

**Karnataka Power Transmission Corporation Limited (KPTCL) Kaveri
Bhavan K.G. Road, Bengaluru - 09 Now Represented By Its Authorized
Signatory & Ors. Vs Nagaraj B R & Ors**

Court: Karnataka High Court At Bengaluru

Date of Decision: Jan. 24, 2025

Acts Referred: Constitution Of India, 1949 " Article 14, 226

Hon'ble Judges: Anu Sivaraman, J; G Basavaraja, J

Bench: Division Bench

Advocate: S.S. Naganand, Arihant R. Sungay, Aditya Sondhi, D.R. Ravi Shankar, Pradeep C.S, Namitha Mahesh, K. Chandrappa, N.R. Kumara Swamy, V. Lakshminarayana, Ravi Shankar, T.K. Javanappa, S.M. Shivabeeran, Sumana Naganand, Anusha L, Suresh S. Lokre, Prabhuling K.Navadgi, Vittal Kothari, Prasanna Deshpande, Sushail Tiwari, N., Skanda, Ashwathakumara, Srinivasa, H.L.Pradeep Kumar, Sanjeev B L, Keshav M.Dattar, Prasanna Kumar P, S.C. Vijayakumar, H.N. Shashidhar, M.Vinaya Keerthy, N.H. Sathyanarayana Reddy

Judgement

Anu Sivaraman, J

CAV JUDGMENT

1. These writ appeals are filed challenging the order dated 31.08.2020 passed by the learned Single Judge in Writ Petitions No.43037-43041/2015 and

connected matters and Writ Petitions No.37589-37607/2016; order dated 13.11.2020 passed by the learned Single Judge in Writ Petition No.8580/2016

and order dated 10.02.2021 passed by the learned Single Judge in Writ Petition No.569/2015.

2. We have heard Shri. S.S. Naganand, learned senior counsel along with Advocate Shri. Arihant R. Sungay as instructed by Advocate Smt. Sumana

Naganand, learned counsel Shri P. Prasanna Kumar and learned counsel Shri Sanjeev B.L, appearing for the appellants.

Shri Pradeep C.S, learned Additional Advocate General as instructed by Smt. Namitha Mahesh, learned Additional Government Advocate appearing

for the State.

Shri. Aditya Sondhi, learned Senior Counsel as instructed by Advocate Smt. Shwetha Ravishankar, Shri D.R. Ravishankar, learned senior counsel as

instructed by Advocate Shri. T.K. Javanappa, Shri. Prabhuling K. Navadgi, learned senior counsel as instructed by Advocate Shri. B.J. Rohith

Gowda, Shri. Suresh S. Lokre, learned senior counsel as instructed by Advocate Shri. Sharan N. Majage and Shri.V. Laxminarayana, learned senior

counsel as instructed by Advocate Smt. Anusha L, Shri. K. Chandrappa, Shri. Srinivasa Shetty, Shri. N.R.Kumara Swamy, Shri. S.M.Shivabeeraiah,

Shri. Srinivas, Shri H.L. Pradeep Kumar, Shri. Keshav M. Dattar, Shri H.N.Shashidhar, Shri H.S.Suhas, Shri Vinaya Keerthy, Shri.

N.H.Sathyanarayana Reddy, Shri. S.C.Vijayakumar, learned counsel appearing for the private respondents.

3. The brief facts are stated as follows:-

On 05.02.2004, the Chief Minister of Karnataka in his budget speech articulated that the Grama Vidyuth Pratinidhis (GVPs) scheme would be

introduced with the object of providing employment opportunities amongst youth in rural areas. The GVPs were to read meters, collect bills and

engage in minor repair works for which they will be paid a fixed remuneration out of the bill amounts recovered.

On the basis of this speech, the 5 Electricity Distribution Companies in the State of Karnataka appointed GVPs after publishing newspaper

advertisements. The eligibility criteria was not uniform among all the 5 companies and the reservation rules was followed only by GESCOM only in

the first appointment process. None of the other Electricity Supply Companies (ESCOMS) followed the reservation policy while appointing GVPs on

contract as they were not employees. The GVPs were required to furnish Bank Guarantees and their remuneration was not uniform among the

companies and depended on their monthly collection. As on 23.02.2015, 3498 GVPs were working in all 5 companies.

The terms of engagement of the GVPs are contained in a Memorandum of Understanding (MOU) which has undergone changes from time to time.

The duration of the MOU was for a period of one year which has been extended from time to time. The responsibilities of the GVPs and payments

which are linked to performance are set out in the MOU, and the MOU stipulates that the GVPs will not be treated as employees.

As the GVPs made various demands in respect of their terms of engagement, a 13 Member Committee was constituted which included

representatives of the GVPs to examine 10 points in respect of the GVPs. This Committee submitted its report dated 23.02.2015 recommending that

equal, uniform remuneration be paid and that medical allowance, the new pension scheme and accident benefits can be provided on a humanitarian

basis. However, it has been recommended that it is not possible to regularise the GVPs.

On 05.09.2019, an interim order was passed in W.P. No. 43037/2015 directing the Government, in consultation with all the concerned departments, to

take a policy decision as to the recommendations of the 13 Member Committee within a time bound manner. In furtherance of the same, the

Government order dated 02.11.2019 was passed. The aforesaid Government order notes that based on the report of the 13 Member Committee,

changes have been included like the payment of Rs.12,000/- uniform remuneration and Rs.2,000/- incentive and that a sum of Rs.2,00,000/-

compensation shall be provided in case of death while on duty and an additional Rs.5,000/- to meet medical expenses. After considering the opinions

given by the Department of Personnel and Administrative Reforms, the Law Department and the Finance Department, the Government, vide order

dated 02.11.2019 has come to the conclusion that there is no provision to regularise the GVPs or provide relaxation in educational qualifications and

weightage based on service, when they apply for the post of meter readers.

4. The learned senior counsel appearing for the appellants contended that the order of the learned Single Judge is unsustainable on facts of law. A

bare reading of the impugned order suggests that assumptions are made with regard to duties discharged by GVPs and regular employees of lower

cadre. The judgments relied by the learned single judge are completely different to the facts and circumstances of the present case. The work of

GVPs is not a full time employment and it is only a part time work for ad hoc purposes of meter reading and collection of bill amount. The learned

Single Judge had not considered any judgments relied upon by the appellants nor appreciated the distinguishing factors pointed out by the appellants.

GVP is created to provide employment to rural youth on contractual basis. Therefore, granting relief of regularization does not arise. The learned

Single Judge erred in coming to the conclusion that they are the permanent employees. The executive statements cannot be enforced when they are

not in consonance with law, rules and regulations relating to public employment. The finding of fact that duties discharged by GVPs has the trappings

of public services is without any basis. The work carried out by the GVPs on behalf of appellants is purely on the basis of principle - agent relationship

governed in MOU. The learned Single Judge relied upon the law laid down by Apex Court in the case of Chander Mohan Negi vs. State of

Himachal Pradesh in Civil Appeal No.2813/2017, which is factually incorrect. The learned Single Judge failed to appreciate that one of the

recommendations of the committee is that it would not be possible to appoint GVPs through regularization against the vacant posts of meter readers

and by virtue of Government Order dated 02.11.2019, the State had rejected the request of petitioners for formulating the scheme and absorption.

5. The learned senior counsel appearing for the appellants has relied on the following decisions:-

Ã,Ã. State of Uttar Pradesh & Others v. Bharat Singh & Others reported in (2011) 4 SCC 120;

Ã,Ã. Central Inland Water Transport Corporation Limited & Another v. Brojo Nath Ganguly and Another reported in (1986) 3 SCC

Ā,Ā. Shivnandan Sharma v. The Punjab National Bank Ltd. reported in AIR 1955 SC 404;
 Ā,Ā. Dharangadhara Chemical Works Ltd v. State Of Saurashtra & Others reported in AIR 1957 SC 264;
 Ā,Ā. Indian Medical Association v. VP. Shantha & Others reported in (1995) 6 SCC 651;
 Ā,Ā. Indian Banks Association, Bombay v. Workmen of Syndicate Bank & Others reported in 1977 (3) L.L.N 111;
 Ā,Ā. Indian Banks Association v. Workmen of Syndicate Bank & Ors. reported in (2001) 3 SCC 36;
 Ā,Ā. South Malabar Gramin Bank v. Regional Provident Fund Commissioner reported in 2013 SCC OnLine Ker 5549;
 Ā,Ā. The Managing Director, Gulbarga Electricity Supply Company Ltd. and Another v. Mallappar eported in (2015) 2 Kant LJ 63;
 Ā,Ā. Paradip Port Trust v. Their Workmen (Orissa) reported in 2005(1) SLR 839 (Orissa);
 Ā,Ā. Ishwar Singh v. R.S.E.B. & Others reported in 2001 SCC Online Raj 784;
 Ā,Ā. State Of Karnataka v. Abdul Nabi reported in ILR 1974 Kant 1538;
 Ā,Ā. State Of Karnataka v. Adimurthy @ B. Moorthy reported in (1983) 3 SCC 268;
 Ā,Ā. Oil and Natural Gas Corporation Ltd. v. Petroleum Coal Labor Union & Others. reported in (2015) 6 SCC 494;
 Ā,Ā. Ajaypal Singh v. Haryana Warehousing Corporation reported in (2015) 6 SCC 321;
 Ā,Ā. Sudarshan Rajpoot v. Uttar Pradesh State Road Transport Corporation reported in (2015) 2 SCC 317;
 Ā,Ā. Secretary, Haryana State Electricity Board v. Suresh & Others reported in (1999) 3 SCC 601;
 Ā,Ā. Nihal Singh v. State of Punjab reported in (2013) 14 SCC 65;
 Ā,Ā. Kumari Shrilekha Vidyarthi & Ors v. State of U.P Others reported in (1991) 1 SCC 212;
 Ā,Ā. Gujarat Steel Tubes Ltd. & Others v. Gujarat Steel Tubes Mazdoor Sabha & Others, reported in (1980) 2 SCC 593;
 Ā,Ā. Mallikarjun & Others v. State and Others, Order dated 10.10.2018 in Writ Petitions No.15712 Ā,Ā, " 15828/2015 and connected matters;
 Ā,Ā. Vasapu L. Kumar v. ONGC Field Operators Union, reported in 2018 SCC OnLine Hyd 1;
 Ā,Ā. The U.P. State Electricity Board and Another v. Hari Shankar Jain and Others reported in (1978) 4 SCC 16;
 Ā,Ā. Pandavapura Sahakara Sakkare Kharkhane Ltd., v. The Presiding Officer, Additional Industrial Tribunal, Bangalore, reported in
 ILR 1996 KAR 2069;
 Ā,Ā. Ballarpur Industries Ltd., v. Maharashtra Lok Kamgar Sanghatana, Mumbai & another, reported in (2016) 2 Mah LJ 183;
 Ā,Ā. R. Lakshmi v. The Chief Engineer, Tamil Nadu Electricity Board reported in 2012 SCC OnLine Mad 2941;
 Ā,Ā. KEB Workmen v. State of Karnataka, reported in 1982 (2) Kar.LJ SN 39;
 Ā,Ā. A.M. Mani v. Kerala State Electricity Board, reported in AIR 1968 Ker 76;
 Ā,Ā. The A.P. State Electricity Board and another v. N. Ramachandra Rao and Another, reported in 1969 SCC OnLine AP 26;

Ã,Â. Rakesh Ranjan Verma and Others v. State of Bihar and Others reported in 1992 Supp (2) SCC 343;

Ã,Â. Sabha Shanker Dube V. Divisional Forest Officer and Others reported in AIR 2019 SC 220;

Ã,Â. State of Punjab and Others v. Jagjit Singh and Others reported in (2017) 1 SCC 148;

Ã,Â. State of Karnataka & Another v. K.K. Mohandas and Others reported in (2007) 6 SCC 484;

Ã,Â. Motilal Padampat Sugar Mills CO. Ltd., v. State of Uttar Pradesh and Others reported in (1979) 2 SCC 409;

Ã,Â. Union of India & Another v. Arulmozhi Iniarasu & Others reported in (2011) 7 SCC 397;

Ã,Â. State of Tamil Nadu v. A. Singamuthu reported in (2017) 4 SCC 113;

Ã,Â. Secretary, State of Karnataka & Others v. Umadevi (3) & Others reported in (2006) 4 SCC 1;

Ã,Â. University of Delhi v. Delhi University Contract Employees Union and Others reported in 2021 SCC OnLine SC 256;

Ã,Â. State of Gujarat & Others v. R.J. Pathan & Others reported in (2022) 5 SCC 394;

Ã,Â. Vibhuti Shankar Pandey v. State of Madhya Pradesh and Others reported in 2023 SCC OnLine SC 114;

Ã,Â. Satya Narain Singh v. District Engineer, PWD Ballai & Another reported in AIR 1962 SC 1161;

Ã,Â. M/s. Karnataka Power Transmission Corporation Ltd. and Others v. Sri. Ramesh R by Order dated 06.11.2020 passed in W.A.

No. 977/2019;

Ã,Â. Rajesh Pravinchandra Rajyaguru v. Gujarat Water Supply & Sewerage Board and Others reported in 2021 SCC OnLine SC 1282;

Ã,Â. Government of Tamil Nadu and Another v. Tamil Nadu Makkal Nala Paniyalargal and Others reported in 2023 SCC OnLine SC

393;

Ã,Â. Venkataraman Krishnamurthy and Another v. Lodha Crown Buildmart Pvt. Ltd. reported in 2024 SCC OnLine SC 182;

Ã,Â. Chief Executive Officer, Zila Parishad, Thane and Others v. Santosh Tukaram Tiware and Others reported in (2023) 1 SCC 456;

Ã,Â. Union of India and Others v. Indo-Afghan Agencies Ltd. reported in AIR 1968 SC 718;

Ã,Â. Manuelsons Hotels Private Limited v. State of Kerala and Others reported in (2016) 6 SCC 766;

Ã,Â. Chander Mohan Negi and Others v. State of Himachal Pradesh and Others reported in (2020) 5 SCC 732;

Ã,Â. Hussainbhai, Calicut v. The Alath Factory Thezhilali Union, Kozhikode and Others reported in (1978) 4 SCC 257;

Ã,Â. Roshan Lal Tandon and Another v. Union of India and Another reported in AIR 1967 SC 1889;

Ã,Â. Sheo Narain Nagar and Others v. State of Uttar Pradesh and Another reported in (2018) 13 SCC 432;

Ã,Â. Narendra Kumar Tiwari and Others v. State of Jharkhand and Others reported in (2018) 8 SCC 238;

Ã,Â. All India Judges Association and Others v. Union of India and Others reported in (2018) 17 SCC 555;

Ã,Â. Union of India and Others v. Vartak Labour Union (2) reported in (2011) 4 SCC 200;

Ã,Â. Union of India and Others v. All India Trade Union Congress and others reported in (2019) 5 SCC 773;

Ã,Ã Pawan Hans Limited and Others v. Aviation Karamchari Sanghatana and Others reported in (2020) 13 SCC 506;

Ã,Ã Union of India and Others v. Central Administrative Tribunal and Others reported in (2019) 4 SCC 290;

Ã,Ã Prem Singh v. State of Uttar Pradesh and Others reported in (2019) 10 SCC 516;

Ã,Ã State of Punjab and Others v. Jagjit Singh and Others reported in (2017) 1 SCC 148; and

Ã,Ã Sabha Shanker Dube v. Divisional Forest Officer and Others reported in (2019) 12 SCC 297.

6. The learned senior counsel appearing for the respondents contended that the GVPs are selected through a recruitment process with procedure as

stipulated by the appellant-ESCOMS. A scheme was formulated to engage the services of rural unemployed youths as GVPs. The scheme was

intended to provide employment opportunities to the small and marginal farmers in the rural areas, where unemployed rural folk would work as GVPs.

The Companies invited applications for recruitment showing the criteria which a candidate had to fulfill, such as age, educational qualifications, etc.

The work assigned to the GVPs are the statutory duties in terms with the Electricity Act, 2003 and Karnataka State Electricity Regulatory

Commission (Electricity Supply) Code, 2004. In order to strengthen their contentions they have placed reliance upon the judgment of the Apex Court

in the case of State v. C. N. Manjunath reported in (2017) 11 SCC 361. GVPs have spent two decades working for appellant-ESCOMS, therefore,

it is an obligation on the part of the appellants to act fairly and to adopt procedure which is Ã,Ãfairplay in actionÃ,Ã. It would turn rise a legitimate

expectation in every person to be treated fairly, when dealing with a state entity. In support of their contentions they have placed reliance on the

judgment of the Apex Court in the case of Food corporation of India v. Kamadhenu cattle Feed Industries reported in (1993) 1 SCC 71 para

7&8, and State of Jharkhand v. Brahmaputra Metalics Ltd. reported in (2023) 10 SCC 634 The State cannot take up a defense stating that there

are no sanctioned posts to absorb the respondents after utilizing their services for a long duration. To strengthen this statement they have relied upon

the judgment of the Apex Court in the case of Nihal Singh v. State of Punjab, reported in (2013) 14 SCC 65, paragraphs No.20, 23, 24, 32, 33,

35, 37 and 39. If the work carried out by the contract laborers is of perennial nature and permanent one, such employment cannot be treated as

contractual employment. In order to strengthen this statement they have relied upon the judgment of Apex Court in the case of M/s. Pawan Hans Ltd.

v. Aviation Karmachari Sanghatana, civil appeal no. 353/2020, Narendra kumar Tiwari v. State of Jharkhand reported in (2018) 8 SCC

238 and Sheo Narain Nagar vs. State of Uttar Pradesh reported in (2018) 13 SCC 432. It is contended that the judgment of the Apex Court in

Umadevi's case (supra), ought to be interpreted in a pragmatic manner and persons who have completed 10 years of service ought to be regularized.

In order to substantiate this statement they have placed reliance on the para 7 of the judgment of Narendra Kumar (supra) and para 37 of the

judgment of Nihal Singh (supra).

7. The learned senior counsel appearing for the respondents has relied on the following decisions:-

Ã,Ã. The State of Madhya Pradesh and Ors v. Shyam Kumar Yadav and anr. by order dated 22.07.2024 passed in SLP (Civil)

25609/2018;

Ã,Ã. Ushaben Joshi v. Union of India and Others, by order dated 02.08.2024 passed in SLP (Civil) No.6427/2019;

Ã,Ã. Vinod Kumar and Ors. Etc. v. Union of India and Ors. reported in 2024 Live Law (SC) 330;

Ã,Ã. Ravi Verma and Ors. v. Union of India and Ors. by order dated 13.03.2018 passed in Civil Appeal Nos.2795-2796/2018;

Ã,Ã. Raman Kumar and Ors. v. Union of India and Ors. by order dated 03.07.2023 passed in SLP No.7898/2020;

Ã,Ã. Mahanadi Coalfields Ltd v. Brajragnagar Coal Mines WorkersÃ,Ã,Ã,Ã Union by Judgment dated 12.03.2024 passed in Civil Appeal

Nos.4092-4093/2024;

Ã,Ã. Food Corporation of India v. General Secretary, Food Corporation of India Employees Union and Others, reported in (2018) 9 SCC

464;

Ã,Ã. Somesh Thapliyal and another v. Vice Chancellor, H.N.B. Garhwal University and another, reported in (2021) 10 SCC 116;

Ã,Ã. Shivnandan Sharma v. Punjab National Bank Ltd, reported in (1955) 1 SCR 1427;

Ã,Ã. H.L. Trehan and Others v. Union of India and Others, reported in (1989) 1 SCC 764;

Ã,Ã. Pandurang Sitaram Jadhav and Others v. State of Maharashtra, through its Dairy Manager and Another, reported in (2020) 17

SCC 393;

Ã,Ã. Sushilaben Indravadan Gandhi and another v. New India Assurance Company Limited and Others, reported in (2021) 7 SCC 151;

Ã,Ã. K. Anbazhagan and another V. Registrar General, High Court of Madras and another, reported in (2018) 9 SCC 293;

Ã,Ã. Union of India and Others v. N. Murugesan and Others, reported in (2022) 2 SCC 25;

Ã,Ã. BCH Electric Limited v. Pradeep Mehra, reported in (2020) 15 SCC 262;

Ã,Ã. Rai Sahib Ram Jawaya Kapur and Others v. State of Punjab, reported in (1955) 2 SCR 225;

Ã,Ã. Gujarat Mazdoor Sabha and Another v. State of Gujarat, reported in (2020) 10 SCC 459;

Ã,Ã. State of Uttar Pradesh and another v. Audh Narain Singh and another, reported in (1964) 7 SCR 89;

Ã,Ã. Hussainbhai Calicut V. The Alath Factory Thezhilali Union, Kozhikode and Ors, reported in (1978) 4 SCC 257;

Ã,Ã. The U.P. State Electricity Board and another V. Hari Shankar Jain and Others, reported in (1978) 4 SCC 16;

Ã,Ã. State Through Lokayukta Police, Raichur v. C.N. Manjunath, reported in (2017) 11 SCC 361;

Ã,Ã. Fuerst Day Lawson Ltd. v. Jindal Exports Ltd, reported in (2001) 6 SCC 356;

Ã,Ã. Pawan Hans Limited and Others v. Aviation Karmachari Sanghatana and Others, reported in (2020) 13 SCC 506;

Ã,Ã. State of Meghalaya and another V. Phikirbha Khariah and Others, reported in (2018) 6 SCC 618;

Ã,Ã. Dinesh Chandra Sangma V. State of Assam and Others, reported in (1977) 4 SCC 441;

Ã,Ã. Bengaluru Electricity Supply Company (BESCOM) v. Sri. C. Kollaiah by Judgment dated 08.01.2020 passed in W.A.No.922/2019

(S-RES);

Ã,Ã. Oil and Natural Gas Corporation v. Krishan Gopal and Others, reported in (2020) SCC OnLine SC 150;

Ã,Ã. Lonankutty V. Thomman and another, reported in (1976) 3 SCC 528;

Ã,Ã. Premier Tyres Limited v. Kerala State Road Transport Corporation, reported in (1993) Supp (2) SCC 146;

Ã,Ã. Shri Ramagya Prasad Gupta and Others v. Sri Murli Prasad and Others, reported in (1974) 2 SCC 266;

Ã,Ã. Gangai Vinayagar Temple and Others v. Meenakshi Ammal and Others, reported in (2009) 9 SCC 757;

Ã,Ã. Sri Gangai Vinayagar Temple and Another v. Meenakshi Ammal and Ors, reported in (2015) 3 SCC 624;

Ã,Ã. Badri Narayan Singh v. Kamdeo Prasad Singh and anr. reported in (1962) 3 SCR 759;

Ã,Ã. Sheodan Singh V. Daryao Kunwar (Smt), reported in (1966) 3 SCR 300;

Ã,Ã. Vajjinath S/o. Yeshwanta Jadhav (Deceased) by Legal Representatives and Others v. Afsar Begum W/o. Nadimuddin (Deceased)

by Legal Representatives and Others, reported in (2020) 15 SCC 128;

Ã,Ã. K.C. Sharma and Others v. Union of India and Others, reported in (1977) 6 SCC 721;

Ã,Ã. Silver Jubilee Tailoring House and Others v. Chief Inspector of Shops and Establishments and another, reported in AIR 1974 SC

37;

Ã,Ã. Secretary, State of Karnataka and Ors. v. Umadevi and Ors. reported in AIR 2006 Supreme Court 1806;

Ã,Ã. State of Karnataka and Ors. v. M.L. Kesari and Ors. reported in AIR 2010 SC 2587;

Ã,Ã. Amarkant Rai v. State of Bihar, reported in 2015 AIR SCW 3080;

Ã,Ã. Narendra Kumar Tiwari v. State of Jharkhand, reported in AIR 2018 SC 3589;

Ã,Ã. Vinod Kumar and Ors. Etc. v. Union of India and Ors, reported in (2024) 1 S.C.R. 1230;

Ã,Ã. Dharendra Chamoli V. State of U.P, reported in 1986 (1) SCC 637;

Ã,Ã. Daily Rated Casual Labour Employed Under P&T Department Through Bhartiya Dak Tar Mazdoor Manch V. Union of India and

Ors, reported in AIR 1987 SC 2342;

Ã,Â Nihal Singh and Others v. State of Punjab and Others, reported in AIR 2013 SC 3547;

Ã,Â State of Punjab and Ors. v. Jagjit Singh and Ors., reported in (2016) 7 SCR 350;

Ã,Â The Union of India and Others v. M/s. Anglo Afghan Agencies Etc, reported in AIR 1968 SC 718;

Ã,Â M/s. Motilal Padampat Sugar Mills Co. Ltd v. The State of U.P and Others, reported in AIR 1979 SC 621;

Ã,Â M/s. Manuelsons Hotels Private Limited v. State of Kerala, reported in AIR 2016 SC 2322;

Ã,Â State through Lokayukta Police, Raichur v. C.N. Manjunath, reported in (2017) 11 SCC 361;

Ã,Â Food Corporation of India v. M/s. Kamdhenu Cattle Feed Industries, reported in (1993) 1 SCC 71;

Ã,Â State of Jharkhand and Others v. Brahmputra Metalics Limited, Ranchi and another, reported in (2023) 10 SCC 634;

Ã,Â Nihal Singh and Others v. State of Punjab and Others, reported in (2013) 14 SCC 65;

Ã,Â M/s. Pawan Hans Limited and Ors. v. Aviation Karmachari Sanghatana and Ors. by Judgment dated 17.01.2020 passed in Civil

Appeal No. 353 of 2020;

Ã,Â Narendra Kumar Tiwari and Ors. v. State of Jharkhand and Ors, reported in (2018) 8 SCC 238;

Ã,Â Sheo Narain Nagar and Others V. State of Uttar Pradesh and another, reported in (2018) 13 SCC 432; and

Ã,Â Secretary, State of Karnataka and Others v. Umadevi (3) and Others, reported in (2006) 4 SCC 1.

8. Shri Pradeep C.S, learned Additional Advocate General (AAG) appearing for the appellants in W.A.No.282/2022 submits that the contract or the

MOU entered into between the ESCOMS and the GVPs were never under challenge and it is only under such contracts that the writ petitioners

placed their case. It is submitted that with the march of technology, prepaid metering is being adopted all over Karnataka and there is no necessity for

the engagement of large number of persons to carry out the reading of the meters and the other functions assigned to them. It is submitted that the

employers cannot be forced to create posts and engage persons for whom they have no needs and that the financial aspects of the matter are also

liable to be considered.

9. The learned Additional Advocate General contended that the GVPs were engaged under a MOU that explicitly provides for termination based on

performance (Clause 8, particularly 8.3.2). The learned Single Judge quashed the Government Orders and directed a disciplinary inquiry, despite the

MOU not envisioning one. Since the GVPs are not regular employees, the introduction of disciplinary proceedings, which typically apply to permanent

personnel, prejudices the ESCOMS and contravenes the clear terms of the MOU. The MOU stipulates that GVPs are appointed on a "contract for

service," with no fixed wages but a performance-linked remuneration. It also states categorically that GVPs are agents, not employees, of the

ESCOMS. Thus, there can be no claim for regularization or absorption arising from such a purely contractual arrangement. Further, learned AAG has

contended that the learned Single Judge failed to accord due weight to the fundamental nature of this contractual setup. Although the learned Single

Judge concluded by saying that there is a master-servant relationship largely because the MOUs were renewed periodically, a co-ordinate Bench of

this Court in the case of H. Raghavendra v. MD BESCO in W.P.No.58814/2013 has expressly held that GVPs engagements are purely

contractual. The impugned judgment neither distinguishes this precedent nor justifies departing from it, rendering it unsustainable. The GVPs entered

into the MOU voluntarily, without any coercion, fully aware of its contractual conditions. Established case law holds that those accepting contractual

terms of engagement cannot subsequently claim permanency. The learned Single Judge overlooked this principle, thereby warranting interference with

the impugned order. Regularization is legally permissible only against sanctioned posts. As no such posts exist for GVPs and as their qualifications,

recruitment, and duties differ from linemen or meter readers and the question of absorbing them as regular employees does not arise. Equating their

service to that of sanctioned posts is factually and legally incorrect.

10. The learned AAG further contended that the learned Single Judge by citing Umadevi's case, failed to consider that imposing regularization

obligations on the ESCOMS (and thus the State Exchequer) creates a significant financial burden and could open floodgates for similar litigation. The

impugned judgment overlooks this crucial aspect of public finance management. While the learned Single Judge observed that the judgment of ONGC

v. Krishna Gopal are referred to a Larger Bench, the unchallenged legal conclusions of that judgment remain binding. The impugned judgment's

reliance on an incomplete reading of that precedent, is therefore flawed. Ordering the GVPs be paid on par with regular sanctioned posts contravenes

the principle of "equals being treated equally" under Article 14 of the Constitution of India. The GVPs role does not exist in the sanctioned

establishment, so equating them with different cadres is legally untenable. For all the above reasons, the impugned judgment is liable to be set aside.

11. We have considered the contentions advanced. The Government of Karnataka had taken a policy decision to provide employment opportunities to

the educated youth in rural areas by introducing a scheme for appointment of GVPs in the ESCOMS in the State. The intention of the scheme was to

give responsibilities, such as, Meter Reading, Collection of Bill Amounts and Minor Electrical Repair Works to Rural Youth within the jurisdiction of

the respective Village Panchayaths. The scheme envisaged that they would be entitled to fixed remuneration out of the bill amount recovered by them.

The scheme was announced by the then Chief Minister of Karnataka while presenting 2004-2005 budgets on the floor of the Legislative Assembly.

12. On the basis of the said declaration, a recruitment process was undertaken and notifications were issued from persons within the age group of 18

to 38 years possessing ITI Trade Certificate or Diploma or degree, SSLC/PUC with knowledge of electricity billing and connection, who are ordinary

residents of the Villages concerned. The selectees were required to furnish Bank Guarantee as security for services to undergo classroom/on-field

training and were engaged to generate power bills, collect the bill amount from consumers, submit proposals for new connections, attend to complaints

of consumers and carry out all work entrusted by the ESCOMS from time to time. 10% of the monthly collection was to be paid as incentive. The

GVPs were subject to transfer from one unit to another and to disciplinary action, if required. Further, they would get Rs.5,000/- as medical expenses

and a compensation of Rs.2 Lakh in case of death due to electrical accidents.

13. After the selection process, Memorandum of Understanding (MOU) was entered into between the ESCOMS and the GVPs and they had been

functioning as such for several years. While so, several of them sought regularization of their services and better remuneration and working conditions

at par with regular employees of the ESCOMS. The matter was referred to a High Level Committee (HLC) by the Government for a consideration of

their contentions. The HLC, which consisted of the representatives of all the ESCOMS as well as the representatives of the KPTCL., and the

Government as well as the representatives of the employees had considered the entire issue and had recommended to the Government as follows:-

1. The works that are being done by the Rural Electric Representatives are major works of the Electricity Supply Companies.

2. As all the works being done by the Rural Electric Representatives are uniform in all the Electricity Supply Companies equal remuneration

can be provided.

3. As the Rural Electric Representatives are carrying out the major responsibilities of the Company, apart from uniform remuneration,

medical allowance, new pension scheme and accident benefits can be provided on humanitarian basis.

4. It is not possible to regularize the Micro Feeder Franchisee Jobs and compensate it with the vacant meter readers posts in the Electricity

Supply Companies. Because, they are working on yearly contract basis with the Electricity Supply Companies and hence are completely

serving as franchisees.

14. However, the Government after considering the recommendations in consultation with the Law Department and the Finance Department initially

passed an order dated on 02.11.2019 rejecting the recommendations. The said order was challenged before this Court in W.P.No.52014/2019 and by

judgment dated 31.08.2020, the order was set aside and re-consideration was ordered on the ground that there is no rule permitting the regularization

of the GVPs or providing facilities like relaxation and educational qualification or weight-age based on their service tenure, while filling up the posts of

meter readers that are available in the various electrical companies. The GVPs challenge the order of the Government and by the Judgment under

appeal, the learned Single Judge considered the batch of writ petitions and directed as follows:-

i) A writ of certiorari issues quashing the impugned Govt. Orders whereby GVPs' claim for absorption/regularization and for the grant of

wages in regular pay scales has been rejected;

ii) A writ of mandamus issues to the first respondent to frame a Fair Scheme for considering the claim of GVPs for regularization/

absorption in service, keeping in view the High Level Committee Recommendations, the current services of the GVPs shall not be dispensed

with except on the ground of proven delinquency or the like;

iii) A writ of mandamus issues to the respondents to identify the posts whose Job Chart substantially matches with the work being done by

the GVPs and to pay them the wages in the minimum of the pay scales admissible to such posts, having in mind the Recommendations of High

Level Committee and observations in Kollaiah Case, with effect from 02.10.2020, being the Jayanthi of Father of the Nation;

iv) A writ of certiorari issues quashing the impugned termination orders in W.P.No.43037/2015 and in W.P.No.44902/2015, with liberty to

hold disciplinary enquiry within eight weeks, if not found guilty, these petitioners shall be reinstated without any consequential benefits

such as back wages, counting of service, etc., and

v) The respondent-Govt., KPTCL and the ESCOMS shall report compliance of above directions to the Registrar General of this Court within

two weeks following the expiry of respective periods prescribed in the paragraphs, supra.

The ESCOMS, as well as the State Government, are in appeal against the directions issued by the learned Single Judge.

15. The learned Senior Counsel appearing for the ESCOMS contended that the GVPs were engaged by the ESCOMS only to provide the limited

services and the contract between the ESCOMS and the GVPs was essentially only a contract for service. It is contended that the persons, who were

engaged on contract as Micro Feeder Franchise (MFF) had entered into an MOU clearly spelling out the duties and responsibilities after furnishing a

Bank Guarantee and was entitled only to proportionate remuneration and were not employees at all. It is contended that there are no sanctioned posts

available to accommodate them and that they do not have the qualification required for appointment to the post of Bill Collectors or Meter Readers,

which are the sanctioned posts available. The contract between the GVPs and the ESCOMS is specifically pleaded to be a contract for service and as

such no question of regularization would arise at all.

16. It is further contended that the decisions of the Apex Court including the one in the case of Secretary, State of Karnataka v. Uma Devi reported

in (2006) 4 SCC 1, would make it clear that the persons engaged on contract basis cannot claim regularization in the absence of regular sanctioned

posts, for which they are duly qualified. It is further contended that HLC was only an advisory committee formed to consider the grievances of GVPs

and that the recommendations of the Committee can, by no stretch of imagination, be seen as binding on the Government which has to take a decision

on the basis of the legal as well as financial implications and the recommendations of the Committee have been specifically considered and rejected by

the Government for cogent reasons. It is therefore contended that the directions issued by the learned Single Judge were completely untenable and the

valid objections raised by the ESCOMS have been completely ignored by the learned Single Judge. It is contended that the directions issued by the

learned Single Judge are impossible of compliance and that the ESCOMS cannot be saddled with the financial burden of regularization of a large

number of GVPs, who were intended only to provide the limited services to the Companies as service providers.

17. The learned senior counsel for the respondents would on the other hand contend that it was on the basis of the policy decision of the Government

of Karnataka that a scheme for appointment of GVPs in the ESCOMS was conceptualized and given effect to by the ESCOMS. It is submitted that

the Public Notifications were issued and it was after a regular selection process that the GVPs were appointed. It is submitted that they were

provided over 15 days of training in the Electricity Code, Electricity Supply Code as well as in carrying out their statutory functions and duties including

fixing of meter, reading of meter etc.

18. It is submitted that the duties carried out by the GVPs are statutory functions and duties, which are subject to the provisions of the Electricity Act,

the Electricity Supply Code and the Rules and Regulations made thereunder. It is contended that in the light of the control exercised by the ESCOMS,

the contract in question is admittedly a contract of service and any contentions to the contrary is totally untenable.

19. Shri. Aditya Sondhi, learned senior counsel appearing for the writ petitioners in eighteen of these writ petitions as instructed by Advocate Smt.

Shwetha Ravishankar, submits that the report of the HLC considers all relevant aspects of the matter and should not have been lightly discarded by

the State Government. It is submitted that the transfer orders and the show-cause notices issued by the employers would clearly show that there is an

employer-employee relationship involved and that the plea that the MOUs are the contract for service is completely untenable. It is further submitted

that, all that the HLC had recommended was equal remuneration and benefits for the work done by the GVPs since they were carrying out the

responsibilities of Meter Readers, Assistant Lineman, Lineman and Junior Assistant in the ESCOMS. It is submitted that the Apex Court in the case

of Jaggo v. Union of India and others reported in 2024 SCC OnLine SC 3825, has also clarified that the decision of the Constitution Bench in

Umadevi's case (supra), should not be used to defraud employees, who have been forced to work for long years of their just dues.

20. It is evident from the decisions which are relied on that regularization of contract employees is not an accepted mode of recruitment into public

service. The Constitution Bench of the Apex Court in Umadevi's case (supra), has clearly held that indiscriminate regularization of contractual and ad

hoc employees would amount to a fraud on the constitutional framework of recruitment and selection to public employment. However, this does not

mean that the State, which is intended to be a model employer, should be permitted to hold out promises of public employment as part of its avowed

public policy, extract labour from employees selected through a due recruitment process for decades together and then plead the existence of a

contract of employment or a memorandum of understanding to contend that they are not entitled to any benefits including fair wages for the work

actually done by them. After taking a policy decision for engaging qualified rural youth for the purpose of the statutory duties of the Corporations, who

are licensees under the Electricity Act, the State and the ESCOMS cannot, thereafter, turn around to contend that the employees are not entitled to

any benefits and the contracts are terminable at pleasure. We have already found that the contracts in question, regardless of the wordings used

therein, are contracts of service and not contracts for service as contended by the State and the licensees. Even if it is argued that the employees in

question are not entitled to regularization, it cannot be said that the other claims raised for fair wages and proper conditions of service can be rejected

by the State on the grounds as contained in order impugned before the learned Single Judge.

21. We notice that the learned Single Judge, after considering the contentions and the arguments, has set aside the Government Order and directed the

Government to frame a fair scheme for considering the claims for regularization, equal pay and fair working conditions for the large numbers of GVPs

engaged under the scheme.

22. The question which arises for consideration therefore is:

Whether the directions issued by the learned Single Judge require any interference?

23. The learned senior counsel appearing for the appellants submits that even if all the contentions are accepted, the GVPs would not be entitled to

regularization since what was envisaged was only a contractual engagement. We notice that the policy announced on the floor of the house was to

utilize the services of unemployed youth for carrying out meter reading and such other activities by the licensees, who are the appellants herein. The

question as to the nature of work carried out by the private respondents and the equivalence of qualification, nature of work etc., are matters which

fall specifically within the realm of policy. The State Government, having taken a policy decision to provide employment to unemployed rural youth and

thereafter having appointed a High Level Committee to study the issue of their service conditions, cannot thereafter refuse to consider the report of

such committee in the proper perspective. It is not in dispute that the GVPs were engaged on contractual basis after undergoing a due selection

process on the basis of a scheme envisaged by the Government. It is also not in dispute that the Writ Petitioners were working for nearly two decades

on renewal of their contractual engagements. It is also not in dispute that the ESCOMS have been exercising clear and direct supervisory control over

the personnel as is evident from the order of transfer as well as the termination orders issued to some of them. Even after the decision of the Apex

Court in Umadevi's case (supra), the State of Karnataka, in exercise of its legislative powers, had enacted the Karnataka Daily Wage Employees

Welfare Act, 2012, to address the grievances of the ad-hoc employees engaged in public service, who had no claims for regularization in terms of the

judgment of the Apex Court. We find that the learned Single Judge has considered all relevant factors and materials to come to the conclusion that the

claims of the Writ Petitioners are liable to be considered. Even, in case all the arguments of the companies and the Government are accepted, we feel

that the Government cannot refuse to work out the scheme for fair wages and conditions of service of a large number of persons admittedly engaged

in public employment as part of the State Policy for carrying out the essential and statutory duties of the Electricity Transmission Companies. Though

economic considerations may be relevant and of importance from the point of view of the Government, we are of the opinion that even such

considerations cannot stand in the way of the Government considering a fair scheme with regard to the fair wages and proper conditions of service for

the Writ Petitioners.

24. Having considered the contentions advanced and given our anxious consideration to the case law placed before us, we hold that the contract

entered into by the ESCOMS with the writ petitioners cannot be characterized as a contract for service and is definitely a contract of service in view

of the clear and direct control exercised by the appellants on the writ petitioners. We also notice that the statutory duties being performed by the writ

petitioners would have to be carried out by the appellants. There is no material on record to show that the appellants do not require the services of the

petitioners to carry out such duties.

25. In the above view of the matter, we are of the opinion that even if the contention that the regularization could not be ordered by this Court, this

Court exercising powers under Article 226 of the Constitution of India would be well within its powers, in the facts and circumstances of the instant

batch of cases, in directing the State Government to frame a scheme for fair wages and proper working conditions of the personnel engaged in the

licensee companies as a part of State Policy. We notice that the Apex Court in Jaggo's case (supra), deprecated the practice of extracting service and

thereafter relying on the claim of the Constitutional Bench in Umadevi's case (supra), to deny benefits of long service to low paid employees. It was

specifically held in paragraph No.26, as follows:-

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 principles are often misinterpreted or misapplied to deny legitimate claims of long-serving

employees. This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in

irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be

considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely

on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack

adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to

regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is

appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have

rendered indispensable services over decades.

26. Further, in the facts and circumstance of the case, we are in agreement with the findings of the learned Single Judge that the contract being one of

service, it can be terminated on allegations of malfeasance or misfeasance only after issuance of due notice in that regard. The directions issued by

the learned Single Judge are therefore upheld. The interim order dated 30.09.2024 passed in W.A.No.684/2020, is sustained and made absolute.

27. In the facts and circumstances, we are of the opinion that the appeals can succeed only to the limited extent of stating that the directions issued by

the learned Single Judge shall not be understood as directing regularization of GVPs/MFFs (Micro Feeder Franchisees) in sanctioned posts to which

they may not be qualified as per the Recruitment Rules. However, we are of the opinion that the State is duty bound to consider the recommendations

of the High Level Committee and to frame a proper scheme for fair wages and proper working conditions of GVPs engaged pursuant to its policies.

The question whether the contract employees have the eligibility to be continued as against the existing posts since they were admittedly carrying out

the statutory duties assigned to them shall also be specifically considered. The needful shall be done by the State Government within four months from

the date of receipt of a copy of this Judgment. The order of the learned Single Judge is sustained in all other aspects.

28. Writ Appeals are ordered accordingly.

Pending IAs, if any, in all the appeals shall stand disposed of.