in also ULP No.506)	24	07	17
Supreme Court cases Security /Watchman				
7	Supreme Court SLP No.20878-79 of 2019 (High Court Writ Petition No.12138 of 2018 Lod. No. 21308 of 2018)	83	64	19
8	Supreme Court SLP No.20869-70 of 2019 (High Court Writ Petition No.2484 of 2019 Lod. No. 67 of	08	08	00

	2019)			
9	Supreme Court SLP No.20721-22 of 2019 (High Court Writ Petition No. 12139 of 2018 Lod. No. 20751)	14	06	08
		1253	903	350

61) Thus, there are about 1300 temporary employees, who are litigating in various Courts demanding almost similar reliefs. Therefore, this Court cannot selectively take into consideration only 108 number of Respondents for the purpose of granting them relief on the basis of existence of 398 vacancies at present. Thus, even at present sufficient number of vacancies are not available with the University to accommodate all the temporary workers. It appears that as of now there are 903+20+5(928) workers already in service. Additionally, 108 workers involved in the present Petitions and 64 workers involved in the case of Shri Amit S. Bagul are also awaiting permanency and other reliefs. Thus, though large number of vacancies exist, they are still not sufficient to accommodate all the temporary workers.

RIGHT OF THE RESPONDENTS TO SEEK REGULARISATION

62) Now I proceed to decide whether the Respondents have made out any case for grant of permanency in the services of the Petitioner-University. As observed above, the Respondents were not recruited in the Petitioner-University by following any process of selection. Most of them were recruited in an informal manner based on notices published on the notice boards of the concerned departments. When applications are made for appointments based on internal notices published on the

notice board, only friends and relatives of the officers and employees can acquire knowledge about a process of engagement/ recruitment. Such action of effecting engagements based on internal recruitment notices severely impairs right of equality enshrined under Articles 14 and 16 of the Constitution of India. It deprives the eligible candidates from even noticing the process of recruitment. Thus, initial engagements of the Respondents in the present case are clearly irregular.

63) Coming to the length of service rendered by the Respondents, only few of them had rendered 10 years of service by the time the Complaint was filed on 25 August 2022 or by the time their engagements were terminated. According to Mr. Cama, only few of the temporary Respondents have completed 10 years of service. As observed above, services of the Respondents have come to an end on 30 August 2022. Even if services rendered by the Respondents are treated as continuous, ignoring brakes, only first 29 employees in the chart reflected above have apparently rendered 10 years' service. Individuals from 30 to 108 did not complete 10 years of service. As a matter of fact, last individual -Shweta Shantaram Redekar has rendered not even two years' service as she was engaged on 8 December 2020 and her engagement ended on 30 August 2022. Individuals at Serial Nos.98 to 107 (*Numbering 10*) have rendered just about four years of service. Individuals from Serial Nos.81 to 97 (*17 in number*) have rendered only five years' service.

64) Thus, only 29 Respondents have apparently completed 10 years of service by 30 August 2022. In my view, only those temporary workers, whose initial engagements are irregular but have completed 10 years of

service can be considered for grant of regularization in view of the law laid down by Constitution Bench judgment in ***Umadevi*** (supra). Rest of the Respondents cannot be granted regularization or permanency. The exception of completion of 10 years' service has been recognized in paragraph 53 of the judgment of the Apex Court in ***Umadevi*** (supra). Otherwise in paragraphs 43, 45, 46 and 47 of the judgment, the Apex Court has ruled against grant of regularization to temporary or casual workers merely on the strength of long tenure of service rendered by them. It is held by the Apex Court in paragraphs 43,45, 46 and 47 of the judgment as under:

> 43.Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified 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. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made

regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. 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 or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

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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 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 of India.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in Dharwad (supra), Piara Singh (supra), Jacob, and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or

(ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn {See Lord Diplock in Council of Civil Service Unions V. Minister for the Civil Service (1985 Appeal Cases 374), National Buildings Construction Corpn. Vs. S. Raghunathan, (1998 (7) SCC 66) and Dr. Chanchal Goyal Vs. State of Rajasthan (2003 (3) SCC 485). There is no case that any assurance was given by the Government or the concerned department while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after the Dharwad decision. Though, there

> is a case that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some case by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.
>
> 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.

65) However, the Hon'ble Apex Court has recognized an exception in paragraph 53 of the judgment in case of irregularly appointed temporary employees, who have worked against vacant posts for 10 years or more as a one-time exception. It is held in paragraph 53 of the judgment in ***Umadevi*** (supra) 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 (supra), R.N. Nanjundappa (supra), and B.N. Nagarjan (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.

66) In the present case, those of the Respondents, who have completed 10 years of service fulfill the requirement of working on sanctioned posts. As observed above, there have been vacancies occurring in the University every year and vacancies continued to subsist on account of non-making of regular appointments against government sanctioned posts. Since there are only about 29 workers, who can be considered for regularization it can be safely assumed that 29 vacancies did exist when they were in service. In my view, therefore, the benefit of the exception recognised in paragraph No.53 of the judgment of the Apex Court in ***Umadevi*** (supra) can be extended to those workers, who have completed 10 years of service.

67) However, this Court is unable to extend the benefit of regularization to the rest of the Respondents *de hors* the law declared by the Hon'ble Apex Court in ***Umadevi*** (supra). No doubt, in ***MSRTC Vs.***

Casteribe Rajya Parivahan Karmchari Sanghatana (supra) the Apex Court has held that the Labour and Industrial Courts have been given wide powers under Section 30 of the M.R.T.U. & P.U.L.P. Act for directing affirmative action. However, the Apex Court has recognised that the judgment in ***Umadevi*** (supra) is an authoritative pronouncement for a proposition that neither Supreme Court nor High Court can issue direction for absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc employees unless the employment itself is made regular in terms of the constitutional scheme. It is held that the judgment in ***Umadevi*** does not denude the Industrial Court and Labour Court of their statutory powers under Section 30 of the M.R.T.U. & P.U.L.P. Act to order permanency to workers, who have been victims of unfair labour practices under Item 6 of the Schedule IV of the M.R.T.U. & P.U.L.P. Act, where posts on which they have been working exist. It is further held that ***Umadevi*** (supra) does not override the power of Labour Court and Industrial Court in passing appropriate order under Section 30 of the M.R.T.U. & P.U.L.P. Act once the unfair labour practice on the part of the employer under Item 6 of Schedule IV of the Act is established. At the same time, the Apex Court has held that Courts cannot direct creation of posts and that creation of posts is not within the domain of judicial functions and that therefore, status of permanency cannot be granted by Courts where no posts exist. The Apex Court held in paragraphs 35, 36 and 41 of the judgment in ***MSRTC Vs. Casteribe Rajya Parivahan Karmchari Sanghatana*** as under:

> 35.Umadevi is an authoritative pronouncement for the proposition that Supreme Court (Article 32) and High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc

> employees unless the recruitment itself was made regularly in terms of constitutional scheme.
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> 36.Umadevi does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of MRTU & PULP Act to order permanency of the workers who have been victim of unfair labour practice on the part of the employer under item 6 of Schedule IV where the posts on which they have been working exists. Umadevi cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order under Section 30 of MRTU & PULP Act, once unfair labour practice on the part of the employer under item 6 of Schedule IV is established.
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> 41. Thus, there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive. It is also true that the status of permanency cannot be granted by the Court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the Courts.

68) The judgment in ***MSRTC Vs. Casteribe Rajya Parivahan Karmchari Sanghatana*** (supra) has been explained by subsequent judgment of the Apex Court in ***Hari Nandan Prasad & Anr. Vs. Employer I/R to Mangmt.of FCI & Anr.*** [22] in which the Apex Court undertook harmonious reading of the two judgments in ***Umadevi*** and ***MSRTC Vs. Casteribe Rajya Parivahan Karmchari Sanghatana*** (supra) and held in paragraph 39 of the judgment as under:

> 39. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may

22 CIVIL APPEAL Nos.2417-2418 /2014 decided on 17 February 2014.

> amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision.

69) Thus, even in relation to an industrial adjudication, now regularization is permissible only if similarly placed workmen are regularized by the employer itself under some scheme. Otherwise, even in exercise of powers under Section 30 of the M.R.T.U. & P.U.L.P. Act, the Industrial or Labour Court cannot straightaway direct regularization contrary to the constitutional scheme.

70) Mr. Naidu has relied on judgments of the Apex Court in ***Jaggo Vs. Union of India, Vinod Kumar Vs. Union of India***, ***Raj Karan Singh and Ors. Vs. Union of India and Ors., Dharam Singh Vs. State of U.P.*** and ***Shripal Vs. Nagar Nigam, Ghaziabad*** (supra) in support of his contention that the Apex Court has given directions for regularization of temporary/ casual employees who are found to have been engaged for several years. However, even in ***Jaggo Vs. Union of India,*** (supra) the Apex Court has referred to the judgment in ***Umadevi*** (supra) and the exception recognized in paragraph 53 of the judgment in relation to irregular employment. The Apex Court has held in paragraph 26 of the judgment in ***Jaggo Vs. Union of India*** as under:

> 26. While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its SLP(C) NO.5580 of 2024 ETC. Page 27 of 29 principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

71) In ***Vinod Kumar Vs. Union of India*** (supra) the Apex Court has held that the true nature of employment is determined by how the job actually evolved and the length of continuous service, rather than the initial label or terms of the appointment letter. In that case, the Apex Court considered three factors of (i) continuous service (ii) performance of duties indistinguishable from those performed in permanent posts and (iii) selection through a process that mirrors that of regular recruitment. In the present case, the last test is clearly not fulfilled since the Respondents have not undergone a process which mirrors that of regular recruitment. Also, services of most of the employees are not long enough for this Court to record a positive finding that their service conditions have evolved over the time warranting their re-classification from temporary to regular status. Most importantly, the criteria of existence of vacant posts to accommodate all temporary employees is

not fulfilled in the present case. Judgment of the Apex Court in ***Raj Karan Singh Vs. Union of India*** (supra) further builds upon the ratio of the judgment in ***Vinod Kumar Vs. Union of India*** (supra). The case involved denial of pensionary benefits on account of recognition of temporary status of the concerned employees. The Apex Court held that denying pensionary and service benefits to long-serving employees solely on the ground of a temporary or scheme-based classification is arbitrary and violates Articles 14 and 16 of the Constitution. It is held that even if employees are initially classified as temporary or attached to a contributory/scheme fund, evaluating their actual working conditions is mandatory. The employees therein had rendered over three decades of continuous service, were receiving regular pay scales, periodic increments, promotions, and Assured Career Progression benefits. The Apex Court therefore held that appellants therein were regular government servants.

72) In ***Shripal Vs. Nagar Nigam, Ghaziabad*** (supra) the Apex Court has dealt with the issue of employment of workers through contractors in the light of ban imposed by the Government on fresh recruitment. Most of the contract employees in ***Shripal*** had worked for more than a decade. In ***Dharam Singh Vs. State of U.P.*** (supra) the Apex Court has dealt with daily wage employees in Uttar Pradesh Higher Education Services Commission. The Commission had employed the Appellants before the Apex Court in 1989 and 1992 on various posts such as peon, driver, etc. The Commission itself had resolved creation of 14 posts for regularization of daily wage employees and had sent a proposal to the State Government. The State Government had however refused to

sanction the posts and what was challenged before the Apex Court was State's arbitrary refusal to sanction posts despite Commission's own acknowledgment of need of the work force, who had worked for several decades. It is in the context of these peculiar circumstances that the Apex Court referred to the judgments in ***Shripal*** and ***Jaggo*** and set aside refusals of the State Government to the Commission's proposal for sanction /creation of class-III /class-IV posts and directed regularization of Appellant before it.

73) Thus in all the five recent judgments, the Apex Court has considered the factor of continuous service over a decade rendered by the concerned employees as an important factor for granting the benefit of regularisation. The judgments cannot be relied on in support of a proposition that continuation in service for a few years would make the temporary employee entitled for regularization, that too in absence of availability of sanctioned posts. In my view, therefore, the same yardstick of continuation in service of at least ten years needs to be applied in the present case for extending the benefit of regularization.

74) Application of yardstick of completion of 10 years' service for grant of benefit of regularization is also important in the light of non-availability of sufficient vacancies to accommodate all the temporary workers. As per the data placed on record by the University, there are at present 903+20 = 923 workers, who are continued in service on account of orders passed by the Hon'ble Apex Court in pending SLPs. Additionally, there are 64 temporary employees, who have been directed to be reinstated by this Court in Writ Petition No.2556 of 2019 and in

respect of whom SLPs are pending before the Apex Court. Additionally, there are 108 employees involved in the present Petition. There are another five employees who are directed to be regularised by the Industrial Court in Complaint (ULP) No.248 of 2022. Thus, there are over 1000 temporary employees, who are seeking benefit of regularization. There are only 398 Class-III and Class-IV sanctioned posts available with the Petitioner-University. Thus, 398 vacant posts are in government sanctioned quota and there are not sufficient vacancies to accommodate all the temporary employees. Temporary employees, who have completed 10 years' service can be accommodated against the available vacancies in State sanctioned quota.

75) Though the University has the power to sanction and create posts through its own funds, it has expressed inability to bear the burden of paying salaries on regular basis to any employee. As observed above, the dynamic nature of development of education system in India makes it difficult to foresee the requirement of permanent employees in the University. It is otherwise impermissible for the Court to direct creation of permanent vacancies by the University through its ownfund as held by the Apex Court in ***MSRTC Vs. Casteribe*** and by the Division Bench of this Court in ***Municipal Council Tirora*** (supra). Therefore, it is not possible to uphold the direction for grant of permanency to all 108 Respondents for whom there are no vacancies. Available 398 vacancies cannot be selectively assigned to the Respondents before this Court when there are additional 900 odd temporary workers, who may have rendered longer services than the Respondents. In my view, therefore, it is important to

apply the yardstick of completion of 10 years' service for grant of benefit of regularization.

76) For deciding the entitlement for regularization, services rendered on account of interim orders passed by Courts/Tribunals cannot be considered as held in ***Umadevi***. Therefore, the interim directions issued by the Industrial Court for payment of wages to the Respondents during pendency of the Complaint does not mean that the services post passing of the interim order can be considered for computing the length of service for regularization. Therefore only those Respondents who have rendered 10 years' of service by 30 August 2022 can be granted the benefit of regularization.

77) Recently, in ***Film & Television Institute of India (FTII) Vs. Javed Rasul Banedar and Ors.***[23] this Court has analysed the development of law on the issue of regularization through various judgments of the Apex Court. This Court upheld the order of the Industrial Tribunal directing regularization to 7 workmen of Film and Television Institute of India (**FTII).** Regularization was upheld on the ground that those 7 workmen had rendered more than 10 years of service and 15 permanent posts were created by the FTII against which they could be regulsrised. Thus, rendering of service of 10 years and availability of permanent posts for absorption are considered as relevant factors by this Court for upholding the benefit of regularization. Following the law enunciated in the judgment in ***FTII V/s. Javed Rasul Banedar*** in my view, the benefit of

23 Writ Petition No.1644 of 2025 decided on 29 September 2026.

regularization deserves to be granted to only those Respondents who have completed 10 years of service.

78) Mr. Naidu has strenuously relied on some of the past judgments of this Court for supporting the impugned judgment and order of the Industrial Court. The judgment in ***Mumbai Vidyapeeth Kamgar Sanghatana Vs. University of Mumbai*** (supra) was delivered on 3 May 2019. It appears that there were large number of temporary employees involved in bunch of Writ Petitions totaling about 1253 out of whom 903 were actually working whereas 350 had stopped working. According to Mr. Naidu this Court has granted the benefit of permanency to the temporary employees involved in that case. Perusal of the operative directions in the judgment indicate that there is no specific direction for grant of benefit of regularization/permanency. However, there is direction for appointment of employees in vacant posts, which Mr. Naidu interprets as the direction for regularization. The operative part of the judgment reads thus:

> 76. In view of the conclusion that I have reached the university's challenge cannot succeed whereas the employees are entitled to relief and accordingly the following order is passed;
>
> (i) The impugned judgments to the extent they hold that the respondent university is not guilty of unfair labour practices under Item 5 of Schedule IV is set aside. I hold that the facts reveal that the university has committed unfair labour practice under Item no. 5 and 6 of Schedule IV of the MRTU & PULP Act.
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> (ii) The finding in the impugned judgment that the appointments of the complainants were inconsistent with the judgments of this Court in WP/1492/2013 and WP/2615/2013 is set aside since they did not arise for consideration

> (iii) The university shall grant benefits contemplated in the operative portions of the impugned judgments from the dates of filing the respective complaints. Salary shall be paid on or before the 7th day of each month. Arrears of salary and allowances shall be paid within a period of six months from today.
>
> **(iv) The University shall appoint employees in vacant posts firstly from amongst the petitioners provided they are still serving. In the meantime they are restrained from terminating services of the petitioners, save and except by following due process. It is clarified that the benefit of this order will also be available to those employees who were on leave at the material time.**
>
> (v) Rule is made absolute in the above terms. Petitions are accordingly disposed.
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> (Emphasis added)

79) Since there is a direction for appointment of employees in vacant posts, it is contended by Mr. Naidu that the judgment contemplated grant of permanency. This is disputed by Mr. Cama. Be that as it may. The judgment is under challenge before the Apex Court in SLP (C) Nos.20161-20162/2019 in which leave is granted and the University is directed to pay only minimum pay scale from 1 July 2022 corresponding to the pay scale of regularly appointed employees. Order is modified on 10 April 2024 by which the Apex Court has directed payment of dearness allowance while paying minimum of the wages in the pay scale. The Apex Court will decide whether permanency is granted to over 1200 temporary employees involved in the judgment of this Court dated 3 May 2019 and whether they are indeed entitled for permanency /regularisation.

80) In ***University of Mumbai V/s. Parag Bhaskar Ghag*** (supra) this Court has dealt with the issue of grant of permanency to the employees working at Ratnagiri Campus of Petitioner-University. A Coordinate Bench of this Court considered the fact that the Respondents before it

had worked for 15 years on an average and requirement of services by them was repeatedly emphasised by the officers of the University. This Court accordingly upheld grant of permanency to 20 workers involved in that case. The judgment of this Court in ***University of Mumbai V/s. Parag Bhaskar Ghag*** (supra) is again under challenge before the Apex Court in SLP No.22364 of 2025 and by order dated 25 August 2025, the Hon'ble Apex Court has directed that interim order dated 26 May 2022 as modified on 19 April 2024 would apply to employees in ***University of Mumbai V/s. Parag Bhaskar Ghag.***

81) In my view, the Respondents cannot rely on ratio of the two judgments delivered in ***Mumbai Vidyapeeth Kamgar Sanghatana Vs. University of Mumbai*** and ***University of Mumbai V/s. Parag Bhaskar Ghag*** (supra) for claiming wholesale regularization to all the Respondents. As observed above, the case in ***Parag Bhaskar Wagh*** involved rendering of 15 years of service and this Court is upholding grant of regularization to those temporary employees who have rendered 10 years of service. However, the ratio of those two judgments cannot be misread to mean that even an employee, who has rendered just two years of service can be regularized in the services of the University.

82) Permanency or regularization in service, which are concepts different and distinct from each other as observed by the Apex Court in ***Umdadevi*** after referring to its judgments in ***R. N. Nanjundappa vs T. Thimmiah & Anr***[24] and ***B.N. Nagarajan Versus. State of Karnataka***[25] are often used interchangeably by Courts and Tribunals. Permanency is more akin to making a temporary or *badli* worker permanent after completion

24 1972 2 SCR 799
25 1979 4 SCC 507

of specified days of service. In various Standing Orders, such days are specified. The concept of permanency is applicable more in private employments, where there is no concept of creation of posts, payment of pension, need to continue the employee till retirement, etc. In services of Governments and State instrumentalities however the concept of permanency on completion of specified number of days cannot be made applicable as grant of permanent status not only requires existence of permanent posts, but also the liability to pay salaries, pension etc. In services of Governments and State instrumentalities, a regular/permanent employee cannot be retrenched unless a misconduct is proved against him/her, which is not the case in private employments. After following the procedure, even the permanent employee can be retrenched. Creation of posts in the establishments of Governments and State instrumentalities involves a comprehensive process as creation of post involves financial burden. The post is created not for any particular person but for the organisation as such. Once posts are created, the salaries are required to be revised as per pay commission recommendations. Governments and many of the State instrumentalities have pension schemes. Therefore, creation of posts in Governments and State instrumentalities is not an easy task. Creation of excess posts impairs the functions of the organisation which then becomes incapable of performing the duties for which the same is created. A classic example is of Municipal Corporations, created for civic governance and regulation of development. Several Municipal Corporations in the State are spending majority of their yearly revenues only on payment of salaries to the employees leaving small portion for performing the duties and functions for which they are created. The State Government is required

to keep a tap on creation of posts by the Municipal Corporations so as to ensure that unnecessary posts are not created impairing performance of the statutory duties.

83) In the case of the Petitioner-University also, the State Government appears to be extremely cautious about sanctioning of posts. It appears that to keep a tap on funding to the University, the State Government has directed it to reduce the manpower. It has not permitted the University to fill up even the vacancies occurring in the sanctioned staffing pattern. True it is that the University has its own funds and can hire manpower by utilizing the same. The Petitioner-University may wear the cap of producing substantial number of billionaire alumni and apparently ranks tenth in the global list, with its 31 alumni controlling global wealth of $232.6 billions[26], it appears to be facing severe and ongoing financial problems driven by shrinking traditional revenues, massive budget deficits, and fund mismanagement. Reportedly[27], the deficit projected in annual budget of the University has more than doubled. Though Mr. Naidu has highlighted the position that the alumni have donated over Rs. 100 crores to the University, the need for donation has arisen due to the financial church.

84) There also appears to be reduction in the overall activities of the Petitioner-University over the years. Large number of colleges, which were once affiliated to the Petitioner-University have gone autonomous.

26 Article "Mumbai University's billionaire alumni control over $232 billion in wealth" published in Business Standard on 22 May 2026

27 Article "*As colleges go autonomous, Mumbai University faces revenue squeeze*" published in the Times of India on 22 August 2026

Reportedly[28], the number of autonomous colleges under Mumbai University (MU) has surged rapidly, jumping from 62 in 2023 to 135 in 2026. The Courts and Tribunals cannot be unmindful of the harsh ground realities an organisation may face while issuing directions for regularization to temporary employees. The Petitioner-University has expressly contended that it does not need the manpower that it once employed on account of technological advances and reduction of its activities. This Court needs to be mindful of this position and on this count also, the direction for grant of permanency to all 108 Respondents cannot be upheld. Also, as observed above there are 900 odd additional temporary employees who are waiting for regularization and there aren't sufficient vacancies to accommodate all of them. Therefore, it would be apt to restrict the regularization benefits to only those who have completed 10 years of service.

85) Petitioner-University has flagged the concern of refusal by the State Government to permit it to fill up the available sanctioned vacancies. It apprehends that if employees are regularized, the University will have to bear the financial burden of paying them salaries as per the pay commission, which it cannot bear. Since the posts are sanctioned, I do not see any difficulty why the State Government can raise any objection to payment of salaries and allowances to the employees who are directed to be regularized by this Order. However, for the sake of clarity, it is observed that the State Government shall bear the burden of paying salaries and allowances to the employees who are directed to be regularized.

28 Article "*Number of autonomous colleges in Maharashtra triple in five years*" published in the Times of India on 21 March 2026

PAYMENT OF EQUAL WAGES

86) Coming to the issue of commission of unfair labour practice under Item V of the Schedule IV of the M.R.T.U. & P.U.L.P. Act, the same is in respect of entitlement of the Respondents to equal wages on par with permanent employees. The law on the issue of payment of equal wages to employees is now well settled by the judgment of the Apex Court in ***State of Punjab and Others Vs. Jagjit Singh*** (supra). In the present case, the Industrial Court has directed payment of equal wages to all the employees on par with permanent employees w.e.f. 1 July 2022. However, the Respondents were discontinued on 30 August 2022. Therefore, the benefit of equal wages would be only for a period of two months from 1 July 2022 to 30 August 2022. Though regularization is being denied to the workers, who have rendered less than ten syears' service, in my view, the benefit of payment of difference of wages (*difference between consolidated salaries and wages in minimum of the payscale payable to permanent employees*) during the period from 1 July 2022 to 30 August 2022 cannot be denied even to those Respondents who have not been extended the benefit of regularization. To that extent, no interference is warranted in direction for payment of equal wages during the period from 1 July 2022 to 30 August 2022.

COMPENSATION TO EMPLOYEES WHO ARE DENIED REGULARISATION

87) This Court is aware of the plight of the employees who cannot be regularized in service in view of the discussion above. Though not for 10

years, some of them may have worked for some length of service. Though the University claims that they are not terminated, the ultimate effect is loss of jobs. They are left high and dry without any retrenchment compensation. The provision for retrenchment compensation is made in the ID Act to ensure that the terminated employees receive atleast some amount which can be utilized to look after their families till they receive a new job. In the present case, nothing is paid to the discontinued employees. In my view the least that must be paid to them is compensation at the rate of 15 days' wages for each completed year of service. Since this Court has upheld their entitlement for wages in the minimum of payscale payable to the permanent employees, the compensation payable shall be calculated by taking into consideration what was payable to them in the minimum of the payscale as on 30 August 2022.

CONCLUSIONS

88) Conspectus of the above discussion is that the findings of the Industrial Court that Petitioner-University has committed unfair labour practice under Item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act is unsustainable. Therefore, grant of permanency to all 108 Respondents is clearly unwarranted. Though commission of unfair labour practices under Item 6 of Schedule IV of the Act is not established, following the ratio of the judgments of the Apex Court in ***Umadevi, Jaggo, Vinod Kumar***, ***Raj Karan Singh, Dharam Singh*** and ***Shripal*** (supra) it would be appropriate to uphold the grant of benefit of regularization to only those Respondents, who have completed 10 years of service.

89) The Respondents, who have completed 10 years of service and who are held eligible for regularization have been discontinued from 1 September 2022. By virtue of various interim orders granted by the Industrial Court read with the order passed by this Court, their wages upto the date of decision of the Complaint have been deposited in the Industrial Court. Since they have been wrongfully discontinued while denying the benefit of regularization, in my view the employees who are held eligible for regularization can be permitted to withdraw the deposited wages for period upto September-2025. They need to be reinstated in service forthwith alongwith the direction to pay wages from October-2025 till the dates of actual reinstatement. So far as wages in respect of balance Respondents (who are held not eligible for regularization), nothing would be payable to them towards backwages out of the deposits made by the University. They would be entitled to withdraw only the difference between amounts drawn and amount in the minimum of payscale paid to permanent employees during the period from 1 July 2022 to 30 August 2022. Additionally, they shall be entitled to compensation as observed above.

90) Writ Petition (L) No.23571 of 2026 challenges Order dated 24 June 2026 permitting withdrawal of the deposited amounts. Since the order of the Industrial Court is modified and the exact entitlement of each of the Respondents is now determined and directions are being issued for withdrawal of the amounts accordingly, nothing would survive in Writ Petition (L) No.23571 of 2026.

ORDER

91) In view of the above discussion, I proceed to pass the following order:

(i) Judgment and order dated 15 September 2025 passed by the Industrial Court, Mumbai in Complaint (ULP) No.215 of 2022 is partly set aside and the Order of the Industrial Court is modified with the following directions.

(ii) It is held that only those Respondents, who have completed 10 years of service upto 30 August 2022 shall be entitled to be regularised in the service of Petitioner-University against the existing vacant posts.

(iii) The Petitioner-University shall accordingly reinstate those Respondents, who are held eligible for regularization, within a period of six weeks.

(iv) The Respondents, who are held eligible for regularization, shall be permitted to withdraw the deposited amount of wages in the Industrial Court for the period upto September-2025. Their wages in respect of period from October 2025 till the date of reinstatement shall be paid by the Petitioner-University within a period three months.

(v) Those Respondents, who are held to be not eligible for regularization, shall be permitted to withdraw from the deposited amounts only difference of consolidated salary and wages payable to permanent employees in respect of the period from 1 July 2022 to 30 August 2022.

(vi) Those Respondents, who are not held to be entitled for regularization and reinstatement, shall be paid compensation at the rate of 15 days' wages per completed year of service upto 30 August 2022 (*computed by considering minimum of the payscale plus dearness allowance*).

(vii) The Petitioner-University shall file a statement before the Industrial Court indicating the exact amounts payable to the Respondents covered by direction Nos. (v) and (vi) above within a period of four weeks and upon filing of such statement, the Industrial Court shall permit withdrawal of such amount from the deposited amount.

(viii) In respect of the employees, who are held to be eligible for regularization differences in respect of consolidated pay and wages payable to regular employees shall be paid to them by the Petitioner-University from 1 July 2022 till the date of regularization within a period of three months.

(ix) Order dated 24 June 2026 passed by the Industrial Court is set aside and it is directed that the withdrawal of the deposited amounts by the Respondents shall be as per the directions above.

92) With the above directions, Writ Petition (L) No. 42490 of 2025 is partly allowed. Rule is made partly absolute therein. Writ Petition (L)

No.23571 of 2026 is allowed and rule therein is made absolute. Both the Petitions are accordingly disposed of. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]