* HON'BLE THE CHIEF JUSTICE
THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

+ Writ Petition No.20544 of 2017
and
Writ Petition (PIL) No.149 of 2017

% Date: 18-9-2018

W.P.No.20544 of 2017:

1. P.Anil Kumar S/o Prakasham, Aged 29 years,
R/o T.Venkatapuram Village, Kallur Mandal,
Khammam District, Telangana-507 209;
2. M.Raghu Mohan S/o Kishan Rao, Aged 33 years;
3. P.Praveen Kumar S/o Narayana, Aged 29 years;
4. D.Srinivas S/o Hanumandlu, Aged 34 years

... Petitioners

Vs.

$ 1. The Telangana State Power Generation Corporation Ltd., Vidyuth Soudha, Hyderabad, Rep. by its Chairman & Managing Director
2. The Telangana State Transmission Corporation, Vidyuth Soudha, Hyderabad, Rep. by its Chairman & Managing Director
3. The Telangana State Southern Power Distribution Co. Ltd., Corporate Office at Mint Compound, Hyderabad, Rep. by its Chairman & Managing Director
4. The Telangana State Northern Power Distribution Co. Ltd., Corporation Office at Vidyuth Bhavan, Nakkalagutta, Hanamkonda, Warangal District, Rep. by its Chairman & Managing Director
5. The State of Telangana, Energy Department, Telangana State, Hyderabad, Rep. by its Prl. Secretary
6. The Telangana Electricity Trade Unions Front, Mint Compound, Hyderabad-63, Rep. by its Chairman Sri N.Padma Reddy, President of TEE-1104 Union

... Respondents

W.P.(PIL) No.149 of 2017:

Marka Sravan Kumar S/o Biksapathi, Aged 25 years,
Occ: Unemployee, R/o H.No.3011, Laxmipuram,
Parakal Mandal, Warangal District, Telangana State

... Petitioner

Vs.

$ 1. The State of Telangana, Rep. by its Chief Secretary to Govt., Telangana Secretariat, Hyderabad-500 022
2. The State of Telangana, Rep. by its Prl. Secretary to Govt., Energy Dept., Telangana Secretariat, Hyderabad
3. The Transmission Corporation of Telangana Ltd., Rep. by its Chairman & Managing Director, Vidyut Soudha, Somajiguda, Hyderabad
4. The Southern Power Distribution Company of Telangana Ltd., Rep. by its Chairman & Managing Director, Mint Compound, Hyderabad
5. The Northern Power Distribution Company of Telangana Ltd., Rep. by its Chairman & Managing

Director, Vidyut Bhavan, Nakkalagutta, Warangal
6. The Telangana State GENCO, Rep. by its Chairman & Managing Director, Vidyut Soudha, Somajiguda, Hyderabad
7. The Telangana State Power Contract Workers' Union (Reg.H-43), Rep. by its General Secretary, #6-3-662/18, Flat No.111, Sri Lakshmi Plaza, Jafer Ali BAgh, Somajiguda, Hyderabad
8. The T.S. Power Employees' Union (Regd. No.E-1535), Rep. by its President, #6-3-662/18, Flat No.111, Sri Lakshmi Plaza, Jafer Ali Bagh, Somajiguda, Hyderabad

(R.7 & R.8 are impleaded as per Court Order dt.02-8-2017 in WP (PIL) MP Nos.266 & 390/2017 respectively)

... Respondents

! Counsel for Petitioners: Mr. Mekala Uday Kiran
(in WP.20544/2017)
Counsel for Petitioner: Mr. Srikanth, representing
(in WP (PIL) No.149/2017) Smt. K.V. Rajasree

Counsel for Respondents:

Mr. G.Vidya Sagar, Senior Counsel appearing for the Transmission Corporation of Telangana Limited, the Southern Power Distribution Company of Telangana Limited and the Northern Power Distribution Company of Telangana Limited,

Mr. S.Sarath Kumar, Special Government Pleader for the Additional Advocate General of the Telangana State,

Government Pleader for Energy (Telangana) appearing for the Energy Department,

Mr. S.Ramachandra Rao, learned Senior Counsel appearing for some of the impleading parties

Mr. Zakir Ali Danish, Mr. Peeta Raman, Mr. V.Mallik, Ms. A.Deepthi, Mr. R.Vinod Reddy and Mr. Prabhakar Chikkudu, counsel appearing for the private respondents.

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> Head Note:

? Cases referred:

1. (2006) 4 SCC 1
2. (1998) 7 SCC 273
3. (2005) 5 SCC 136
4. (2010) 9 SCC 655
5. (2014) 15 SCC 308
6. (2006) 9 SCC 623
7. (1974) 4 SCC 3
8. 2018 (1) ALT 505 (DB)
9. (2009) 8 SCC 556
10. (2014) 7 SCC 190
11. (2015) 6 SCC 321
12. (2015) 6 SCC 494
13. (2017) 3 SCC 410

HON'BLE THE CHIEF JUSTICE
THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Writ Petition No.20544 of 2017
and
Writ Petition (PIL) No.149 of 2017

Common Order: (per V.Ramasubramanian, J.)

Challenging the proceedings of the (i) Transmission Corporation of Telangana Limited, (ii) Southern Power Distribution Company of Telangana Limited and (iii) Northern Power Distribution Company of Telangana Limited, the petitioners, who claim to be educated unemployed youth, have come up with the above writ petitions, one in the form of a public interest litigation and another in the form of a regular writ petition by aggrieved parties.

2. We have heard Mr. Srikanth, learned counsel appearing for the petitioner in the public interest litigation and Mr. Mekala Uday Kiran, learned counsel appearing for the petitioners in the second writ petition. We have also heard Mr. G.Vidya Sagar, learned Senior Counsel appearing for the Transmission Corporation of Telangana Limited, the Southern Power Distribution Company of Telangana Limited and the Northern Power Distribution Company of Telangana Limited, Mr. S.Sarath Kumar, learned Special Government Pleader for the Additional Advocate General of the Telangana State, the learned Government Pleader for Energy (Telangana) appearing for the Energy Department, Mr. S.Ramachandra

Rao, learned Senior Counsel appearing for some of the impleading parties and Mr. Zakir Ali Danish, Mr. Peeta Raman, Mr. V.Mallik, Ms. A.Deepthi, Mr. R.Vinod Reddy and Mr. Prabhakar Chikkudu, learned counsel appearing for the private respondents.

3. Pursuant to the Andhra Pradesh Re-organisation Act, 2014 and the formation of the State of Telangana with effect from 02-6-2014, 4 Corporations including the Transmission Corporation of Telangana Limited, the Northern Power Distribution Company of Telangana Limited and the Southern Power Distribution Company of Telangana Limited, came into existence. Admittedly, these Corporations were engaging the services of workers through outsourcing agencies and the Corporations received lot of complaints about the middlemen taking away a part of the wages payable to the workmen.

4. It appears that the plight of the workmen engaged through the outsourcing agencies was taken up by 14 Trade Unions operating in the power sector in the State of Telangana. These 14 Trade Unions are said to have formed themselves into a Federation known as Telangana Electricity Trade Unions Front on 29-9-2015 and they submitted a charter of demands. This Federation issued a notice dated 19-5-2016 detailing a series of agitational programmes for resolving various issues. Therefore, a Committee was constituted to examine the charter of demands.

5. A series of discussions were held by the representatives of the managements of the three Corporations, with the representatives of the Federation, in the presence of the Minister for Energy of the Government of Telangana. These discussions led to a settlement being reached on 14-6-2016. But this settlement did not cover the demand for absorption of workmen engaged through outsourcing agencies.

6. Therefore, the Federation issued a strike call notice in Form-L on 03-11-2016 followed by another notice dated 10-11-2016 proposing to go on strike from the midnight of 06-12-2016. Hence, conciliation was initiated by the Joint Commissioner of Labour, Hyderabad, in view of the fact that the Corporations came within the definition of "Public Utility Services" under Section 2(n) of the Industrial Disputes Act, 1947. On 01-12-2016, discussions were held in the presence of the Chief Minister, pursuant to which a settlement under Section 18(1) of the Industrial Disputes Act, 1947, was entered into between the Telangana State Power Utilities (comprising of four Corporations) with the representatives of the Federation of Trade Unions. Under this settlement, it was agreed that the outsourced workmen employed in all the four Corporations will be absorbed in a phased manner as against existing vacancies.

7. When the exercise of identifying the workmen who are entitled to the benefit of the settlement was going on, the

Federation of Trade Unions made a complaint to the Joint Commissioner of Labour that the implementation of the settlement under Section 18(1) was being dragged on. Therefore, the Joint Commissioner of Labour convened a meeting on 27-5-2017. Pursuant to the undertaking given by the managements before the Joint Commissioner of Labour, the Board of Directors of all the Corporations resolved to constitute Committees for the verification and consideration of the question of absorption of the outsourced workmen. In accordance with these resolutions, the Transmission Corporation of Telangana Limited issued proceedings in T.O.O. (Jt. Secy-Per) Rt.No.247, dated 02-6-2017, constituting a Committee comprising of the Executive Director of Finance, the Chief General Manager (HRD), Joint Secretary and Additional Superintendent of Police, to verify and scrutinise the applications of the outsourced employees for absorption. Similarly, the Southern Power Distribution Company of Telangana Limited issued proceedings in S.P.O.O. (CGM-HRD) Rt.No.510, dated 01-6-2017, constituting two Committees for scrutinising and verifying the applications of the outsourced employees. The Northern Power Distribution Company of Telangana Limited also issued proceedings in N.O.O. (CGM-HRD) Rt.No.358, dated 01-6-2017, constituting a single Committee.

8. Challenging the aforesaid three proceedings, issued respectively by the Transmission Corporation of Telangana

Limited, the Southern Power Distribution Company of Telangana Limited and the Northern Power Distribution Company of Telangana Limited, four persons claiming to be educated unemployed youth belonging to the Scheduled Castes and the Backward Classes, came up with the writ petition W.P.No.20544 of 2017. At about the same time, a person claiming to be an unemployed engineering degree holder came up with the public interest litigation challenging the very same proceedings of the three Corporations.

9. On 29-6-2017, the public interest litigation came up for orders as to admission. While issuing notice before admission in the public interest litigation, a Bench of this Court observed that it may not be appropriate at that stage to interdict the process of a settlement being reached.

10. Thereafter, the Transmission Corporation of Telangana Limited issued proceedings in T.O.O. (Jt. Secy.-Per) Ms. No.114, dated 29-7-2017, identifying about 23,667 workers employed on outsourcing basis, seeking to get absorbed. Therefore, on 02-8-2017, a Bench of this Court admitted the public interest litigation and granted an interim suspension of the process of absorption, primarily on the ground that the attempted absorption fell foul of the law declared by the Supreme Court in ***Secretary, State of Karnataka v. Umadevi (3)***[1] and that at least 50% of those who are sought to be absorbed, were employed for a period of

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[1] (2006) 4 SCC 1

less than 6 years which did not justify the demand for absorption and that there was no fair and transparent mode of selection of these employees through the outsourcing agencies, which resulted in violation of Articles 14 and 16 of the Constitution.

11. The non-public interest litigation writ petition W.P.No.20544 of 2017 which went before a learned single Judge, got admitted on 23-6-2017 and thereafter it got tagged along with the public interest litigation writ petition.

12. The sum and substance of the grievance of the petitioners in both the writ petitions is that all the Corporations formed as Power Utility Establishments in the State of Telangana, come within the definition of "Instrumentality of State" and hence the appointment to posts in these Corporations constitute public employment attracting Articles 14 and 16 of the Constitution of India. Therefore, the contention of the petitioners is that the engagement of thousands of persons through outsourcing agencies, allowing them to continue for some time and absorbing them against regular vacancies is nothing but a device to make back door entries legalised. According to the petitioners, the impugned actions of all the Corporations clearly fall foul of the law declared by the Supreme Court in *Umadevi (3)*. The petitioners contend that under the scheme now formulated, even persons engaged on a single day, could be absorbed and that the absorption of such persons who

were not recruited through any fair and transparent procedure, offends Articles 14 and 16 of the Constitution.

13. But the defence taken by the respondent-Corporations is that these Corporations come within the definition of the expression "industry" under the Industrial Disputes Act, 1947 and that therefore the impugned action of absorption, brought forth in terms of a settlement reached under Section 12(3) of the Industrial Disputes Act, cannot be termed as unlawful. In any case, it is the contention of the Corporations that no public interest litigation can be entertained in respect of service matters.

14. We have carefully considered the rival contentions.

15. At the outset, it should be pointed out that the public interest litigation, as rightly contended by Mr. G.Vidya Sagar, learned Senior Counsel appearing for the Corporations, is not maintainable. The law is well settled on this point in the decision of the Supreme Court in ***Dr. Duryodhan Sahu v. Jitendra Kumar Mishra***[2]. This principle was reiterated in ***Gurpal Singh v. State of Punjab***[3]. Again in ***Hari Bansh Lal v. Sahodar Prasad Mahto***[4], the Supreme Court made it clear that except a Writ of *Quo warranto*, no public interest litigation is maintainable in service matters. Finally, the view was re-affirmed in ***Madan***

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[2] (1998) 7 SCC 273
[3] (2005) 5 SCC 136
[4] (2010) 9 SCC 655

Lal v. High Court of Jammu and Kashmir[5], where the Supreme Court held that *pro bono publico* writ petitions cannot be entertained in service matters. Therefore, the public interest litigation writ petition is liable to be dismissed.

16. But the other writ petition is not filed as a public interest litigation. It is filed by persons who are personally interested in having the impugned action set aside, so that the opportunity to seek employment in these Corporations is thrown open to them. Therefore, this writ petition cannot be thrown out on the ground of maintainability and hence we have to consider the grounds of attack to the impugned proceedings.

17. But at the outset, this writ petition also falls short of the requisite fire power. The reason is that all the impugned proceedings of the Corporations are the product of a settlement first reached under Section 18(1) and then sealed under Section 12(3) of the Industrial Disputes Act. These settlements are not under challenge. In fact, a settlement reached under Section 12(3) in the course of conciliation proceedings, is binding even upon persons who are not parties to the dispute. In ***Transmission Corporation of A.P. Ltd. v. P.Ramachandra Rao***[6], a group of employees who retired before the cut-off date fixed for revision of pension, challenged the same before this Court and succeeded. The defence taken by the management was that

[5] (2014) 15 SCC 308
[6] (2006) 9 SCC 623

the scheme was a product of a settlement reached under Section 12(3) of the Industrial Disputes Act. While allowing the appeal filed by the Transmission Corporation, the Supreme Court pointed out that when there was no challenge to the settlement reached under Section 12(3) of the Act, it is not possible to test the correctness of the decision taken pursuant to such a settlement. The Court also held that the line of enquiry that could be undertaken against the terms of a settlement is also restricted. Unless a settlement is shown to be *ex facie* unfair, unjust or *mala fide*, the Court cannot even go into the question of correctness of the settlement.

18. Therefore, when the settlement under Section 18(1) or 12(3) is not under challenge, it is not possible for this Court to set at naught the consequential action flowing out of such a settlement. Hence, the non-public interest litigation writ petition is also liable to be dismissed. Nevertheless, we shall test the correctness of the contentions revolving around-(i) the applicability of Articles 14 and 16 of the Constitution and (ii) the applicability of the ratio laid down in *Umadevi (3)*.

19. It was contended by the learned counsel for the public interest litigation petitioner, on the basis of the decision of the Supreme Court in ***E.P. Royappa v. State of Tamil Nadu***[7] that Article 14 is the genus of which Article 16 is one of the species and that Article 16 gives effect to the

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[7] (1974) 4 SCC 3

doctrine of equality in all matters relating to public employment. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. According to the learned counsel for the petitioner, the respondent-Corporations are wholly owned by the State of Telangana and that they undoubtedly come within the purview of the definition of "the State" or at least "instrumentality of the State". Therefore, the employment in these Corporations is a matter of public employment and hence appointment to the posts in these Corporations should be made in a fair, just and transparent manner. Engaging thousands of persons on outsourcing basis, allowing them to continue for a long period of time and absorbing them later on, would, according to the petitioners, defeat the very guarantee of equality enshrined in Articles 14 and 16 of the Constitution.

20. We have no difficulty in accepting the proposition – (i) that the respondent-Corporations are instrumentalities of State and (ii) that appointments to the posts in these Corporations should follow a fair, just and transparent process of recruitment, after providing equality of opportunities to all eligible candidates. But it is doubtful whether appointments to posts in the respondent-Corporations can be elevated to the status of "public employment" governed by Article 16 of the Constitution. Clause (1) of Article 16 uses the expression "employment or

appointment to any office under the State". Clause (2) uses the expression "employment or office under the State". Clause (3) uses the expression "employment or appointment to an office under the Government of or any local or other authority within a State or Union Territory". Clause (4) uses the expression "services under the State". Clause (4A) of Article 16 uses the expression "services under the State".

21. Appointment to a post or absorption in a post in the respondent-Corporations cannot be equated to "any office under the State" within the meaning of Clauses (1) and (2) of Article 16 of the Constitution. It cannot even be termed as appointment to an office under the Government or any local authority or other authority, within Clause (3) of Article 16. The work force in the respondent-Corporations cannot be taken to be "in the services under the State" within the meaning of Clause (4) of Article 16.

22. Up to a particular point of time in the democratic polity of our State, there were only two categories of employers, viz., (i) the Government and (ii) private employers. Persons appointed to civil posts (in contra distinction to those appointed to the Defence Services) and those appointed in the Civil Services of the State, in various departments of the Government, were engaged to carry out the sovereign functions of the State. Persons engaged by the private employers constituted the economic life of the country.

23. But when the Government started outsourcing some of the activities that are incidental to or in aid of the sovereign functions and when the Government started engaging itself in purely commercial or quasi commercial activities through special purpose vehicles created as Corporations, statutory or otherwise, with common seal and perpetual succession, a hybrid variety of employers came into existence. Persons engaged in these entities or Corporations could not claim the status of the holders of civil posts or the holders of posts in the Civil Services of the State. Therefore, these entities naturally became liable to be covered by various labour welfare legislations. It is not disputed by the petitioners that the respondent-Corporations come within the definition of the word "industry" under Section 2(j) of the Industrial Disputes Act, 1947. A careful look at the definition of the word "industry" in Section 2(j) of the Act would show that in the exclusion clause, the activities of the Government relatable to the sovereign functions of the Government find a place. Therefore, there is no escape from the conclusion that the respondent-Corporations are industries within the meaning of the Industrial Disputes Act and that therefore the provisions of the Act apply both to the managements as well as to the workers.

24. All labour welfare legislations are intended to ensure the fundamental right guaranteed under Article 21 of the Constitution. Some of the Labour Welfare Legislations are

intended to secure some of the directive principles of State Policy, such as those enshrined in Article 39(d) and (e), Articles 41 to 43 and 43A of the Constitution.

25. Therefore, what happens in cases of this nature is actually a clash of interests between one set of citizens and another. If persons seeking to enforce the Fundamental Right to be considered on par with others for appointment to posts under the State (assuming without admitting that the posts in the respondent-Corporations are posts under the State) pitch their claim on Articles 14 and 16 of the Constitution, persons seeking absorption or regularisation in the posts that they hold, pitch their claim on Article 21 of the Constitution. The advantage that the latter category of persons has over the former is that in addition to Article 21, their rights are protected even by Statutes. Therefore, the rights that the workmen in an industrial establishment seek to enforce through settlements reached under Section 12(3) of the Industrial Disputes Act, also have Constitutional sanction under Article 21 and hence they overweigh or eclipse the rights that the unemployed seek to enforce under Articles 14 and 16 of the Constitution.

26. It may be true that when thousands of persons already in employment join together and make a demand for absorption, their potential to become a solid vote bank may influence the decisions taken by the policy makers. While the Political Executive can easily choose the option of recognising

the rights conferred upon this work force, identifiable as a group, as against an unidentifiable group of unemployed youth, it is not so easy for the Courts to balance these competing interests and rights.

27. If the argument of the petitioners based upon Articles 14 and 16 of the Constitution and also based upon the respondent-Corporations being instrumentalities of State is to be accepted, the Court may have to disrobe thousands of persons now working in these Corporations, of their Fundamental Right to livelihood under Article 21. It must be remembered that the dilemma arises only in cases where the institutions in question are industries governed by the Industrial Disputes Act and those in employment are workmen category employees. The rights conferred upon these workmen category employees under a Labour Welfare Legislation and the rights conferred upon them under Article 21 make it clear that persons in employment in these Corporations have two sets of rights viz., statutory rights and constitutional rights. They cannot now be stripped of these rights on the pretext of Articles 14 and 16 in favour of the petitioners. Hence, the contention of the petitioners revolving around Articles 14 and 16 of the Constitution is liable to be rejected.

28. The second contention of the petitioners is based upon the decision of the Constitution Bench of the Supreme Court in *State of Karnataka v. Umadevi*. But this decision has

a checkered history. In order to see whether this decision is applicable to the cases on hand, it may be necessary to see how *Umadevi (1)* manifested itself in different forms later.

29. The decision in *Umadevi* actually concerned two sets of civil appeals that arose out of the decisions of the Karnataka High Court. One set of appeals related to the claim of persons engaged on daily wages basis in the Commercial Taxes Department of the State of Karnataka, for regularisation of their services. Another set of appeals challenged the cancellation of appointments of all daily rated employees appointed after 01-7-1984. When these appeals came up before a 2-member Bench of the Supreme Court, the Supreme Court noted that there were a few decisions of 3-Judges Benches and a couple of decisions of 2-Judges Benches of the Supreme Court which stood in contrast. Therefore, by an order passed on 15-10-2003 and reported in *Secretary, State of Karnataka v. Umadevi* [*(2004) 7 SCC 132*], a 2-member Bench of the Supreme Court directed the matter to be placed before the Hon'ble Chief Justice of India to be heard by a 3-member Bench. This order of reference came to be known as *Umadevi (1).*

30. But the 3-member Bench before which the matter was placed, by an order of reference passed in *Secretary, State of Karnataka v. Umadevi* [*(2006) 4 SCC 44*], requested the matter to be heard by a Bench of 5 learned Judges, in view of the fact there were conflict of opinions between the

3-Judges Benches. This order of reference came to be known as *Umadevi (2)*.

31. Pursuant to the order of reference in *Umadevi (2)*, the batch of appeals were placed before a Bench of 5 Hon'ble Judges, which decided the issue on 10-4-2006 in *Secretary, State of Karnataka v. Umadevi* [*(2006) 4 SCC 1*]. This decision came to be known as *Umadevi (3)*.

32. But the decision in *Umadevi* arose under the Service Law and not under the Labour Law. Very often the Constitutional Courts themselves have overlooked the distinction between the principles of law that are applicable to Service Jurisprudence and the principles of law applicable to Labour Jurisprudence. A Division Bench of this Court, to which one of us (*VRS, J.*) was a party, had an occasion to delineate the distinctions between these two branches, in ***Vasapu L. Kumar v. ONGC Field Operators Union***[8]. Paragraphs-27 to 31 of the said decision reads as follows:

> "27. Two expressions are of significance in service law. They are (i) civil posts and (ii) Civil Services of the State. The appointment of a person to a civil post or in the Civil Services of the State, brings within it, certain consequences, both for the holders of these posts and for the Government. For instance, the appointment of a person to a civil post or to the Civil Services of the State, is one of status. It is protected by the provisions of the Constitution, as the sovereign functions of the State are sought to be performed through them. Therefore, for anything and everything they have to look up to the appointing or controlling authority and their services are to be available

[8] 2018 (1) ALT 505 (DB)

throughout. The service conditions of persons appointed to civil posts or the Civil Services of the State are governed by Statutory Rules issued in exercise of the power conferred by the proviso to Article 309 of the Constitution. There are any number of Rules such as Fundamental Rules, General Rules, Special Rules, Leave Rules, Pension Rules etc., which apply to these persons, whom we call in common parlance as Government Servants.

28. In contrast, the engagement of a person in an industry or factory or other establishment is not one of status. It could be one of contract, but the Management and the workmen are not entitled to contract out of the Statutes such as Factories Act, Industrial Disputes Act, ESI Act, EPF Act, Industrial Employment (Standing Orders) Act, Payment of Wages Act, Payment of Gratuity Act, Maternity Benefit Act etc.

29. Another important distinguishing feature is that a person who is engaged by an industrial establishment in a workman category, acquires statutory protection only after his appointment. In respect of some benefits, such as ESI, PF etc., he acquires protection after being engaged for 60 days or more. He acquires protection against termination, upon completion of 240 days of service in a period of 12 calendar months. He acquires permanency, in some States (and not in all States), upon completion of 480 days of service within a period of 24 calendar months under certain special enactments such as Tamil Nadu Industrial Employment (Conferment of Permanent Status on Casual Workmen) Act, 1981 (such an enactment is not there in the State of Andhra Pradesh).

30. In other words, a workman category employee in an industrial establishment acquires statutory rights, only after appointment and that too after completing a particular period of service. On the contrary, every person qualified for appointment to a civil post or to the Civil Services of the State, acquires a Constitutional right, even before appointment, for consideration of his case for appointment in accordance with the Constitutional scheme.

31. Under labour law, strike is a weapon in the hands of the workmen and lockout is a weapon in the hands of the management, to strike a balance. But in

> service law, Government servants have no right to strike work (Refer TK Rangarajan vs Government of Tamil nadu (2003) 6 SCC 581). The fact that the decision in Umadevi lies in the realm of service law and not labour law, was already indicated by the Supreme Court in Para 17 of Ajaypal Singh Vs. Haryana Warehousing Corporation (2015) 6 SCC 321)."

33. As a matter of fact, an argument was advanced in *Vasapu L. Kumar* that the law laid down by the Constitution Bench in *Umadevi* is not confined to Service Law, but applicable also to Industrial Law. Rejecting the said contention, it was held by this Court that the decision in *Umadevi* is not so elastic as to cover cases under Industrial Law. It was also pointed out in paragraph-60 of the decision in *Vasapu L. Kumar* that all labour welfare legislations are aimed at the prevention of exploitation of labour, which has a direct nexus to Article 21 of the Constitution of India. Therefore, ***any reference to a Constitutional scheme in a dispute arising under the Industrial Law, is normally with reference to Article 21. But in contrast, a reference to a Constitutional scheme in Service Law would revolve around Articles 14, 16, 309, 320 and 335***. Therefore, this Court pointed out that the decision in *Umadevi* will predominantly govern the realm of Service Law.

34. As rightly pointed out by the learned Senior Counsel appearing for the respondent-Corporations, the Supreme Court had an occasion to consider the impact of the decision in *Umadevi*, upon disputes arising under the Industrial Law.

In ***Maharashtra State Road Transport Corporation v. Casteribe Rajya Parivahan Karmchari Sanghatana***[9], the Supreme Court recognised the power of the Labour Courts to accord permanency to employees effected by unfair labour practice and held that this power was not affected by the decision in *Umadevi*.

35. In ***Hari Nandan Prasad v. Food Corporation of India***[10], the Supreme Court pointed out that the Legislature has empowered adjudicating authorities under the Industrial Disputes Act to give reliefs, which may not be permissible in common law or justified under the terms of the contract. In fact, it was argued before the Supreme Court in *Hari Nandan Prasad* that there was a conflict between the decision in *U.P. Power Corporation Ltd. v. Bijli Mazdoor Sangh* [*(2007) 5 SCC 755*] and the decision in *Maharashtra State RTC v. Casteribe Rajya Parivahan Karmchari Sanghatana* [*(2009) 8 SCC 556*], on the question of applicability of the ratio in *Umadevi* even in the branch of Industrial Law. But the Court held in *Hari Nandan Prasad* that the adjudicating authorities under the Industrial Disputes Act are not denuded of their powers conferred by the Statute.

36. In ***Ajaypal Singh v. Haryana Warehousing Corporation***[11], the Supreme Court had an occasion to consider the inter-play of the rights guaranteed under

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[9] (2009) 8 SCC 556
[10] (2014) 7 SCC 190
[11] (2015) 6 SCC 321

Articles 14 and 16 and the rights conferred by Labour Welfare Legislations. This case also involved a Public Sector Corporation wholly owned by the State, but was nevertheless an industry within the meaning of the expression “industry” under Section 2(j) of the Industrial Disputes Act. Questioning the termination of his services, a workman raised an industrial dispute and the Labour Court passed an award of reinstatement with full back wages. The Punjab and Haryana High Court held that the appointment of the workman was made in violation of Articles 14 and 16 and that therefore reinstatement was not possible. While reversing the said decision, the Supreme Court pointed out that the provisions of the Industrial Disputes Act and the powers of the Industrial Tribunals/Labour Courts were not at all under consideration in *Umadevi (3)*. In paragraph-18 of the report, the Court pointed out that the Industrial Disputes Act prohibits the unfair labour practice on the part of the employer in engaging the workmen on casual or temporary basis for a long period of time without giving them the status and privileges of permanent employees.

37. Again in ***ONGC Ltd. v. Petroleum Coal Labour Union***[12], the Supreme Court pointed out that the rights conferred by the Labour Welfare Legislations cannot be denied on the ground that the initial appointment was contrary to Articles 14 and 16. Therefore, the Court held that

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[12] (2015) 6 SCC 494

the decision in *Umadevi* will have no application to such cases.

38. Though in a different context, in relation to the question of regularisation of about 209 employees working on daily wages basis in the High Court of Jammu and Kashmir, the Supreme Court pointed out in ***State of Jammu and Kashmir v. District Bar Association, Bandipora***[13] that the decision in *Umadevi* is not an authority for the proposition that the Executive or the Legislature cannot frame a scheme for regularisation. In fact, this decision did not fall in the realm of Labour Law, but fell in the realm of Service Law. Still, the Court held that the instrumentalities of State are not denuded of their powers by the decision in *Umadevi*, from framing a scheme.

39. In the case on hand, it is not even a scheme under which the workmen employed through outsourcing agencies are sought to be absorbed. It is out of a statutory compulsion that the situation on hand has arisen. The industrial dispute raised by the Federation of Trade Unions had led to a settlement first under Section 18(1) followed by a settlement under Section 12(3) in the course of conciliation proceedings. The managements of the respondents-Corporations cannot now go back on the settlement. This settlement cannot be set at naught at the instance of third parties. Therefore, the

[13] (2017) 3 SCC 410

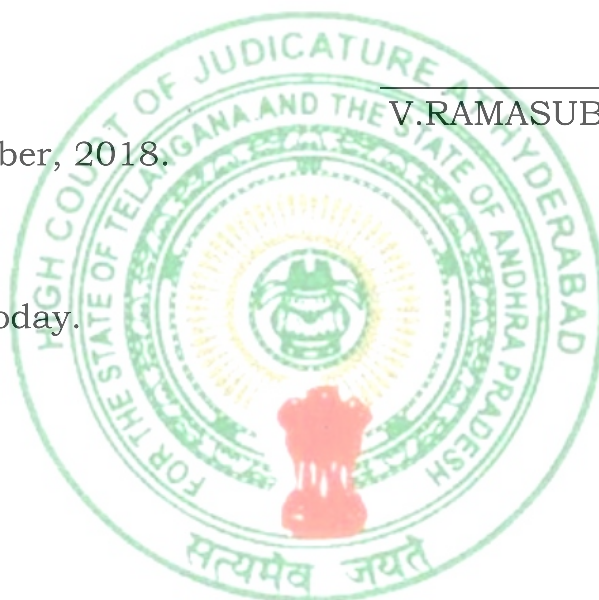
objection on the basis of the decision in *Umadevi* is also liable to be rejected.

40. In view of the above, we find no merits even in the non-public interest litigation writ petition. Therefore, the public interest litigation writ petition as well as the other writ petition are dismissed. Pending applications, if any, shall stand closed. No costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

V.RAMASUBRAMANIAN, J.

18th September, 2018.
Ak



<u>Note</u>:-
Issue C.C. today.
(B/o)
Vs/Ak

HON'BLE THE CHIEF JUSTICE
THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Writ Petition No.20544 of 2017
and
Writ Petition (PIL) No.149 of 2017
(Common Order of the DB - per VRS, J.)

18th September, 2018.
(Ak)