THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No.29 of 2017

Shri Naw Raj Bhattarai,
S/o Shri Nar Hair Bhattarai,
R/o Namin Busty,
P.O. & P.S. Ranipool,
East Sikkim

..... Petitioner

Versus

1. The State of Sikkim
Through the Chief Secretary,
Government of Sikkim,
East Sikkim at Gangtok.

2. Department of Personnel (DOP),
New Secretariat Building Development Area,
Through Commissioner-cum-Secretary,
Government of Sikkim,
East Sikkim at Gangtok.

3. Human Resource Development Department,
Through the Secretary,
Government of Sikkim,
East Sikkim at Gangtok.

4. The Regional Officer,
All India Council for Technical Education, (AICTE),
Eastern Regional Office,
L.B. Block, Sector III,
College of Leather Technology Campus,
Salt Lake City,
Kolkata- 700 091.

5. The Principal,
Advance Technical Training Centre (ATTC),
Bardang,
P.O. Bardang & P.S. Singtam,
East Sikkim.

..... Respondents

Application under Article 226 of the Constitution of India.

Appearance:

Mr. Naw Raj Bhattarai, Petitioner in person.

Dr. Doma T. Bhutia, Additional Advocate General. Mr. S. K. Chettri, Government Advocate for respondent nos. 1, 2, 3 and 5.

Mr. D. K. Siwakoti, Advocate for respondent no.4.

With

W.P. (C) No. 30 of 2017

Shri. Amosh Shanker,
S/o Shri Yam Kumar Shanker,
R/o Tharpu Busty, P.O. Tharpu,
P.S. Soreng, West Sikkim.

..... Petitioner

Versus

1. The State of Sikkim
Through the Chief Secretary,
Government of Sikkim,
East Sikkim at Gangtok.

2. Department of Personnel (DOP),
New Secretariat Building Development Area,
Through Commissioner-cum-Secretary,
Government of Sikkim,
East Sikkim at Gangtok.

3. Human Resource Development Department,
Through the Secretary,
Government of Sikkim,
East Sikkim at Gangtok.

4. The Technical Director,
Technical Education, HRDD,
Government of Sikkim,
East Sikkim at Gangtok.

5. The Regional Officer,
All India Council for Technical Education, (AICTE),
Eastern Regional Office,
L.B. Block, Sector III,
College of Leather Technology Campus,
Salt Lake City,
Kolkata-700 091.

6. The Principal,
Advance Technical Training Centre (ATTC),
Bardang,
P.O. Bardang & P.S. Singtam,
East Sikkim.

..... Respondents

Application under Article 226 of the Constitution of India.

Appearance:

Mr. Amosh Shanker, Petitioner in person.

Dr. Doma T. Bhutia, Additional Advocate General. Mr. S. K. Chettri, Government Advocate for respondent nos. 1, 2, 3, 4 and 6.

Mr. D. K. Siwakoti, Advocate for respondent no.5.

Date of hearing : 23.02.2021

Date of Judgment : 03.04.2021

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. As both W.P. (C) No 29 of 2017 and W.P. (C) No. 30 of 2017 raises similar issues this common judgment shall dispose both of them.

2. Heard the petitioners in person in both the writ petitions; Dr. Doma T. Bhutia, learned Additional Advocate General for respondent nos. 1, 2, 3 and 5 in W.P. (C) No 29 of 2017 and respondent nos. 1, 2, 3, 4 and 6 in W.P. (C) No. 30 of 2017 and Mr. D.K. Siwakoti, learned counsel for respondent no.4 in W.P. (C) No 29 of 2017 and respondent no.5 in W.P.(C) No. 30 of 2017.

3. The petitioners in person (Naw Raj Bhattarai) in W.P. (C) No. 29 of 2017 and (Amosh Shanker) in W.P. (C) No. 30 of 2017) submits that although their appointment orders state that they had been appointed on contractual basis, the Advanced Technical Training Centre (ATTC) had always treated them as regular employees and its failure to regularise them in spite of various assurances violates their fundamental rights. It is also their case that the ATTC has failed to keep the student faculty ratio as per the requirements set by the All India Counsel for Technical Education (AICTE) and on that ground also a direction to regularise them would be maintainable. The petitioners submits that they are qualified to hold the regular posts and as their appointments were done in accordance with the constitutional scheme of appointments i.e. by

advertising the posts in a newspaper; inviting eligible candidates; conducting written examination and viva voce and selecting eligible candidates for the advertised posts, they should be regularised. They have drawn the attention of this court to chapter III of the Service Rules of the Advanced Technical Centre, 2003 (Service Rules) which provide that all appointments shall be made on contract basis for one year and that based on an *"appraisal report"* they shall be considered for regular appointment on probation. It was submitted that the records would reveal that the ATTC had not expressed its dissatisfaction on their performance and therefore, considering them for regularisation ought to have been done. They drew the attention of this court to the specific pleading in W.P. (C) No.29 of 2017 i.e. paragraphs 14 and 13 in W.P. (C) No.29 of 2017 and W.P. (C) No. 30 of 2017 respectively in which they had stated that the ATTC had even made them fill up a form for self assessment during their service which assertion has been accepted as matter of record in the counter affidavits filed on behalf of the State respondents including ATTC. It is their case that they have been sent for various training programmes by ATTC and those training

programmes were under the Carrier Advancement Scheme meant for movement to higher grades as the knowledge obtained from such training would be beneficial to the students. It is also their case that they had been in continuous service during the entire period and that they were employed against sanctioned posts and worked till 2016 in such capacity. The petitioners relied upon ***Union Public Service Commission v. Girish Jayanti Lal Vaghela & Ors.***[1]; ***B.S. Minhas v. Indian Statistical Institute & Ors.***[2]; ***Secretary, State of Karnataka v Umadevi (3)***[3]; ***Malathi Das v. Suresh***[4] and ***Mandeep Sunwar v. State of Sikkim***[5].

4. The learned Additional Advocate General (learned AAG) submitted that the perusal of the writ petitions as well as the records would reveal that there has been no violation of any right, leave alone any fundamental right of the petitioners. She relied upon ***Mani Subrat Jain & Ors. v. State of Haryana & Ors.***[6] to submit that no one can ask for mandamus without a legal right.

---

[1] **2006 (2) SCALE 115**
[2] **AIR 1984 SC 363**
[3] **(2006) 4 SCC 1**
[4] **(2014) 13 SCC 249**
[5] **SLR (2017) Sikkim 53**
[6] **(1977) 1 SCC 486**

5. The learned A.A.G. submits that the appointment orders are clear and unambiguous and that the petitioners were appointed on contract basis on specific terms and conditions. It is her case that the terms and conditions of contract specifically provided that they shall have no right to claim for regularisation. It was further submitted that once the contractual period came to an end that was the end of the service and the petitioners could have no grievance just because ATTC did not continue their service. She relied upon ***State of Maharashtra & Ors. v. Anita & Anr.***[7]; ***Umadevi (3) (supra); Union of India v. Arulmozhi Iniarasu***[8]. In addition, in so far as Amosh Shanker is concerned, the learned AAG also pointed out that he had applied for the sanctioned post advertised on 22.09.2016 but had failed to qualify for the same and as such he was estopped from challenging his discontinuance from contractual service. The learned AAG also argued that the Service Rules are meant for regular employees of ATTC and that contractual employees like the petitioners would be

---

[7] **(2016) 8 SCC 293**
[8] **(2011) 7 SCC 397**

governed by the terms and conditions of the contracts entered into.

6. Mr. D. K. Siwakoti, learned counsel for AICTE submits that there is no prayer sought by the petitioner against AICTE and as such their role in the present litigation is limited. Nevertheless, the learned counsel guided this Court through the various documents relating to the student to lecturer ratio issue raised by the petitioners in person. The learned counsel also relied upon certain judgments to assist this court. They are: ***A. Umarani v. Registrar, Cooperative Societies[9]; State of Madhyapradesh v. Mohd. Abrahim[10]; Mani Subrat Jain (supra)*** and ***Nihal Singh v. State of Punjab[11].***

7. Before this court examines the facts it would be relevant to consider the various judgment cited at the bar. In ***Uma Devi (3) (supra)*** the Constitutional Bench of the Supreme Court considered the legality of the action of the State in resorting to irregular appointments without following the procedure for appointment contemplated by the Constitution of India.

---

[9] **(2004) 7 SCC 112**
[10] **(2009) 15 SCC 214**
[11] **(2013) 14 SCC 65**

8. In ***Nihal Singh (supra)*** the Supreme Court examined whether it could compel the State to create posts and absorb the appellants therein into the service of the State on a permanent basis consistent with the decision in ***Umadevi (3) (supra)***. While doing so the Supreme Court also noted that in ***Umadevi (3) (supra)*** the Supreme Court while recognising the authority of the State to make temporary appointments declared that the regularisation of the employment of such persons which was made without following the procedure conforming to the requirement of the scheme of the Constitution in the matter of public employments cannot become an alternative mode of recruitment to public appointment. The Supreme Court further noted that it had in ***Umadevi (3) (Supra)*** declared that the jurisdiction of the Constitutional Courts under Article 226 or Article 32 cannot be exercised to compel the State or to enable the State to perpetuate an illegality. The Supreme Court noted that in ***Umadevi (3) (supra)*** the Constitution Bench had held that compelling the State to absorb persons who were employed by the State as casual workers or daily wage workers for a long period on the ground that such a practice would be an arbitrary practice and violative

of Article 14 and would itself offend another aspect of Article 14 i.e. the State chose initially to appoint such persons without any rational procedure recognized by law thereby depriving vast number of other eligible candidates who were similarly situated to compete for such employment.

9. In ***Nihal Singh (supra)*** the Supreme Court found that the initial appointments of the appellants could have never been categorised as an irregular appointment as their initial appointment were made in accordance with the statutory procedure contemplated under the act. Thus it was held that even going by the principles laid down in ***Umadevi (3) (supra)*** the State cannot be heard to say that the appellants therein were not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporarily and not against any sanctioned posts created by the State.

10. In ***Malati Das (supra)*** the Supreme Court held on facts that since similarly placed employees had been regularised by State and in some cases such regularisation was effected even after decision in ***Umadevi (3) (Supra)***, stand taken by the appellants in refusing regularisation on

ground that claimants do not fulfil conditions for regularisation as laid down in ***Umadevi (3) (supra)*** was not sustainable.

11. In ***Mandip Sunwar (supra)*** a Single Judge of this court held that the Constitutional philosophy of employment is enshrined in Article 14 read with Article 16 of the Constitution of India and that public employment has to be made after a proper competition among qualified persons on the basis of invitation through wide publicity, enabling all required candidates to make application for the same; selection is required to be made in accordance with statutory provisions, on merit, in the spirit of the constitutional mandate of equality of opportunity without discrimination.

12. In ***Mani Subrat Jain (supra)*** the Supreme Court *held:*

> ***"****It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something.****"***

13. In ***Anita (supra)*** the Supreme Court examined the appointments of 471 posts of legal advisors, law officers and law instructors on contractual basis pursuant to

government resolutions. It was found that the intention of the government was to fill up the said posts on contractual basis and that the respondents therein at the time of appointment had entered into agreement in terms of which the appointment was purely contractual creating no right, interest or benefit of permanent service in respondent's favour. It was held that having accepted contractual appointment, the respondents were estopped from challenging terms of their appointment and when the government had taken a policy decision to fill up post on contractual basis, the Tribunal and High Court ought not to have interfered with it to hold that appointments were permanent in nature.

14. In ***Arulmozhi (supra)*** the Supreme Court examined its various decisions on the doctrine of legitimate expectations and its impact in administrative law. It noted that in ***Sethi Auto Service Stations v. DDA***[12] the Supreme Court had held:

> ***"32.*** *An examination of the aforenoted few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our*

[12] **(2009) 1 SCC 180**

> *legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfil unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.***"**

15. In ***A. Umarani (supra)*** it was held by the Supreme Court that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and in ignorance of essential qualifications, the same would be illegal and cannot be regularised by the State.

16. In ***Mohd. Abrahim (Supra)*** the Supreme Court held that it was necessary for the State to follow the constitutional scheme laid down in Article 14 and Article 16 and relevant recruitment rules and appointment through side door being appointment in violation of the said Articles would be illegal.

Pleadings in W.P. (C) No 29 of 2017

17. Naw Raj Bhattarai filed a writ petition on 06.06.2017 seeking an appropriate writ directing the respondents to take him back in service and other reliefs. It was contended that he had been appointed as lecturers as per the constitutional mandate following the issuance of an advertisement and thereafter being selected after a selection process as per the Service Rules.

18. Respondent nos.1, 2, 3 and ATTC filed their composite counter-affidavits on 26.07.2017 opposing the writ petition and asserting that he was a contractual employee; his employment would thus be governed by the terms and conditions agreed upon and further after his term expired he would have no right to claim regularisation. It was also asserted that the recruitment and service condition of the lecturers and all the employees of ATTC is governed by the Service Rules which came into force on 01.04.1999. The State respondents have highlighted the provisions of the Service Rules as enumerated in chapter III. It has been asserted that a selection committee was constituted vide notification dated 07.03.2015 as per All India Council for Technical Education (Carrier Advancement Schemes) (CAS)

for the Teachers and other Academic Staff in Technical Institutions (Diploma) Regulations, 2012 notified on 08.11.2012. According to the State respondents there are altogether 19 posts of lecturers in ATTC including 4 posts of lecturers in the department of mechatronics and 1 post of the head of the department. The State respondents assert that in the month of June, 2012, two regular lecturers in mechatronics department were sent for further studies. They completed it in June, 2015 and thereafter, joined duties. It is asserted that it was on account of their absence that Naw Raj Bhattarai was appointed on contract basis on 28.02.2013 and continued till 31.12.2016.

19. Naw Raj Bhattarai filed his rejoinder on 21.08.2017. He countered the State respondent's assertion regarding him being appointed due to the absence of the 2 regular lecturers in mechatronics department by stating that if it had been so then he should have been terminated in the year 2015 itself. It was submitted that the very fact that even for the session 2016 his service was renewed till December, 2016 would belie the assertion.

20. On 01.11.2017 the AICTE filed an affidavit in opposition against the writ petition. The AICTE asserted

that it had not issued any notification nor is there any provision under their Acts and rules for appointment of temporary faculty by their institutions. AICTE stated that as per the information projected by ATTC student to faculty ratio was adequate.

21. On 12.10.2017 Naw Raj Bhattarai filed his rejoinder to the reply filed by AICTE disputing that the ATTC had complied with the student lecturer ratio. On 15.05.2018 an additional affidavit was filed by AICTE in which AICTE asserted that on inquiry it was found that the infrastructure and faculty members of ATTC were in order. On 26.05.2018 Naw Raj Bhattarai filed his response to the additional affidavit filed by AICTE disputing the claim made by AICTE. On 19.06.2018 the AICTE filed another additional affidavit pursuant to the order dated 29.11.2017 passed by this court permitting AICTE to inspect ATTC and submit a report as to whether the terms and conditions or guidelines are being complied by it. It was stated that an Expert Visiting Committee (EVC) was constituted by the competent authority that visited the ATTC and after conducting inspection submitted its report. Various deficiencies had been pointed out in the report pursuant to

which a show cause notice was issued dated 06.03.2018. The ATTC was allowed to file a reply and was also heard. Thereafter, the Standing Hearing Committee of the AICTE accepted the documents submitted by ATTC in respect of each of the deficiencies pointed out except one.

Pleadings in W.P. (C) No 30 of 2017

22. Amosh Shanker filed a writ petition on 13.06.2017 also seeking directions upon the State respondents to take him back in service, to regularize him and for other reliefs on the ground that he had been appointed under the constitutional scheme and as such had a right to be regularized.

23. The respondent nos.1, 2, 3, 4 and ATTC (State respondents) has filed a composite counter-affidavit on 21.08.2017 disputing Amosh Shanker's claim. It is the case of the State respondents that he was a contractual appointee and as such under the terms and conditions agreed upon he has no right to claim for regularization. It is further submitted that as Amosh Shanker had taken his chance to be considered for selection to the two regular posts of lecturer (mechanical) and failed to be selected he is estopped from claiming for regularization. The State

respondents had made identical assertion regarding the Service Rules as in the counter-affidavit filed by them in Writ Petition (C) No. 29 of 2017.

24. Amosh Shanker has filed a rejoinder dated 18.10.2017 to the counter-affidavit filed by the State respondents as well. In the rejoinder he has sought to rely upon the approval process hand book of the AICTE for penal action in case of violation of its regulation for providing false information while applying for approval of extension. He has disputed all the assertions made by the State respondents in the counter-affidavit.

(i) The AICTE has filed an affidavit in opposition dated 25.11.2015 asserted that it had not issued any notification nor is there any provision under their acts and rules for appointment of temporary faculty by their institutions. AICTE stated that as per the information projected by ATTC the faculty student ratio was adequate.

(ii) An additional affidavit was filed by State respondents on 23.04.2019 clarifying that altogether ten candidates were called for viva voce as per the marks obtained in the written test and thereafter final select list were prepared. Copy of the list of qualified candidates who appeared for

written test held on 26.11.2016 was annexed along with a notice dated 05.01.2017 showing the list of three candidates declared qualified in order of merit and recommended for appointment. Amosh Shanker does not feature in either of the two lists. It transpires that on 26.09.2016 two posts of lecturer (mechanical) were advertised for appointment on regular basis. A written examination and viva voce was also conducted. Amosh Shanker had applied for the said post and had appeared in the written examination held on 26.11.2016. Amosh Shanker was however, placed at serial no.14 of the merit list of successful candidates and those two posts were filled by two other persons.

The issue and its considerations.

25. The issue that needs to be determined in both the writ petitions is whether on the facts stated above the petitioners had a right to be taken back in service and absorbed in the regular establishment or in the alternative be considered by ATTC for regularization as per rule 8(2) of the Service Rules?.

26. The record reveals that Naw Raj Bhattarai first applied for employment in response to an advertisement

issued by ATTC on 03.02.2013 pursuant to which he was employed as lecturer (mechatronics) on contractual basis for the period 01.03.2013 to 31.12.2013 after a selection process. A perusal of the advertisement reflects that the ATTC had sought appointment for temporary contractual posts. The appointment letter also made it clear that the post was temporary and contractual and that Naw Raj Bhattarai would have no right to claim for regularization. Yet another advertisement was issued on 30.10.2013 pursuant to which Naw Raj Bhattarai was employed again on contract basis from 01.01.2014 to 31.12.2014. This advertisement was for both temporary as well as regular posts. In the case of lecturer (mechanical), however, only one temporary post for lecturer (electronics) was advertised pursuant to which Naw Raj Bhattarai was once again offered and appointed on contract basis for a period of another year. Thereafter, pursuant to an interview held on 07.11.2013 Naw Raj Bhattarai was once again appointed on contract basis for a period of one year w.e.f. 01.01.2014. After the expiry of the last contract period, the ATTC issued two appointment letters dated 17.12.2014 and 01.12.2015 extending Naw Raj Bhattarai's contractual employment till

31.12.2016. On each occasion when his contract was renewed he accepted all the terms of contract including that he had no right to claim for regularization.

27. In the case of Amosh Shanker also it is noticed that he was selected on contract basis pursuant to an advertisement issued on 30.10.2013. The advertisement for various posts of lecturers and other officers were for both temporary and regular employment. Three temporary posts and two regular posts for lecturer (mechanical) were advertised. The terms and conditions specified that candidates selected for temporary posts will be for one year contract term. It also specified that the top two candidates as per merit lists of lecturer (mechanical) would be employed initially for one year contract. Based on work performance after completion of contract period they would be considered for regularization. The first appointment letter dated 07.07.2014 was for the period 07.07.2014 to 31.12.2014. It was contractual with no right to claim for regularization. On 17.12.2014 Amosh Shanker's contractual appointment was extended from 03.01.2015 to 31.12.2015. This contract period was renewed by ATTC by offering him the post once again on 01.12.2015 for the

period 11.01.2016 to 31.12.2016. On each occasion of renewal of contract period he submitted a joining report without a protest. Even Amosh Shanker accepted all the terms of contract including that he would have no claim for regularization.

28. Both the petitioners' contract came to an end on 31.12.2016.

29. It transpires that during the period of their contractual service the petitioners were sent for various training programmes to the National Institute of Technical Teachers' Training & Research Centre (NITTTR) Kolkatta. It is their case that the short term training programme recognised by AICTE and conducted by NITTTR is meant for movement to higher grades under Carrier Advancement Scheme for regular staff of the institute only, not for temporary faculty. It is also their case that the ATTC has always projected them as regular lecturers which is seen while browsing the official website of AICTE. They further contend that they were also made to fill up a *"self assessment report"* during their service with ATTC and therefore, they ought to be considered for regularisation.

30. In ***Umadevi (3) (supra)*** the Supreme Court held:-

*"**11.** In addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and the Public Service Commissions for the States. Article 320 deals with the functions of the Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognised by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the Scheduled Castes and Scheduled Tribes for employment. The States have made Acts, rules or regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, rules and regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.*

***12.** In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognised and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the*

fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognised and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

13. *What is sought to be pitted against this approach, is the so-called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab v. Jagdip Singh [(1964) 4 SCR 964 : AIR 1964 SC 521] . It was held therein: (SCR pp. 971-72)*

> *"In our opinion where a government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in*

*law be deemed to have been validly appointed to the post or given the particular status.***"**

x x x x x x

"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. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, 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 the 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.***"**

x x x x x x

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

x x x x x x x

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

31. The Supreme Court in ***Umadevi (3) (supra)*** has clearly recognized the State respondents' right to appoint persons on temporary basis. In spite of the constitutional scheme, the Supreme Court held, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts sanctioned. The Supreme Court held that there was nothing in the Constitution which prohibits such engaging of persons temporarily to meet the needs of the situations. A reading of the Service Rules makes it clear that it does not contemplate appointment of any person on contract basis besides what is contemplated in Rule 8(2). A reading of Rules, 5, 6, 7 and 8 makes it clear that the provisions are meant for regular appointments. However, there is no manner of doubt that the State respondent did posses the right to appoint persons on temporary basis to meet its exigencies. Although the claim made by ATTC that the petitioners had been employed temporarily due to the exigency of some of its regular employees being sent for training may not sound appealing sans contemporaneous

records, the fact that ATTC had in fact sought for temporary employment and that the petitioners were appointed purely on contract basis cannot be doubted. It is also clear that both the petitioners accepted the terms of contract and therefore, they were bound by it. It is correct that the petitioners were initially appointed pursuant to an advertisement issued. However, the advertisements were specific and it sought for temporary contractual employment. It is equally correct that the petitioners were selected after undergoing a selection procedure akin to the procedure prescribed in the Service Rules. However, merely because the ATTC chose to follow the selection procedure as prescribed for regular employment also for contractual appointment; sought for self assessment reports and incorrectly projected the petitioners as regular employees it cannot be held that their appointments were regular. Further, their continuation beyond the periods as per the advertisements was ad hoc. The State respondents were certain that they were seeking temporary employees. During the entire period of service, the petitioners could not have also had a single doubt in their mind that they

were not contractual employees bound by the terms of their contracts.

32. The petitioners' grievance about the State respondents not keeping the student to lecturer ratio even if proved may lead to other consequences upon ATTC. In a writ of this nature were the petitioners are seeking relief for regularization of contractual service it may not be correct to examine the failure of the ATTC to keep the student to lecturer ratio. However, it definitely cannot be a reason for this court to direct regularization of contractual employees. The petitioners' contentions that they were regularly sent for training under the Carrier Advancement Scheme is responded to by the State respondents stating that they were so trained keeping in mind its benefit upon the students. It is quite certain that their training and experience would have greatly benefited the State respondents, the students as well as the petitioners themselves. However, this also cannot be a factor for this court to direct the State respondents to do, what has been held illegal by the Supreme Court. Consequently, both the issues are held against the petitioners.

33. The writ petitions fails and are accordingly dismissed.

In the circumstances, no order as to cost.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**

to/