



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3084 OF 2016

1. Sudhir S/o Arjunrao Bansode,
Age : 43 Years, Occu. : Service,
Assistant Public Prosecutor,
Working at J.M.F.C. Vaijapur,
Tq. Vaijapur, Dist. Aurangabad.
2. Shivkumar S/o Vasanttrao Deshmukh,
Age : 40 Years, Occu. : Service,
Assistant Public Prosecutor,
Working at J.M.F.C. Gangapur,
Tq. Gangapur, Dist. Aurangabad.
3. Sunil S/o Motiram Jondhale,
Age : 43 Years, Occu. : Service,
Assistant Public Prosecutor,
Working at J.M.F.C. Aurangabad,
Tq. and, Dist. Aurangabad.
4. Govind S/o Laxmikant Kulkarni,
Age : 41 Years, Occu. : Service,
Assistant Public Prosecutor,
Working at J.M.F.C. Kannad,
Tq. Kannad, Dist. Aurangabad.
5. Pramod S/o Ramrao Kurlekar,
Age : 41 Years, Occu. : Service,
Assistant Public Prosecutor,
Working at J.M.F.C. Khultabad,
Tq. Khultabad, Dist. Aurangabad.
6. Sanjay S/o Ramrao Barse,
Age : 44 Years, Occu. : Service,
Assistant Public Prosecutor,
Working at J.M.F.C. Vaijapur,
Tq. Vaijapur, Dist. Aurangabad.

7. Zarina Yousufkhan Duranni,
Age : 40 Years, Occu. : Service,
Assistant Public Prosecutor,
Working at J.M.F.C. Aurangabad,
Tq. and, Dist. Aurangabad.
8. Supriya D/o Lakhandra Das,
Age : 40 Years, Occu. : Service,
Assistant Public Prosecutor,
Working at J.M.F.C. Aurangabad,
Tq. and, Dist. Aurangabad.
9. Syed Shahnaz Baadshah,
Age : 40 Years, Occu. : Service,
Assistant Public Prosecutor,
Working at J.M.F.C. Aurangabad,
Tq. and, Dist. Aurangabad. .. Petitioners

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai – 400 032.
2. The District Magistrate,
Aurangabad.
3. The Assistant Director and
Public Prosecutor, Aurangabad .. Respondents

Shri A. N. Nagargoje, Advocate for the Petitioners.
Ms. Neha Kamble, A.G.P. a/w Shri A. B. Girase, G.P. for the
Respondent Nos. 1 to 3.

**WITH
CIVIL APPLICATION NO. 3384 OF 2016
IN
WRIT PETITION NO. 3084 OF 2016**

1. Yogesh Shivajirao Tupe and others .. Applicants

Versus

1. Sudhir S/o Arjunrao Banosde .. Respondents

Shri Avinash S. Deshmukh, Advocate for the Applicants.
Shri A. N. Nagargoje, Advocate for the Respondent Nos. 1 to 9.
Ms. Neha Kamble, A.G.P. a/w Shri A. B. Girase, G.P. for the
Respondent Nos. 10 to 13.

**WITH
WRIT PETITION NO. 9850 OF 2017**

- 1) Anil S/o. Motiram Ingle,
Age : Major, Occ. Service,
- 2) Sharda Ravikumar Bhatt,
Age : Major, Occ. Service,
- 3) Sunita Rama Kharat,
Age : Major, Occ. Service
- 4) Santosh S/o. Dhondbarao Choutmal,
Age : Major, Occ. Service,
- 5) Raju S/o. Uddhavrao Joshi,
Age : Major, Occ. Service,
- 6) Mahesh S/o. Digambarrao Aher,
Age : Major, Occ. Service,
- 7) Chetan S/o. Ramprasad Agrawal,
Age : Major, Occ. Service,
- 8) Gajanan S/o. Kautikrao Jagtap,
Age : Major, Occ. Service
- 9) Ashish S/o. Shrikant Deshpande,
Age : Major, Occ. Service
- 10) Shaikh Abdul Kalam,

Age : Major, Occ. Service

- 11) Tukaram S/o. Namdeorao Patil,
Age : Major, Occ. Service
- 12) Shyam S/o. Shrinivas Kalaskar,
Age: Major, Occ.: Service,
- 13) Mukund S/o. Nivruttirao Kasbe,
Age: Major, Occ.: Service,
- 14) Umakant S/o. Marotrao Wadikar,
Age: Major, Occ.: Service,
- 15) Ujjwala Gorakh Ingle,
Age: Major, Occ.: Service,
- 16) Dipti Digambra Jagtap,
Age: Major, Occ.: Service,
- 17) Sunilkumar S/o. Motiram Jondhale,
Age: Major, Occ.: Service,
- 18) Sudhir S/o. Arjunrao Bansode,
Age: Major, Occ.: Service,
- 19) Govind S/o. Laxmikant Kulkarni,
Age: Major, Occ.: Service,
- 20) Pramod S/o. Ramrao Kurlekar,
Age: Major, Occ.: Service,
- 21) Shivkumar S/o. Vasantrao Deshmukh,
Age: Major, Occ.: Service,
- 22) Zarina Yusuf Durrani,
Age: Major, Occ.: Service,
- 23) Supriya Lakhanchandra Das,
Age: Major, Occ.: Service,
- 24) Syed Shahnaz Badshahbhai,

- Age: Major, Occ.: Service,
- 25) Sanjay S/o. Ramrao Barse,
Age: Major, Occ.: Service,
- 26) Vinayak S/o.Keda Aher,
Age: Major, Occ.: Service,
- 27) Sanjay S/o. Kautik Sonwane,
Age: Major, Occ.: Service,
- 28) Girish S/o. Govindrao Pawar,
Age: Major, Occ.: Service,
- 29) Prakash S/o. Subhash More,
Age: Major, Occ.: Service,
- 30) Nasreen Mohd. Usman Memon,
Age: Major, Occ.: Service,
- 31) Uma Shankar Sinalkar,
Age: Major, Occ.: Service,
- 32) Vijay S/o. Dnyanba Aru,
Age: Major, Occ.: Service,
- 33) Khalil Sahid Mulla,
Age: Major, Occ.: Service,
- 34) Sadhna Prabhakar Sarkate,
Age: Major, Occ.: Service,
- 35) Geeta Hariprasad Tiwari,
Age: Major, Occ.: Service,
- 36) Naina Rangrao Ingale,
Age: Major, Occ.: Service,
- 37) Astha Amarsingh Gaharwar,
Age: Major, Occ.: Service,

- 38) Kavita Ramchandra Bhatkar,
Age: Major, Occ.: Service,
- 39) Varsha Deepak Tiwari,
Age: Major, Occ.: Service,
- 40) Vivekanand S/o. Manohar Mahalle,
Age: Major, Occ.: Service,
- 41) Chakradhar S/o. Uttamrao Hadole,
Age: Major, Occ.: Service,
- 42) Supriya Rajaram Vankar,
Age: Major, Occ.: Service,
- 43) Rajesh S/o. Devrao Jadhav,
Age: Major, Occ.: Service,
- 44) Nishikant S/o. Mahipati Hode,
Age: Major, Occ.: Service,
- 45) Pradnya Deepak Tiwarekar,
Age: Major, Occ.: Service,
- 46) Pawanjeetsingh S/o. Dharamsingh Kapoor,
Age: Major, Occ.: Service,
- 47) Amol S/o. Bhisrnadas Ganvir,
Age: Major, Occ.: Service,
- 48) Jaya Krushnarao Bagwale,
Age: Major, Occ.: Service,
- 49) Naresh S/o. Ramdas Gaikawad,
Age: Major, Occ.: Service,
- 50) Arif Pasha Ibrahim Kokani,
Age: Major, Occ.: Service,
- 51) Suvarna Jalindar Bhosle,
Age: Major, Occ.: Service,

All R/o. C/o. Pramod Ramrao Kurlekar,
Jyoti Nagar, Aurangabad.
Plot No.53, S.B.H, Colony.

.. Petitioners

Versus

- 1) The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai-400 032
- 2) The Directorate of Public Prosecution,
Maharashtra State, Mumbai.
Barracks No.6, Free Press Journal
Marg, Nariman Point, Near Manorama
MLA Hostel, Mumbai-32.

.. Respondents

Shri A. N. Nagargoje, Advocate for the Petitioners.
Ms. Neha Kamble, A.G.P. a/w Shri A. B. Girase, G.P. for the
Respondent Nos. 1 and 2.

**WITH
WRIT PETITION NO. 1262 OF 2014**

1. All Special Assistant Public
Prosecutor Association, Sangali (M.S.)
Through it's President-
Shri Rajendra S/o. Vaijanathrao Tate,
Age : 50 Yrs, Occu : Government Service,
R/o. Plot No.63, Verma Nagar, Parbhani.
Dist.Parbhani, Maharashtra

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai,32.
2. The Directorate of Public Prosecution,

M/s,Mumbai.
Barracks No.6 Free Press Journal Marg,
Narimant Point, Near Manora MLA Hostel,
Mumbai,22.

3. The District Magistrates,
in the State of Maharashtra
(Through the District Magistrates of
each District in the State of Maharashtra).
4. Maharashtra Public Service Commission
5th,7th and 8th Floor,
Cooprej Telephone Exch.Bldg.,
Maharshi Karve Road,
Cooprej, Mumbai 400021

.. Respondents

Shri U. R. Awate, Advocate h/f Talekar and Associates, Advocate
for the Petitioner.

Ms. Neha Kamble, A.G.P. a/w Shri A. B. Girase, G.P. for the
Respondent Nos. 1 to 4.

**WITH
WRIT PETITION NO. 9998 OF 2017**

1. Bhagwat s/o. Pundlik Patil,
Age : 48 years, Occu : Service
R/o JMFC, Court, Bhusawal,
Tq.Bhusawal Dist.Jalgaon.
2. Rambhau s/o Sukalal Shinde
Age: 54 years, Occu: Service
R/o JMFC, Court, Amaniner
Tq. Amalner Dist Jalgaon
3. Ramakant s/o Laxman Patil,
Age: 50 years, Occu: Service,
R/o JMFC, Court, Dharangaon
Tq. Dharangaon Dist. Jalgaon
4. Anil s/o Goba Patil,
Age: 49 years, Occu: Service,

R/o JMFC, Court, Chalisgaon
Tq. Chalisgaon Dist. Jalgaon

5. Rajesh s/o Sahebrao Gawai
Age: 47 years, Occu: Service,
R/o JMFC, Court, Bhusawal
Tq. Bhusawal Dist. Jalgaon
6. Milind s/o Suresh Yeole,
Age: 42 years, Occu: Service
R/o JMFC, Court, Pachora
Tq. Pachora Dist. Jalgaon
7. Vishwasrao s/o Dhansingh Motiwale,
Age: 45 years, Occu: Service
R/o JMFC, Court, Chopda
Tq. Chopda Dist. Jalgaon
8. Santosh Kumar s/o Maniklal Kalanthari
Age: 47 years, Occu: Service
R/o JMFC, Court, Bhusawal
Tq. Bhusawal Dist. Jalgaon
9. Shaikh Farid s/o Shaikh Majid
Age: 40 years, Occu: Service
R/o JMFC, Court, Chalisgaon
Tq. Chalisgaon Dist. Jalgaon

.. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai -32.
2. The Directorate of Public Prosecution
Maharashtra State Mumbai
Barracks No. 6, Free Press Journal Marg,
Nariman Point, Near Manora MLA Hostel,
Mumbai – 22.

3. The District Magistrate,
District Collector office,
Jalgaon.

.. Respondents

Shri Hamzakhan I. Pathan, Advocate for the Petitioners.
Ms. Neha Kamble, A.G.P. a/w Shri A. B. Girase, G.P. for the
Respondent Nos. 1 to 3.

**WITH
WRIT PETITION NO. 13274 OF 2018**

1. Pramod Ramrao Kurlekar,
Age : 43 Years, Occu. : Service,
2. Vijay Rangnath Dhanwat,
Age : 42 Years, Occu. : Service,
3. Govind Laximikant Kulkarni,
Age : 43 Years, Occu. : Service,
4. Shivkumar Vasantroa Deshmukh,
Age : 43 Years, Occu. : Service,
5. Sanjay Ramrao Barase,
Age : 47 Years, Occu. : Service,
6. Syed Shahnaz Badshaha,
Age : 43 Years, Occu. : Service,
7. Supriya Lakhanchandra Dar,
Age : 43 Years, Occu. : Service,
8. Zarena Yusufkhan Durrani,
Age : 43 Years, Occu. : Service,
9. Sudhir Arjunrao Bansode,
Age : 44 Years, Occu. : Service,
10. Sunil Motiram Jondhale,
Age : 45 Years, Occu. : Service,

11. Shivaji Sahebrao Darade,
Age : 45 Years, Occu. : Service,
12. Kakasaheb Mahadeo Kothule,
Age : 39 Years, Occu. : Service,
13. Nitin Ramkrushna Wagh,
Age : 41 Years, Occu. : Service,
14. Manoj Vishnu Jaybhaye,
Age : 42 Years, Occu. : Service,
15. Sau. Manisha Nitin Thube
Patil (Kadlag),
Age : 35 Years, Occu. : Service,
16. Sau. Shubhada Pankaj Autade,
Age : 36 Years, Occu. : Service,
17. Ravindra Kashinath Gagare,
Age : 43 Years, Occu. : Service,
18. Dattatraya Baburao Zarad,
Age : 41 Years, Occu. : Service,
19. Gahininath Babasaheb Newase,
Age : 36 Years, Occu. : Service,
20. Sandip Manik Nagargoje,
Age : 41 Years, Occu. : Service,
21. Annasaheb Punja Kadam,
Age : 41 Years, Occu. : Service,
22. Balasaheb Murlidhar Sanap,
Age : 45 Years, Occu. : Service,
23. Madhukar Sonajirao Pandav,
Age : 45 Years, Occu. : Service,
24. Pushpa Ramesh Pansambal,

- Age : 45 Years, Occu. : Service,
25. Ratnajadita Shripatrao Munde,
Age : 41 Years, Occu. : Service,
 26. Nandkumar Panditrao Gandale,
Age : 44 Years, Occu. : Service,
 27. Chandrakant Ambadas Jawale,
Age : 41 Years, Occu. : Service,
 28. Rajesh Laxman Waghmare,
Age : 42 Years, Occu. : Service,
 29. Kalpana Dnyaneshwar Deshpande,
Age : 44 Years, Occu. : Service,
 30. Santosh Tatyrao Mane,
Age : 44 Years, Occu. : Service,
 31. Shaikh Khaisar Janimiya,
Age : 40 Years, Occu. : Service,
 32. Rahul Bapurao Chotapgar,
Age : 39 Years, Occu. : Service,
 33. Kazi Mukmoddin Sayadoddin,
Age : 39 Years, Occu. : Service,
 34. Subhash Bhagwan Gaikwad,
Age : 39 Years, Occu. : Service,
 35. Ganesh Prabhuling Swami,
Age : 41 Years, Occu. : Service,
 36. Narayan Bhikaji Kendre,
Age : 48 Years, Occu. : Service,
 37. Santosh Bhaskar Giri,
Age : 43 Years, Occu. : Service,

38. Dattatraya Ramrao Ghule,
Age : 45 Years, Occu. : Service,
39. Surekha Indramohan Lamb,
Age : 43 Years, Occu. : Service,
40. Shaikh Abdul Kalam Abdul Karim,
Age : 43 Years, Occu. : Service,
41. Umakant Marotirao Wadikar,
Age : 42 Years, Occu. : Service,
42. Shivraj Ramchandra Phalegaonkar,
Age : 42 Years, Occu. : Service,
43. Mukund Nivruttirao Kasbe,
Age : 54 Years, Occu. : Service,
44. Ashish Shrikant Deshpande,
Age : 40 Years, Occu. : Service,
45. Sharda Ravikumar Bhatt,
Age : 50 Years, Occu. : Service,
46. Sunita Rama Kharat,
Age : 44 Years, Occu. : Service,
47. Anil Motiram Ingale,
Age : 50 Years, Occu. : Service,
48. Usha Nivrutti Shinge,
Age : 48 Years, Occu. : Service,
49. Gajanan Kautikrao Jagtap,
Age : 39 Years, Occu. : Service,
50. Amardeep Amarsingh Lali,
Age : 41 Years, Occu. : Service,
51. Vishal Ashokrao Patil,
Age : 41 Years, Occu. : Service,

52. Anita Sitaram Sawant,
Age : 49 Years, Occu. : Service,
53. Prabhavati Mukund Mali,
Age : 50 Years, Occu. : Service,
54. Gopisagar Mansaram Dhiware,
Age : 41 Years, Occu. : Service,
55. Bipin Dhwarkadas Agrawal,
Age : 40 Years, Occu. : Service,
56. Bhagwat Pundalik Patil,
Age : 51 Years, Occu. : Service,
57. Rambhau Suklal Shinde,
Age : 57 Years, Occu. : Service,
58. Shaikh Nawab Ahmed,
Age : 52 Years, Occu. : Service,
59. Nitin Kamlakar Khare,
Age : 51 Years, Occu. : Service,
60. Anil Dwarkadas Saraswat,
Age : 52 Years, Occu. : Service,
61. Ramakant Laxman Patil,
Age : 52 Years, Occu. : Service,
62. Anil Gaba Patil,
Age : 51 Years, Occu. : Service,
63. Milind Suresh Yewale,
Age : 43 Years, Occu. : Service,
64. Rajesh Sahebrao Gawai,
Age : 48 Years, Occu. : Service,
65. Vishwasrao Dhansing Motiwale,

- Age : 46 Years, Occu. : Service,
66. Ravindra Padmakar Suradkar,
Age : 51 Years, Occu. : Service,
67. Santosh Maniklal Kalantri,
Age : 48 Years, Occu. : Service,
68. Shaikh Farid Abdul Majid,
Age : 40 Years, Occu. : Service,
69. Avinash Shaligram Patil,
Age : 43 Years, Occu. : Service,
70. Mohammed Ismail Hazi Abdul Sattar Beskar,
Age : 40 Years, Occu. : Service,
71. Arifpasha Ibrahim Kokani,
Age : 42 Years, Occu. : Service,
72. Anand Pralhad Kale,
Age : 44 Years, Occu. : Service,
73. Santosh Abasaheb Patil,
Age : 37 Years, Occu. : Service,
74. Sanjay Kautik Sonwane,
Age : 43 Years, Occu. : Service,
75. Girish Govindrao Pawar,
Age : 37 Years, Occu. : Service,
76. Vinayak Keda Aher,
Age : 41 Years, Occu. : Service,
77. Prakash Subhash Gore,
Age : 40 Years, Occu. : Service,
78. Nasareen Mohammed Usman Menan,
Age : 40 Years, Occu. : Service,

79. Vrunda Rajesh Sankhe,
Age : 46 Years, Occu. : Service,
80. Rajesh Bandu Sankhe,
Age : 43 Years, Occu. : Service,
81. Bhupesh Ajit Purandare,
Age : 39 Years, Occu. : Service,
82. Rekha Rohidas Patil,
Age : 45 Years, Occu. : Service,
83. Saroj Chandrakant Nagothkar,
Age : 40 Years, Occu. : Service,
84. Jayshree Waman Kulkarni,
Age : 42 Years, Occu. : Service,
85. Varsha Vinod Mhatre,
Age : 39 Years, Occu. : Service,
86. Vinod Shankar Mhatre,
Age : 40 Years, Occu. : Service,
87. Kundan Ramesh Kamble,
Age : 40 Years, Occu. : Service,
88. Ashta Amarsing Gaharwar,
Age : 44 Years, Occu. : Service,
89. Varsha Dipak Tiwari,
Age : 46 Years, Occu. : Service,
90. Gita Hariprasad Tiwari,
Age : 49 Years, Occu. : Service,
91. Ramauddin Siddiqui,
Age : 55 Years, Occu. : Service,
92. Chandradas Baliram Wasukar,
Age : 50 Years, Occu. : Service,

93. Kavita Ranjit Nitnaware (Bhatkar),
Age : 45 Years, Occu. : Service,
94. Chandradhar Uttamrao Hadale,
Age : 46 Years, Occu. : Service,
95. Vivekanand R. Mahalle,
Age : 50 Years, Occu. : Service,
96. Dipak Sadashiv Sinkar,
Age : 53 Years, Occu. : Service,
97. Nayana Rangrao Ingale,
Age : 45 Years, Occu. : Service,
98. Sujata Devidas Dake,
Age : 55 Years, Occu. : Service,
99. Rekha Gangadhar Hade,
Age : 45 Years, Occu. : Service,
100. Prabhakar Ramchandra Mangalkar,
Age : 40 Years, Occu. : Service,
101. Tushar Prabhakar Udaykar,
Age : 43 Years, Occu. : Service,
102. Mohd. Bashir Mohd. Nasir,
Age : 42 Years, Occu. : Service,
103. Vaishali Vijaykumar Kasture,
Age : 38 Years, Occu. : Service,
104. Ajay Janardhan Ingale,
Age : 42 Years, Occu. : Service,
105. Sudhir Sonaji Dongardive,
Age : 45 Years, Occu. : Service,
106. Rajesh Bhalchandra Dhattrak,

- Age : 44 Years, Occu. : Service,
107. Priti Balkunal Amte,
Age : 41 Years, Occu. : Service,
108. Priya Vitthalrao Meshram,
Age : 43 Years, Occu. : Service,
109. Sangita Wasudeo Dongre,
Age : 42 Years, Occu. : Service,
110. Mamta Niranjan Bajade,
Age : 45 Years, Occu. : Service,
111. Sanjay R. Thawari,
Age : 42 Years, Occu. : Service,
112. Ganesh Shankarrao Raut,
Age : 45 Years, Occu. : Service,
113. Vidya Govindrao Kakade,
Age : 43 Years, Occu. : Service,
114. Siddharth Keshav Umre,
Age : 47 Years, Occu. : Service,
115. Ravikumar Prataprao Choudhary,
Age : 49 Years, Occu. : Service,
116. Ruchi Rajeshwar Tiwari,
Age : 33 Years, Occu. : Service,
117. Vijay Vitthalrao Dorle,
Age : 45 Years, Occu. : Service,
118. Mohan Devrao Pokale,
Age : 40 Years, Occu. : Service,
119. Bhaskar Laxman Ingale,
Age : 53 Years, Occu. : Service,

120. Sadhana Prabhakar Sarkate,
Age : 43 Years, Occu. : Service,
121. Manoj Govindparsad Sharma,
Age : 40 Years, Occu. : Service,
122. Khalil Sahid Mulla,
Age : 43 Years, Occu. : Service,
123. Vijay Dnyanba Aru,
Age : 40 Years, Occu. : Service,
124. Rajkumar Dadarao Bhende,
Age : 53 Years, Occu. : Service,
125. Pawanjeet Dharmasing Kapoor,
Age : 44 Years, Occu. : Service,
126. Amol Bhashamdas Ganvir,
Age : 55 Years, Occu. : Service,
127. Rakesh Rajendraprasad Trivedi,
Age : 49 Years, Occu. : Service,
128. Jaya Krushanrao Bagwale,
Age : 47 Years, Occu. : Service,
129. Anjali Ashokrao Talware,
Age : 53 Years, Occu. : Service,
130. Jugalkishor Mulchand Tugnaya,
Age : 56 Years, Occu. : Service,
131. Naresh Ramdas Gaikwad,
Age : 52 Years, Occu. : Service,
132. Rajesh Dattatraya Bhende
Age : 47 Years, Occu. : Service,
133. Subhash Parashram Rathod,
Age : 53 Years, Occu. : Service,

134. Shrinivas Nilkanthrao Naik,
Age : 45 Years, Occu. : Service,
135. Vikas Shiwajirao Gore,
Age : 40 Years, Occu. : Service,
136. Chandrakant Bhimrao Uike,
Age : 45 Years, Occu. : Service,
137. Tukaram Udebhan Chavan,
Age : 54 Years, Occu. : Service,
138. Chatrapati Govindrao Shelke,
Age : 54 Years, Occu. : Service,
139. Sanjay Ramdhan Kale,
Age : 52 Years, Occu. : Service,
140. Amit Govindrao Bhende,
Age : 42 Years, Occu. : Service,

All R/o C/o : Sudhir Arjunrao
Bansode, Plot No. 8, Rajesh Nagar,
Beed-bypass Road, Garkheda
Parisar, Aurangabad.

.. Petitioners

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai – 32.
2. The Director of Prosecutions
Directorate of Prosecution,
Maharashtra State, Mumbai
Khetan Bhawan, Building No. 8,
5th Floor, J. Tata Road, Church Gate,
Mumbai – 400 020.

3. The Assistant Director and Public Prosecutor, Aurangabad.
4. The Assistant Director and Public Prosecutor, Ahmednagar.
5. The Assistant Director and Public Prosecutor, Beed.
6. The Assistant Director and Public Prosecutor, Nanded.
7. The Assistant Director and Public Prosecutor, Hingoli.
8. The Assistant Director and Public Prosecutor, Parbhani.
9. The Assistant Director and Public Prosecutor, Dhule.
10. The Assistant Director and Public Prosecutor, Jalgaon.
11. The Assistant Director and Public Prosecutor, Solapur.
12. The Assistant Director and Public Prosecutor, Nashik.
13. The Assistant Director and Public Prosecutor, Thane.
14. The Assistant Director and Public Prosecutor, Raigad.
15. The Assistant Director and Public Prosecutor, Amrawati.
16. The Assistant Director and Public Prosecutor, Buldhana.

17. The Assistant Director and
Public Prosecutor, Chandrapur.
18. The Assistant Director and
Public Prosecutor, Wardha.
19. The Assistant Director and
Public Prosecutor, Washim.
20. The Assistant Director and
Public Prosecutor, Yavatmal. .. Respondents

Shri A. N. Nagargoje, Advocate for the Petitioners.
Ms. Neha Kamble, A.G.P. a/w Shri A. B. Girase, G.P. for the
Respondent Nos. 1 to 20.

**WITH
WRIT PETITION NO. 13728 OF 2018**

1. Pratap S/o Balbhimrao Kawade,
Age : 41 Years, Occu. : Legal Practitioner,
R/o Washi, Tq. Washi,
Dist. Osmanabad.
2. Balaji S/o Shivdas Jagtap,
Age : 40 Years, Occu. : Legal Practitioner,
R/o Tambari Vibhag, Osmanabad,
Tq. Osmanabad, Dist. Osmanabad.
3. Dhananjay S/o Udhavrao Patil,
Age : 40 Years, Occu. : Legal Practitioner,
R/o Anajansonda, Tq. Bhoom,
Dist. Osmanabad.
4. Sayyad Salim S/o Babasaheb,
Age : 40 Years, Occu. : Legal Practitioner,
R/o Shivaji Nagar, Paranda,
Tq. Paranda, Dist. Osmanabad.

5. Deepti D/o Digambar Jagtap,
Age : 37 Years, Occu. : Legal Practitioner,
R/o Munde Galli, Aakare Plot,
Bhoom, Tq. Bhoom, Dist. Osmanabad.
6. Sadashiv S/o Pandurang Gunjal,
Age : 38 Years, Occu. : Legal Practitioner,
R/o Veer Galli, Aakare Plot,
Bhoom, Tq. Bhoom, Dist. Osmanabad. .. Petitioners

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai – 32.
2. The Collector, Osmanabad,
Office of District Collector,
Osmanabad, Dist. Osmanabad.
3. The Director of Prosecutions
Directorate of Prosecution,
Maharashtra State, Khetan
Bhavan, Building No. 8,
5th Floor, J. Tata Road, Church Gate,
Mumbai – 400 020.
4. The Assistant Director and
Public Prosecutor, Osmanabad,
Dist. Osmanabad. .. Respondents

Shri Anant R. Devkate, Advocate for the Petitioners.
Ms. Neha Kamble, A.G.P. a/w Shri A. B. Girase, G.P. for the
Respondent Nos. 1 to 4.

**WITH
WRIT PETITION NO. 12718 OF 2021**

1. Rahul Bapurao Choptpagar,
Age : 41 Years, Occu. : Service,

2. Rajesh Laxmanrao Waghmare,
Age : 43 Years, Occu. : Service,
3. Santosh Bhaskarrao Giri,
Age : 45 Years, Occu. : Service,
4. Balasaheb Murlidhar Sanap,
Age : 45 Years, Occu. : Service,
5. Quazi Muqueemoddin Saydoddin,
Age : 43 Years, Occu. : Service,
6. Chandrakant Ambadas Jawale,
Age : 44 Years, Occu. : Service,
7. Narayan Bhikaji Kendre,
Age : 51 Years, Occu. : Service,
8. Madhukar Sonijarao Pandav,
Age : 46 Years, Occu. : Service,
9. Dattatraya Ramrao Ghule,
Age : 46 Years, Occu. : Service,
10. Ratnajadita Shripatirao Mundhe,
Age : 45 Years, Occu. : Service,
11. Nandkumar Panditrao Gandle,
Age : 45 Years, Occu. : Service,
12. Pushpa Rameshrao Pansambal,
Age : 49 Years, Occu. : Service,
13. Kalpana Dnyaneshwarrao Deshpande,
Age : 40 Years, Occu. : Service,
14. Khaisar Janimiya Shaikh,
Age : 40 Years, Occu. : Service,
15. Santosh Tatyarao Mane,

- Age : 47 Years, Occu. : Service,
16. Balasaheb Sheshrao Nakade,
Age : 50 Years, Occu. : Service,
 17. Surekha Indramohan Lamb,
Age : 47 Years, Occu. : Service,
 18. Pradnya Radhakrishna Gite,
Age : 38 Years, Occu. : Service,
 19. Kakasaheb Mahadev Kothule,
Age : 41 Years, Occu. : Service,
 20. Nitin Ramkrushna Wagh,
Age : 44 Years, Occu. : Service,
 21. Nitin Sambhaji Bhingardive,
Age : 42 Years, Occu. : Service,
 22. Mrs. Shubhada Pankaj Autade,
Age : 38 Years, Occu. : Service,
 23. Mrs. Manisha Nitin Dube Patil,
Age : 38 Years, Occu. : Service,
 24. Gahininath Babasaheb Newase,
Age : 38 Years, Occu. : Service,
 25. Smita Ashok Bhosale,
Age : 41 Years, Occu. : Service,
 26. Vikas Asaram Sangale,
Age : 39 Years, Occu. : Service,
 27. Sandip Manik Nagargoje,
Age : 42 Years, Occu. : Service,
 28. Shivaji Sahebrao Darade,
Age : 47 Years, Occu. : Service,

29. Manoj Vishnu Jayabhaye,
Age : 46 Years, Occu. : Service,
30. Madhav Gangaram Nikalje,
Age : 48 Years, Occu. : Service,
31. Mhalsakant Panditrao Kulkarni,
Age : 47 Years, Occu. : Service,
32. Usha Nivruttirao Shinage,
Age : 50 Years, Occu. : Service,
33. Deepak Sheshrao Natkar,
Age : 46 Years, Occu. : Service,
34. Purushottam Nivruttirao Solunke,
Age : 46 Years, Occu. : Service,
35. Iliyas Alikhan S/o Abzal Alikhan Pathan,
Age : 47 Years, Occu. : Service,
36. Vranda Pralhadrao Sadgure,
Age : 36 Years, Occu. : Service,
37. Chaya Anandrao Ghadge,
Age : 45 Years, Occu. : Service,
38. Prabhavati Mukund Mali,
Age : 53 Years, Occu. : Service,
39. Gopisagar Mansaram Dhiware,
Age : 43 Years, Occu. : Service,
40. Vishal Ashokrao Patil,
Age : 43 Years, Occu. : Service,
41. Amandeep Amarsing Lali,
Age : 43 Years, Occu. : Service,
42. Anita Sitaram Sawant,
Age : 52 Years, Occu. : Service,

43. Rasika Rajendra Nikumbh,
Age : 52 Years, Occu. : Service,
44. Ravindra Padmakar Suradkar,
Age : 53 Years, Occu. : Service,
45. Vijaykumar Ramgopalji Pancholi,
Age : 55 Years, Occu. : Service,
46. Mohan Krushnarao Thosar,
Age : 55 Years, Occu. : Service,
47. Gopal Manohar Gawhale,
Age : 43 Years, Occu. : Service,
48. Jaikrishna Vasudeo Gawande,
Age : 47 Years, Occu. : Service,
49. Seematai Shaligram Lodh,
Age : 38 Years, Occu. : Service,
50. Dattatraya Dashrath Kadam,
Age : 37 Years, Occu. : Service,
51. Sheetal Shashikant Raut,
Age : 38 Years, Occu. : Service,
52. Charandas Baliramji Vasukar,
Age : 52 Years, Occu. : Service,
53. Deepak Sadashiv Sinkar,
Age : 56 Years, Occu. : Service,
54. Razauddin Siddiqui,
Age : 57 Years, Occu. : Service,
55. Amit Govindrao Bhende,
Age : 43 Years, Occu. : Service,
56. Rajkumar Dadarao Bhende,

- Age : 55 Years, Occu. : Service,
57. Chatrapati Govindrao Shelke,
Age : 54 Years, Occu. : Service,
58. Vikas Shivajirao Gore,
Age : 45 Years, Occu. : Service,
59. Tukaram Udebhan Chavhan,
Age : 45 Years, Occu. : Service,
60. Sanjay Ramdhan Kale,
Age : 47 Years, Occu. : Service,
61. Chandrakant Bhimrao Uike,
Age : 40 Years, Occu. : Service,
62. Shrinivas Nilkanthrao Naik,
Age : 45 Years, Occu. : Service,
63. Rakesh Rajendraprasad Trivedi,
Age : 52 Years, Occu. : Service,
64. Rajesh Dattatraya Bhende,
Age : 48 Years, Occu. : Service,
65. Subhash Parasram Rathod,
Age : 55 Years, Occu. : Service,
66. Vidya Govindrao Kakade,
Age : 45 Years, Occu. : Service,
67. Preeti Balkunal Amte,
Age : 42 Years, Occu. : Service,
68. Sangeeta Vasudeo Dongre,
Age : 42 Years, Occu. : Service,
69. Ganesh Shankarrao Raut,
Age : 46 Years, Occu. : Service,

70. Rajesh Bhalchandra Dhattrak,
Age : 47 Years, Occu. : Service,
71. Sanjay Ramchandra Thawari,
Age : 42 Years, Occu. : Service,
72. Priya Vitthalrao Meshram,
Age : 39 Years, Occu. : Service,
73. Trupti Bhaiyalal Neware,
Age : 39 Years, Occu. : Service,
74. Mamta Niranjan Bunjade,
Age : 41 Years, Occu. : Service,
75. Ashwini Dhiraj Nandeshwar,
Age : 43 Years, Occu. : Service,
76. Gurudeo Sakharamji Shende,
Age : 53 Years, Occu. : Service,
77. Vandana Purushottam Thote,
Age : 49 Years, Occu. : Service,
78. Megha Prataprao Burange,
Age : 49 Years, Occu. : Service,
79. Neeta Vijay Saigal,
Age : 52 Years, Occu. : Service,
80. Urmila Keshavrao Fatale,
Age : 44 Years, Occu. : Service,
81. Shrikrishna Govind Ingle,
Age : 49 Years, Occu. : Service,
82. Ravikumar Prataprao Chaudhari,
Age : 52 Years, Occu. : Service,
83. Siddhartha Keshavrao Umare,
Age : 49 Years, Occu. : Service,

84. Vijay Vitthalrao Dorle,
Age : 47 Years, Occu. : Service,
85. Bhaurao Kashinath Khobragade,
Age : 52 Years, Occu. : Service,
86. Manoj Govindprasadji Sharma,
Age : 42 Years, Occu. : Service,
87. Bhupesh Ajit Purandare,
Age : 40 Years, Occu. : Service,
88. Rajesh Bandugulab Sankhe,
Age : 47 Years, Occu. : Service,
89. Vrunda Purushottam Raut,
Age : 49 Years, Occu. : Service,
90. Vijay Gondaji Bansode,
Age : 50 Years, Occu. : Service,
91. Sayli Ajit Ghokhale,
Age : 36 Years, Occu. : Service,
92. Jagruti Bapurao Thakare,
Age : 36 Years, Occu. : Service,
93. Jagdish Sureshchandra Patil,
Age : 38 Years, Occu. : Service,
94. Suyog Prataprao Aher,
Age : 38 Years, Occu. : Service,
95. Sunita Shankarrao Chitalkar,
Age : 43 Years, Occu. : Service,
96. Sandhya Manohar Wakchaure,
Age : 43 Years, Occu. : Service,
97. Sarthak Shivanand Chivari,

- Age : 37 Years, Occu. : Service,
98. Anand Pralhad Kale,
Age : 38 Years, Occu. : Service,
99. Santosh Abasaheb Patil,
Age : 36 Years, Occu. : Service,
100. Vaishali Bamanna Banosde,
Age : 34 Years, Occu. : Service,
101. Mainoddin Mahmood Pathan,
Age : 38 Years, Occu. : Service,
102. Nitin Deepak Bhadule,
Age : 39 Years, Occu. : Service,
103. Sachin Sukhlal Lunawat,
Age : 43 Years, Occu. : Service,
104. Vishal Prakash Sakri,
Age : 42 Years, Occu. : Service,

All R/o C/o : Dattatraya Ramrao
Ghule, R/o Takali, Tq. Kaij
District Beed

.. Petitioners

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai – 32.
2. The Director of Public Prosecution
Maharashtra State, Mumbai
Barracks No. 6, Free Press Journal
Marg, Nariman Point, Near Manorama
MLA Hostel, Mumbai – 32.
- .. Respondents

Shri A. N. Nagargoje, Advocate for the Petitioners.
Ms. Neha Kamble, A.G.P. a/w Shri A. B. Girase, G.P. for the
Respondent Nos. 1 and 2.

**CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.**

CLOSED FOR JUDGMENT ON : 12.02.2025
JUDGMENT PRONOUNCED ON : 20.03.2025

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. With the consent of parties heard both sides finally at the admission stage.

2. The petitioners are Special Assistant Public Prosecutors (for the sake of brevity and convenience hereinafter referred as to the “Spl. A.P.Ps.”) soliciting directions for regularization of their services, parity in pay scales, service benefits and claiming protection of their services from any adverse action. There are common questions of law and facts involved in these petitions, therefore, we propose to decide them by this common judgment and order. Writ Petition No. 3084 of 2016 and Writ Petition No. 9850 of 2017 are treated to be lead petitions.

3. Following tabular chart is useful to disclose the nature of the proceedings at a glance :

Sr. No.	Writ Petition No.	Name of Parties	Relief Claimed
1.	WP/3084/2016	Sudhir Bansode and others Vs.	Direction to quash M.A.T. order dated 09/03/2016

		The State of Maharashtra and others	<p>Direction to quashed order passed by district magistrate dated 10/11/2014.</p> <p>Direction to respondents not to terminate petitioners services.</p> <p>Stay to order dated 10/11/2014.</p> <p>Injunction against termination.</p>
2.	WP/9850/2017	Anil Ingle and others Vs. The State of Maharashtra and others	Directions to pay salary & other consequential benefits as per Sec. 25(1) Cr. P. C.
3.	WP/12718/2021	Rahul Chotpagar and others Vs. The State of Maharashtra and others	Directions to pay salary & other consequential benefits as per Sec. 25(1) Cr. P. C.
4.	WP/9998/2017	Bhagwat Patil and others Vs. The State of Maharashtra and others	Directions to pay salary & other consequential benefits as per Sec. 25(1) Cr. P. C. from initial date of appointment.
5.	WP/1262/2014	All Special APP Parbhani Vs. The State of Maharashtra and others	<p>Direction to regularize service.</p> <p>Directions to grant consequential benefits according to Section 25(1) of the Cr. P. C.</p> <p>Direction to quash GR dated 20/05/2013.</p> <p>Direction to grant interim injunction from termination.</p>

			Direction to quash impugned advertisement No. 71/2015 dated 04/07/15. Direction to quash impugned GR 12/05/2015.
6.	WP/13274/2018	Pramod Kurlekar and others Vs. The State of Maharashtra and others (1)	Direction to quash circular dated. 31/10/18. Direction to restrain the respondents from termination. Direction not to take coercive action. Direction to Stay.
7	WP/13728/2018	Pratap Kawade and others Vs. The State of Maharashtra and others	Direction to quash circular issued by directorate of prosecution. Direction not to terminate service. Direction to stay to circular for replacing panel of APP.

4. Before we advert to the facts and the submissions of both the sides, it would be appropriate to refer to relevant sections.

CODE OF CRIMINAL PROCEDURE, 1973

1.
2.

[24. **Public Prosecutors.**—(1)

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).

(6) Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre: Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

25. Assistant Public Prosecutors. (1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates. 1*[(1A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.]

25(2)

25(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case; Provided that a police

officer shall not be so appointed- (a) if he has taken any part in the investigation into the offence with respect to which the accused being prosecuted; or (b) if he is below the rank of Inspector.

5. The background of these petitions is that Assistant Public Prosecutors (for the sake of brevity and convenience hereinafter referred as to the "A.P.Ps.") had filed Special Leave Petition No. 317 of 1979 before the High Court of Bombay at Nagpur Bench soliciting directions for exclusion from Police Department and for creation of their separate cadre. The decision rendered in that case was questioned in **Civil Appeal No. 676 of 1982 in the matter of S. B. Shahane Vs. The State of Maharashtra** before the Supreme Court. The appeal was allowed and the judgment of the Bombay High Court was quashed. The directions of the Apex Court were not followed by the State Government, which led to filing of Contempt Petition (Civil) No. 431 of 1999. A statement was made by the learned Advocate General before the Apex Court that all posts of A.P.P. in the State of Maharashtra would be filled in within two months. It was further stated that in each Magistrate's Court there would be one A.P.P. Relying on the statement, it was observed by the Apex Court that it would be open for the State Government to make appointments.

6. In pursuance of above orders, instructions were issued to all District Magistrates vide letter dated 09.05.2000 to take steps for appointment of Spl. A.P.Ps. U/Sec. 25(3) of the Code of Criminal Procedure (for the sake of brevity and convenience

hereinafter referred as to the “Cr. P. C.”). Accordingly, the panel of qualified advocates was to be prepared by the District Magistrate. A selection committee was constituted for conducting interviews of the qualified lawyers. The petitioners were qualified and they were selected by the recommendation of the Selection Committee. They were appointed by the District Magistrate by various orders from 2006 to 2015.

7. Lateron, the Government Resolution dated 12.05.2015 was issued constituting committee for selection of Spl. A.P.Ps. U/Sec. 25(3) of the Cr. P. C. Few of the petitioners were selected through the recommendation of the committee. Their honorarium was fixed by the Government Resolutions dated 08.12.2009, 15.07.2013 and lastly by the Government Resolution dated 06.04.2023. They were not being appointed on a regular scale and cadre. They were not treated to be regular employees of the State Government. They were not being given service benefits as admissible by the Maharashtra Civil Services (Pay) Rules. They were being paid meager amount despite extracting services like a full timer. Hence, representations were made by them for regularizing services and bringing parity in the scale and other benefits.

8. Petitioners while rendering services on temporary basis are confronted with the instructions and the policies of the respondents, which were detrimental to their claim of continuation, regularization and parity in service benefits. For them those were the causes of action to approach Tribunal and

High Court. Those are as follows :

- (a) The Government Resolution dated 28.05.2013 creating 299 posts of A.P.P.s (Group – A) and after recruiting 100 posts directing the authorities to relieve Spl. A.P.Ps. appointed U/Sec. 25(3) of the Cr. P. C.
- (b) The order dated 10.11.2014 removing Spl. A.P.Ps. appointed U/Sec. 25(3) from the panel on the ground of low conviction rate.
- (c) The Government Resolution dated 12.05.2015 constituting committee for appointing Spl. A.P.Ps. U/Sec. 25(3) of the Cr. P. C.
- (d) Advertisement dated 04.07.2015 for appointment of A.P.Ps. issued by the Maharashtra Public Service Commission.
- (e) Circular dated 31.10.2018 for disbanding panels of Spl. A.P.Ps. and instructing to prepare new panel.

9. Few of the petitioners had approached Maharashtra Administrative Tribunal (for the sake of brevity and convenience hereinafter referred as to the “Tribunal”) by preferring Original Application No. 618 of 2014 and Original Application No. 149 of 2015 seeking direction for regularization, parity in service conditions and challenging order dated 10.11.2014 and the Government Resolution dated 28.05.2013. The applications were dismissed on merits vide judgment and order dated 09.03.2016.

Whereas rest of the petitioners are directly approaching this Court for the relief of regularization and parity in service benefits.

10. During the course of hearing, we made a specific query to the learned counsels appearing for the parties as to whether applications preferred before the Tribunal by these adhoc appointees were maintainable. We are shown judgment and order of the Division Bench in the matter of *Marathwada Sarva Shramik Sangathan Vs. The State of Maharashtra and others* reported in *1999(3) Mh.L.J. 37* by Mr. A. N. Nagargoje learned counsel for the petitioners to buttress a point that such application was maintainable. The Division Bench referred to various judgments including the Supreme Court, holding that administrative Tribunal had jurisdiction to entertain claims of daily rated employees. Mr. Nagargoje is right in his submissions. Few of the petitioners had already approached the Tribunal and were unsuccessful. We have to entertain their petitions on merits. Therefore, there is no point and purpose in refusing to entertain the petitions of those Spl. A.P.Ps., who are directly approaching the High Court. The cause of action and relief are common. We, therefore, propose to examine all the petitions on merits.

11. Mr. A. N. Nagargoje, learned counsel for the petitioners submitted that the judgment and order under challenge passed by the Tribunal is perverse and patently illegal as the Tribunal failed to examine the plea of adverse action proposed against the petitioners on the ground of low conviction rate. He would

submit that the petitioners were appointed after following due procedure of law against the vacancies and, therefore, their appointments are at the most irregular, but not illegal. In view of the judgment rendered in the matter of ***Sachin Dhawale and others Vs. The State of Maharashtra and others*** reported in ***2014(2) Mh. L. J. 36***, which was confirmed by the Supreme Court, they are entitled for the regularization. The petitioners' claim for regularization is covered by para 53 of the judgment of the Supreme Court in the matter of ***Secretary, State of Karnataka Vs. Uma Devi*** reported ***(2006) 4 SCC 01***. He would submit that there is requirement of 1391 A.P.Ps. in the State. The petitioners cannot be discontinued, rather they are entitled to be regularized, which would be in consonance with the statement made by the learned Advocate General before the Apex Court in Contempt Petition No. 431 of 1999. There are vacancies so as to facilitate regularization.

12. He has vehemently canvassed that the petitioners are rendering identical work as like A.P.Ps. appointed U/Sec. 25(1) of the Cr. P. C. They are rendering full time job. There is no dispute about their qualification and capability, hence they are entitled to regularization. It is further submitted that, they are getting meager payment of honorarium as per the G. R. dated 15.07.2013, which was holding the field, when petitions were filed. The principle of equal pay for equal work is attracted. It is a case of exploitative appointments. There is no reasonable explanation for difference in the service benefits awarded to the petitioners and the] A.P.Ps. appointed U/Sec. 25(1). It is further

submitted that due to heavy burden of work and engagement of the petitioners for entire day, it is not possible for them to accept any civil work or private work. The respondents being model employer would extend benefit of parity in service conditions and clear the dues of the petitioners. The petitioners relied on number of judgments of the Supreme Court as well as the High Courts.

13. Learned counsels appearing for the petitioners in other matters adopted the submissions of Mr. A. N. Nagargoje, learned counsel for the petitioners in Writ Petition No. 3084 of 2016.

14. The petitions are contested by filing affidavit in reply by the respondents in each case. Ms. Neha Kamble, learned Assistant Government Pleader addressed this Court on their behalf. It is vehemently submitted that A.P.Ps. appointed U/Sec. 25(3) of the Cr. P. C. and those appointed U/Sec. 25(1) of the Cr. P. C. stand on different pedestal and they cannot be equated. The mode of appointment, service conditions, appointing authority and nature of work are altogether distinct. The appointing authority of A.P.Ps. U/Sec. 25(1) of the Cr. P. C. is the State Government, as against that the appointing authority of the Spl. A.P.Ps. U/Sec. 25(3) of the Cr. P. C. is the District Magistrate. The appointments of the A.P.Ps. U/Sec. 25(1) are governed by the Assistant Public Prosecutor, Group – B in Directorate of Public Prosecution, Maharashtra State (Recruitment) Rules, 1995. It is submitted that the petitioners did not challenge validity of Sec. 25(1) or Sec. 25(3) of the Cr. P. C. It is further contended that,

purport of the appointments U/Sec. 25(3) of the Cr. P. C. is to meet out the exigency and that is not a regular employment.

15. She submitted that few of the petitioners were unsuccessful before the Tribunal and, therefore, they are not entitled to claim regularization or the parity. Their appointments were not against sanctioned posts and they were not selected by scrupulous procedure. They were selected by a panel. Therefore, neither are they entitled to regularization, nor any parity at par with the A.P.Ps. appointed U/Sec. 25(1) of the Cr. P. C. She further submitted that appointments of few of the petitioners are litigious in nature. She has relied upon number of judgments of the Supreme Court and High Courts to oppose the claim of the petitioners.

16. Civil Application No. 3384 of 2016 is filed for intervention. Mr. Avinash Deshmukh, learned advocate for the applicants submits that they are supporting the petitioners. They adopt the submissions advanced by Mr. A. N. Nagargoje, learned counsel for the petitioners.

17. We have also taken judicial notice of the last recruitment of A.P.Ps. The process commenced with advertisement dated 07.01.2022 for 547 posts of Group A A.P.Ps. M. P. S. C. conducted written test and oral interviews and selected 531 candidates. Unsuccessful 15 candidates had approached Tribunal by preferring Original Application No. 778 of 2023. It was partly allowed vide judgment and order dated 28.05.2024. Being

aggrieved Writ Petition No. 7228 of 2024, Writ Petition No. 6816 of 2024 and other connected writ petitions were filed in the High Court, which are still pending. Initially the operation of the judgment of the Tribunal under challenge was stayed. By the order of the coordinate bench passed order on 21.10.2024, interim relief was modified permitting the Government to accept the recommendations of the M. P. S. C. and to issue appointment orders subject to final outcome of the writ petitions. Accordingly, the State Government issued Government Resolution dated 02.01.2025 appointing 491 selected candidates as A.P.Ps. This indicates that the State Government has made endeavour to recruit the vacant posts, albeit, belatedly. In the above factual matrix, we need to examine rival claims of the parties.

18. Ms. Neha Kamble, learned A. G. P. has brought to our notice following status as on 17.01.2025.

Sr. No.	Sanctioned Strength of A.P.Ps.	Occupied posts of A.P.Ps.	Vacant Posts
01.	879	784	95

19. Having heard both the sides extensively, we propose to formulate following questions and address the same :

- (i) Whether Spl. A.P.Ps., who are petitioners before the Court are entitled to regularization of services ?
- (ii) Whether petitioners are entitled to claim parity in the scale and service benefits at par with Assistant Public Prosecutors appointed U/Sec. 25(1) of the Code of Criminal Procedure ?

- (iii) Whether instructions dated 10.11.2014, Government Resolutions dated 28.05.2013 and 12.05.2015, Circular dated 31.10.2018 and advertisement dated 04.07.2015 are liable to be quashed and set aside ?
- (iv) Whether judgment and order dated 09.03.2016 passed by the Tribunal is sustainable ?

20. Question No. (i) :

The appointments of A.P.Ps. U/Sec. 25(1) of the Cr. P. C. are made in pursuance of rules framed under Article 309 of the Constitution of India, namely Assistant Public Prosecutors (Group – B) in Directorate of Public Prosecutions, Maharashtra State (Recruitment) Rules, 1995, Assistant Public Prosecutors (Group – A) in Directorate of Public Prosecutions, Maharashtra State (Recruitment) Second Amendment Rules, 2015. Those are made against sanctioned vacant posts U/Sec. 24(3) r/w Sec. 25(1) of the Cr. P. C. The State Government is the appointing authority. M.P.S.C. undertakes rigorous selection process, which is comprised of written test as well as oral interviews. The appointees are governed by the Maharashtra Civil Services Rules for their condition of service, emoluments, disciplinary matters, etc. They are regularly appointed State Government employees drawing emoluments in accordance with the recommendations of the Pay Commissions and Rules formulated by the State Government. The A.P.Ps. appointed U/Sec. 25(1) of the Cr. P. C. is a separate cadre.

21. The appointments of the petitioners/Spl. A.P.Ps. are made

U/Sec. 25(3) of the Cr. P. C. The appointing authority is the District Magistrate. They are selected by the selection committee through interviews only. They are not governed by any rules promulgated under Article 309 of the Constitution of India. Their appointments are contractual and/or temporary in nature. They enjoy tenure at the pleasure of the District Magistrate. They are paid honorarium as fixed by the Government Resolutions. Government Resolution dated 06.04.2023 is the latest in that regard.

22. Considering rival submissions of the parties, statutory provisions and the policies, the following comparative table showing contours of Spl. A.P.Ps. and A.P.Ps. is prepared, which is useful to refer.

Sr. No.	Spl. A.P.Ps. appointed U/Sec. 25(3) of the Cr. P. C.	A.P.Ps. appointed U/Sec. 25(1) of the Cr. P. C.
1.	Appointments are not made on sanctioned posts.	Appointments are made on sanctioned posts only.
2.	Appointments are made by the District Magistrate, through the recommendation of selection committee by way of oral interviews.	Appointments are made through State Government as per Rules framed under Article 309 of the Constitution M. P. S. C. conducts written tests and oral interviews.
3.	The appointments are restricted to district. The aspiring candidates are from the same district.	The candidates from all over Maharashtra are eligible and aspire for the appointments.
4.	It is not mandatory to pass Hindi and Marathi language	It is mandatory to pass Hindi and Marathi language

	exam as well as MSCIT or any other computer course.	exam as well as MSCIT or any other computer course.
5.	The appointees are not regulated by M.C.S.R. Rules. Government circulars and resolutions regulate honorarium or specific service conditions. They enjoy tenure at the pleasure of the District Magistrate.	They are regulated by the M.C.S.R. Rules for general service conditions, pay emoluments, transfers, disciplinary matters, etc.
6.	Annual confidential reports are not prepared and maintained.	Annual confidential reports are maintained and acted upon.
7.	They are being paid honorarium as per availability of the work.	They are paid as per M.C.S. Rules, regular monthly scale.
8.	They need not have to attend on holidays.	They are government servants and they are deputed on holidays also.
9.	They are entitled to undertake civil as well as criminal practice, but they cannot take matters against the State Government.	They are prohibited from undertaking any practice.
10.	They are not full time salaried employees and can accept part time employment as per rules of Bar Council of India.	On their appointment they have to surrender their sanad with the Bar Council.

23. There is stark difference in the appointing authority, procedure of appointment, service conditions, tenure, emoluments and overall status of Spl. A.P.Ps. appointed U/Sec. 25(3) of the Cr. P. C. and A.P.Ps. appointed U/Sec. 25(1) of the Cr. P. C. As per Section 25(3) of the Cr. P. C., the appointments of Spl.A.P.Ps. are made when no Assistant Public Prosecutors

are available for the purpose of particular case. Their appointments are for the purpose of particular cases. However, it is common knowledge that the statutory provision is diluted to meet with the work load and exigencies. Regularly appointed A.P.Ps. are not adequate. This improvisation is due to variety of reasons, but that does not equate status of Spl. A.P.Ps. with A.P.Ps.

24. It is pointed out by Mr. Nagargoje that there is requirement of 1391 A.P.P.s in the State in view of the judgment of the Supreme Court in the matter of **S. B. Shahane Vs. The State of Maharashtra** (supra). There are vacancies in the sanctioned strength to the extent of 95. The State Government lastly recruited near about 491 A.P.Ps. It is open for the State Government to go for further round of recruitment. Just because there is requirement of 1391 A.P.Ps. and 94 vacancies exist in the sanctioned strength, we are not persuaded to treat present petitioners as regularly appointed A.P.Ps. The Tribunal in its common judgment dated 09.03.2016 has held that Spl. A.P.Ps. were appointed temporarily and their tenure is contractual in nature. They have no vested right to seek appointment as regular A.P.Ps. or to seek continuation of the appointment. These findings are plausible and in accordance with the record.

25. There is no dispute that the petitioners were not appointed against sanctioned post and through the procedure contemplated by the constitutional scheme. In other words, they were not recruited by the recommendation of the M.P.S.C. The procedure

laid down under Article 309 of the Constitution was not followed. They did not face rigor of competitive procedure giving equal opportunity to all aspirants state-wise. They were contractual. We have already recorded the difference between cadre of A.P.Ps. and category of Spl. A. P. Ps. In the wake of this situation, we find it difficult to accept the submissions of the petitioners for the regularization.

26. As this is a matter of regularization of the services of the petitioners, we find it appropriate to refer to Constitution Bench judgment of the Supreme Court in the matter of *Secretary, State of Karnataka Vs. Uma Devi and others* (supra). The previous judgments need not be gone into. Both the parties have referred this land mark judgment. Following are the relevant paragraphs.

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment

on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its

affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the Dharwad decision, the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise

of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to take out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them.

After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. NARAYANAPPA* (supra), *R.N. NANJUNDAPPA* (supra), and *B.N. NAGARAJAN* (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the

light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

27. Mr. A. N. Nagargoje, the learned counsel for the petitioners relied on judgment of the Supreme Court in the matter of **Nihal Singh and others Vs. State of Punjab and others** reported in ***(2013) 14 SCC 65***. He has referred to paragraph Nos. 31, 35 and 37 of the said judgment. Most relevant para is as follows :

“35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop

extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.”

It was pertaining to appointment of Special Police Officers. There was need of more staff, but the State Government was unable to appoint. Therefore, Special Police Officers were appointed on honorarium. The appellants in that case and others had claimed regularization by approaching High Court, but they were unsuccessful. In that context the observations referred above were recorded. Facts in the present matter are altogether different. This judgment will not be helpful to the petitioners.

28. In case of *Sachin Dhawale and others Vs. The State of Maharashtra and others* (supra), the petitioners were lecturers in different departments of the Government polytechnics. They were in service for the period ranging from three to ten years. They were not given benefit of permanency. Their appointments were made by following due procedure and with the recommendation of the selection committee. In that context the observations were made in paragraph Nos. 10, 12, 13, 16 and 17. The facts of the case at hand are peculiar and different. In the present case appointments are not on sanctioned posts.

29. Reliance is also placed by the petitioners on the judgment of the Supreme Court in the matter *Sheo Narain Nagar and others Vs. State of Uttar Pradesh and another* reported in (2018) 13 SCC

432. Following are the relevant paragraphs :

“7. When we consider the prevailing scenario, it is painful to note that the decision in *Uma Devi* (Supra) has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad-hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in exploitative forms. This situation was not envisaged by *Uma Devi* (supra). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the *Uma Devi* (supra) has been ignored and conveniently over looked by various State Governments/ authorities. We regretfully make the observation that *Uma Devi* (supra) has not be implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article 14, 16 read with Article 34 (1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in *D.S. Nakara v. Union of India*, AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits etc. There is clear

contravention of constitutional provisions and aspiration of down trodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of *Uma Devi* (supra). Thus, the time has come to stop the situation where *Uma Devi* (supra) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas *Uma Devi* (supra) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/adhoc basis or otherwise. This kind of action is not permissible, when we consider the pith and substance of true spirit in *Uma Devi* (supra).

8. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularization of the appellants. However, regularization was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2.10.2002. As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the

appellants, which were taken on exploitative terms.

9. The High Court dismissed the writ application relying on the decision in *Uma Devi* (supra). But the appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of time, when their temporary status was conferred w.e.f. 2.10.2002. The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of *Uma Devi* (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 2.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 2.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today.

In the peculiar facts of the case, it was held to be exploitative appointments. There was already direction issued in the year 1999 to consider the regularization of the appointments. But it was not done. The case in hand involves difference in the appointing authority as well as procedure of appointment. Hence the ratio is not applicable to the present case.

30. The petitioners have also relied on the judgment of the coordinate bench of this Court in the matter of **Madhukar Bhavanrao Sadgir and others Vs. State of Maharashtra and others**

reported in *2019(2) Mh.L.J. 119*. The petitioners in that matter were employees of post basic government ashram schools. They were working in the tribal area on adhoc basis for number of years. In that context the claim of regularization was accepted by the coordinate bench. The judgment is distinguishable on facts. It will be of no assistance to the petitioners.

31. Reliance is also placed on the **judgment dated 30.01.2024 of the Supreme Court in the matter of Vinod Kumar and others Vs. Union of India and others in S. L. P. (C) No. 22241 of 2016**. It was a case of regularization and absorption to the post of accounts clerk. The appellants before the Supreme Court had suffered rejection of their claims before the Tribunal and thereafter before the Allahabad High Court. They were also appointed through a process involving written test and viva voca. In the facts of that case the observations were made by the Supreme Court in para Nos. 6 and 7. There is no similarity in facts and circumstances of the present case and the judgment cannot be made applicable to the present case.

32. Further reliance is placed by the petitioners on the judgment of the Supreme Court in the matter of **Jaggo Vs. Union of India and others** reported in *2024 SCC OnLine SC 3826*. The claim of the appellants for regularization of the services was dismissed by the Tribunal and confirmed by the Delhi High Court. We have gone through paragraph Nos. 19 to 28 of the said judgment. In that case the plight of the temporary employees, who faced multi facet exploitation, was noticed. In

that context relief of regularization was granted to the appellants. We do not find that the element of exploitation is made out in the present case. Hence this judgment is of no help to the petitioners.

33. The petitioners have relied on the judgment of the Supreme Court in the matter of Shripal and another Vs. Nagar Nigam, Ghaziabad reported in *2025 SCC OnLine SC 221*. The appellants in that matter were working as gardeners. They were not issued any formal appointment letter. They were denied minimum wages, weekly off, national holidays and other statutory benefits. They had approached the Conciliation Officer. They were terminated. Therefore, matter was referred to Labour Court. Termination was set aside. They were directed to be reinstated with 30% of the back wages. Then writ petitions were preferred to High Court. High Court modified the relief granted. Hence matters reached the Supreme Court. We have gone through para Nos. 14 and 15 of the said judgment of the Supreme Court. In those peculiar facts and circumstances, it was recorded that the engagement of the appellants was exploitative. Therefore, High Court's orders were quashed and with certain directions were given in favour of the appellants. The facts of the case before us are different and same yardstick cannot be made applicable.

34. As against the above referred judgments cited by the petitioners, Ms. Neha Kamble, learned A.G.P. relies on following judgments of the Supreme Court, of which relevant portion is

extracted below :

I. **State of Rajasthan Vs. Daya Lal and others** reported in (2011) 2 SCC 429. Para No. 12 of the judgment reads as under :

“12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be ‘litigious employment’. Even temporary, ad hoc or dailywage service for a long number of years, let

alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.”

II. State of Karnataka Vs. M. L. Kesari and others reported in (2010) 9 SCC 247. Para No. 7 of the judgment is reproduced as

under :

“7. It is evident from the above that there is an exception to the general principles against ‘regularization’ enunciated in Umadevi, if the following conditions are fulfilled :

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

III. **Surinder Prasad Tiwari Vs. U. P. Rajya Krishi Utpadan Mandi** reported in *(2006) 7 SCC 684*. Paragraphs Nos. 36, 37 and 38 of the judgment are relevant, which are as under :

“36. H. M. Seervai, in his celebrated book "Constitutional Law of India" has mentioned that in fact the principle of recruitment by open competition was first applied in India and then applied in England.

37. Our constitutional scheme clearly envisages equality of opportunity in public employment. The Founding Fathers of the Constitution intended that no one should be denied opportunity of being considered for public employment on the ground of sex, caste, place of birth, residence and religion. This part of the constitutional scheme clearly reflects strong desire and constitutional philosophy to implement the principle of equality in the true sense in the matter of public employment.

38. In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularization of services of the person who is working either as daily-wager, ad hoc employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment.”

IV. **Nand Kumar Vs. State of Bihar and others** reported in (2014) 5 SCC 300. Paragraph Nos. 20 and 25 of the judgment are relevant, which are as follows :

“20. Therefore, considering the facts of the present case, it appears to us that the appellants were never appointed through a proper procedure. It is not in dispute that they all served as daily wagers. Therefore, it was within their knowledge all the consequences of appointment being temporary, they cannot have even a right to invoke the theory of legitimate expectation for being confirmed in the

post. Accordingly, we cannot accept the contention of the appellants in the matter.

25. We have consciously noted the aforesaid decisions of this Court. The principle as has been laid down in *Umadevi (supra)* has also been applied in relation to the persons who were working on daily wages. According to us, the daily wagers are not appointees in the strict sense of the term 'appointment'. They do not hold a post. The scheme of alternative appointment framed for regular employees of abolished organization cannot, therefore, confer a similar entitlement on the daily wagers of abolished organization to such alternative employment. [See *Avas Vikas Sansthan v. Avas Vikas Sansthan Engineers Association* (2006 (4) SCC 132)]. Their relevance in the context of appointment arose by reason of the concept of regularization as a source of appointment. After *Umadevi (supra)*, their position continued to be that of daily wagers. Appointment on daily wage basis is not an appointment to a post according to the rules. Usually, the projects in which the daily wagers were engaged, having come to an end, their appointment is necessarily terminated for want of work. Therefore, the status and rights of daily wagers of a Government concern are not equivalent to that of a Government servant and his claim to permanency has to be adjudged differently.”

V. **Kerala Asstt. Public Prosecutors Association Vs. State of Kerala and others** reported in *(2018) 7 SCC 314*. Paragraph No. 6 is relevant to be referred, which reads as under :

“6. We have cogitated over the rival submissions and after examining the records, we find no infirmity in the conclusion arrived at by the High Court in rejecting the claim of the appellant to accord parity in respect of age of

superannuation at 60 years to the Assistant Public Prosecutors appointed on or before 31st March, 2013. The High Court rightly opined that the method of appointment and conditions of service of Assistant Public Prosecutors and Public Prosecutors are qualitatively different. Assistant Public Prosecutors are appointed through a competitive selection process conducted by the Kerala Public Service Commission as per the rules in vogue. After appointment, Assistant Public Prosecutors are entitled to all service benefits as are enjoyed by the other government employees without any exception. Public Prosecutors, however, are appointed from a panel of advocates furnished by the Advocate General and the term of appointment of Public Prosecutors is for a period of 3 years only. They are not considered as government employees and do not derive any service benefits as in the case of government employees. They can even be terminated by the Government at any time before the expiry of normal term of appointment, without assigning any reason. The Government is also free to re-appoint any person appointed as Public Prosecutor for a further period subject to eligibility. The fact that the nature of duties and functions of Assistant Public Prosecutors and Public Prosecutors are similar, per se, cannot be the basis to claim parity with Public Prosecutors in respect of age of superannuation.”

VI. Ms. Neha Kamble, learned A. G. P. also referred to the judgment of the Supreme Court in the matter of **the Government of Tamil Nadu and another, Etc. Vs. Tamil Nadu Makkal Nala Paniyalargal and others, etc.** reported in *2023 LiveLaw (SC) 294* to buttress the submission that in the absence of sanctioned posts, the State Government cannot be compelled to create the posts and absorb the persons who are continuing in services. We find

substance in the submission and we reiterate the relevant portion. Paragraph Nos. 54, 55 and 56 of the judgment are as follows :

“54. At the same time, this Court further observed that in absence of sanctioned post, the State cannot be compelled to create the post and absorb the persons who are continuing in service of the State.

55. In **Nihal Singh and Others**(supra) on which heavy reliance has been placed, it was a case where appointments were made by the State Government under Section 17 of the Police Act, 1861. Since their appointments were under the Act, 1861 and were allowed to continue for sufficient long time, which was not considered to be illegal or irregular appointment, this Court considered it appropriate to observe that as they are allowed to continue for such a long term, they deserve regularization of service. In the instant case, the respondents were never appointed in the establishment of the Government against a regular sanctioned post, in the absence whereof, judgment may be of no assistance.

56. The later judgment in **Malathi Das(Retired) Now P.B. Mahishy**(supra) which has been relied upon, it was a case where the employees were working on daily wage basis serving in different departments which are indeed Government establishments. At one stage, the employees approached the High Court claiming regularization of service and the High Court of Karnataka came to their rescue and directed the State Government to regularize service of such employees who are serving on a daily wage basis in Government departments and finally the SLP was dismissed by this Court. Thereafter, contempt

petitions were filed before the High Court and in two phases, the employees were regularized, in the first and second phase of filing contempt petition by the incumbents concerned. But few of the incumbents filed contempt petition which appears to be the third phase, they were not considered for regularization despite the order of the High Court being confirmed by this Court on dismissal of the special leave petition on the premise of the judgment of this Court in ***Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others***(supra). This Court was of the view that once the judgment of the High Court has been affirmed and in two phases on filing contempt petitions, employees have been regularized, there appears no reason to deviate and take away the claim of rest of the employees who are covered by the judgment of the High Court, may be the reason that there was a change in law on the subject after passing of the judgment of this Court in, ***State of Karnataka and Others Vs. Umadevi (3) and Others*** (supra) and this is not the factual matrix in the instant case.”

35. We cannot be oblivious of the caution vouched for by the Supreme Court in the matter of **State of Rajasthan Vs. Daya Lal and others** (supra) while exercising power under Article 226 of the Constitution of India. We find that if the relief of regularization is granted to the petitioners, then doctrine of equality contained in Articles 14 and 16 of the Constitution as well as constitutional scheme would be violated. Merely because the petitioners are working as Spl. A.P.Ps. for more than ten years cannot be a criteria for granting them regularization. The sanctioned post is the foremost requirement and *sine qua none* for granting regularization as laid down by the Supreme Court

vide judgment in the matter of **State of Karnataka Vs. M. L. Kesari and others** (supra).

36. The importance of constitutional scheme and especially procedure laid down under Article 309 of the Constitution is emphasized in the matter of **Surinder Prasad Tiwari Vs. U. P. Rajya Krishi Utpadan Mandi** (supra). We are also fortified in our view by pronouncement in the case of **Nand Kumar Vs. State of Bihar and others** (supra). In view of the observations made by the Supreme Court which are very close to our case in the matter of **Kerala Asstt. Public Prosecutors Association Vs. State of Kerala and others** (supra), highlighting difference in status of two ostensibly similar cadre, we are of the considered view that no case is made out for regularization. Hence we answer question No. (I) in the negative.

37. Question No. (ii) :

The petitioners' fees structure depended on the policy of the government. From time to time fees structure was determined by different policies viz Government Resolutions dated 15.07.2013 and 08.12.2019 and lastly on 06.04.2023. Following is the extract of last Government Resolution :

फौजदारी प्रक्रिया संहिता कलम २५{३} अन्वये तात्पुरत्या स्वरुपात नियुक्त विशेष सहाय्यक सरकारी अभियोक्त्यांना शासन निर्णय क्रं. डीपीपी-२०१२/प्र.क्र. ११७/पोल-१० दि. १५.०७.२०१३ अन्वये निश्चित करण्यात आलेल्या मानधनात खालीलप्रमाणे वाढ मंजूर करण्यास मान्यता देण्यात येत आहे.

	बाब	सध्याचे मानधन	सुधारित मानधन
अ}	प्रतिदिन परिणामकारक सुनावणीसाठी फी	रु. ६००/-	रु. १२००/-
ब}	एका जामीन अर्जाच्या विरोधाकरीता	रु. ४००/-	रु. ८००/-
क}	प्रतिदिन एकूण कमाल मर्यादा	रु. १०००/-	रु. २०००/-

२. एकापेक्षा जास्त सुनावणी किंवा जामीन अर्जाच्या विरोधाचे काम चालविले तरी प्रतिदिन कमाल मर्यादा रु. २०००/- राहिल.

३. उपरोक्त सुधारित फी / मानधनाचे दर शासन निर्णय निर्गमित झाल्याच्या दिनांकापासून लागू होतील.

४. यावरील खर्च या विभागाच्या मागणी क्रमांक बी-१, न्यायदान (००) (११४) विधी सल्लागार व समुपदेशी (००) (०१) संचालक सरकारी अभियोग (२०१४००२९) १०-कंत्राटी सेवा या लेखाशीर्षाखालील त्या-त्या आर्थिक वर्षाच्या मंजूर अनुदानातून भागविण्यात यावा.

38. The petitioners are rendering full time services to the respondents. It is not case of the respondents that they were being appointed for particular case or for handling particular number of cases. They are qualified and they were selected by the recommendation of the selection committee. It is submitted by the respondents that they were entitled to accept civil work or work which is not against the State government. But practically it may be possible for them to attend the matters. Their assignment is heavy and is consistently engaging them for discharging duties U/Sec. 25(3) of the Cr. P. C. The respondents did not bring to our notice any material to show that the

petitioners are not rendering full time work. We find that nature of their work is on par with the work rendered by the regularly appointed A.P.Ps. U/Sec. 25(1) of the Cr. P. C. Just because certain service conditions are not made applicable to the petitioners would not render their work less important or insignificant or lighter in nature.

39. If, the respondents are expecting that there should be adequate ratio of conviction from the petitioners and objectively scrutinizing the performance, then they should be paid reasonably and adequately. It is lopsided to say that for emoluments and scale, they cannot be equated with A.P.Ps. Honorarium which they are receiving, is not adequate. Considering nature of work, time consumed in discharging the duties and the skills extracted from the petitioners, we find that they are being paid inadequately. If the respondents/District Magistrates continue to engage them, then they have to be paid reasonably and equally. It is the prerogative of the respondents to determine the fees structure. We do not suggest that the petitioners should be given exactly the same scale, which is being drawn by the A.P.Ps., but the honorarium needs to be escalated reasonably.

40. It is also grievance of the petitioners that they were not being paid their arrears as admissible by the policies. We find that even interim orders were passed in these petitions to clear the dues of the petitioners. The petitioners are entitled to their outstanding dues. They have rendered the services and they are

still rendering it. The respondents cannot dodge the monetary claim after extracting the services. We expect that the respondents shall disburse the outstanding dues after determining the entitlement of the individual petitioner, albeit, if not done earlier.

41. The petitioners have relied on the judgment of the Supreme Court in the matter of **Randhir Singh Vs. Union of India (UOI) and others** reported in *(1982) 1 SCC 618*. We also adopt the principle of equal pay for equal work by relying upon paragraph No. 8 of the judgment, which reads as under :

“8. It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. [Art. 39\(d\)](#) of the Constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. [Art. 14](#) of the Constitution enjoins the state not to deny any person equality before the law or the equal protection of the laws and [Art. 16](#) declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

These equality clauses of the Constitution must mean some thing to everyone. To the vast majority of the people the equality clauses of the Constitution would mean

nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular Governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the takeover of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word 'Socialist' must mean something. Even if it does not mean 'To each according to his need', it must at least mean 'equal pay for equal work'. The principle of 'equal pay for equal work' is expressly recognized by all socialist systems of law, e.g, Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western labour codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance

(vide: International Labour Law by Istvan Szaszy p. 265). The preamble of the Constitution of the International Labour Organization recognizes the principle of 'equal remuneration for work of equal value' as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled". Construing [Articles 14](#) and [16](#) in the light of the Preamble and [Art. 39\(d\)](#) we are of the view that the principle 'Equal pay for Equal work' is deducible from those Article and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though these drawing the different scales of pay do identical work under the same employer.”

42. The petitioners relied on the **judgment dated 13.01.2021** passed by this Court in the matter of **Ambaji Chatrasing Pawara and others Vs. The State of Maharashtra and others in Writ Petition No. 6231 of 2020 and other connected writ petitions**, in which reference of the judgment and order dated 20.11.2019 passed by the Nagpur Bench in Writ Petition No. 2247 of 2014 in the matter of Dhiraj S. Wankhede and ors. Vs. The Zilla Parishad, Chandrapur and ors. was made. The petitioners have relied on para No. 11 of the judgment, which is rightly cited, which is as follows :

“11. It is clear that the Hon’ble Supreme Court has held that when one employee discharges/performs same work as another employee, there cannot be any distinction between the two employees so far as the application of the pay scale to both of them is concerned.

The Hon'ble Apex Court has further held that all the temporary employees who are performing similar work as the regular employees would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale) extended to regular employees holding the same post. This relief would also have to be granted to all the petitioners as there is no dispute that their work is similar to the work of the regular drivers.”

43. Ms. Neha Kamble, learned A. G. P. would oppose the submissions of the petitioners by relying on the judgment of the Supreme Court in the matter of **State of Andhra Pradesh and others Vs. G. Sreenivasa Rao and others** reported in *(1989) 2 SCC 290*. Reference is made to para Nos. 14 and 15 of the said judgment, which are as follows :

14. We do not agree with the High Court/Tribunal. Doctrine of 'equal pay for equal work' cannot be put in a straight-jacket. Although the doctrine finds its place in the Directive Principles but this Court, in various judgments, has authoritatively pronounced that right to 'equal pay for equal work' is an accompaniment of equality clause enshrined in [Articles 14](#) and [16](#) of the Constitution of India. Nevertheless the abstract doctrine of 'equal pay for equal work' cannot be read in [Article 14](#). Reasonable classification, based on intelligible criteria having nexus with the object sought to be achieved, is permissible.

15. "Equal pay for equal work" does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a

cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex-facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. To illustrate, when Pay fixation is done under valid statutory rules/executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at Efficiency Bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or as incentive for efficiency; are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differentia on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved. We do not therefore find any good ground to sustain the judgments of the High Court/Tribunal.”

44. We have not been pointed out any reasonable classification based on intelligible criteria having nexus with the object sought to be achieved for not making payment equal to that of regular A.P.Ps. The nature of the work, quantum and consumption of time are identical. Hence relying upon above preposition, we are not impressed to accept the submissions of the respondents.

45. She further relied on the judgment of the Supreme Court in the matter of **State of Madhya Pradesh and another Vs. Pramod Bhartiya and others** reported in *(1993) 1 SCC 539*. We have gone through the parameters stipulated by the Supreme Court in para

No. 13 of the judgment. It is extracted as follows :

“13. It would be evident from this definition that the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, as pointed out by Mukherji, J. (as he then was) in Federation of All India Customs and Excise Stenographers the quality of work may vary from post to post. It may vary from institution to institution. We cannot ignore or overlook this reality. It is not a matter of assumption but one of proof. The respondents (Original petitioners) have failed to establish that their duties, responsibilities and functions are similar to those of the non-technical lecturers in Technical Colleges. They have also failed to establish that the distinction between their scale of pay and that of non-technical lecturers working in Technical Schools is either irrational and that it has no basis, or that it is vitiated by mala fides, either in law or in fact (see the approach adopted in Federation case). It must be remembered that since the plea of equal pay for equal work has to be examined with reference to [Article 14](#), the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be. This burden the Original Petitioners (Respondents herein) have failed to discharge.”

In the present matter, there is no serious dispute over the nature of work handled by the petitioners. Therefore, we are not convinced by the submissions of the respondents.

46. Further reliance is placed on the judgment of the Supreme Court in the matter of **State of Haryana and another Vs. Tilak Raj and others** reported in *(2003) 6 SCC 123*. We have gone through

paragraph Nos. 11 to 13 of the said judgment. The submissions and the material placed by the petitioners that they discharge the work at par with the A.P.Ps. appointed by the State Government has not been dispelled by the respondents effectively. Rather, respondents focused on the status and the manner of appointment of Spl. A.P.Ps. Hence this judgment is not helpful to them.

47. The respondents further relied on the judgment of the Supreme Court in the matter of **State of Haryana and others Vs. Charanjit Singh and others** reported in *(2006) 9 SCC 321*. We have considered paragraph Nos. 19 to 24 of the said judgment. The Supreme Court was considering the claims of equal pay for equal work of daily wagers, Class IV employees. Their claims were earlier disposed of by directing to pay them minimum of wages in the scale payable to regular Class IV employees from the date of filing of the petitions. The Supreme Court ultimately remitted the matter to the High Court. Hence this judgment will not help the respondents.

48. Then reliance is placed on the judgment of the Supreme Court in the matter of **Ram Naresh Rawat Vs. Ashwini Ray and others** reported in *(2017) 3 SCC 436*. The petitioners in that case were daily wagers. Reference was made to para Nos. 24 to 26. We find that Supreme Court was considering the entitlement of those petitioners in the context of their designation of permanent employees. The discussion was in respect of permanent employee and regular employee. This judgment will also not

help the respondents, as the facts in the present case are different.

49. We, therefore, decide question No. (ii) in favour of the petitioners and direct the respondents to pay the honorarium or fix fees structure commensurate with nature of the duties of the petitioners, their devotion and consumption of time. The respondents are model employers. They should adhere to the norms of modesty and reasonableness in the payment also. It cannot be lost sight of that the petitioners are instrumental in maintaining the criminal justice delivery system operative. Their role cannot be undermined to save the system from breaking down.

50. Mr. A. N. Nagargoje, learned counsel for the petitioners has also argued alternatively for direction to pay lump sum compensation. He referred the **judgment dated 01.02.2023** of this Court at Goa in the matter of **Joaquina Gomes E Colaco Vs. State of Goa and others in Writ Petition No. 269 of 2022**. In the peculiar circumstances, the coordinate bench held that the State Government was responsible for the exploitation of then petitioner. We have gone through para Nos. 22, 23 and 29 of the said judgment. Considering difference in the facts, we are not inclined to accept the submission of the petitioners.

51. Question No. (iii) :

The petitioners have challenged order dated 10.11.2014 thereby instructing the District Magistrates to disband earlier

panel considering low conviction rate of the petitioners. This issue is already covered by the **judgment dated 24.08.2018** of the coordinate bench in the matter of **Maharashtra State Public Prosecutors Association Vs. The State of Maharashtra and another in Writ Petition No. 8117 of 2017**. In that case similar type of Government Resolution was issued on 12.05.2015, which was challenged by the petitioners successfully before the Division Bench. Following are the relevant extracts :

“17. Thus, it is clear that Public Prosecutor being an officer of the Court, is not expected to only grab the conviction, but is expected to act fairly before the Court and his performance should be only in the form of assistance to the Court for arriving at proper conclusion regarding conviction or acquittal of the accused. Considering such impartial duty to be performed by the Public Prosecutor, the State cannot set target before the Public Prosecutors to get conviction at least in 25 % criminal cases handled by them. What is expected by the State of Maharashtra from the Public Prosecutor is totally against law as discussed above. In other words, by passing the impugned Government Resolution, the State Government cannot fix bench-mark for the Public Prosecutors to secure at least 25% conviction in the criminal cases handed by them, to get promotion.

18. The conviction or acquittal in criminal trial depends on various factors and mainly on the quality of material collected by the Investigating Officer. If the Investigating Officer has collected good quality of material as evidence against the accused and if he has taken necessary precaution while sealing and forwarding

the important Muddemal articles to Chemical Analyst, certainly such case may result into conviction, provided that material witnesses stand constant at the stage of evidence. For conviction, the credit goes to Investigating Officer and witnesses. The conviction in criminal trial is not merely related with performance of the Public Prosecutor, but as discussed supra depends upon various factors.

19. Therefore, issuance of the impugned Government Resolution mandating achievement of 25% conviction in criminal trial is only as a result of above-said misconception. If any negligence has been committed by the Public Prosecutor while conducting the case, that cannot be ascertained only from conviction or acquittal, but it can be ascertained only on examination of the record of that particular case. Therefore, we hold that the condition of particular conviction rate to be achieved by Public Prosecutors, embodied in the impugned Government Resolution is definitely unreasonable.

20. Thus, the impugned Government Resolution is irrational, unreasonable and against the law of the land. Therefore, in view of the parameters laid down by the Apex Court in the case of “**Brij Mohan Lal**” (supra), this Court can definitely quash the impugned Government Resolution. It follows that this Writ Petition deserves to be allowed.”

52. We propose to follow the view of the coordinate bench in quashing order dated 10.11.2014. Besides that we find that no material is placed on record by the respondents for having conducted any objective scrutiny of the performance of the petitioners. Impugned order is grossly arbitrary.

53. The petitioners have also challenged the Government Resolution dated 28.05.2013. No submissions have been advanced by them for quashing the policy in question. The petitioners have no vested right to be continued on contractual posts U/Sec. 25(3) of the Cr. P. C. It is prerogative of the respondents to issue instructions to the District Magistrates regarding appointments, continuation or discontinuation of Spl. A. P. Ps. We do not find that there is any per-se arbitrariness or unreasonableness in the impugned policy. We do not find that the impugned policy is violative of any constitutional or statutory provision. Objections to this government resolution are overruled.

54. In all the petitions the prohibitory orders are solicited against the respondents from terminating the services of the petitioners. We are not inclined to grant such blanket relief to the petitioners. Their appointments are contractual in nature and they are not occupying sanctioned posts. It is the prerogative of the respondents either to continue or discontinue Spl. A.P.Ps. However, if the services are to be discontinued, then reasonable minimal procedure adhering to principles of natural justice should be followed.

55. The petitioners are also challenging the advertisement dated 04.07.2015. We are not shown any circumstances to sustain the challenge. The advertisement is fallout of the procedure contemplated by Article 309 of the Constitution. By

adopting the procedure appointments of regular A.P.Ps. are made. The respondent No. 1 enjoys the privilege of appointing A.P.Ps., which cannot be faulted. We find no substance in the challenge.

56. The petitioners have also challenged the Government Resolution dated 12.05.2015, by which a panel was proposed to be appointed for selecting Spl. A.P.Ps. In fact, appointment of panel comprising of senior and experienced officers is a step towards bringing rationalization and transparency in the selection of Spl. A.P.Ps. This is always a welcome approach of the respondents to prevent any arbitrariness in the selection or misuse of power. We do not approve the submission in this regard.

57. Few of the petitioners have also challenged circular dated 31.10.2018. The purport of the circular is to prepare new panel for Spl. A.P.Ps. as the earlier panels had become more than five years old. We adopt the same reasons as done for rejecting the challenge to G. R. dated 28.05.2013. No case is made out to quash the circular.

58. Finally while answering question No. (iii), we hold that instruction dated 10.11.2014 is liable to be quashed. Besides that, we are not interfering with the Government Resolutions dated 28.05.2013 and 12.05.2013, Circular dated 31.10.2011 and advertisement dated 04.07.2015.

Question No. (iv) :

59. Judgment and order dated 09.03.2016 passed by the Tribunal is questioned in these petitions. We do not find that there is any perversity or patent illegality in the findings regarding regularization and absorption. However, the Tribunal did not deal with order dated 10.11.2014 as well as parity in the pay scale or service benefits. No reasons are assigned by learned Members in that regard. We confirm the findings to the extent of regularization. The impugned judgment stands modified to the extent of our findings for remaining issues. Accordingly we answer question No. (iv) by modifying the impugned judgment.

60. In the light of above discussion, we pass following order.

O R D E R

A. The claim of all the petitioners of regularization and absorption is rejected.

B. (i) The claim of the petitioners for parity in the scale and service benefits stands partly allowed.

(ii) The respondents shall enhance the fees structure/honorarium of Spl. A.P.Ps. within a period of two (02) months from today which may be commensurate with the basic pay drawn by A.P.P. and disburse the payment accordingly.

(iii) They shall also disburse arrears of the petitioners by conducting objective scrutiny of the claims, if submitted by

individual petitioners within three (03) months from the date of submission of the claims.

- C. Order dated 10.11.2014 is quashed and set aside.
- D. The writ petitions are dismissed to the extent of challenge to the Government Resolutions dated 28.05.2013 and 12.05.2013.
- E. Judgment and order dated 09.03.2016 passed by the Maharashtra Administrative Tribunal stands modified in above terms.
- F. Rule is partly made absolute in above terms.
- G. There shall be no order as to costs.
- H. The Civil Application No. 3384 of 2016 stands disposed of.

[SHAILESH P. BRAHME, J.]

[S. G. MEHARE, J.]