IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9668 OF 2016

1. Shri. Sanjay Shamrao Bhor
   At Post: Awasari Khurd (Kauli Mala)
   Tal: Ambegaon, Dist: Pune. 412 405

2. Shri Shashibhushan Maruti Hole
   At Post: Urulikanchan Tal: Haveli,
   Dist. Pune. 412 202

3. Shri. Amol Balasaheb Tapkir
   S.No.37/3 B, Tapkir Heights,
   Dhankawdi, Pune: 411 043

4. Shri. Hemant Manvendra Kolekar
   712, Guruwar Peth, Pratibha Mansion,
   Pune: 411 042

5. Prashant Harishchandra Bibwe
   129, Bibwewadi Gavthan,
   Near Datta Mandir, Pune : 411 037

6. Shri. Chetan Pandurang Chattar
   Tapovan Road, D. Nikal Hospital,
   Jagdamba Sweet Home,
   Flat No.1, Pimpri Gaon, Pune: 411 017 ....Petitioners

V/s

1. Pune Municipal Corporation
   M.N.P. Bhavan, Shivajinagar,
   Pune 411 005 Through the Commissioner

2. Municipal Secretary
   Standing Committee,
   M.N.P. Bhavan, Shivajinagar,
   Pune: 411 005.

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3. Shri. Vidnyan Bapurao Gaikwad,
84/165, Near Maruti Mandir,
Shastrinagar, Kothrud,
Pune: 411 038 ....Respondents

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Mr. Nitin A. Kulkarni *for the Petitioners.*
Mr. Abhijit P. Kulkarni with Mr. Abhishek Roy, Mr. Gourav Shahane and Ms. Shweta Shah *for Respondents.*

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CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 22 OCTOBER 2026.
PRONOUNCED ON : 02 NOVEMBER 2026.

J U D G M E N T :

1. This Petition is filed by six Petitioners challenging the judgment and order dated 9 March 2016 passed by the learned Member, Industrial Court, Pune, dismissing complaints of unfair labour practice filed by them seeking permanency in the post of Junior Engineer in the municipal service with effect from the date of completion of 240 days of service.

2. Briefly stated, facts of the case are that the Respondent-Municipal Corporation had issued an advertisement dated 25 September 2005 for filling up posts of Junior Engineer (Civil). Petitioners applied in pursuance of the said advertisement. They were subjected to written test on 25 June 2006. Petitioners also applied for interviews on 17 March 2007. The Respondent-Municipal Corporation made a select list of 147 candidates for appointment on the post of Junior Engineers, which did not include names of the Petitioners. It appears that a waiting list was

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also made, which included names of the Petitioners. The Respondent-Municipal Corporation decided to utilize wait listed candidates for making contractual engagements in the projects to be executed under Jawaharlal Nehru National Urban Renewal Mission (**JNNURM**). Accordingly, Petitioners were engaged on contract basis as Junior Engineers (Civil), by order dated 18 December 2007 with effect from 28 December 2007. The appointments were on contract basis on consolidated wages of Rs.5,500/- for a tenure of six months. The appointments were extended from time to time by issuing fresh orders. Petitioners filed Complaints of unfair labour practices under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**) read with Items 5, 6, and 10 of Schedule IV thereof before Industrial Court, Pune, in the year 2009. They sought permanency on the post of Junior Engineer from the dates of completion of 240 days of service. They also sought pay and other benefits on par with regular employees. They sought direction for discontinuation of engagements on contractual basis. They also sought treatment on par with candidates appointed as Junior Engineers vide advertisement dated 25 September 2005. They also sought wages on par with regular Junior Engineers from the initial dates of engagement. In their Complaints, Petitioners filed applications for interim relief, which were partly allowed and by order dated 30 July 2010, the Industrial Court directed Respondent-Municipal Corporation to continue them in service till appointment of regularly selected candidates. However, services of the Petitioners were terminated by office order dated 19 March 2011. Petitioners filed Criminal Complaint No.28 of 2011 before Labour Court

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under Section 48(1) of the MRTU & PULP Act, alleging willful violation of interim order dated 30 July 2010. By order dated 17 September 2013, Labour Court recorded *prima facie* finding of breach of interim order and issued process against the officials of Respondent-Municipal Corporation. Respondent-Municipal Corporation preferred Revision Application (ULP) No.214 of 2013 before Industrial Court. The Industrial Court remanded the matter to the Labour Court with direction to examine the issue as to whether previous sanction under Section 197 of Code of Criminal Procedure, 1973 (**CrPC**) was necessary before proceeding with the complaint. The Labour Court re-heard the matter and once again issued process vide order dated 28 September 2017. In the meantime, Petitioners raised industrial dispute demanding reinstatement by questioning legality of termination order dated 19 March 2011. References was made to the Labour Court regarding termination of the Petitioners.

3. During pendency of the Reference challenging termination orders, Complaints filed by the Petitioners under Section 28 of the MRTU and PULP Act seeking permanency came to be adjudicated. By common judgment and order dated 9 March 2016, the Industrial Court has dismissed the Complaints filed by the Petitioners. Aggrieved by the judgment and order dated 9 March 2016, the Petitioners have filed the present Petition.

4. When the Petition came up for hearing on 31 January 2023, it was brought to the notice of this Court that services of the Petitioners were

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already terminated on 19 March 2011 and that References challenging termination were pending. This Court disposed of the Petition by order dated 31 January 2023 granting liberty to Petitioners to revive the same in the event their terminations were set aside.

5. After disposal of the present Petition on 31 January 2023, the Labour Court decided the References and by Award dated 30 May 2024 rejected the same. Various Petitions were filed in this Court challenging the judgment and award dated 30 May 2024 passed by the Labour Court. By judgment and order dated 8 May 2026, this Court partly allowed the Petitions by setting aside the Award dated 30 May 2024 as well as termination orders dated 19 March 2011. The Respondent-Municipal Corporation was directed to reinstate the Petitioners in service, subject to availability of work without full back-wages. However, this Court directed 25% of last drawn wages as lump-sum compensation for the intervening period, excluding the period during which Petitioners were found to have been employed. This Court has also granted continuity of service for the purpose of retiral and pensionary benefits. By order dated 14 July 2026 passed in Review Petitions filed by Petitioners, this Court has clarified that it should be open to the Petitioners to apply for revival of the present Petition.

6. Accordingly, Petitioners applied for revival of the present Petition. By order dated 8 October 2026, this Court has revived the present Petition. Accordingly, the Petition is taken up for final disposal.

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7. Mr. Nitin Kulkarni, the learned counsel appearing for Petitioners submits that the Industrial Court has erred in dismissing the Complaints filed by the Petitioners. That the Complaints are dismissed only by citing order dated 15 October 2010 passed by the Division Bench of this Court in Writ Petition No.5546 of 2010. That the order passed in the said Petition has absolutely no application to the facts of the present case as the Petition was filed under Article 226 of the Constitution of India whereas what was filed by Petitioners were complaints of unfair labour practices under Items 5, 6, 9 and 10 of Schedule IV of the MRTU and PULP Act. He submits that Petitioners are not back door entrants and have duly participated in the selection process initiated vide advertisement of 2005. He submits that Petitioners fulfill the qualifications required for appointments on the post of Junior Engineer. That upon completion of 240 days' of service, Petitioners are entitled for grant of permanency. That the Pune Municipal Corporation is governed by the provisions of the Industrial Employment (Standing Orders) Act, 1946, and therefore, it cannot keep employees on a temporary basis in violation of clause 4-C of the Model Standing Order. He further submits that there are vacant posts available with the Municipal Corporation. That in any case Standing Committee of Municipal Corporation has powers of creation of posts and that in the present case, posts were created while appointing the Petitioners. He further submits that Petitioners were wrongfully terminated and they have been directed to be reinstated by this Court vide judgment and order dated 8 May 2026.

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8. Mr. Kulkarni further submits that since Petitioners have rendered substantial service after being selected in the regular selection process, keeping them on temporary basis would clearly amount to unfair labour practice, in support he relies on judgment of the Apex Court in ***Pandurang Sitaram Jadhav and others vs. State of Maharashtra and another***[1]. He submits that the ratio laid down by the Constitution Bench of the Supreme Court in ***Secretary, State of Karnataka vs. Umadevi (3)***[2] has been explained by the Apex Court in its judgment in ***Pandurang Sitaram Jadhav*** (supra). He also relies on the judgment of the Apex Court in ***Bhartiya Kamgar Karmachari Mahasangh vs. Jet Airways***[3] in support of his contention that clause 4-C of the Model Standing Order clearly entitles employees to claim permanency upon completion of 240 days of service. He also relies on judgment of the Apex Court in ***Jaggo vs. Union of India and others***[4] in support of plea for permanency. Lastly, Mr. Kulkarni relies on judgment of Division Bench of this Court Bench at Aurangabad in ***Madhukar Bhavanrao Sadgir and others vs. State of Maharashtra and others***[5] in support of his plea that even temporary appointments made under schemes or projects do not defeat the employees' right to claim permanency, provided that such right is established and sufficient work is available. He submits that since vacancies are available with the Municipal Corporation, the Petitioners deserve to be regularized in service. That since Petitioners are directed to be reinstated in service, they need to be reinstated as permanent

1 2020 (17) SCC 393
2 2006 (4) SCC 1
3 2023 20 SCC 178
4 2024 SCC OnLine SC 3826
5 Writ Petition No.5867 of 2015, decided on 31 October 2018

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employees. He prays for setting aside the impugned judgment and order dated 9 March 2016 and for grant of permanency in favour of the Petitioners.

9. The Petition is opposed by Mr. Abhijit Kulkarni, the learned counsel appearing for Respondent-Municipal Corporation. He submits that the Industrial Court has rightly dismissed the Complaint of the Petitioners. He submits that the Complaint itself was barred by the principles of *res judicata* as Writ Petition filed seeking the same relief has been withdrawn by the Petitioners on 23 June 2010. That though Petitioners participated in the regular selection process, they could not be selected. That they were engaged merely as temporary hands under JNNURM project. That the State Government has not sanctioned any posts permanently under the JNNURM project. That therefore question of Petitioners rendering services against sanctioned posts does not arise. He submits that the order passed by this Court in ***Gopal Malba Alapure and Others vs. The Municipal Commissioner, Pune Municipal Corporation***[6] squarely applies to the facts of the present case. That since identically situated persons are denied the benefit of permanency, there is no question of Petitioners claiming the same. He submits that the judgment and order dated 8 May 2026 passed by this Court has been challenged by the Respondent-Municipal Corporation before the Apex Court and Petitioners have not been reinstated in service. He prays for dismissal of Petition.

[6] Writ Petition No.5546 of 2010, decided on 15 October 2012

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10. Rival contentions urged on behalf of the parties now fall for my consideration.

11. Petitioners are aggrieved by dismissal of their Complaints by the Industrial Court vide common judgment and order dated 9 March 2016. Complaint (ULP) Nos.176 of 2010 to 182 of 2010 were filed by the Petitioners and one more individual seeking permanency in the services of Respondent-Municipal Corporation with effect from completion of 240 days of service. Additionally, various other reliefs such as payment of equal wages on par with permanent employees and grant of similar treatment as granted to the named employees appointed vide advertisement dated 25 September 2005 were also sought. The Complaints were filed by the Petitioners alleging unfair labour practices under Items 5, 6, 9 and 10 of Schedule IV of the MRTP & PULP Act.

12. As observed above, the services of the Petitioners were terminated by an order dated 19 March 2011, during the pendency of the Complaints. The Petitioners continued to pursue separate remedies in respect of their termination. The Labour Court however rejected the demand for reinstatement and upheld terminations by Award dated 30 May 2024. This Court has set aside Labour Court's Award dated 30 May 2024 and has directed reinstatement of the Petitioners in service by judgment and order dated 8 May 2026. Respondent-Municipal Corporation has challenged the judgment and order dated 8 May 2026 before the Apex Court and the Special Leave Petition filed by it is apparently pending. Consequently, Petitioners are yet to be reinstated in service.

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13. Petitioners had applied in pursuance of the advertisement dated 25 September 2005 issued by Respondent-Pune Municipal Corporation for filling up various posts in its departments. It appears that the post of Junior Engineer (Civil) was also advertised. At the end of the selection, Respondent-Municipal Corporation prepared a merit list of 147 candidates. Additionally, a waiting list of candidates was also prepared. Respondent-Municipal Corporation apparently appointed the candidates in the merit list in various departments. On 6 February 2008, the office of JNNURM raised a demand for 35 Junior Engineers. However, none of the 147 candidates on the merit list were interested in joining the office of JNNURM on a contract basis. Therefore, Respondent-Municipal Corporation decided to utilize candidates from waiting list for the purpose of temporary employments in the JNNURM project. This is borne out by a letter dated 10 March 2008 of the Assistant Municipal Commissioner. After securing approval of the Municipal Commissioner, Petitioners were engaged on contract basis on tenure of six months on consolidated salary. Petitioners claim to have commenced their appointments with effect from various dates as under:

Petitioner No.1	24 March 2008
Petitioner No.2	1 April 2008
Petitioner No.3	11 April 2008
Petitioner No.4	23 February 2008
Petitioner No.5	31 March 2008
Petitioner No.6	4 April 2008

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14. Thus, though the Petitioners participated in selection process, they were never selected for regular appointments and since their names figured on the waiting list, they were utilized on a contract basis on consolidated salaries in JNNURM projects for a tenure of six months. As observed above, services of the Petitioners were terminated by order dated 19 March 2011. Thus, Petitioners have rendered services of about three years. As a matter of fact, when Complaints of unfair labour practice were filed in July 2009, they had rendered just about one year of service. The issue for consideration is whether Petitioners could have sought regularization in service on the strength of 1 year service by approaching the Industrial Tribunal and even if their total service of 3 years in JNNURM project is taken into consideration, whether they are entitled to permanency.

15. According to Mr. Nitin Kulkarni, Petitioners are entitled to permanency on completion of 240 days of service, as per Clause 4-C of Model Standing Orders (**MSO 4-C**) issued under the provisions of Industrial Employment (Standing Orders) Act, 1946. However, Respondent-Municipal Corporation is an instrumentality of State and by now it is well-settled position that MSO 4-C cannot be utilized by an industrial adjudicator for directing permanency on completion of 240 days of service. For grant of permanency, regularly sanctioned posts are required. If engagements are made in absence of sanctioned posts, the Industrial Court cannot indirectly order creation of posts by directing permanency on completion of 240 days of service. Reference in this regard can be made to the Division Bench judgment of this Court in

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Municipal Council Tirora Versus. Tulsidas Baliram Bindhade[7]. The Division Bench has answered reference made to it on account of conflicting views expressed in judgments of the learned single Judges. The Division Bench has answered the reference by holding that in absence of vacant sanctioned posts with the Municipal Council, a workman who had put in continuous service of 240 days or more in span of 12 months, cannot invoke Clause 4-C of the MSO to claim either permanency or regularization. It is held in paragraphs 19 to 21 of the judgment as under:

> **19.** In this reference, the position emerging before us is similar. There is no conflict between the provisions of M.S.O. 4C and the provisions of the section 76 of the 1965 Act. In the event of the appointment having been made validly, it may be possible to invoke the provisions Cl. 4C of M.S.O.A. view to the contrary would result in regularizing/validating a void act. Cl. 4C neither permits nor contemplates the same. As held in the above judgments, if the appointment is not made in accordance with the constitutional scheme, it is void ab initio and, therefore, there can be no claim to its regularization or for grant of permanency in any manner. This is all the more so as Cl. 32 of the M.S.O. clarifies that the Standing Orders are not to operate in derogation of any other law i.e. section 76 of 1965 Act. Definitely any interpretation of Clause 4C conducive to defeating the Constitutional mandate is unwarranted. Violation of Clause 4C of the MSO may tantamount to an unfair labour practice under item 9 of Sch. IV of the 1971 Act but unless and until, other additional factors are proved on record, finding of indulgence in an unfair labour practice under Item 6 of Sch. IV thereof cannot be reached. As explained by the Hon'ble Apex Court in case of *Maharashtra SRTC* v. *Casteribe Rajya Parivahan Karmchari Sanghatana*, (supra), existence of a legal vacancy must be established and as discussed above, the power to recruit with the employer must also be demonstrated. In absence thereof, workman cannot succeed in proving the commission of unfair labour practice under Item 6 by the employer. These two ingredients, therefore, also must be established when benefit of Cl. 4C is being claimed. Unless availability of a vacancy is shown or then power with the employer to create the post and to fill it is brought on record, mere continuation of 240 days cannot and does

[7] 2016 (6) MH.L. 867

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not enable the workman to claim permanency by taking recourse to Cl. 4C read with Item 9 of Sch. IV of 1971 Act. Clause 4C does not employ word "regularisation" but then it is implicit in it as no "permanency" is possible without it. Conversely, it follows that when a statutory provision like section 76 disables the employer either from creating or filling in the posts, such a claim cannot be sustained. This also nullifies the reliance upon the judgment of learned Single Judge in case of *Maharashtra Lok Kamgar Sanghatana* v. *Ballarpur Industries Limited* (supra) where the employer was a private Company not subjected to such regulatory measures by any Statute and enjoyed full freedom to create the posts and to recruit. One of us (B.P. Dharmadhikari, J.) is party to the judgment of this Court in *Raymond UCO Denim Private Ltd.* v. *Praful Warade* (supra) which again needs to be distinguished for the same reasons. The judgment of learned Single Judge in case of *Indian Tobacco Company Ltd.* v. *Industrial Court* (supra), judgment of Hon'ble Apex Court affirming it or then judgment of Hon'ble Apex Court reported at Western India Match Company Ltd. and Workmen are all considered therein and are distinguishable as the same do not pertain to the province of public employment or consider inherent Constitutional restraints (the suprema lex-see *Mahendra L. Jain* v. *Indore Development Authority* (supra) and Cl. 32 of the MSO. For same reasons, law laid down by the Full Bench judgment of this Court in 2007 (1) Mh.L.J. (F.B.) 754 : 2007 (1) CLR 460 *Gangadhar Balgopal Nair* v. *Voltas Limited* does not advance the cause of workmen. The Division Bench of this Court in *May and Baker Ltd.* v. *Kishore Jaikishandas Icchaporia* (supra) while construing section 10A(3) held that the expression "other law" would not refer to the Model Standing Orders or the Certified Standing Orders since they are laws made under the provisions of Parent Act itself and not under any other law. The Model Standing Orders and Certified Standing Orders, held the Division Bench, "are laws no doubt but they are laws made under the provisions of the Act". They were held not to be provisions under any other law. This discussion therefore shows how these words "in derogation of any law for the time being in force" in Cl. 32 of MSO need to be understood and does not help Adv. Jaiswal or Adv. Khan.

20. In *Vice-chancellor, Lucknow University* v. *Akhilesh Kumar Khare* (supra) relied upon by Adv. Parihar, Hon'ble Apex Court follows its Constitution Bench in Umadevi (III) and while rejecting relief of regularization to the daily wagers who were engaged in public employment without proper procedure, grants them compensation of ? 4 Lakh each by way of compassion. This judgment does not consider any welfare labour legislation and, therefore, cannot provide direct answer to the reference made. Judgment of this Court taking similar view in the light of 1971 Act in the case of *Punjabrao Krishi Vidyapeeth,*

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> *Akola* v. *General Secretary, Krishi Vidyapeeth Kamgar Union* (supra) is already considered above. The Division Bench of this Court in *State of Maharashtra* v. *Pandurang Sitaram Jadhav* (supra) finds that the respondents before it were employed as daily wagers in the establishment of the Government Milk Dairy for a longer period of 12 to 20 years. There were no sanctioned posts and vacancies in existence in the concerned department. Respondents failed to demonstrate that their appointments were made in accordance with the procedure prescribed for selection. The Division Bench finds it wholly unjust to direct the appellant State Government to grant permanency to the respondents. It points out that the provisions of Model Standing Orders are subject to the Rules regulating selection and appointment so also subject to the constitutional scheme of public employment. Respondents daily wagers are declared to possess no legal right to claim permanency. Order passed by the learned Single Judge to the contrary have been quashed. State Government is held obliged to make appointments in adherence to the constitutional scheme of Public employment. Respondents Daily Wagers appointed without following the prescribed procedure for selection by passing public participation did not acquire any legal right to claim permanency. It is apparent that no inconsistency exists and cannot be worked out in *State of Maharashtra* v. *Pandurang Sitaram Jadhav* as also *Pune Municipal Corporation* v. *Dhananjay Prabhakar Gokhale* (supra) on one hand and *Ballarpur Industries Limited* v. *Maharashtra Lok Kamgar Sanghatana* (supra) on the other hand. Status of employer, nature of employment and inherent Constitutional limitation on public employer or absence of such fetters on any private employer or absolute freedom available to it to create post/s and recruit, are some of the distinguishing features which prohibit this exercise.
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> **21.Thus, in the light of this discussion, it follows that in absence of vacant sanctioned posts with the Municipal Council, a workman who has put in continuous service of 240 days or more in span of 12 months, cannot invoke Clause 4C of the MSO to claim either permanency or regularization.** We accordingly answer the question referred. Registry to place the writ petitions before the learned Single Judge as per roaster assignment for further consideration.
>
> *(emphasis added)*

16. Thus, mere completion of 240 days of service in a State instrumentality does not entitle a temporary employee to seek permanency by relying on clause 4-C of the MSO.

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17. No discussion on the issue of regularization or permanency can be complete without reference to the Constitution Bench judgment in ***Umadevi (3)*** (supra), which marks a watershed moment in the area of regularization of service of temporary, casual, contractual, ad-hoc employees in public employment. The Apex Court has held that mere rendering of long tenure of service does not *ipso facto* entitle a temporary worker to seek regularization in service. The Apex Court has held 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

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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.

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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

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> 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.
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> 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

18. However, the Apex Court has recognized an exception in paragraph 53 of the judgment in ***Umadevi (3)*** that in case of irregularly appointed temporary employees who have continued services for a period of 10 years against vacant posts. The Apex Court directed their regularization as one-time exception. The Apex Court has held in paragraph 53 of the judgment in ***Umadevi (3)*** as under:

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> **53.** One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa*, *R.N. Nanjundappa* and *B.N. Nagarajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

19. Judgment of the Apex Court in ***MSRTC vs. Casteribe Rajya Parivahan Rajya Karmachari Sanghatana***[8] is often quoted in support of contention that Labour and Industrial Courts are conferred with wide powers under Section 30 of MRTU & PULP Act for directing affirmative action whenever commission of unfair labour practice is established. However, even in ***MSRTC v. Casteribe*** the Apex Court has held in paragraphs 35, 36 and 41 of the judgment as under:

> **35.***Umadevi (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

[8] (2009) 8 SCC 556

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> ***36.*** *Umadevi (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims 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 exist. *Umadevi (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established.
>
> **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.

20. If one considers the ratio of the judgment in ***MSRTC v. Casteribe*** as not in tune with the judgment of the Constitution Bench in ***Umadevi (3),*** specially in relation to industrial adjudication, the quandary is resolved by subsequent judgment of the Apex Court in ***Hari Nandan Prasad & Anr. v. Employer I/R through Management of FCI & Anr.***[9] in which the Apex Court has made harmonious reading of ratio of judgments in ***Umadevi (3)*** and ***MSRTC v. Casteribe*** and has held in paragraph 39 of the judgment as under:

> **39. On a 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 regularisation only because a worker has continued as daily-wage worker/ad hoc/temporary worker for number of years. <u>Further, if there are no posts available, such a direction for regularisation would be impermissible.</u>** In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by

[9] (2014) 7 SCC 190

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> such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned 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 regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution.** Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.
>
> *(emphasis added)*

21. Thus in ***Hari Nandan Prasad,*** the Apex Court has upon a harmonious reading of the judgments in ***Umadevi (3)*** and ***MSRTC Vs. Casteribe*** had that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularisation only because a worker has continued as daily-wage worker/ad hoc/temporary worker for number of years. It is also held that if there are no posts available, such a direction for regularisation would be impermissible. It is further held that wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination *qua* them in such cases and would be violative of Article 14 of the Constitution.

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22. The law is thus well settled that even an industrial adjudicator cannot direct the creation of posts by ordering permanency of temporary employees. It is only in exceptional cases, where other similarly situated employees have been regularised in service, that an industrial adjudicator may direct the grant of permanency by way of an affirmative action under Section 30 of the MRTU & PULP Act. Thus, mere completion of 240 days of service can never, by itself, constitute a ground for directing the grant of permanency to employees of State instrumentalities.

23. Respondent is a Municipal Corporation; it cannot create any posts on its establishment without the previous sanction of the State Government. The embargo on creation of posts on establishment of Municipal Corporations is imposed with a view to ensure that they do not sanction excessive posts thereby impeding the functions for which they are established. In order to check a balance on spending on salaries, the State Government sanctions only such number of posts which are absolutely necessary for carrying out duties and functions by a Municipal Corporation. In such circumstances, if Municipal Corporation is required to hire temporary workers for some time, mere completion of 240 days of service by them does not automatically make them entitled to claim status of permanency.

24. There is a fundamental difference between the concept of grant of permanency in services of a private employer and in the services of State instrumentalities. This difference is dealt with by this Court in recent

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judgment in ***University of Mumbai vs. Sunil Tanda Pagare***[10], in which it is held in paragraph 82 of the judgment as under:

> 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 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.

[10] Writ Petition (L) No.42490 of 2025, decided on 21 October 2026

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25. In my view therefore, the Industrial Court is justified in denying prayer for permanency to Petitioners who had rendered hardly three years of service before their termination. Even otherwise, Petitioners have worked against JNNURM project, which does not have any permanently sanctioned posts. The project is implemented under funding received from Central Government. The project is not of permanent nature and therefore temporary hiring is required to be made for execution of activities under the project. Petitioners were thus project employees engaged on contractual basis in absence of any vacant sanctioned posts. The contention of Mr. Nitin Kulkarni that there existed several sanctioned posts on the establishment of Respondent-Municipal Corporation in the year 2010 does not appeal to this Court. He relies on copy of the roster for the period 1 July 2010 to 30 September 2010 in support of his contention that there were vacant posts available at the relevant time. However, the Petitioners' reliance on the reservation roster is wholly misconceived. The roster merely indicates backlog vacancies in various reserved categories and cannot, by itself, form the basis for presuming that the Petitioners were working against sanctioned posts. On the contrary, the relevant file notings clearly establish that their engagements were under the JNNURM project.

26. Thus, in the present case, Petitioners do not fulfill the requirement of completion of 10 years of service as per exception recognized by the Apex Court in paragraph 53 of the judgment in ***Umadevi 3*** (supra).

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27. Mr. Nitin Kulkarni has relied on judgment of the Apex Court in ***Jaggo*** (supra). The Apex Court recently has delivered judgments in ***Jaggo, 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] and ***Shripal & Anr. Vs. Nagar Nigam, Ghaziabad***[14]. Those judgments are quoted to suggest as if they water down the ratio of Constitution Bench judgment in ***Umadevi (3)***. However, in each of those judgments, the facts involved rendering of decades of services by the temporary employees. This Court has considered the ratio of all the five judgments in ***University of Mumbai vs. Sunil Tanda Pagare*** (supra) and it is held in paragraphs 70 to 73 as under:

> **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

11 2024 9 SCC 327
12 2024 INSC 621
13 Civil Appeal No. 8558 of 2018
14 Civil Appeal No. 8157 of 2024

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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.

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> **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.**
>
> *(emphasis added)*

28. Thus, the common thread that runs across all the five judgments of the Apex Court is rendering of continuous service over a decade by the concerned temporary employees. In the present case, Petitioners do not fulfill that requirement as they have rendered only about three years of service.

29. Mr. Nitin Kulkarni has relied on judgment of the Apex Court in ***Pandurang Sitaram Jadhav*** (supra) in support of his contention that the

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ratio of the judgment in ***Umadevi-3*** (supra) has been distinguished by the Apex Court. The contention is baseless to the core. The judgment in ***Umadevi-3*** (supra) is rendered by Constitution Bench whereas the judgment in ***Pandurang Sitaram Jadhav*** (supra) is rendered by two Hon'ble Judges of the Apex Court. Therefore, there is no question of a two Judge Bench taking a different view than the one which is the ratio of Constitution Bench judgment. The judgment in ***Pandurang Sitaram Jadhav*** *(*supra) reiterated the principles in ***MSRTC vs. Casteribe Rajya Parivahan Rajya Karmachari Sanghatana*** (supra) about wide powers of Labour and Industrial Courts to take affirmative action under Section 30(1)(b) of the MRTU and PULP Act. In ***Pandurang Sitaram Jadhav*** (supra) the Apex Court held that the Complainant therein was working since the year 1983 and had rendered long length of service. The judgment is thus distinguishable on facts as Petitioners have rendered just three years of service.

30. Reliance placed by Mr. Nitin Kulkarni on judgment of the Apex Court in ***Bharatiya Kamgar Karmachari Mahasangh*** (supra) is also inapposite. The judgment is delivered in the context of employees of Jet Airways Limited, which is not an instrumentality of State. The Apex Court has upheld right of permanency in terms of MSO 4-C on completion of 240 days of service. The ratio of the judgment cannot be applied to the facts of the present Petition, which involves issue of regularization in services of a State instrumentality.

31. Mr. Nitin Kulkarni has also relied on judgment of Division Bench of this Court in ***Madhukar Bhavanrao Sadgir*** (supra) in which the

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Division Bench restricted grant of permanency/regularization only to those employees who had rendered services for 10 years or more. Therefore, the judgment again is clearly distinguishable.

32. Mr. Kulkarni has contended that while setting aside termination order, this Court has granted the benefit of permanency to the Petitioners. However, in paragraph 43(viii) of the judgment dated 8 May 2026, this Court has expressly clarified that continuity shall not confer right of permanency, regularization etc. It is held in paragraph 43(viii) of the judgment as under:

> viii) The petitioners shall be entitled to continuity of service only for the limited purpose of retiral and pensionary benefits, if otherwise admissible in law. However, such continuity shall not confer any right of permanency, regularisation, seniority, or promotional benefits;

33. Mr. Nitin Kulkarni has relied on order dated 14 July 2026 passed in Review Petitions, which reads thus:

> "1. Considering the reasons assigned in the Review Petitions and the order passed by the Coordinate Bench in Writ Petition No.9668 of 2016 dated 31 January 2023, and clause (viii) of the judgment of this Court dated 8 May 2026 is clarified as under:
>
> "(viii) The petitioners shall be entitled to continuity of service only for the limited purpose of retiral and pensionary benefits, if otherwise admissible in law. However, such continuity shall not confer any right of permanency, regularisation, seniority, or promotional benefits;"
>
> 2. It is further clarified that it shall be open to the petitioner to apply for revival of Writ Petition No. 9668 of 2016. If such an application is filed, the concerned Court shall decide the same on its own merits and in accordance with law, uninfluenced by any observations made in the present order.
>
> 3. The review Petitions stand disposed of."

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34. All that is clarified is that the order dated 14 July 2026 is mere permission to the Petitioners to revive the present Petition. This Court has not deleted the direction prohibiting the grant of permanency solely on the basis of continuity of service. In any event, the Petitioners cannot rely on the period of service subsequent to their termination for the purpose of claiming permanency, as the Apex Court has emphatically held in paragraph 53 of the judgment in ***Umadevi (3)*** that the one-time exception for regularisation of employees who have completed ten years of service does not apply to those who have continued in service by virtue of interim orders passed by Courts.

35. It appears that Division Bench of this Court has denied the benefit of permanency to the colleagues of the Petitioners by order dated 15 October 2010. Mr. Nitin Kulkarni has sought to distinguish the order passed in ***Gopal Malba Alapure*** (supra) contending that the same did not involve adjudication of unfair labour practice. Even if his contention is to be taken as correct, I am unable to record a finding of commission of any unfair labour practice by the Respondent- Municipal Corporation in terms of Item 6 of Schedule IV of MRTU and PULP Act. In ***University of Mumbai vs. Sunil Pagare*** (supra) this Court has distinguished the judgment of Co-ordinate Bench of this Court in ***Chief Officer, Sangli Municipal Council vs. Dharamsing Hiralaal Nagarkar***[15]***,*** by holding that the expression "for years" cannot be interpreted to mean completion of a couple of years of service. This Court held in paragraph 54 of the judgment as under:

[15] 1991 Mh.LJ. 981

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> **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.

36. In ***University of Mumbai v. Sunil Pagare*** (supra) this Court has restricted benefit of regularization only to those employees who had rendered 10 years of service, after noticing that there were sanctioned vacant posts available. In another recent judgment in ***Film and Television Institute of India (FTII) vs. Javed Rasul Banedar and Anr.***[16] this Court once again restricted the benefit only to those employees who had rendered more than 10 years of service.

37. In the present case, Petitioners have rendered hardly three years of service and therefore, they cannot claim the benefit of permanency in the services of Respondent-Pune Municipal Corporation. The Industrial Court has rightly dismissed the Complaints filed by them. The impugned

[16] Writ Petition No.1644 of 2025, decided on 29 September 2026

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judgment and order passed by the Industrial Court appears, to my mind, to be unexceptionable. Writ Petition is devoid of merits.

38. Writ Petition is accordingly **dismissed**. However, there shall be no order as to costs.

(SANDEEP V. MARNE, J.)

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