ಕರ್ನಾಟಕ ವಿಧಾನ ಪರಿಷತ್ತು

ಚುಕ್ಕೆ ಗುರುತಿಲ್ಲದ ಪ್ರಶ್ನೆ ಸಂಖ್ಯೆ:	376+377
ಸದಸ್ಯರ ಹೆಸರು	ಶ್ರೀ ಎಸ್. ವ್ಹಿ. ಸಂಕನೂರ (ಪದವೀಧರರ ಕ್ಷೇತ್ರ)
ಉತ್ತರಿಸುವ ದಿನಾಂಕ	15.09.2022
ಉತ್ತರಿಸುವ ಸಚಿವರು	ಮಾನ್ಯ ಮುಖ್ಯಮಂತ್ರಿಗಳು

ಪ್ರಶ್ನೆ	ಉತ್ತರ
ಅ) ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಇಲಾಖೆಯಲ್ಲಿ 1-7-1984ರ ನಂತರ ದಿನಗೂಲಿ ನೌಕರರಾಗಿ ಸೇವೆಗೆ ಸೇರಿದ್ದು, ನೌಕರರಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಸುಪ್ರೀಂ ಕೋರ್ಟ್ ಆದೇಶ CA No: 3595-3612/1999, ದಿನಾಂಕ: 10.04.2006ರ ಆದೇಶದ ಪ್ಯಾರಾ ನಂ.46ರ ಬಗ್ಗೆ ಸರ್ಕಾರದ ನಿರ್ದಿಷ್ಟ ಅಭಿಪ್ರಾಯವೇನು; (ವಿವರವನ್ನು ತಿಳಿಸುವುದು);	ವಾಣಿಜ್ಯ ತೆರಿಗೆಗಳ ಇಲಾಖೆಯಲ್ಲಿ ದಿನಾಂಕ: 01-07-1984ರ ನಂತರ ದಿನಗೂಲಿ ಆಧಾರದ ಮೇಲೆ ನೇಮಕಗೊಂಡ ನೌಕರರನ್ನು ಸಕ್ರಮಾತಿಗೊಳಿಸುವ ಸಂಬಂಧ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯವು ಸಿವಿಲ್ ಅಪೀಲ್ ಸಂಖ್ಯೆ 3595-3612/1999 ಕಾರ್ಯದರ್ಶಿ, ಕರ್ನಾಟಕ ರಾಜ್ಯ ವಿರುದ್ಧ ಶ್ರೀಮತಿ ಉಮಾದೇವಿ ಮತ್ತು ಇತರರು ಪ್ರಕರಣದಲ್ಲಿ ದಿನಾಂಕ: 10-04-2006ರಂದು ತೀರ್ಪನ್ನು ನೀಡಿರುತ್ತದೆ. ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯವು ದಿನಾಂಕ: 10-04-2006ರಂದು ನೀಡಿರುವ ತೀರ್ಪಿನ **ಪ್ಯಾರಾ 46**ರ ಉದ್ಧೃತ ಭಾಗ ಈ ಕೆಳಕಂಡಂತೆ ಇರುತ್ತದೆ. *"----If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. No. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of*

	the exercise of power by this Court under Article 142 of the Constitution to do justice to them". ದಿನಾಂಕ: 10.04.2006 ರ ಆದೇಶವು ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ಸಂವಿಧಾನ ಪೀಠದ ತೀರ್ಪಾಗಿದ್ದು ಅಂತಿಮತೆ ತಲುಪಿದೆ.
ಆ) ಸುಪ್ರೀಂ ಕೋರ್ಟ್ ಆದೇಶವನ್ನು ಉಲ್ಲಂಘಿಸಿ ದಿನಗೂಲಿ ನೌಕರರಾಗಿ ಹಿಂದಿನ ದಿನಾಂಕಕ್ಕೆ ಜೇಷ್ಠತೆಯನ್ನು ನಿಗದಿಪಡಿಸಿ ಸಕ್ರಮಾತಿ ಮಾಡಿರುವ ಲೋಪವನ್ನು ಸರಿಪಡಿಸಬೇಕೆಂದು ಪ್ರಕರಣ ಸಂಖ್ಯೆ: 131/2016 (ಸೇವೆ) ರಲ್ಲಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಅನುಸೂಚಿತ ಜಾತಿಗಳ ಮತ್ತು ಅನುಸೂಚಿತ ಬುಡಕಟ್ಟುಗಳ ಆಯೋಗದಿಂದ ತೀರ್ಪು ನೀಡಲಾಗಿರುವ ವಿಚಾರವು ಸರ್ಕಾರದ ಗಮನಕ್ಕೆ ಬಂದಿದೆಯೇ; ಬಂದಿದ್ದಲ್ಲಿ, ಇದರ ಬಗ್ಗೆ ಸರ್ಕಾರ ಕೈಗೊಂಡಿರುವ ಕ್ರಮಗಳೇನು; ಕಡತ ಸಂಖ್ಯೆ: ಎಫ್.ಡಿ 37 ಸಿ.ಎಸ್.ಎಂ. 2018, ಕಂಪ್ಯೂಟರ್ ಸಂಖ್ಯೆ: 97700 ರಲ್ಲಿನ ಮಾಹಿತಿ ನೀಡುವುದು;	ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯವು ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸರ್ಕಾರ ಮತ್ತು ಇತರರು ವಿರುದ್ಧ ಶ್ರೀಮತಿ ಉಮಾದೇವಿ ಹಾಗೂ ಇತರರು ಪ್ರಕರಣದಲ್ಲಿ ಎಸ್.ಎಲ್.ಪಿ (ಸಿವಿಲ್) ಸಂಖ್ಯೆ: 34164/2013 ರಲ್ಲಿ ದಿನಾಂಕ: 25.11.2013 ರಂದು ನೀಡಿರುವ ತೀರ್ಪಿನ ಹಿನ್ನಲೆಯಲ್ಲಿ ಸಕ್ರಮಾತಿಗೊಂಡ ದಿನಗೂಲಿ ನೌಕರರಿಗೆ ಅವರನ್ನು ಸಕ್ರಮಾತಿಗೊಳಿಸಿದ ದಿನಾಂಕಕ್ಕೆ ಅನುಗುಣವಾಗಿ ಸೇವಾ ಜೇಷ್ಠತೆ ನಿಗದಿಪಡಿಸಲಾಗಿರುತ್ತದೆ. ಕರ್ನಾಟಕ ರಾಜ್ಯ ಅನುಸೂಚಿತ ಜಾತಿಗಳು ಮತ್ತು ಅನುಸೂಚಿತ ಬುಡಕಟ್ಟುಗಳ ಆಯೋಗ, ಬೆಂಗಳೂರು ಇವರ ಪ್ರಕರಣ ಸಂಖ್ಯೆ: 131/2016 (ಸೇವೆ) ದಿನಾಂಕ: 02.03.2019ರ ಆಯೋಗದ ಆದೇಶದ ಹಿನ್ನಲೆಯಲ್ಲಿ, ಈಗಾಗಲೇ ದಿನಗೂಲಿ ನೌಕರರನ್ನು ಸಕ್ರಮಾತಿಗೊಳಿಸಿ, ಸೇವಾ ಜೇಷ್ಠತೆಯನ್ನು ನಿಗದಿಗೊಳಿಸಿರುವುದರಿಂದ, ಆಯೋಗದ ನಿರ್ದೇಶನವನ್ನು ಪಾಲಿಸುವ ಬಗ್ಗೆ ಮಾನ್ಯ ಅಡ್ವೊಕೇಟ್ ಜನರಲ್ ರವರ ಅಭಿಪ್ರಾಯ ಕೆಳಗಿನಂತಿದೆ: *"Considering the fact that the order of regularization dated 10.08.2006 and 06.01.2007 have been considered by the Karnataka State Administrative Tribunal and the Hon'ble High Court of Karnataka while dealing with the case of seniority of eleven regularized employees and considering the fact that neither the Hon'ble Tribunal nor the Hon'ble High Court has reserved liberty to the State Government to review or cancel the order of*

	regularization, I am of the opinion that it is not appropriate for the State Government to review the order of regularization." ವಾಣಿಜ್ಯ ತೆರಿಗೆಗಳ ಇಲಾಖೆಯಲ್ಲಿ ದಿನಾಂಕ: 10.08.2006 ಮತ್ತು 06.01.2007ರ ಆದೇಶಗಳನ್ವಯ ದಿನಗೂಲಿ ನೌಕರರ ಸೇವೆಯನ್ನು ಸಕ್ರಮಗೊಳಿಸಿರುವ ಆದೇಶವನ್ನು ಕರ್ನಾಟಕ ರಾಜ್ಯ ಆಡಳಿತ ನ್ಯಾಯಮಂಡಳಿ ಮತ್ತು ಗೌರವಾನ್ವಿತ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಗಳು ಪರಿಗಣಿಸಿದ್ದು, ಈ ರೀತಿ ಸಕ್ರಮಗೊಂಡ ಹನ್ನೊಂದು ನೌಕರರ ಜೇಷ್ಠತೆಯ ಪ್ರಕರಣವನ್ನು ಪರಿಗಣಿಸುವಾಗ, ಕ್ರಮಬದ್ಧಗೊಳಿಸುವಿಕೆಯ ಆದೇಶವನ್ನು ಮರುಪರಿಶೀಲಿಸಲು ಅಥವಾ ರದ್ದುಗೊಳಿಸಲು ಮಾನ್ಯ ನ್ಯಾಯಮಂಡಳಿ / ನ್ಯಾಯಾಲಯ ರಾಜ್ಯ ಸರ್ಕಾರಕ್ಕೆ ಸ್ವಾತಂತ್ರವನ್ನು ಕಾಯ್ದಿರಿಸಿಲ್ಲವಾದುದರಿಂದ ಸದರಿ ಸಕ್ರಮಾತಿಗಳನ್ನು ಮರುಪರಿಶೀಲಿಸದಿರಲು ಸರ್ಕಾರವು ತೀರ್ಮಾನಿಸಿದೆ. ಮೇಲ್ಕಂಡ ನಿರ್ಣಯವನ್ನು ಕರ್ನಾಟಕ ರಾಜ್ಯ ಅನುಸೂಚಿತ ಜಾತಿಗಳು ಮತ್ತು ಅನುಸೂಚಿತ ಬುಡಕಟ್ಟುಗಳ ಆಯೋಗಕ್ಕೆ ತಿಳಿಸಿದ್ದು, ಪ್ರಕರಣ ಸಂಖ್ಯೆ: 131/2016 ಅನ್ನು ಮುಕ್ತಾಯಗೊಳಿಸುವಂತೆ ಆಯೋಗವನ್ನು ಕೋರಲಾಗಿದೆ.
ಇ) ದಿನಗೂಲಿ ನೌಕರರ ವಿಚಾರಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಆರ್ಥಿಕ ಇಲಾಖೆಯ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿಯವರು ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಇಲಾಖೆಯ ಆಯುಕ್ತರವರಿಂದ ನಂ. EST-2D/CR-44/2005-06, ದಿನಾಂಕ: 30.12.2011 ರಂದು ಪತ್ರವನ್ನು ಸ್ವೀಕರಿಸಿದ್ದಾರೆಯೇ; (ಸ್ವೀಕರಿಸಿದ್ದಲ್ಲಿ ಅದರೊಂದಿಗಿನ ಅಡಕಗಳ ಪ್ರತಿಗಳನ್ನು ಒದಗಿಸುವುದು)	ವಾಣಿಜ್ಯ ತೆರಿಗೆಗಳ ಆಯುಕ್ತರಿಂದ ದಿನಾಂಕ:30.12.2011ರ ಪತ್ರವನ್ನು ಸ್ವೀಕರಿಸಿದ್ದು, ಪತ್ರದ ಪ್ರತಿಯನ್ನು ಅನುಬಂಧ-1 ರಲ್ಲಿ ಲಗತ್ತಿಸಿದೆ.

ಈ) ದಿನಗೂಲಿ ನೌಕರರ ವಿಚಾರಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಆರ್ಥಿಕ ಇಲಾಖೆಯ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿಯವರು ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಅಪರ ಆಯುಕ್ತರು (ಕೇಂದ್ರ ಕಛೇರಿ)–2, ಬೆಂಗಳೂರು ರವರಿಂದ ಸಂಖ್ಯೆ: ಸಿಬ್ಬಂದಿ–2ಡಿ/ಸಿಆರ್–44/2006–07, ದಿನಾಂಕ: 19.04.2013ರಂದು ಪತ್ರವನ್ನು ಸ್ವೀಕರಿಸಿರುತ್ತಾರೆಯೇ; (ಸ್ವೀಕರಿಸಿದ್ದಲ್ಲಿ ಪತ್ರ ಮತ್ತು ಅದರೊಂದಿಗಿನ ಅಡಕಗಳ ಪ್ರತಿಗಳನ್ನು ಒದಗಿಸುವುದು)	ದಿನಾಂಕ: 19–04–2013ರ ಪತ್ರವನ್ನು ಸ್ವೀಕರಿಸಿದ್ದು ಪತ್ರದ ಪ್ರತಿಯನ್ನು ಅನುಬಂಧ–2ರಲ್ಲಿ ಲಗತ್ತಿಸಿದೆ.
ಉ) ಸುಪ್ರೀಂ ಕೋರ್ಟ್‌ನಲ್ಲಿ ಉಮಾದೇವಿ ಪ್ರಕರಣದ ಆಧಾರದನ್ವಯ ನೀಡಿದ ತೀರ್ಪಿನನ್ವಯ ಆರ್ಥಿಕ ಇಲಾಖೆಯು ದಿನಗೂಲಿ ನೌಕರರ ಸಕ್ರಮಾತಿ ಬಗ್ಗೆ ದಿನಾಂಕ: 22.04.2008 ರಂದು ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಇಲಾಖೆಗೆ ಪತ್ರ ಬರೆದಿದೆಯೆ; ಬರೆದಿರುವ ಪತ್ರದ ಪ್ರತಿಯನ್ನು ನೀಡುವುದು.	ಸರ್ಕಾರದ ದಿನಾಂಕ: 22–04–2008ರ ಪತ್ರದ ಪ್ರತಿಯನ್ನು ಅನುಬಂಧ–3 ರಲ್ಲಿ ಲಗತ್ತಿಸಿದೆ.

ಆಇ 259 ವಾತೆಸಿ 2022

(ಬಸವರಾಜ ಬೊಮ್ಮಾಯಿ)
ಮುಖ್ಯಮಂತ್ರಿ

GOVERNMENT OF KARNATAKA
(COMMERCIAL TAXES DEPARTMENT)

No: EST-2D/CR-44/2005-06

Office of the
Commissioner of Commercial Taxes,
Vanijya Therige Karyalaya-I,
Gandhinagar, Bengaluru -9.
Dated 30-12-2011

To:

The Principal Secretary,
Government of Karnataka,
Finance Department,
Vidhana Soudha,
Bangalore.

Sir,

Sub: Grant of service benefits like Annual increment, Pay fixation, Leave encashment benefit etc. to daily wages employees reg.

Ref: (1) Order of K.A.T dated 15-11-2011 in Appln. Nos. 64-84/2011, 449-451/2011 & 759-1015/2011.
(2) OM dtd: 10-08-2006
(3) Government letter dtd:22-04-2008
(4) Government letter No.AaE 142 VaTE dtd: 31-12-2010 .

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The Daily Wage employees who are working since 1-07-1984 in Commercial Taxes Department purely on daily wage basis were regularised under the Official Memorandum dated:10-08-2006 **(Annexure-1)**. The cadre wise details of daily wage employees who were regularised in service are as below:

Stenographers	17 Nos.
Second Division Assistants	183 Nos.
Typists	147 Nos.
	347 Nos.

However, the Government in the letter dated:22-04-2008 **(Annexure-2)** had directed that the regularisation of the daily wage employees made vide O.M. dated:10-08-2006 is to be reviewed and withdrawn in view of the Supreme Court judgment, State of Karnataka and others V/S Umadevi and others reported in (2006)(4) SCC1[Civil Appeal No 3595-3612/1999].

The Supreme Court inter-alia had ordered that :

i) these daily waged earners to be paid wage equal to the salary at the lowest grade of employees and their cadre in the Department from the date of judgement of Division Bench of High Court of Karnataka dtd: 1-06-2001.

ii) since they are only daily waged earners there would be no question of other allowances being paid to them.

iii) the Courts are not expected to issue directions for making such persons permanent in service. We set aside that part of the directions of High Court directing the Govt to consider their case for regularisation.

It is relevant to quote some paras of decision of Supreme Court here under:

(i) When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent.

(ii) *The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate and made permanent in employment even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.*

(iii) *Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that could be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.*

(iv) *In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in Government service with effect from the dates from which they were*

respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that those employees be paid equal salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit.

In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularisation.

(v) If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filing those posts by a regular process of selection. But when regular recruitment is undertaken the respondents in C.A.No.3595-3612 and those in the commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time.

On going through the above relevant paras, it becomes clear that the daily wage employees are not eligible for regularisation as well as annual increment or leave encashment benefit etc.

Out of 347 daily wage employees 15 daily wages employees were not given the benefit of annual increment and leave encashment benefit who were working in the office of Commissioner. Further, the Government had communicated vide letter No.ಆಇ 142 ಖಾ.ತೆ.ಇ.2010 dated:31-10-2010 stating that 15 daily wage employees are not entitled for annual increment and leave encashment benefit as the matter is before the Cabinet Sub-committee.

Meanwhile, daily wage employees who were denied the benefit of annual increment and leave encashment benefits approached the Karnataka Administrative Tribunal challenging the intimation of the Government letter dated:31-12-2010 **(Annexure-3)**.

The Hon'ble KAT in its Order dated 15-11-2011 **(Annexure-4)** has directed as below:

(i) " The averment that "ಇದು ಅಂತಿಮವಾಗುವವರೆಗೆ ವಾರ್ಷಿಕ ವೇತನ ಬಡ್ತಿ ಮತ್ತು ಗಳಿಕೆ ರಜೆ ನಗದೀಕರಣ ಸೌಲಭ್ಯವನ್ನು ನೀಡುವುದು ಸೂಕ್ತವಲ್ಲವೆಂದು ತಮಗೆ ತಿಳಿಸಲು ನಾನು ನಿರ್ದೇಶಿಸಲ್ಪಟ್ಟಿದ್ದೇನೆ" in the impugned letter No.AE 142 VateE 2010, dated 31-12-2010 is quashed.

(ii) The respondents shall extend the benefit of annual increments and the facility of leave encashment to the applicants, if the applicants are entitled to the same as per rules, subject to the final decision of the government in the matter.

(iii) Government is directed to take final decision in the matter as expeditiously as possible at any rate within the period of six months from the date of receipt of a certified copy of this Order."

Since the KAT has directed to comply with its order, there is an urgency to decide the matter.

The directions of the KAT are to be complied within six months from the date of receipt of the order. However the issue relating to the regularisation of daily wages employees is in dispute and is before the Cabinet Sub-Committee and the Committee has not finalised the matter and submitted its recommendations to Govt.

The following options are available to the department:

1. The Government may file a review petition before the Hon'ble K.A.T. after obtaining the opinion of the Advocate General in Karnataka, Bangalore.

2. The Government may move the matter before the Hon'ble High Court to file Writ Petition challenging the KAT order dated 15-11-2011.

3. The Government may decide to implement the decision of KAT as ultimately the decision of the Cabinet Sub-Committee would prevail.

Under these circumstances, it is requested a meeting may be conducted with DPAR to take a decision in this matter.

Yours faithfully,

Commissioner of Commercial Taxes
(Karnataka), Bangalore.

ಅನುಬಂಧ-2

ಕರ್ನಾಟಕ ಸರ್ಕಾರ
(ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಇಲಾಖೆ)

11/2006-07

ವಾಣಿಜ್ಯ ತೆರಿಗೆಗಳ ಆಯುಕ್ತರ ಕಛೇರಿ,
ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಕಾರ್ಯಾಲಯ-1,
ಗಾಂಧಿನಗರ, ಬೆಂಗಳೂರು-560 009,
ದಿನಾಂಕ: 19-04-2013.

ಇವರಿಗೆ:

ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿಗಳು,
ಆರ್ಥಿಕ ಇಲಾಖೆ,
ಬೆಂಗಳೂರು.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಶ್ರೀಮತಿ ಉಮಾದೇವಿ ಮತ್ತು ಇತರರು ಇವರ ಪ್ರಕರಣದಲ್ಲಿ ಘನತೆವೆತ್ತ ರಾಜ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಮೇಲ್ಮನವಿಯನ್ನು ಸಲ್ಲಿಸುವ ಕುರಿತು.

ಉಲ್ಲೇಖ: ಮಾನ್ಯ ಕರ್ನಾಟಕ ಆಡಳಿತ ನ್ಯಾಯಮಂಡಳಿ ಆದೇಶದ ಅರ್ಜಿ ಸಂಖ್ಯೆ:4702-4712/2012 ದಿನಾಂಕ: 10-01-2013- ಆದೇಶ ಸ್ವೀಕೃತವಾದ ದಿನಾಂಕ: 23-02-2013.

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ಮಾನ್ಯ ಕರ್ನಾಟಕ ಆಡಳಿತ ನ್ಯಾಯಮಂಡಳಿಯು ಶ್ರೀಮತಿ ಉಮಾದೇವಿ ಮತ್ತು ಇತರರು ಇವರ ಪ್ರಕರಣದಲ್ಲಿ ದಿನಾಂಕ: 10-01-2013 ರಂದು ತೀರ್ಪನ್ನು ನೀಡಿದ್ದು, ಸದರಿ ತೀರ್ಪಿನ ವಿರುದ್ಧ ಮಾನ್ಯ ರಾಜ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ರಿಟ್ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸುವ ಅವಶ್ಯಕತೆಯಿರುತ್ತದೆ. ಸದರಿ ರಿಟ್ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸುವ ಸಂಬಂಧ ಗ್ರೌಂಡ್ಸ್ ವಿವರಗಳನ್ನು ಸರ್ಕಾರದ ಅನುಮೋದನೆಗಾಗಿ ಈ ಪತ್ರದೊಂದಿಗೆ ಲಗತ್ತಿಸಿ ಸಲ್ಲಿಸಲಾಗಿದೆ.

19/4/13

ತಮ್ಮ ವಿಶ್ವಾಸಿ,

ಮಾನ್ಯ ಆಯುಕ್ತರಿಂದ ಕಂಡಿಕೆ
ಅನುಮೋದಿಸಲ್ಪಟ್ಟಿದೆ

ವಾಣಿಜ್ಯ ತೆರಿಗೆಗಳ ಅಪರ ಆಯುಕ್ತರು,
(ಕೇಂದ್ರ ಕಛೇರಿ)-2, ಬೆಂಗಳೂರು.

Grounds for filing Writ Petition before the Hon'ble High Court of Karnataka against the order passed by the Karnataka Administrative Tribunal in case of Smt.Umadevi & Others V/s. State of Karnataka & Others in Application No.4702 to 4712 of 2012 dtd: 10-01-2013.

The Hon'ble Karnataka Administrative Tribunal in its judgement dtd: 10-01-2013 in Application Nos.4702 to 4712 of 2012 in the case of Smt.Umadevi & Others, SDA, Gulbarga V/s. State of Karnataka & Others has allowed the application of the applicant by holding that, "In the light of the above mentioned principles particularly considering the fact that services of these applicants had been regularised in existing posts, it was not proper on the part of the Commissioner of Commercial Taxes to have given them seniority only from the date of order of regularisation. The applicants are entitled for seniority from the date of regularisation of their services".

Further the court has categorically held that, "for the above said reasons the applications are allowed. The respondents are directed to count the seniority of the applicants from the dates of their regularsation that is from 1994-1995 mentioned before respective names in the Official Memorandum No.Sibbandi.2D.CR-44/2006-07 dated: 10-08-2006 (Annexure-A-2) and re-fix their seniority accordingly in the cadre of Second Division Assistants. Thereafter, the in-charge arrangements made as per Annexure A-14 be reviewed and further benefits shall be considered for the applicants. Time for compliance : Three months".

The order of Hon'ble KAT with due respect appears to be incorrect on the following grounds:-

1) On review by Government, it was found that the Commissioner of Commercial Taxes has regularized the services of Daily Wages Employees appointed after 01-07-1984 on the presumption that all the four conditions

mentioned in Umadevi's case (para 44) are satisfied and their case has to be considered as cases of irregular appointments and hence eligible for regularization. It is submitted that this presumption is factually incorrect in view of the following reasons.

a) Vide Official Memorandum No. DPAR 10 SLC 83 dated 3rd July 1984, instructions were issued to stop forthwith the practice of making appointment of any persons on daily wages in all Departments of Government. Vide Government Order No.DPAR 2 SLC 90 dated: 06-08-1990, Government has decided that all the appointments of casual workers / daily rated workers made after 01-07-1984 shall stand automatically cancelled. However, the specific cases covered by stay orders given by the Supreme Court, High Court and KAT are excluded from the purview of the decision mentioned above till the stay orders are vacated and casual daily rated workers who have put in continuous service of 240 days as defined in Industrial Disputes Act and in such other cases where stay orders are given by the Supreme Court, High Court of Karnataka and KAT are not discharged until further orders.

b) In Writ Petition No.8192/90, the High Court of Karnataka had directed the State Government on 11-04-1990 "not to terminate the services of daily rated / casual employees who have put in continuous service of 240 days as defined in the Industrial Disputes Act". Further in W.P.No. 12610/93 the High Court of Karnataka directed on 23-4-1993 that, "the termination of services of any of the daily wage employees appointed after 01-07-1984 working in various Departments of Government, Establishment of Zilla Panchayats and Local Bodies be and the same is hereby stayed". Therefore, all the daily wagers engaged after 01-07-1984 have thus continued because of the stay orders of the High Court of Karnataka dated 11-04-1990 and 23-04-1993 only. Otherwise their services would have been terminated as per the decision of the Government Order dated:

06-08-1990 as there is no specific stay orders of courts against the termination of the services of daily wagers of the Department of Commercial Taxes. Thus the services of the daily wagers engaged under the Department of Commercial Taxes after 1-7-1984 are continued beyond 11-04-1990 till the disposal of the case by the Hon`ble Supreme Court of India by virtue of the common stay order given by the High Court of Karnataka on 11-04-1990 and 23-04-1993.

The DPAR had issued a Circular vide No.ಸಿಆಸುಇ 25 ಸೇಸ್ಥಳ 2003(ಭಾ) dated: 13-11-2006, wherein it was clarified that, the daily wage employees who have continued to work for 10 years or more but without intervention of the orders of Courts or of Tribunals were alone eligible for regularization but not the daily wage employees who were working for 10 years or more because of intervention of the orders of Court or of Tribunals. In the said Circular it was made it clear that, the daily wage employees appointed after 01-07-1984 were continued in service because of the orders of High Court of Karnataka dated: 11-04-1990 and 24-03-1993. It was also made it clear that, most of the daily wage employees had continued in service in view of intervention of Courts and hence they had not fulfilled the fourth condition in Para-44 of Umadevi's case judgement.

c) Accordingly, the Government in their letter vide No.FD 97 Va Te Si 1998 dated: 20-11-2007 addressed to the CCT had made it clear that, the order of regularization made vide Official Memorandum dated: 10-04-2006 was incorrect as it was not as per the directions vide Circular No.ಸಿಆಸುಇ 25 ಸೇಸ್ಥಳ 2003(ಭಾ) dated: 13-11-2006 issued by DPAR wherein it was clarified that, the regularization of daily wage employees may be made only if the following conditions as observed by the Supreme Court in Umadevi's case were fulfilled. They are:

i) such daily wage employees were appointed in vacant sanctioned post.

ii) they should have duly qualified to work in such vacant sanctioned post.

iii) they should have worked 10 years or more in duly sanctioned post.

iv) they should not have worked under covers of orders of Courts or of Tribunals.

Further, again the Government in their letter vide No.FD 97 Va Te Si 2008 dated: 22-04-2008 directed the CCT to withdraw the orders of regularization vide Official Memorandum dated: 10-8-2006 as the same was not in accordance with Umadevi's case.

Once again the Government in the letter vide No.FD 142 Va Te E 2010 dated: 31-12-2010 directed the CCT that, since the issue of regularization of daily wage employees were before the Cabinet Sub Committee to consider the matter relating to daily wage workers appointed after 01-07-1984, such daily wage employees should not be sanctioned annual increment and leave encashment benefit.

d) Therefore, the Department was awaiting general policy in this regard. The same was also brought to the Hon'ble KAT in reply statement. This aspect has not been considered by the Hon'ble KAT.

2) The Government after considering all the aspects has enacted an Act namely the Karnataka Daily Wage Employees Welfare Act 2012, which is given effect from 15-02-2013.

The provisions of Section 2, 3 & 4 of the said Act are extracted below:-

2. **Definitions.**- In this Act, unless the context otherwise requires,-

(a) **"The daily wage employee"** means an employee engaged by the Government or local bodies on daily wage basis,

who has worked and completed not less than 10 years of service as daily wage employee as on 10th April 2006 and who is working as such on the date of commencement of this Act;

(b) –

(c) –

(d) –

3. Continuation of daily wage employees.- (1) Subject to provisions of this Act, the daily wage employees in the establishments whose names are notified by the Government under this Act, shall be continued on daily wage basis till they complete the age of sixty years.

Provided that no daily wage employee shall be continued unless he possessed the qualification prescribed for the post on the date of his initial engagement on daily wage basis;

(2) The State Government shall within one year from the date of commencement of this Act shall notify the names of eligible daily wage employee of all establishments for the purpose of sub-section (1).

4. Pay, leave and terminal benefits of daily wage employees continued in service.- (1) Notwithstanding anything contained in the Karnataka State Civil Services Act, 1978 (Karnataka Act 14 of 1990), the Karnataka Civil Services Rules or any other rules governing the conditions of service of Government servants made or deemed to have been made under the said Act. The pay of a daily wage employee shall be the minimum of the time scale of

pay of the post in which he is continued in service. He shall also be paid admissible Dearness Allowance and House Rent Allowance as may be determined by the Government, by order, from time to time. A daily wage employee shall be entitled for all General Holidays, Casual Leave of fifteen days and Earned Leave of thirty days per year. A daily wage employee may be given an increase in his pay at such interval of time as may be determined by the Government, by order.

(2) The daily wage employee shall be entitled for such terminal benefits or ex-gratia, on his discontinuance after attaining the age of sixty years, as may be determined and notified by the Government time to time.

3) The said Act does not provide for regularization of daily wages employees appointed after 01-07-1984. It only provides for continuation of their services till they reach the age of 60 years with certain benefits like Minimum Wages, leave benefit, and some ex-gratia terminal benefit as determined by the Government recently.

4) The provisions of the Karnataka Daily Wages Employees Welfare Act 2012 has come into effect from 15-02-2013 and covers all daily wage employees including the petitioners before the KAT. Their case also needs to be examined under the provisions of this Act only.

5) Since the very regularisation of these applicants itself is incorrect, the order of the Commissioner of Commercial Taxes needs to be reviewed and hence the question of granting service and other benefits from the date of their regularization does not arise. It is therefore not possible to implement directions issued by the KAT dated: 10-01-2013 in Application Nos. 4702 to 4712/2012.

In view of the circumstances and facts stated above, this Hon'ble Court be pleased to quash the order of Hon'ble KAT dated 10-01-2013 passed in Application No. 4702 to 4712/2012 as the same is devoid of merits.

It is further prayed that pending disposal of this writ petition, this Hon'ble Court be pleased to stay the operation of order of Hon'ble KAT dated 10-01-2013 passed in Application No.4702 to 4712/2012.

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ಅನುಬಂಧ-3

21

ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ : ಆಇ 97 ವಾತೆಸಿ 2008

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ,
ವಿಧಾನ ಸೌಧ,
ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 22-04-2008.

ಇಂದ:
ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿಗಳು,
ಆರ್ಥಿಕ ಇಲಾಖೆ,
ಬೆಂಗಳೂರು.

ಇವರಿಗೆ:
ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಆಯುಕ್ತರು,
ಗಾಂಧಿನಗರ,
ಬೆಂಗಳೂರು

ಮಾನ್ಯರೇ,

ವಿಷಯ: ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಇಲಾಖೆ ದಿನಗೂಲಿ ನೌಕರರ ಸೇವೆಯನ್ನು ಸಕ್ರಮಗೊಳಿಸಿರುವ ಕುರಿತು.

ಉಲ್ಲೇಖ: ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಅಪರ ಆಯುಕ್ತರು(ಕೇಂ.ಕ-2), ಬೆಂಗಳೂರು ಇವರ ಪತ್ರ ಸಂಖ್ಯೆ: ಸಿಬ್ಬಂದಿ 2ಡಿ.ಸಿಆರ್-59/2006-07, ದಿನಾಂಕ: 26.11.2007.

* * * * *

ಮೇಲ್ಕಂಡ ವಿಷಯ ಹಾಗೂ ಉಲ್ಲೇಖಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಇಲಾಖೆ ದಿನಗೂಲಿ ನೌಕರರ ಸೇವೆಯನ್ನು ಸಕ್ರಮಗೊಳಿಸಿರುವ ಕುರಿತು ಸಿಆಸುಇ (ಸೇವಾ ನಿಯಮಗಳು) ವಿಭಾಗವು ನೀಡಿರುವ ಅಭಿಪ್ರಾಯದ ಉದ್ಧೃತ ಭಾಗ ಈ ಕೆಳಕಂಡಂತಿರುತ್ತದೆ.

"ದಿನಾಂಕ: 10.04.2006ರಂದು ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ಸಂವಿಧಾನದ ಪೀಠವು ನೀಡಿರುವ ತೀರ್ಪಿನ ಪ್ಯಾರಾ 44 ರಲ್ಲಿ 4 ಷರತ್ತುಗಳನ್ನು ನಮೂದಿಸಿ ಇವುಗಳನ್ನು ಪೂರೈಸುವಂತಹ ದಿನಗೂಲಿ ನೌಕರರನ್ನು ಒಂದು ಬಾರಿಯ ಕ್ರಮವಾಗಿ ಸಕ್ರಮಗೊಳಿಸುವುದನ್ನು ಪರಿಗಣಿಸಬಹುದೆಂದು ತಿಳಿಸಲಾಗಿದೆ. ಆ 4 ಷರತ್ತುಗಳನ್ನು ಸುತ್ತೋಲೆ ಸಂಖ್ಯೆ: ಸಿಆಸುಇ 25 ಸೇಸ್ಥಅ 2003, ದಿನಾಂಕ: 25.05.2006 ರ ಪ್ಯಾರಾ 2 ರಲ್ಲಿ ನಮೂದಿಸಲಾಗಿದೆ. ಆ 4 ಷರತ್ತುಗಳಲ್ಲಿ ನಾಲ್ಕನೆಯ ಷರತ್ತೆಂದರೆ ನೌಕರರು 10 ವರ್ಷಗಳು ಅಥವಾ ಅದಕ್ಕೂ ಹೆಚ್ಚಿನ ಅವಧಿಗೆ ಮುಂದುವರೆದಿರುವುದು. ನ್ಯಾಯಾಲಯಗಳು ಅಥವಾ ಅದಕ್ಕೂ ಹೆಚ್ಚಿನ ಅವಧಿಗೆ ಮುಂದುವರೆದಿರುವುದು ನ್ಯಾಯಾಲಯಗಳು ಅಥವಾ ನ್ಯಾಯಾಧಿಕರಣಗಳ ಆದೇಶದಿಂದಾಗಿರಬಾರದು ಎಂಬುದು. ("……employees have continued to work for 10 years or more but without the intervention of orders of courts or of tribunals"). ಅಂದರೆ ನೌಕರರು ನ್ಯಾಯಾಲಯಗಳ ಆದೇಶದಿಂದಾಗಿ 10 ವರ್ಷಗಳಿಗೂ ಹೆಚ್ಚಿನ ಅವಧಿಗೆ ಮುಂದುವರೆದಿದ್ದಲ್ಲಿ ಅಂತಹ ನೌಕರರು ಸಕ್ರಮಾತಿಗೆ ಅರ್ಹರಾಗುವುದಿಲ್ಲ. ದಿನಾಂಕ: 01.07.1984ಕ್ಕೂ ಹಿಂದೆ ದಿನಗೂಲಿ ನೌಕರರಾಗಿ ನೇಮಕಗೊಂಡಂತಹ ನೌಕರರನ್ನು

....2/-

ಸಕ್ರಮಗೊಳಿಸುವ ಬಗ್ಗೆ ದಿನಾಂಕ: 23.02.1990 ರಂದು ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯವು ನೀಡಿದ ತೀರ್ಪಿನ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಸರ್ಕಾರಿ ಆದೇಶ ಸಂಖ್ಯೆ: ಸಿಆಸುಇ 2 ಸೇಸ್ಥಅ 90, ದಿನಾಂಕ: 06.08.1990ನ್ನು ಹೊರಡಿಸಲಾಗಿತ್ತು. ಈ ಆದೇಶದಲ್ಲಿನ ಷರತ್ತಿಗೊಳಪಟ್ಟು ದಿನಾಂಕ: 01.07.1984 ಕ್ಕಿಂತ ಮೊದಲು ದಿನಗೂಲಿ ನೌಕರರಾಗಿ ನೇಮಕಗೊಂಡ ನೌಕರರ ಸೇವೆಯನ್ನು ಸಕ್ರಮಗೊಳಿಸಲು ಆದೇಶಿಸಲಾಗಿತ್ತು. ಈ ಆದೇಶದಲ್ಲಿ ನಮೂದಿಸಿದ ಪರತ್ತುಗಳನ್ನು ಪೂರೈಸದ ದಿನಗೂಲಿ ನೌಕರರ ನೇಮಕಾತಿ ಸ್ವಯಂ ಚಾಲಿತವಾಗಿ ರದ್ದಾಗುತ್ತದೆಂದು ಇದರಲ್ಲಿ ಹೇಳಲಾಗಿದೆ. ಆದರೆ, ನ್ಯಾಯಾಲಯಗಳ ಮಧ್ಯಂತರ ಆದೇಶಗಳನ್ನು ನೀಡಿದ ಪ್ರಕರಣಗಳಿಗೆ ಇದು ಅನ್ವಯವಾಗುವುದಿಲ್ಲವೆಂದು ಹೇಳಲಾಗಿದೆ. ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸರ್ಕಾರಿ ದಿನಗೂಲಿ ನೌಕರರ ಮಹಾಮಂಡಲ, ಹುಬ್ಬಳ್ಳಿ, ಇದು ಉಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಸಲ್ಲಿಸಿದ್ದ ರಿಟ್ ಅರ್ಜಿ ಸಂಖ್ಯೆ: 8192/90 ರಲ್ಲಿ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು ದಿನಾಂಕ: 11.04.1990 ರಂದು ರಾಜ್ಯ ಸರ್ಕಾರಕ್ಕೆ ನಿರ್ದೇಶನ ನೀಡಿ ಕೈಗಾರಿಕಾ ವಿವಾದ ಕಾಯ್ದೆಯಲ್ಲಿ ಪರಿಭಾಷಿಸಿದಂತೆ 240 ದಿನಗಳ ಸತತ ಸೇವೆಯನ್ನು ಸಲ್ಲಿಸಿದ ದಿನಗೂಲಿ/ಸಾಂದರ್ಭಿಕ ನೌಕರರನ್ನು ಸೇವೆಯಿಂದ ತೆಗೆದು ಹಾಕಬಾರದೆಂದು ಆದೇಶಿಸಿತ್ತು. ("not to terminate the services of daily rated/casual employees who have put in continuous service of 240 days as defined in the Industrial Disputes Act"). ಇದಲ್ಲದೆ 1993 ರಲ್ಲಿ ಇದೇ ಸಂಘದ ಇನ್ನೊಂದು ರಿಟ್ ಪಿಟಿಷನ್‌ನಲ್ಲಿ ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು ಈ ಕೆಳಕಂಡ ಮಧ್ಯಂತರ ಆದೇಶವನ್ನು ನೀಡಿತ್ತು. "That the termination of services of any of the daily wage employees appointed after 01.07.1984 working in various department of Government, Establishment of Zilla Parishats and Local Bodies be and the same is hereby stayed". ಈ ಮಧ್ಯಂತರ ಆದೇಶವು 1998 ರವರೆಗೂ ಮುಂದುವರೆದಿದ್ದವು. 1998ರಲ್ಲಿ ಸಂಬಂಧಿತ ರಿಟ್ ಅರ್ಜಿ ಕುರಿತಂತೆ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ಏಕ ಸದಸ್ಯ ಪೀಠವು ತೀರ್ಪನ್ನು ನೀಡಿದ್ದು, ಸದರಿ ತೀರ್ಪಿನ ವಿರುದ್ಧ ರಾಜ್ಯ ಸರ್ಕಾರವು ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ವಿಭಾಗೀಯ ಪೀಠಕ್ಕೆ ಮೇಲ್ಮನವಿಯನ್ನು ಸಲ್ಲಿಸಿತ್ತು. 2001ರಲ್ಲಿ ವಿಭಾಗೀಯ ಪೀಠವು ನೀಡಿದ ತೀರ್ಪಿನಲ್ಲಿ ಈ ದಿನಗೂಲಿ ನೌಕರರ ಸೇವೆಯನ್ನು ಖಾಯಂಗೊಳಿಸಲು ಅವಕಾಶವಿಲ್ಲವೆಂದು ಹೇಳಲಾಗಿತ್ತು. ವಿಭಾಗೀಯ ಪೀಠದ ಈ ತೀರ್ಪಿನ ವಿರುದ್ಧ ದಿನಗೂಲಿ ನೌಕರರ ಸಂಘವು ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಎಸ್.ಎಲ್.ಪಿ.ಯನ್ನು ಸಲ್ಲಿಸಿತ್ತು. ದಿನಾಂಕ: 10.04.2006 ರಂದು ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ಸಂವಿಧಾನ ಪೀಠವು ನೌಕರರ ಸಂಘದ ಸಿವಿಲ್ ಅಪೀಲನ್ನು ವಜಾಗೊಳಿಸಿದೆ. ಒಟ್ಟಿನಲ್ಲಿ ರಾಜ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು 1990 ರಲ್ಲಿ ನೀಡಿದ ಮಧ್ಯಂತರ ಆದೇಶವು 1998ರವರೆಗೆ ಮುಂದುವರೆದಿತ್ತು. ಹಾಗಾಗಿ 1998 ರವರೆಗೆ ದಿನಾಂಕ: 01.07.1984 ರ ನಂತರ ನೇಮಕಗೊಂಡ ಯಾವುದೇ ದಿನಗೂಲಿ ನೌಕರರ ಸೇವೆಯನ್ನು ತೆಗೆದು ಹಾಕುವಂತಿಲ್ಲ. ಅದರಂತೆ, ಸರ್ಕಾರವು ಸಹ ಸೂಚನೆಗಳನ್ನು ಹೊರಡಿಸಿ ಮಧ್ಯಂತರ ಆದೇಶಗಳಿರುವ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ದಿನಾಂಕ: 01.07.1984ರ ನಂತರ ನೇಮಕಗೊಂಡ ದಿನಗೂಲಿ ನೌಕರರನ್ನು ಸೇವೆಯಿಂದ ತೆಗೆದು ಹಾಕಬಾರದೆಂದು ಆದೇಶಿಸಿತ್ತು. ಹೀಗಾಗಿ ದಿನಾಂಕ: 01.07.1984 ರ ನಂತರ ನೇಮಕಗೊಂಡ ದಿನಗೂಲಿ ನೌಕರರನ್ನು ನ್ಯಾಯಾಲಯಗಳ ಆದೇಶಗಳಿಂದಾಗಿ ಮುಂದುವರೆಸಲಾಗಿತ್ತು. ಈ ಬಗ್ಗೆ ಮಾಹಿತಿಯನ್ನು ದಿನಾಂಕ: 25.05.2006ರ ಸುಪ್ರೀಂಕೋರ್ಟ್ ಪ್ಯಾರಾ 4 ರಲ್ಲಿ ನೀಡಲಾಗಿದೆ. ಪ್ರಸ್ತುತ ಪ್ರಕರಣಕ್ಕೆ ಮೇಲ್ಕಂಡ ನ್ಯಾಯಾಲಯದ ಮಧ್ಯಂತರ ಆದೇಶ ಅನ್ವಯವಾಗಿದೆ. ಇಲ್ಲದೇ ಇದ್ದಲ್ಲಿ ಈ ದಿನಗೂಲಿ ನೌಕರರ

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ಸೇವೆಯನ್ನು ಮುಂದುವರೆಸುತ್ತಿರಲಿಲ್ಲ. ಹೀಗೆ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ಮಧ್ಯಂತರ ಆದೇಶದ ಆಧಾರದಿಂದಾಗಿಯೇ 10 ವರ್ಷಗಳಿಗೂ ಹೆಚ್ಚು ಕಾಲ ಈ ದಿನಗೂಲಿ ನೌಕರರು ಮುಂದುವರೆದಿದ್ದರಿಂದ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ದಿನಾಂಕ: 10.04.2006ರ ತೀರ್ಪಿನ ಪ್ಯಾರಾ 44 ರಲ್ಲಿ ನಮೂದಿಸಿದ 4 ನೇ ಷರತ್ತನ್ನು ಅವರು ಪೂರೈಸುವುದಿಲ್ಲ. ಹಾಗಾಗಿ ಅವರು ಸಕ್ರಮಾತಿಗೆ ಅರ್ಹರಾಗುವುದಿಲ್ಲ.

ಅದಲ್ಲದೆ, ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ಸಂವಿಧಾನ ಪೀಠವು ಮೇಲ್ಕಂಡ ದಿನಾಂಕ: 10.04.2006ರ ತೀರ್ಪಿನಲ್ಲಿ ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಇಲಾಖೆಯ ದಿನಗೂಲಿ ನೌಕರರಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಪ್ರತ್ಯೇಕವಾಗಿ ಕೆಳಕಂಡಂತೆ ಸೂಚನೆಗಳನ್ನು ನೀಡಿದ್ದು ಅದರ ಉದ್ಧೃತ ಭಾಗ ಕೆಳಕಂಡಂತಿದೆ:

"37. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in Dharwad (supra), Piara Singh (supra), Jacob, and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision – maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance form the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn {**See Lord Diplock in Council of Civil Service Unions V. Minister for the Civil Service (1985 Appeal Cases 374), National Buildings Construction Corpn. Vs. S. Raghunathan, (1998 (7) SCC 66) and Dr. Chanchal Goyal Vs. State of Rajasthan (2003 (3) SCC 485)**. There is no case that any assurance was given by the Government or the concerned department while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars

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

"38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging theses persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

"40. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the tendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the

constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages."

"46. In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowance that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowance that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of

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selection. But when regular recruitment is undertaken, the respondents in C.A. No. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them."

ಸದರಿ ತೀರ್ಪಿನ ಕಂಡಿಕೆ 44 ರಲ್ಲಿ ಈ ಕೆಳಕಂಡಂತೆ ತಿಳಿಸಲಾಗಿದೆ:

".....but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

ಮೇಲ್ಕಂಡ ಅಂಶಗಳ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಪ್ರಸ್ತುತ ಪ್ರಕರಣದಲ್ಲಿ ಸರ್ಕಾರಿ ಸುತ್ತೋಲೆ ಸಂಖ್ಯೆ: ಸಿಆಸುಇ 25 ಸೇಸ್ಥಅ 2003 (ಭಾ), ದಿನಾಂಕ: 13.11.2006ರ ಕಂಡಿಕೆ 4 ರಲ್ಲಿ ನಮೂದಿಸಿರುವಂತೆ ಈ ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿರುವ ನೌಕರರ ಸೇವೆಯನ್ನು ಸಕ್ರಮಗೊಳಿಸಿರುವುದರ ಬಗ್ಗೆ ಹೊರಡಿಸಿರುವ ಆದೇಶಗಳನ್ನು ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ದಿನಾಂಕ: 10.04.2006ರ ತೀರ್ಪಿನ ಅಡಿಯಲ್ಲಿ ಮರುಪರಿಶೀಲಿಸಿ ಅವುಗಳನ್ನು ಹಿಂಪಡೆಯಲು ನಿಯಮಾನುಸಾರ ಸೂಕ್ತ ಕ್ರಮ ಜರುಗಿಸುವಂತೆ ಆಡಳಿತ ಇಲಾಖೆಗೆ ತಿಳಿಸಲಾಗಿದೆ."

ಮೇಲ್ಕಂಡ ಸಿಆಸು ಇಲಾಖೆಯ ಅಭಿಪ್ರಾಯದ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಇಲಾಖೆಯ ದಿನಗೂಲಿ ನೌಕರರ ಸೇವೆಯನ್ನು ಸಕ್ರಮಗೊಳಿಸಿ ಹೊರಡಿಸಿರುವ ಆದೇಶಗಳನ್ನು ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ದಿನಾಂಕ: 10.04.2006ರ ತೀರ್ಪಿನ ಅಡಿಯಲ್ಲಿ ಮರುಪರಿಶೀಲಿಸಿ ಅವುಗಳನ್ನು ಹಿಂಪಡೆಯಲು ನಿಯಮಾನುಸಾರ ಸೂಕ್ತ ಕ್ರಮ ಜರುಗಿಸುವಂತೆ ತಮಗೆ ತಿಳಿಸಲು ನಿರ್ದೇಶಿಸಲ್ಪಟ್ಟಿದ್ದೇನೆ.

ತಮ್ಮ ವಿಶ್ವಾಸಿ,

(ವಿಶಾಲಾಕ್ಷಿ ಎಸ್.ಎಸ್.)
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ,
ಆರ್ಥಿಕ ಇಲಾಖೆ (ವಾ.ತೆ.-2).