persons already accused before the Court if from the evidence led it appears to the Court that such person has committed an offence. Since in the present case the Court had not recorded any evidence, resort to the provisions of section 319 (1), Criminal Procedure Code, could not be had simply on the application filed by the Public Prosecutor or the complainant. Order dated April 6, 1988 summoning Mithlesh accused to face trial being illegal is set aside. With consequence the order framing charge against Mithlesh accused dated June 13, 1988 to that extent is also set aside, while accepting the revision petition.

S. C. K.

Before G. C. Mital and S. D. Bajaj, JJ.

PIARA SINGH AND ANOTHER,—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 72 *of* 1988

September 26, 1988.

(a) *Constitution of India*, 1950—*Arts.* 14, 16, 37 *to* 44 *and* 226—*Industrial Disputes Act*, (*XIV of* 1947)—*Ss.* 25-*B*, 25-*F and* 25-*G*—Ad hoc *class III and IV employees serving for more than one year in different departments and Corporations of the State of Punjab—Service of such employees—Whether liable to be regularised—If service benefits to be given from the date of initial appointment—Fixation of date for qualification for regularisation—Whether discriminatory and violative of Articles* 14 *and* 16.

(b) *Regularisation—Employees of State Departments and Corporations in the State of Haryana on completion of two years of service—Whether to be considered as regular employees—Persons completing more than a year of services—Services—Whether can be terminated—Government directed to frame scheme of regularisation.*

(c) *Regularisation—Daily wage workers and casual labourers other than those falling within the meaning of 'workman'*

in the Industrial Disputes Act—Whether entitled to continue in service after completion of one year of service —Service whether can be dispensed with—Work charged employees in Haryana—Whether have a right to be regularised after 4 years service—Such employees in Punjab—Whether have a right to be considered as regular employees on completion of five years of service.

(d) *Industrial Disputes Act, (XIV of 1947)—Ss. 25B, 25F and Chapter V-A—On completion of 240 days of continuous service—Workers—Whether entitled to the benefits of Chapter V-A—Services—Whether can be dispensed with without following the procedure laid down in Chapter V-A.*

(e) *Constitution of India, 1950—Art. 226—Regularisation—Ad hoc/temporary employees in temporary organisations completing one year of service—Whether can be terminated only on abandonment of scheme—If scheme not abandoned—Whether have a right to be regularised.*

(f) *Constitution of India, 1950—Art. 226—Termination—Employees whose services stand terminated after completion of more than one year of service—Whether have a right to reinstatement—Limitation for making request for reinstatement—Held to be three years and two months of such termination.*

(g) *Constitution of India, 1950—Art. 226—Industrial Disputes Act, (XIV of 1947)—Reinstatement—Abolition of posts—Surplus staff may be retrenched provide rule of last come first go applied—Vacancies arising in the future—Retrenched workmen—Whether have a right to be recalled.*

(h) *Constitution of India, 1950—Art. 226—Ad hoc appointments —Such appointments deprecated—Appointees not to continue ad hoc more than one year—On completion of one year—Whether entitled to all benefits.*

(i) *Constitution of India, 1950—Arts. 14 and 16—Equal pay for equal work—Whether to be paid from the date of initial appointment.*

(j) *Employment Exchange (Compulsory Notification of Vacancies) Act (XXXI of 1959)—Sponsorship by Employment Exchange—Whether mandatory—Government imposing condition in policy of regularisation that only such candidates as have been sponsored by the Employment Exchange entitled to regularisation—Condition—Whether bad.*

Held, that the date fixed in the policy of regularisation of the government is discriminatory. We only go by the period of regular/continuous service for the purpose of regularisation. Therefore, it has to be held that various dates fixed from time to time in the regularisation policy are hit by Articles 14 and 16 of the Constitution of India, 1950. The State Governments should avoid making any *ad hoc* appointments. If they do so, it shall be for initial period of six months and not to be extended beyond another six months. If their term is extended beyond one year, to such employees the benefit arising from our following conclusions will apply according to the group in which they fall. The Punjab State employees covered by Group No. 1 would be considered as regular members of the service on completion of more than one year after ignoring notional and permissible breaks in service, as noticed by the Supreme Court in various judgments and also by our Full Bench in Jagdish Lal's case. However, the concerned departments would pass orders for their regularisation and they would be entitled to all benefits of service from the date of their initial appointments

(Paras 11 and 33).

Held, that as regards Haryana employees covered by Group No. 1, on completion of two years of service they would be considered as regular members of service after ignoring their notional and permissible breaks as noticed by the Supreme Court in various judgments and also by our Full Bench in Jagdish Lal's case and the concerned departments would pass orders for their regularisation. In case of those, who have completed more than one year of service, their services shall not be terminated till the new policy for regularisation in accordance with our judgment is framed, in which a direction has been issued to re-frame the policy for regularisation on completion of more than one year of service, and without the condition which may hamper the policy of regularisation, irrespective of the fact whether or not their names were sponsored by the Employment Exchange or that their posts are within or outside the purview of the S.S.S.B. In case such petitioners complete two years, then on completion of two years, they will be considered as regular members of service and appropriate orders for their regularisation will be passed by the concerned departments, and such employees would be entitled to all service benefits from the date of their initial appointments. (Para 33).

Held, that the services of work-charged, daily wage workers and casual labourers (other than those who fall within the definition of 'workman' under the 1947 Act covered by Group III serving in the different departments of Government of Punjab and Haryana, as also their Corporations, who have put in more than one year of service, would continue to serve and their services will not be dispensed with. The concerned departments shall frame schemes for

their absorption, as regular employees on completion of more than one year of service, and their services shall be regularised under those schemes. On regularisation, they would be entitled to all service benefits from the date of initial appointments. As regards work charged employees, who have completed five years of service, they shall be considered to be regular employees under the scheme of regularisation framed by the State of Punjab and orders for their regularisation shall be passed. As regards work charged employees of the State of Haryana, on completion of four years of service they shall be considered to be regular under the regularisation scheme framed by the State and appropriate orders for their regularisation shall be passed. However, they would be entitled to all service benefits from the date of their initial appointments. (Para 33).

Held, that the persons falling in group III are those, who come within the definition of 'workman' under the 1947 Act. On completion of 240 days, which shall be counted keeping in view the decision of the Supreme Court in The Workman of American Express International Bank Corporation *vs.* The Management of American Express, AIR 1986 S.C. 458, they would be entitled to Chapter V-A of the 1947 Act, and their services would not be dispensed with without following the procedure laid down in that Chapter. For the purposes of regularisation, what has been stated for the employees falling in Group II, would also be applicable to the employees falling in this group. On regularisation they would be entitled to the benefits of provisions of the 1947 Act as also the service Rules, from the date of their initial appointments, as applicable to the departments concerned from time to time. (Para 33).

Held, that the *ad hoc/temporary* employees in temporary organisations like the Adult Education Scheme and Integrated Child Development Scheme, covered by Group IV, who have continued in service for more than one year with notional breaks would be entitled to the benefits of service and benefit of the directions issued by the Supreme Court in Bhagwan Dass's case and the services of none of them would be terminated except on abandonment of the scheme.

(Para 33)

Held, that in case services of an employee, who come within the ambit of Groups I to III, have already been terminated on the completion of his more than one year of service, he shall have to be taken back in service in case of a request being made by him to the concerned department of the government before the expiry of three years and two months of such termination. Some of the petitioners, who had put in more than one year of service, are out. They would be reinstated forthwith with continuity of service and all benefits.

(Para 33).

Held, that in case some posts are abolished or some persons are found surplus, junior-most would be out on the rule of 'last come First go', but if later on vacancies arise or posts are created, they will have to be called back first in the order of seniority, that is, on the rule of 'Last go First come' and if still some vacancies remains, new incumbents through S.S.S.B. may be accommodated. (Para 33)

Held, that the learned counsel for the State was asked to point out if the claim made by the petitioners for 'equal pay for equal work', as being paid to their counter-parts, in view of the decision taken by the Supreme Court in various cases was not justified. He was not able to point out if the claim so made was not correct. Accordingly, they would be paid wages as claimed from the date of initial appoinmtent in service. The arrears should be paid within six months from today. (Para 33).

Held, that if at a given moment, suitable candidates amongst candidates sponsored by the employment exchanges are not available, or no candidate has been sponsored by the employment exchange, and recruitment is made on *ad hoc* basis from the sources other than the employment exchange, it cannot be said in the regularisation policy that such candidates would not be entitled to be regularised. The basic policy decision is that *ad hoc* employees who have worked for quite some time and have gained experience should be regularised and in case they are shunted out, hardship would be caused in numerous ways. To avoid the hardship to such *ad hoc* employees the regularisation policy has been made. In the wake of this, it cannot be said that regularisation would be limited only to those, who were sponsored through the employment exchange and not to others. The hardship, which was kept in view by the State would come in the way of the *ad hoc* employees, even if they come through the other sources. We find no justification in the policy of regularisation that the candidates sponsored through the employment exchange alone would be entitled to regularisation. Therefore, while, we agree that the appointment should be made as far as possible even on *ad hoc* basis from the candidates sponsored by the employment exchanges, but if appointment from some other source is made, that would not be considered to be bad. (Paras 18 and 20).

Petition Under Article 226 *of the Constitution of India praying that a writ of certiorari*, mandamus *or any other suitable writ, direction or order be issued directing the respondents*:—

(*i*) to produce the complete records of the case ;

(*ii*) to issue Mandamus *directing the respondents to frame a rational policy to regularise the services of petitioners and other similarly situated persons in view of the law laid down by the Supreme Court of India as all the petitioners have more than* 240 *days of service to their credit and most of them have completed two years of service* ;

(iii) *to issue direction to the respondent to grant all other reliefs as admissible to other regular government employees ;*

(iv) *termination of the services of the petitioners be stayed during the pendency of the writ petition ;*

(v) *this Hon'ble Court may also pass any order which it may been just, fit and fair in the circumstances of the case; and direct the respondent to hold interview of those petitioners, who became over age after joining service on* ad hoc *basis.*

(vi) *Exemption from production of original letters/orders may please be granted; and*

(vii) *cost of this writ petition may also be awarded to the petitioners.*

G. K. Chatrath, J. L. Gupta, S. N. Singla, R. K. Chopra, Ravinder Chopra, M. M. Kumar, R. K. Malik, K. L. Arora, Advocates, *for the Petitioners.*

S. C. Mohunta, A.G., with S. K. Sood, D.A., *for State of Haryana.*

D. S. Brar, D.A.G., Punjab, *for State of Punjab.*

JUDGMENT

Gokal Chand Mital, J.—

(1) In this bunch of writ petitions filed by the different categories of employees of the States of Haryana and Punjab the points involved can be grouped as under :—

I. What would be the fate of the *ad hoc* employees of the cadre of Class III and IV. other than those, who fall within the definition of 'workman' under the Industrial Disputes Act, 1947 (for short 'the 1947 Act'), serving for more than one year in the different departments of the States of Punjab and Haryana, and the Corporations (which are State within the ambit of Article 12 of the Constitution of India) ;

II. What would be the fate of the employees employed on work-charged basis, daily wage earners and casual labourers (other than those who fall within the definition of

'workman' under the 1947 Act), serving in the different departments of States of Punjab and Haryana and Corporations thereof ;

III. What would be the fate of the aforesaid kind of employees working in the aforesaid departments, whether on *ad hoc* work-charged and daily wage basis or casual labourers, when they are covered by the definition of workman under the 1947 Act, on completion of 240 days or more in a year, that is, when the provision of Section 25-F and other provisions of the 1947 Act become applicable to them ;

IV. What would be the fate of the *ad hoc/temporary* employees, employed in temporary organisations like the Adult Education scheme and Integrated Child Development scheme, when they have continued in service for more than one year with or without notional break ; and

V. Whether the employees of the aforesaid categories, that is covered by item Nos 1 to 4 above, are entitled to the parity of pay on the rule of 'equal pay for equal work'.

BACKGROUND TO BE KEPT IN VIEW

(2) In the States of Punjab and Haryana, for the last nearly 18/19 years, class-III and IV employees in various departments and organisations have been employed either on *ad hoc* basis, which period was extended from time to time, or they were employed as work-charged, and daily wages or casual labourers. Such kind of workers continued for years together in the capacity they were appointed. Provision for *ad hoc* appointment for six months was made so that within that period regular appointments are made in accordance with the Service Rules. Out of exigency it was the policy of the State Government to extend the period of *adhocism* for one more similar term but not beyond that, so that if regular appointments could not be finalised within the first six months, same could he finalised before the close of the next six months. Both the State Government, instead of making regular appointments through the Subordinate Services Selection Board (for short 'the SSSB') kept on continuing the *ad hoc* appointments even after the expiry of the initial two terms of six months. The Government many a times took certain posts out of the purview of the SSSB so that they could justify the appointment on *ad hoc* basis beyond the initial two terms of six months each.

(3) When this practice continued for quite a long period, the attention of the Governments was engaged to give relief to such ad hoc employees by regularising their services because if they were to be ousted it would entail hardship and would create the problem of unemployment. In order to take benefit of their experience besides the above the State of Punjab issued the following instructions from time to time for regularisation of services of all *ad hoc*/temporary employees working in the cadre of class III and IV in various departments/offices:—

Sr. No.	Date of issue of instructions	Crux of the instructions so issued
1.	3.3.1969	To be regularised on completion of one year on 29.2.1969.
2.	29.1.1973	To be regularised on completion of one year on 1.1.1973.
3.	3.5.1977	To be regularised on completion of one year on 1.4.1977.
4.	20.10.1980	To be regularised on completion of one year on 1.10.1988.
5.	26.10.1982	To be regularised on completion of one year on 26.10.1982.
6.	29.3.1985	To be regularised on completion of two years on 1.4.1985.
7.	28.8.1985	Instructions issued on 29.3.1985, as mentioned at Sr. No. 6, were modified on re-consideration, and it was ordered that all Class-III employees who had one year service to their credit on 1.4.1985, may be regularised.

(4) In Punjab State, the matter for issue of fresh instructions for regularisation is pending consideration of the State Government.

(5) As regards the employees of Haryana State, it is admitted that from 1970 to March, 1987 all Class-III posts in the Education Department were kept out of the purview of the SSSB. There was no Subordinate Services Selection Board for more than ten years. Sometimes *ad hoc* appointments were also made of the candidates selected by the Departmental Selection Committees. *Vide* Notification No. G.S.R. 27/Const./AR-309/87, dated 1/4.3.1987, certain posts in the Education Department and other departments were brought within the purview of the SSSB. Following are the instructions issued by the State of Haryana for regularisation of *ad hoc*/temporary employees from time to time:

Sr. No.	Date of issue of instructions	Crux of the instructions so issued.
1.	1.1.1980	Providing for regularisation of all Class-III employees, who completed two years service on 31.3.1979;
2.	3.1.1983	Providing for regularisation of clerks-cadre class-III, who completed two years service on 15.9.1982;
3.	19.1.1984	Providing for regularisation of class-III employees, who completed two years on 15.9.1982. Those, who were left out in instructions dated 3.1.1983, were also included in this policy;
4.	16.2.1987	Providing for regularisation of all class-III, *ad hoc* employees other than teachers working against the posts, which have been taken out of the purview of SSSB, Haryana, and completed two years service on 1.11.86, subject to the terms and conditions detailed in the policy.

(6) In some of the circulars issued by both the States, besides fixing the date on which an employee has to complete one year or two years of service, as the case may be, other conditions have also been imposed. In Haryana conditions like having been sponsored by the Employment Exchange or being outside the purview of the SSSB, were added. Those, who fulfilled the conditions were regularised from time to time and those, who did not fulfil any of the conditions were allowed to continue as *ad hoc* or temporary employees. In these writ petitions we are concerned with those *ad hoc*/ temporary, daily wage earners, work-charged and casual labourers, who continued in the same capacity with notional breaks and are not considered as regular employees , and they are left on tenterhooks to wait for a day when they would be chucked out of service arbitrarily. This probably has been engaging the attention of Courts for the last about two decades but the changing trend favouring the aforesaid categories of employees started within the last 4/5 years only.

Court decisions on the subject :

(7) To start with the Courts did not recognise if the *ad hoc* and similarly situated temporary employees had any right in service. When government framed policy for regularisation, the instructions issued in this regard were considered to be having the force of law but with the rigour prescribed for regularisation. With the passage of time, the Courts started taking liberal view in favour of *ad hoc* and other temporary employees, and the one of the first decisions of the highest Court of the land is contained in :

(i) *Rattan Lal* v. *State of Haryana* (1), this was a case of teachers of the State of Haryana, who were working on *ad hoc* basis. Direction in this case was issued by a Bench headed by Venkataramiah, J. to allow the *ad hoc* teachers to continue without break and to allow them salary and allowances for the period of summer vacations "and maternity leave etc. in accordance with the Rules. The State Government was given a direction to frame the policy in this regard for their regularisation."

In spite of the aforesaid direction, which was of general nature for all the State Governments in the country and the Central Government, when it was seen by the highest Court in various cases that

(1) 1985(3) S.L.R. 548.

policies were being framed but with un-reasonable conditions, which did not stand the test of fairness in terms of Articles 14 and 16 of the Constitution of India, the Apex Court while ordering the continuance of such employees in service also laid guidelines for reframing the policies for regularisation. When these guidelines were not followed, the Supreme Court started directing the concerned Governments or departments to frame policy to regularise the services of those who have put in more than one year of service and not to terminate their services. For those. who had completed 240 days and were governed by the 1947 Act, benefit of the provisions of that Act was allowed. In some cases regularisation after six months service was also ordered. The other authorities on the subject are as under :

(ii) *Inder Pal Yadav* v. *Union of India* (2). In this case a scheme framed by the Ministry of Railways for regularising the services of casual labour was considered. Under the scheme, those employees, who had completed 360 days of continuous service on 1st January, 1984 were to be regularised and others not. It was observed that the date was likely to introduce an invidious distinction and was thus held to be arbitrary.

(iii) *Surinder Singh* v. *The Engineer in Chief, C.P.W.D.* (3), in which it was hoped that the Government will regularise the services of all those employees who have been in continuous employment for more than six months as temporary or daily wage workers.

(iv) *Dakshin Railway Employees Union Trivandrum Division* v. *General Manager, Southern Railway* (4), in which casual labourers who had been in continuous employment for 360 days were held to be entitled for absorption even though not in service on 1st January, 1981.

(v) *Daily Rated Casual Labour employed under P. & T. Department through Bhartiya Dak Tar Mazdoor Manch* v. *Union of India* (5). In this case a direction was issued to the Union of India to prepare a scheme on rational basis

(2) 1985 (2) S.L.R. 248.
(3) AIR 1986 S.C. 584.
(4) AIR 1987 S.C. 1153.
(5) AIR 1987 S.C. 2342.

for absorbing temporary or casual labourers, who have been continuously working for more than one year in the Posts and Telegraphs Department. A reading of para 8 of the aforesaid judgment highlights the background wherein *inter alia* it was observed that there was much of development to be carried in the Communication Department and more workers were needed.

(vi) *U.P. Income Tax Department Contingent Paid Staff Welfare Association* v. *Union of India*, (6). A direction was issued to the respondents to prepare a scheme on rational basis for absorbing as far as possible the contingent paid staff in the Income Tax Department, who have been continuously working for more than one year as class IV employees.

(vii) *Delhi Municipal Karamchari Ekta Union (Regd.)* v. *P. L. Singh* (7). A direction was issued to the Delhi Municipal Corporation to prepare a scheme on a rational basis for absorbing as far as possible the workers involved in the case. It was also directed that the scheme for absorption shall be prepared within six months and process of absorption shall be completed within eight months from the date of the order.

(viii) *Gainda Ram* v. *M.C.D.* (8). A direction was issued to regularise the services of the persons employed in the Municipal Corporation on the basis of total length of service giving preference to those who may be senior most among the lot.

(ix) *The General Secretary, Bihar State Road Transport Corporation, Patna* v. *The Presiding Officer, Industrial Tribunal, Patna* (9) a Supreme Court Judgment in which it was ordered that a workman within the meaning of 1947 Act on completion of 240 days would be entitled to benefit of Chapter V-A of that Act.

Out of the above cited authorities, in most of the cases no regularisation policy was framed at all and guidelines were given for framing

(6) AIR 1988 S.C. 517.
(7) AIR 1988 S.C. 519.
(8) AIR 1988 (1) S.L.R. 327.
(9) 1988 (1) S.L.R. 349.

policy for regularisation of those who had completed more than one year of service and in one case even on completion of six months' service. However, in *Inderpal Yadav's case* (supra), there was a regularisation policy in which it was mentioned that those, who fulfil the requisite conditions on 1st January, 1984, would be regularised. The date was held to have introduced invidious distinction and was not accepted and a direction was issued to frame policy in such a way that all those employees, who had completed more than one year of service be regularised.

Constitutional Provisions :

(8) Besides Articles 14 and 16 of the Constitution of India, the employees appointed in any of the capacities with which we are dealing in these writ petitions, have the protection of Directive Principles contained in Articles 37 to 44 of the Constitution of India. The Directive Principles enjoin duty on the State Governments to frame policy to secure social and economic order for the employees and to provide just and human conditions of work besides living wage. In pursuance of these Directive Principles, both the State Governments have been framing policies for regularisation but the benefit of those policies could not be extended to the petitioners before us because they are couched in such a way that they did not fall within the four corners of the said policies although they fulfil the basic requirements :

(i) They are fully qualified ;

(ii) They have served for more than the requisite period for regularisation.

(9) As noticed in the foregoing paragraphs, rule of *ad hoc* service was created so as to give time to the Government or different organisations thereof to fill in the posts in a regular manner in accordance with the Rules and in the meantime to appoint *ad hoc* employees to keep the work going. The service Rules generally provide that move for finding out candidates should start six months before the vacancies occur, also taking note of the vacancies which are likely to occur within six months thereafter. Keeping in view one year's vacancies the selection process should be completed within six months and in no case beyond another six months. As the practice has been seen during the last more than 18/19

years adhocism is going on and may be, during this period, some appointments may also have been made in regular manner. The Courts have deprecated the *ad hoc* appointments and we also by doing the same observe that *ad hoc* employment should not be allowed to continue beyond one year. All the same, we find the adhocism is allowed to continue not only beyond one year but for several years keeping the employees on tenterhooks, which cannot be considered good. To keep them as temporary or *ad hoc* employees even after one year would be greater evil than to appoint employees initially as *ad hoc* and allowed to continue for another term of six months. That is why, in the cases noted above, direction was issued for regularisation of all those *ad hoc* employees, who have worked for more than one year by framing schemes.

GROUP (1) : AD HOC *EMPLOYEES*

(10) Both the States with which we are concerned, have framed numerous schemes and every time a date was fixed, by which an employee should have completed one year or two years of service. The Government have multifarious duties to perform and remain busy and before they consider to frame another policy, several years pass in between with the result that *ad hoc* employees continue to work for years together. In this context it has become necessary for us to decide whether within the existing policies, we can order (i) that the services of the *ad hoc* and temporary employees be regularised, or (ii) should they be made to wait for the new policy of the State Government.

(11) On a consideration of this matter, we find that the following conditions stand in the way of the petitioners for regularisation :

(i) the date by which they have to complete one year or two years of service for the purpose of regularisation has expired although they have completed the tenure of service;

(ii) they were required to be sponsored through the Employment Exchange but were not so sponsored;

(iii) their posts are within the purview of the SSSB.

Now we deal with these conditions seriatim.

Validity of fixing date for regularisation.

There is no magic in fixing a date by which an employee has to complete the prescribed tenure of service for regularisation. When

a policy is sought to be made, a date when the policy is taken up for consideration or a notional date is fixed without having any nexus. Fixing of a date has no reasonable basis or intelligible differentia for the object to be achieved. The real object is that on completion of one year of service, an employee becomes entitled for regularisation. In this context fixing of a date is wholly arbitrary and meaningless. Once a clear guideline is known to the Governments that there can be no adhocism after one year of service, then it should be clear to them that if an employee continues for more than one year on *ad hoc* basis, adhocism will finish and he will be treated as a regular employee. In this manner, one policy would be enough and it would not be necessary to waste time in making and framing fresh policies every time for *ad hoc* employees. On the other hand attention would be diverted towards appointment of employees by regular method of selection within the period of six months or in any case within another six months so that before an employee completes one year of service, regular employee takes his place. That is why in *Inderpal Yadav's case* (supra), the Supreme Court had held that the date 1st January, 1984 fixed for regularisation introduced invidious distinction. Following that view, we hold that the dates fixed in the policy of regularisation of the two Governments are discriminatory. We only go by the period of regular/continuous service for the purposes of regularisation. For this view we also take support from *D. S. Nakara* v. *Union of India* (10). There, the date fixed for granting of enhanced pension to those employees who had retired on or after a particular date as compared to those who retired before that date was held to be hit by Article 14 of the Constitution of India, and similarly we hold that here the various dates fixed from time to time in the regularisation policies are hit by Articles 14 and 16 of the Constitution of India.

(12) On behalf of the State Governments, Shri S. C. Mohanta, learned Advocate General, Haryana, placed reliance on *Dr. (Mrs.) Sushma Sharma* v. *State of Rajasthan* (11), in support of the proposition that date fixed in the various regularisation policies could not be held to be bad in view of the aforesaid decision. We have gone through this judgment and find that the same is distinguishable. That case related to appointment of lecturers and certain

(10) A.I.R. 1983 S.C. 130.
(11) A.I.R. 1985 S.C. 1367.

amount of experience was provided for and to find out the experience a date was prescribed. There, the persons who had to be selected, had obtained a degree of doctorate after passing post-graduation whereas in these cases we are concerned with Class III and IV employees, who are lowest in the service rank.

(13) Reliance was also placed by the Advocate General, Haryana, on a Division Bench judgment of this Court in *Gian Chand* v. *The Director, Hydel Designs, Punjab, Chandigarh* (12). Wherein the second Punjab policy decision of regularisation fixing 1st January, 1973 for the purposes of regularisation was held not to be arbitrary. It was also held therein that the policy decision for regularising *ad hoc* employees was merely a concession and was not justiciable. In the wake of the authorities of the Supreme Court, referred to above, and particularly *Inderpal Yadav's case* (supra), and keeping in view the six/seven more regularisation policies framed by the State of Punjab, the decision in *Gian Chand's case* (supra) cannot be said to be a good law any longer. The attention of the learned Judges was not invited to the provision of Articles 37 to 44 of the Constitution of India, which enjoins upon the State to make provisions in this behalf nor by then the Supreme Court judgments had come. Now it is too late in the day to argue that the policy decision for regularisation would be a mere concession and would not be justiciable in the Court of law. Similar is the criticism about the Full Bench judgment reported in *S. K. Verma* v. *State of Punjab* (13), and that also does not hold good any longer in view of the Supreme Court decision particularly in *Inderpal Yadav's case* (supra).

(14) The Full Bench judgment reported in *S. K. Verma's case* (supra), and the Division Bench judgment reported in *Gian Chand's case* (supra), do not stand in our way because of the two later decisions of this Court, one of which is by a Division Bench in *Giani Ram* v. *The State of Haryana* (14), which was approved by the Full Bench of this Court in *Jagdish Lal* v. *State of Punjab* (15). Before the Full Bench, the Punjab policy decision of regularisation dated 28th August, 1985, which had modified the notification of regularisation dated 29th March, 1985,

(12) 1976 (1) S.L.R. 570.
(13) A.I.R. 1979 Pb. & Hry. 149.
(14) 1981 (2) S.L.R. 803.
(15) 1988 (1) P.L.R. 43.

providing therein that all class-III employees, who had one year's service to their credit on 1st April, 1985, may be regularised, came up for consideration and the learned Judges did not find favour with the interpretation given by the government on the regularisation policy. The instructions were interpreted by the Full Bench to mean not completion of one year *ad hoc* service on 1st April, 1985 but at a time when he was to be considered for regularisation. The relevant observations made by the Full Bench in *Jagdish Lal's case* (supra), are as follows :

> "In our opinion the more rational and just view to be taken on the interpretation of the relevant notification is that minimum continuous period of service of one year need not necessarily be a year immediately preceding April 1, 1985."

The Full Bench approved the dictum of the Division Bench in *Giani Ram's case* (supra). Before the Division Bench in *Giani Ram's case* (supra), the first Haryana Government policy of regularisation, in which it was provided that only such *ad hoc* employees, who have completed a minimum of two years service on 31st December, 1979, should be made regular, came up for consideration. While interpretating the policy of regularisation, the Division Bench ruled as follows :

> "If the clause in dispute is interpreted keeping in view this purpose, then the only rational view would be to extend the benefit of this clause to all those *ad hoc* employees, who have to their credit two years completed service, without a break of more than one month on the relevant date and not necessarily to those only who have two years continuous service immediately preceding the said date."

Between these two judgments, that is *Jagdish Lal's case* (supra) and *Giani Ram's case* (supra), and the earlier two judgments, that is, *Gian Chand's case* (supra) and *S. K. Verma's case* (supra), there is conflict of views, and we prefer to follow the view taken in *Jagdish Lal's case* (supra) and *Giani Ram's case* (supra).

(15) The learned Judges in *Jagdish Lal's case* (supra) and *Giani Ram's case* (supra), did not go into the question whether fixing of a date for regularisation is arbitrary and violative of

Articles 14 and 16 of the Constitution of India, Apart from it, in view of the Supreme Court judgment and after going into this point, we find the fixing of a date for the purposes of regularisation is wholly arbitrary and it has no object to achieve. In the aforesaid two judgments, while interpreting the policy decision, it was laid whether two years or one year's is fixed for regularisation, on completion of the requisite period, the incumbent would be entitled to regularisation. In the wake of these observations, it has become more necessary to specifically say that fixing of a date is wholly besides the point and if a date is fixed instead of interpreting to mean that it has no meaning, we rather like to say that this date is arbitrary so that the policy minus date already framed would hold field, and new policy, if at all to be framed, should be made keeping in view the observations, which we are going to make in this judgment in regard to other matters also.

(16) In view of our above discussions, the decision of D. V. Sehgal, J., dated 30th March, 1987, challenged in L.P.A. No. 214 of 1987 and other connected appeals and cross-objections, upholding the validity of the fixing of the cut off date for regularisation, that is 1st April, 1985, is hereby set aside.

(17) Similarly, the decision of M. R. Agnihotri, J. in (*U. S. Sihag* v. *State of Haryana*), (16), challenged in the LPA is hereby set aside.

EMPLOYMENT EXCHANGE'S SPONSORSHIP

(18) In some of the regularisation policies, one of the conditions is that only those employees, whose names have been sponsored through the Employment Exchange, would be considered for regularisation. The validity of this condition has been challenged on the same rule as advanced in the matter of fixing of date namely that it has no nexus with the object to be achieved. There is Employment Exchange (Compulsory Notification of Vacancies) Act 31 of 1959, (for short 'the 1959 Act'). The provision of this Act, which would fall for consideration, came up for interpretation in *Union of India* v. *N. Hargopal* (17). After looking into the scheme of the Act, it was held that government offices are also included in

(16) CWP 120 of 1987 decided on September 22, 1988.

(17) A.I.R. 1987 S.C. 1227.

the expression 'establishment in public sector' and the purpose of the Act was not that the government or other establishments could employ those persons only who have been sponsored by the Employment Exchanges.

The relevant passage in para 6 of this reported judgment is as follows :

> "It is, therefore, clear that the object of the Act is not to restrict, but to enlarge the field of choice so that the employer may choose the best and provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. We are, therefore, firmly of the view that the Act does not oblige any employer to employ those persons only who have been sponsored by the employment exchanges."

In the aforesaid case, certain instructions issued by the Central Government to its departments to adhere to the rule of notifying the vacancies to the employment exchanges and to fill the vacancies by such sponsored candidates came up for consideration. While holding that insistence of recruitment through employment exchanges advances rather than restricts the right guaranteed by Articles 14 and 16 of the Constitution of India, the following observations were made in para 9 of the reported judgment:

> "It was only when no suitable candidates were available, then other sources of recruitment were to be considered."

These observations were made after observing that the vacancies should be filled up from the candidates sponsored by the employment exchanges. Therefore, if at a given moment, suitable candidates amongst candidates sponsored by the employment exchanges are not available, or no candidate has been sponsored by the employment exchanges, and recruitment is made on *ad hoc* basis from the sources other than the employment exchange, it cannot be said in the regularisation policy that such candidates would not be entitled to be regularised. The basic policy decision is that *ad hoc* employees who have worked for quite some time

and have gained experience should be regularised and in case they are shunted out, hardship would be caused in numerous ways. To avoid the hardship to such *ad hoc* employees the regularisation policy has been made. In the wake of this, it cannot be said that regularisation would be limited only to those, who were sponsored through the employment exchange and not to others. The hardship, which was kept in view by the State would come in the way of all the *ad hoc* employees, even if they come through the other sources. We find no justification in the policy of regularisation that the candidates sponsored through the employment exchanges alone would be entitled to regularisation.

(19) The Full Bench of our Court in *Daljit Singh Minhas* v. *State of Punjab,* (18), had the occasion to consider the regularisation policy of the Punjab State, dated 3rd May, 1977 and one of the points raised was that if the *ad hoc* appointees were not selected through proper advertisement, their services could not be regularised. The Full Bench turned down the argument in view of the observations contained in paras 12 to 15 of the judgment.

(20) Therefore, while we agree that the appointment should be made as far as possible even on *ad hoc* basis from the candidates sponsored by the employment exchanges, but if appointment from some other source is made, that would not be considered to be bad. In this view of the matter, we consider the policy of regularisation to be creating an invidious discrimination having no object to be achieved rather contrary to the object to be so achieved, and, is, therefore, arbitrary. The Government would be well advised in reframing its policy to bring in the matter of regularisation in accordance with this judgment and till then the condition will not be given effect to.

POSTS WITHIN THE PURVIEW OF SSSB.

(21) In the State of Haryana from the year, 1970 to 1987, till before the notification of 1st/4th March, 1987, was issued, most of the class-III and IV posts with which we are concerned, were kept out of the purview of the SSSB. Moreover, for over ten years there was no SSSB. By the notification dated 1st/4th March, 1987, certain posts have again been brought within the purview

(18) 1978 (1) S.L.R. 32.

of the SSSB, and the regularisation policy contains a clause that the *ad hoc* employees working on the posts, which are within the purview of the SSSB, shall not be considered for regularisation. When the aggrieved petitioners, whose posts have now come within the purview of the SSSB were appointed, these posts were outside its purview. The basic question with which we are dealing is as to the fate of the *ad hoc* employees, who were so appointed by way of administrative necessity and have been allowed to continue for more than one year. In one of the orders passed by the State of Punjab, for the purposes of regularisation, the following object was mentioned :

> "Whereas by continuation of the *ad hoc* appointments made as above, as an administrative necessity, the *ad hoc* employees have acquired necessary experience and their ouster after a considerable period of service would entail hardship to *ad hoc* employees as a whole and accentuate the problem of un-employment, the President of India is pleased to decide ....."

If the aforesaid is the background of regularisation, the employee hardly knows whether he is being appointed on *ad hoc* basis against the post, which is within or outside the purview of the SSSB. This is making an invidious distinction having no reasonable basis or object to be achieved and we hold it to be arbitrary. The State of Haryana would be will advised in reframing its policy by deleting this clause/condition in the instructions issued by it. Till then it will not be given effect to. The decision of M. R. Agnihotri, J., dated 22nd September, 1987 in this behalf given in CWP No. 120 of 1987, which is under challenge in the LPA before us is also hereby set aside.

(22) In view of our aforesaid discussion, while the *ad hoc* employees in Class-III and IV service, who had completed more than one year service in the State of Punjab would be entitled to be regularised : in the State of Haryana, the similarly situated employees would be entitled to regularisation on completion of two years of service. Whether this disparity in the two neighbouring States should be allowed to continue or deserves to be resolved ?

(23) On behalf of the employees of the Haryana State, it was strenuously argued that if on continuation of one year, a similarly situated employee in Punjab is entitled to be regularised, and

the Supreme Court has also found favour with the regularisation on completion of more than one year of service, in *Inderpal Yadav's case* (supra), *Daily Rated Casual Labour, P & T Department's case* (supra) and *U. P. Income-tax Department Contingent Paid Staff Welfare's case* (supra), the same period should be adopted for directing the State of Haryana to reframe the policy of regularisation of the employees, who have completed more than one year of service. We find merit in this contention.

(24) The erstwhile State of Punjab included the Haryana territory and Haryana was created on re-organisation with effect from 1st November, 1966. From 1968 to 1972 Haryana made so much of progress that economically and financially it surpassed the State of Punjab. Both the States are like sister States carved out of the same erstwhile territory and once the financial position of Haryana State is equal to the State of Punjab if not better, we find no reasonableness in fixing two years period for the purposes of regularisation.

(25) *In B. S. Yadav* v. *State of Haryana*, (19), the Supreme Court had observed that the rules relating to the Superior Judicial Service in the two States should be similar. Although, on the parity of reasoning, it may not apply to the facts of the case but taking over all view of the matter, we direct the State of Haryana to reframe its policy to give benefit of regularisation to all Class-III and IV *ad hoc* employees, who have completed more than one year of service, because the underlying object for regularisation in both the States is the same. Till such a policy is framed by the State of Haryana, all *ad hoc* class III and IV employees, who have put in more than one year of service would continue. Of course those who have completed two years of service would be regularised.

GROUP II: Work-Charged, Daily Wages and Casual Labour.

(26) In *Surinder Singh's case* (supra), *Dakhshin Railway Employees Union's case* (supra), *Daily Rated Casual Labour Under P&T Department's case* (supra), *U. T. Income-Tax Department Contingent Paid Staff's case* (supra) and *Delhi Municipal Karamchari Ekta Union's case* (supra), direction was given to frame policy for absorption of all such type of workers. In *Surinder Singh's*

(19) 1980 (3) S.L.R. 591.

case (supra) six months period was fixed for the purposes of regularisation, whereas in the other above-quoted cases, barring the last case, more than one year was considered for the purposes of regularisation.

In *Daily Rated Casual Labour P&T Department's case* (supra) Venkataramiah, J. took note of the argument that in some of the departments there may not be enough work for such type of employees and the argument was repelled with the following observations contained in para 8 of the reported judgment :

> "..... Is it for paying the lower wages ? Then it amounts to exploitation of labour. Is it because you do not know that there is enough work for the workers ? It cannot be so because there is so much of development to be carried out in the communications department that you need more workers. The employees belonging to skilled, semi-skilled and unskilled classes can be shifted from one department to another even if there is no work to be done in a given place. Administrators should realise that if any worker remains idle on any day, the country loses the wealth that he would have produced during that day. Our wage structure is such that a worker is always paid less than what he produces. So why allow people to remain idle ? Anyway they have got to be fed and clothed. Therefore, why don't we provide them with work ? There are several types of work such as road making, railway construction, house building, irrigation projects, communications etc. which have to be undertaken on a large scale. Development in these types of activities (even though they do not involve much foreign exchange) is not keeping pace with the needs of the society. We are saying all this only to make the people understand the need for better management of man power (which is a decaying asset) the non-utilisation of which leads to the inevitable loss of valuable human resources. Let us remember the slogan : "Produce or Perish". It is not an empty slogan. We fail to produce more at our own peril. It is against this background that we say that non-regularisation of temporary employees or casual labour for a long period is not a wise policy.

"We, therefore, direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department."

(27) Apart from the observations made above, that working in the Government departments continues in one section or the other, we have seen that such type of workers are allowed to go on till superannuation. One such matter came up for consideration before a Full Bench of this Court in *Kesar Chand* v. *State of Punjab,* (20). There, the work-charged employees, who were made to work upto the age of superannuation were not being paid pension and gratuity on the ground that they are only work-charged employees and are not governed by the Civil Services Rules and for the purposes of pension and gratuity the service rendered by them as work-charged employees was not taken into account for determining the qualified service. This Court ordered that whole of length of service from the date of initial appointment/joining as work-charged should be taken into consideration for the purposes of payment of pension and gratuity and the rule to the contrary was hit by the vice of arbitrariness and was opposed to Article 14 of the Constitution of India. The Supreme Court had noticed in the afore-quoted judgments that such type of employees are allowed to continue for years and why should they be kept for years together under such labels. Whenever certain posts are declared surplus or abolished, it is always open to the Governments or its departments to dispense with the services of such surplus staff on the rule of 'last come first go' but with a rider that as and when vacancy arises or new posts are created or revived, those people will have to be called back on the rule 'last go first come'

(28) As regards work-charged employees, the State of Punjab has made rules for regularisation of their services on completion of five years whereas the State of Haryana has made rules for regularising their services on completion of four years of service. This further adds to the fact that temporary employees are generally allowed to continue year after year, with casual break, if any. The Full Bench in *Kesar Chand's case* (supra), has further noticed the award of the Industrial Tribunal dated 1st June, 1972, wherein it

(20) 1988 (2) P.L.R. 223.

was held that the work-charged employees, who have put in continuous three years of service, are entitled to be made permanent. In view of the Supreme Court decisions, referred to above, it will be reasonable to direct the State Governments to frame policies to regularise the services of all such employees on completion of more than one year service, and till such policies are framed, their services shall not be terminated. Those employees, who have completed four years of service in Haryana and five years of service in Punjab, shall be considered to be permanent under the existing policies with all other benefits with effect from the date of initial appointment in temporary capacity with whatever nomenclature one is given.

GROUP III : Class III and IV employees, enumerated in Groups (I) and (II), but fall within definition of workman under the 1947 Act, *on completion of 240 days in a year.*

(29) The workmen who come within the definition of 'workman' under the 1947 Act, on completion of 240 days service in a year, become entitled to the benefit of the provisions of Chapter V-A of the 1947 Act, both within the meaning of the provisions of the said Act, as also in view of the decision of the Supreme Court in *The General Secretary Bihar State Road Transport Corporation's case* (supra). Wherever such workmen have completed 240 days in a year, they are allowed the benefit of the provisions of Chapter V-A of the 1947 Act, and their services cannot be dispensed with without following the procedure of that Chapter and in case these are dispensed with, the same will be void. If any one of them is retrenched they would be entitled to retrenchment compensation and other benefits in accordance with the provisions of the 1947 Act. After retrenchment whenever vacancy arises, they will have the preferential right to be taken back in service according to the provisions of the 1947 Act.

(30) Moreover, certain policies have been framed by the two Governments to regularise the services of such workmen. On the regularisation of their services under these policies, or the policy which the State Governments may frame in view of the directions issued by us, such workmen will be entitled to the benefit of the provisions of the 1947 Act as also the Service Rules, which may be applicable to the departments in which they are already working

GROUP IV : *AD HOC*/TEMPORARY EMPLOYEES IN TEMPORARY ORGANISATIONS :

(31) Some *ad hoc*/temporary employees have been employed in temporary organisations like the Adult Education Scheme and Integrated Child Development Scheme, and they have continued in service for more than one year with or without notional break. The fate of the employees of the Adult Education Scheme came up for consideration before the Supreme Court in *Bhagwan Dass* v. *State of Haryana,* (21) both for purposes of giving 'equal pay for equal work' with other benefits of service and for continuing in service, till the temporary scheme lasts. The employees under both the temporary schemes on the parity of reasoning given in the aforesaid judgment of the Supreme Court, would be entitled to continue in case they have put in more than one year of service after ignoring the notional breaks and none of them would be terminated from service except on abandonment of the scheme.

GROUP V : EQUAL PAY FOR EQUAL WORK :

(32) This matter is concluded by now by various decisions of the Supreme Court and was subject matter of consideration in some of the aforequoted judgments. The principle was not disputed by any of the State Counsel in view of the numerous binding decisions of the Supreme Court.

(33) However, the categories of the cases will be seen where the relief can be granted.

In the result, our conclusions are as follows :—

(1) The State Governments should avoid making any *ad hoc* appointments. If they do so, it shall be for initial period of six months and not to be extended beyond another six months'. If their term is extended beyond one year, to such employees the benefits arising from our following conclusions will apply, according to the group in which they fall.

(2) The Punjab State employees covered by Group No. 1 would be considered as regular members of the service on completion of more than one year after ignoring notional and permissible breaks in service, as noticed by the

(21) AIR 1987 S.C. 2049.

Supreme Court in various judgments and also by our Full Bench in *Jagdish Lal's case* (supra). However, the concerned departments would pass orders for their regularisation and they would be entitled to all benefits of service from the date of their initial appointments.

As regards Haryana employees covered by Group No. 1, on completion of two years of service they would be considered as regular members of service after ignoring their notional and permissible breaks as noticed by the Supreme Court in various judgments and also by our Full Bench in *Jagdish Lal's case* (supra), and the concerned departments would pass orders for their regularisation. In case of those, who have completed more than one year of service, their services shall not be terminated till the new policy for regularisation in accordance with our judgment is framed, in which a direction has been issued to reframe the policy for regularisation on completion of more than one year of service, and without the condition which may hamper the policy of regularisation, irrespective of the fact whether or not their names were sponsored ed by the Employment Exchange or that their posts are within or outside the purview of the SSSB. In case such petitioners complete two years, then on completion of two years, they will be considered as regular members of service and appropriate orders for their regularisation will be passed by the concerned departments, and such employees would be entitled to all service benefits from the date of their initial appointments.

(3) The services of work-charged, daily wage workers and casual labourers, (other than those who fall within the definition of 'workman' under the 1947 Act) covered by Group II serving in the different departments of Government of Punjab Haryana, as also their Corporations, who have put in more than one year of service, would continue to serve and their services will not be dispensed with. The concerned departments shall frame schemes for their absorption, as regular employees on completion of more than one year of service, and their services shall be regularised under those schemes. On regularisation, they would be entitled to all service benefits from the date of initial appointments.

As regards work-charged employees, who have completed five years of service, they shall be considered to be regular employees under the scheme of regularisation framed by the State of Punjab and order for their regularisation shall be passed. As regards work charged employees of the State of Haryana, on completion of four years of service they shall be considered to be regular under the regularisation scheme framed by the State and appropriate orders for their regularisation shall be passed. However, they would be entitled to all service benefits from the date of initial appointments.

(4) The persons falling in group (III) are those, who come within the definition of 'workman' under the 1947 Act. On completion of 240 days, which shall be counted keeping in view the decision of the Supreme Court in *The Workmen of American Express International Bank Corporation* vs. *The Management of American Express*, (22) they would be entitled to benefits of all the provisions of Chapter V-A of the 1947 Act, and their services would not be dispensed with without following the procedure laid down in that Chapter.

For the purposes of regularisation, what has been stated for the employees falling in Group II, would also be applicable to the employees falling in this group. On regularisation, they would be entitled to the benefits of provisions of the 1947 Act as also the Service Rules, from the date of their initial appointments, as applicable to the departments concerned from time to time.

(5) The *ad hoc*/temporary employees in temporary organisations like the Adult Education Scheme and Integrated Child Development Scheme, covered by Group IV, who have continued in service for more than one year with notional breaks would be entitled to the benefits of service and benefit of the directions issued by the Supreme Court in *Bhagwan Dass's case* (supra), and the services of none of them would be terminated except on abandonment of the scheme.

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(22) AIR 1986 S.C. 458.

(6) In case services of an employee, who come within the ambit of Groups I to III, have already been terminated on the completion of his more than one year of service, he shall have to be taken back in service in case of a request being made by him to the concerned department of the government before the expiry of three years and two months of such termination.

Some of the petitioners, who had put in more than one year of service, are out. They would be re-instated forthwith with continuity of service and all benefits.

(7) In case some posts are abolished or some persons are found surplus, junior-most would be out on the rule of 'Last come First go', but if later on vacancies arise or posts are created, they will have to be called back first in the order of seniority, that is, on the rule of 'Last go First come' and if still some vacancies remain, new incumbents through SSSB may be accommodated.

(8) The learned counsel for the State was asked to point out if the claim made by the petitioners for 'equal pay for equal work', as being paid to their counter-parts, in view of the decision taken by the Supreme Court in various cases was not justified. He was not able to point out if the claim so made was not correct. Accordingly, they would be paid wages as claimed from the date of initial appointment in service. The arrears should be paid within six months from today.

(34) It is again made clear that till regularisation policies are framed as directed by us and regularisation orders are passed, the employees shall continue and their services shall not be terminated.

(35) Before parting, it deserves mention that Sarvshri Satya Narian Singla, G. K. Chatrath, Ravinder Chopra, Ramesh K. Chopra, R. K. Malik, M. M. Kumar, J. L. Gupta and K. L. Arora, Advocates had rendered good assistance on behalf of the employees and Sarvshri S. C. Mohanta, Advocate General, Haryana, Mani Subrat Jain, the then Additional Advocate General, Haryana, and D. S. Brar, Senior Deputy Advocate General, Punjab, had rendered valuable assistance on behalf of their respective States.

(36) The writ petitions stand allowed with costs in the aforesaid terms. The costs are quantified at Rs. 500 in each case.

R.N.R.

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