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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2802/2004

With

Original Application No.1072/2004

New Delhi, this the ^w 2 day of June, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)

O.A. No.2802/2004:

Mrs. Pushpa Sinha
C/o Bhushan General Store
Near Molar Band High School
Meetha Pur
At Badarpur
New Delhi – 110 044. ... Applicant

(By Advocate: None)

Versus

1. The Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat
New Delhi – 110 002.
2. The Director
Health and Family Welfare Department
Govt. of NCT of Delhi
9th Level, A-Wing
Delhi Secretariat
New Delhi – 110 002.
3. The Director
Directorate of Health Services
Govt. of NCT of Delhi
F-17, Karkardooma
Delhi – 32.
4. Medical Superintendent
Bhagawan Mahavir Hospital
Pitampura
New Delhi – 110 088.

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5. Hanuman (Staff Nurse)
C/o Nursing Superintendent
Dr. Hedgavar Arogya Sansthan (Hospital)
Karkardooma
Delhi – 110 032.
 6. Ram Prasad (Staff Nurse)
C/o Nursing Superintendent
Dr. Hedgavar Arogya Sansthan (Hospital)
Karkardooma
Delhi – 110 032.
 7. Meena (Staff Nurse)
C/o Nursing Superintendent
Dr. Hedgavar Arogya Sansthan (Hospital)
Karkardooma
Delhi – 110 032.
 8. Suresh (Staff Nurse)
C/o Nursing Superintendent
Dr. Hedgavar Arogya Sansthan (Hospital)
Karkardooma
Delhi – 110 032.
 9. Shiv Narain (Staff Nurse)
C/o Nursing Superintendent
Dr. Hedgavar Arogya Sansthan (Hospital)
Karkardooma
Delhi – 110 032.
 10. Satbir (Staff Nurse)
C/o Nursing Superintendent
Dr. Hedgavar Arogya Sansthan (Hospital)
Karkardooma
Delhi – 110 032.
 11. Lata Kumari (Staff Nurse)
C/o Nursing Superintendent
Dr. Hedgavar Arogya Sansthan (Hospital)
Karkardooma
Delhi – 110 032.

(By Advocate: Sh. George Paracken)

O.A. No.1072/2004:

1. Mrs. Anju Chanan
W/o Sh. Kewal Chanana
C-1/90, Sector-16
Rohini
Delhi – 85.

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2. Mrs. Sonali Dey
W/o Sh. S.K.Dey
143-C, D.D.A. Flats
Paschim Vihar Extension
New Delhi.
 3. Ms. Sushma Rani
C/o Mrs. Anju Chanana
R/o C-1/90, Sector-16
Rohini
Delhi - 85.
 4. Miss. Geeta Bhatt
D/o Sh. D.N.Bhatt
F-2/157, Sector-XI
Rohini
Delhi - 85.
 5. Miss. Sonia Garg
D/o Sh. Inder Mal Garg
A/A-117, Shalimar Bagh
Delhi - 88.
 6. Mrs. Alice P.Luke
W/o Sh. Bijoy Thomas
C-1/45, D D A Janta Flats
Hastal
Uttam Nagar
New Delhi - 59.
 7. Miss. Sumitha C. Chandran
D/o Sh. K.K.Chandrashekharan
C/o Sh. Binu Joseph (S/N-Casualty)
Sunder Lal Jain Hospital
Ashok Vihar Phase-III
Delhi-52.
 8. Miss. Suni T.S.
D/o Sh. T.K.Sukumaran
C/o Sh. Bijoy Thomas
C-1/45, D.D.A. Jant Flats
Hastsal, Uttam Nagar
New Delhi - 59.
 9. Ms. Renu
C/o Sh. Bibash Kumar
C-253, Nehru Vihar
Opp. Timarpur
Delhi - 54.

... Applicants

(By Advocate: None)

Versus

1. The Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat
New Delhi - 110 002.
 2. The Director
Health and Family Welfare Department
Govt. of NCT of Delhi
9th Level, A-Wing
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Govt. of NCT of Delhi
F-17, Karkardooma
Delhi - 32.
 4. Medical Superintendent
Satyawati Raja Harish Chander Hospital
Narela
Delhi.
 5. The Medical Superintendent
Maharishi Balmiki Hospital
Pooth Khurd
Bawana
Delhi.
- ... Respondents

(By Advocate: Sh. George Paracken)

ORDER

By Mr. Justice V.S. Aggarwal:

By this common order, we propose to dispose of the following
two Original Applications:

(1) Original Application No.2802/2004

(2) Original Application No.1072/2004

They involve the common question therefore, they are being taken
up together. However, for the sake of convenience, we are taking

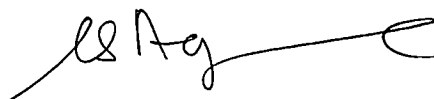


the facts from OA 2802/2004 entitled **Ms. Pushpa Sinha vs. Govt. of NCT of Delhi & others.**

2. Applicant seeks a direction for continuing her in service as Staff Nurse and for her appointment as regular Staff Nurse in the Hospitals under the Government of NCT of Delhi.

3. The applicant contends that respondents had made different types of appointments out of the one and the same selection process and given memo of regular appointments to one group and Contract appointments to the other group including her. The applicant seeks that she should be given same appointment as the other Group of candidates who were earlier appointed regularly. It is also stated that the applicant is not getting her monthly salary regularly and she was paid for the entire one year in August, 2004. It was after a long struggle that the salary was paid. She has undergone the selection process as the way it has been prescribed. She is an OBC candidate. Others have been given regular appointment but not the applicant. She claims further that she should be given regular monthly salary which is being denied. Arrears should be paid from retrospective date.

4. The facts which prompt the applicant to file the present application are that on 21.1.2002, the Government of NCT of Delhi, Department of Health and Family Welfare had advertised through an employment notice, whereby applications were invited on prescribed form from the eligible candidates for the post of Staff Nurse. It prescribed educational qualifications required, experience, etc. The applicant had submitted application. She



appeared in the selection process by attending the written test by the Department of Health and Family Welfare. After the result was declared, she was offered the appointment as Staff Nurse.

5. The applicant reported for duty on 22.9.2003.

6. In the subsequent month, she came to know that similarly placed several Nurses have made certain representations for non payment of their monthly salary. She also came to know that certain other similarly placed Staff Nurses who were appointed on contract like the applicant, have been appointed as regular Staff Nurse. They were also in the OBC category.

7. The applicant claims that similar treatment is not being given to her. She is being discriminated. It is contended that the applicant should be regularly appointed and paid same salary as other regularly appointed persons were getting.

8. Some of the other facts can also precipitate the controversy. The applicant had taken the test and after that she had been given the following offer of appointment:

"Subject: Appointment to the post of Staff Nurse on contract basis.

With reference to his/her application to the post of Staff Nurse Sh./Smt/Kr. Pushpa Sinha is hereby directed to appear before the undersigned alongwith his/her all relevant original certificates as regard educational qualifications/date of birth/caste certificate etc, if he/she is interested to work on purely on short terms contract basis for 89 days or till regular employee is available whichever is earlier basis under this Directorate within 3 days from receipt of this memorandum. This shall not entitle the addressee to any claim on regular appointment subsequently.

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Sd/-
(MADHU K. GARG)
JOINT DIRECTOR (ADMN)"

9. The same was accepted and it was thereafter that she was appointed. Relevant portion of the order reads:

"I am directed to convey the concurrence of Principal Secretary (Finance), Govt. of NCT of Delhi in respect of terms and conditions for Group C and D staff appointed on daily wage basis for newly opened Hospital, e.g. Dr. Hedgavar Arogya Sansthan and SRCH, Narela these are as under:-

1. The tenure of the service of these Group C & D employees will be 89 days or 31.03.2004 whichever is earlier and their services can be terminated/disengaged at any time with notice of 7 days period. The right of employment and disengagement of services will be with the Director, Directorate of Health Services/HOD concerned.
2. In case of regular staff recruited or transferred/posted from other Hospital/Medical Institutions the services of daily wage staff will be terminated/disengaged.
3. The daily wage staff of Group C & D cadre will not be entitled for any kind of leave or other benefit as usually given to the regular staff of this Government of NCT of Delhi as per relevant Rules & Regulations.
4. He/She should get his/her medical examination done within one week from the Hospital for which appointed and if found unfit the contract appointment shall stand withdrawn with immediate effect.
5. In case he/she resign before the completion of tenure he/she is required to give advance notice of 07 days, failing which an amount equivalent to 07 days will be recovered from him/her.



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6. In case of continuous absence of more than 03 days the service shall be liable to be dispensed with, without any prior notice.
 7. Delay in completing the formalities may delay the release of salary and this will be his/her individual responsibility.
 8. The detail of consolidated payment to the daily wage staff will be as under:-
 - (a) Contract staff in Group D
- Rs.3500/-P.M.(Consolidated)
 - (b) Staff Nurse Rs.6000/-P.M.(consolidated)
 - (c) Other Group - (Para-Medical Staff) -
Rs.5000/- P.M. (Consolidated)
 9. These terms and conditions for appointment of staff on daily wage basis will be with retrospective effect.

The above concurrence of Finance Department in regarding terms and conditions and remuneration to be paid to daily wage staff is upto 31-3-2004 subject to the following conditions:-

1. Funds are available during the current financial year.
 2. Appointment are made as per recruitment rules for the respective post."
10. Before proceeding further, it would be proper also to note that on 1.3.2005, respondents' learned counsel had himself made a statement at the Bar that respondents shall not replace the applicants by any ad hoc employees and replacement shall only be effected in case regular appointment is made against the said post.
11. The applications have been contested.
12. The Health and Family Welfare Department has made recruitment for staff nurses on regular basis for different hospital under Government of NCT of Delhi. The Directorate of Health

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Services was opening new hospitals for which there was urgent requirement of staff nurses and other para-medical staff. Therefore, the Health and Family Welfare Department has furnished the dossiers of some unsuccessful candidates who appeared in the examination for selection. They were called through Memo dated 21.8.2003 to work purely on contract basis for 89 days or till regular employees become available. The applicant joined with full knowledge that her service was purely on contact basis and for short term and her services can be terminated at any time after 89 days. She was never declared as successful in any examination conducted. It is denied that the regular appointment is admissible or that the applicants are entitled to full pay and allowances.

13. On the date fixed for hearing, none appeared on behalf of the applicant. In these circumstances, we did not have the advantage of hearing the applicant's learned counsel.

14. The first and foremost question that comes up for consideration is as to if the applicant has worked for about one year, she can claim regularization or not. We are conscious of the decision in the case of **DR. G.P. SARABHAI & OTHERS V. UNION OF INDIA & OTHERS**, 1983 LAB.I.C. 910 [Civil Writ Petition No.5/1981, decided on 13.8.1982]. In the afore-cited case, certain petitioners were appointed as Junior Medical Officers in E.S.I. Corporation initially on ad hoc basis for a period of one year. The appointment letter indicated that maximum period of the selection was one year and it was contemplated that selection would be

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regularized by the Union Public Service Commission and they were continued from time to time. It was in the backdrop of these facts that the Division Bench of the Delhi High Court had given the decision referred to and relied upon by the learned counsel. But the same had been considered by the Delhi High Court in the case of **SH. SANDEEP & OTHERS V. DELHI SUBORDINATE SERVICES SELECTION BOARD & ORS.**, C.W.P. No. 7386/2000 decided on 23.7.2002. The decision in the case of **Dr. G.P. Sarabhai & Others (supra)** was referred to and it was held that question, therefore, for consideration was whether the petitioners who were appointed as Doctors in the ESI Corporation, and had been continued for about seven years, could be asked to compete with the new entrants. It will have no application in the present case also because the applicants had been appointed purely on ad hoc and on contractual basis.

15. On behalf of the respondents, it was vehemently contended, in our view successfully that a person who is appointed on ad hoc basis or even on contract basis, cannot claim regularization as of right. The regularization cannot be made dehors the rules.

16. In the case of **DR. CHANCHAL GOYAL (MRS.) VS. STATE OF RAJASTHAN**, (2003) 3 SCC 485, a similar situation had cropped up before the Supreme Court. Certain persons had been appointed on temporary basis for a period of six months. Certain orders of extension were issued. On 1.10.1998, services of

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Dr. Chanchal Goyal were terminated on the ground that the candidates selected by the Public Service Commission were available. The question for consideration before the Supreme Court was as to whether she could claim regularization as in the case of the applicants. The Supreme Court repelled the argument of Dr. Chanchal Goyal and held:

“8. Unless the initial recruitment is regularized through a prescribed agency, there is no scope for a demand for regularization. It is true that an ad hoc appointee cannot be replaced by another ad hoc appointee; only a legally selected candidate can replace the ad hoc or temporary appointee. In this case it was clearly stipulated in the initial order of appointment that the appellant was required to make room once a candidate selected by the Service Commission is available.”

Thereupon the Supreme Court went on to hold:

“10. In J&K Public Service Commission vs. Dr. Narinder Mohan [(1994) 2 SCC 630] it was, inter alia, observed that it cannot be laid down as a general rule that in every category of ad hoc appointment if the ad hoc appointee continued for a longer period, rules of recruitment should be relaxed and the appointment by regularization be made. In the said case in para 11 the position was summed up as under: (SCC pp.640-41, para 11).

“11. This Court in A.K. Jain (Dr.) v. Union of India [1987 Supp SCC 497] gave directions under Article 142 to regularize the services of the ad hoc doctors appointed on or before 1.10.1984. It is a direction under Article 142 on the peculiar facts and circumstances therein. Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 – power is confided only to this Court. The ratio in P.P.C. Rawani (Dr.) v. Union of India [(1992) 1 SCC 331] is also not an authority under Article 141. Therein the orders issued by this Court under Article 32 of

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the Constitution to regularize the ad hoc appointments had become final. When contempt petition was filed for non-implementation, the Union had come forward with an application expressing its difficulty to give effect to the orders of this Court. In that behalf while appreciating the difficulties expressed by the Union in implementation, this Court gave further direction to implement the order issued under Article 32 of the Constitution. Therefore, it is more in the nature of an execution and not a ratio under Article 141. In Union of India vs. Dr. Gyan Prakash Singh [1994 Supp (1) SCC 306] this Court by a Bench of three Judges considered the effect of the order in A.K. Jain case [1987 Supp. SCC 497] and held that the doctors appointed on ad hoc basis and taken charge after 1.10.1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment. In H.C. Puttaswamy vs. Hon'ble Chief Justice of Karnataka High Court [1991 Supp.(2) SCC 421] this court while holding that the appointment to the posts of clerk etc. in the subordinate courts in Karnataka State without consultation of the PSC are not valid appointments, exercising the power under Article 142, directed that their appointments as a regular, on humanitarian grounds, since they have put in more than 10 years service. It is to be noted that the recruitment was only for clerical grade (Class III post) and it is not a ratio under Article 141. In State of Haryana v. Piara Singh [1992) 4 SCC 118] this court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. Ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee. He must be replaced only by regularly selected employee.

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The ad hoc appointment should not be a device to circumvent the rule of reservation. If a temporary or ad hoc employee continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. It is to be recommended that in that case, the appointments are only to Class III or Class IV posts and the selection made was by subordinate selection committee. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of ad hoc appointment, if the ad hoc appointee continued for long period, the rules of recruitment should be relaxed and the appointment by regularization be made. Thus considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned Single Judge is right in directing the State Government to notify the vacancies to the PSC and the PSC should advertise and make recruitment of the candidates in accordance with the rules."

17. Similar situation had arisen before the Supreme Court in the case of **UNION OF INDIA & ORS. v. HARISH BALKRISHNA MAHAJAN**, 1996(6) SLR SC 669. Therein, Harish Balkrishna Mahajan was appointed on monthly basis. This Tribunal had directed that he should be regularized in consultation with Union Public Service Commission. The Supreme Court allowed the appeal and held:

"2. The respondent was temporarily appointed as a Medical Officer on monthly basis in the Central Government Health Scheme on August 10, 1982. During the unfortunate strike of the doctors as trade unionists, unmindful of the ethical and medical code of conduct, he was appointed and even continued in the service till August, 1987. When his services were terminated, he had gone to the Tribunal and filed OA No. 701/89. The Tribunal in the

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impugned order dated 21.12.1994 directed the appellants to regularize the service of the respondent in consultation with the Public Service Commission. Thus, this appeal by special leave.

3. The controversy is no longer res integra. In similar circumstances, this Court had considered the entire controversy in J and K Public Service Commission & Ors. Vs. Dr. Narinder Mohan and Ors. [(1994) 2 SCC 630]; [(1994)(1) SLR 246 (SC)]. Admittedly, the post of doctors in the Central Government Health Scheme are required to be filled up by recruitment through Union Public Service Commission. Therefore, the direction to consider the case of the respondent in consultation with the Public Service Commission for regularization is in violation of the statutory rules and Article 320 of the Constitution of India. The only course known to law is that the Union of India shall be required to notify the recruitment to Public Service Commission and Union Public Service Commission shall conduct the examination inviting the applications from all the eligible persons including the persons like the respondents. It would be for the respondent to apply for and seek selection in accordance with Rules. Therefore, the direction is in violation of Article 320 of the Constitution."

18. Identical view was expressed by the Apex Court in the case of DR. SURINDER SINGH JAMWAL & ANR. VS. THE STATE OF JAMMU & KASHMIR & ORS., JT 1996 (6) SC 725. The decision of the Supreme Court in the case of JAMMU & KASHMIR PUBLIC SERVICE COMMISSION VS. DR. NARINDER MOHAN, 1994 (2) SCC 630 was relied upon, and it was held that the applicant therein could apply afresh only.

19. This Tribunal had considered this controversy in the case of DR. DIVPREET SAHNI & OTHERS VS. GOVERNMENT OF NCT OF DELHI & OTHERS, OA No. 988/2001, decided on



19.9.2002. Herein also the said persons had been appointed firstly on ad hoc basis for a period of six months. It was reiterated that they could continue with ad hoc appointment subject to the appointment of regular incumbents, and when regular incumbents became available, the question for consideration was as to if the said persons had gained any such right or not? The applications were dismissed holding:

"22.....it was clearly mentioned that appointments were to be made on ad hoc basis. When a suggestion of ad hoc appointment is made, only few persons would apply. On the other hand, when regular appointments are notified, a large number of eligible candidates are tempted to apply. To this extent, the applicants in these OAs have been selected from amongst a much lesser number of competitors than would have been the case if regular selection had been notified. Further, there is always the likelihood of favouritism when departmental committees are set up to interview candidates from the open market. When UPSC gets associated, objectivity and impartiality also steps in. That is precisely the reason why the UPSC and for that matter the State Public Service Commissions have been set up as constitutional bodies who devise their own procedure albeit in consultation with the department concerned, for selecting candidates for various services. We have in the foregoing paragraphs also noticed, after a discussion of the various Court cases relied upon by the applicants, that nothing will assist their case, whether it is the case of Dr. Jitender Singh (supra) or that of Medical Officers (Unani), or for that matter any other case. Consideration of the candidature of the applicants in the manner sought by them treating them as forming a separate block and by directing the UPSC to consider their claims wholly on the basis of their performance in ad hoc service, is something unknown to the relevant rules and the procedure. Following of such a hybrid procedure cannot be sustained in law, and for this, reasons are available in plenty in the cases of J&K

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Public Service Commission & Others (Supra)
and Shri Sandeep & Others (supra)."

20. The Supreme Court in the case of **STATE OF MADHYA PRADESH & ANOTHER VS. DHARAM BIR**, (1998) 6

SCC 165 further held:

"34. The respondent having worked in an ad hoc capacity on the post of Principal might have gained some administrative experience but the same cannot be treated as equivalent to his knowledge in the field of Engineering. A compounder, sitting for a considerably long time with a doctor practicing in modern medicine, may have gained some experience by observing the medicine prescribed by the doctor for various diseases or ailments but that does not mean that he, by that process, acquires knowledge of the human anatomy or physiology or the principles of pharmacology or the field of action of any particular medicine or its side effects. The compounder cannot, merely on the basis of experience, claim a post meant exclusively for persons having MBBS or other higher degrees in medicine or surgery. The plea of experience, therefore, must fail. Moreover, this would amount to a relaxation of the Rule relating to educational qualification. Power to relax the Rule vests exclusively in the Governor as provided by Rule 21. This power cannot be usurped by the Court or the Tribunal."

21. At this stage, it is relevant to mention the decision rendered by the Supreme Court in the case of **AHMEDABAD MUNICIPAL CORPORATION VS. VIRENDRA KUMAR JAYANTIBHAI PATEL**, (1997) 6 SCC 650. The Supreme Court in that case went on to conclude that even sympathetic consideration will not out-way the legal position.

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22. Therefore, as is apparent from the above, once the appointment was on contract basis, the applicant could only be regularized in accordance with rules.

23. In the pleadings, it has been pointed that certain other persons who are similarly situated have been so appointed.

24. We have already referred to above the plea of the respondents that the applicants had participated in the test. They were unsuccessful but keeping in view the opening of new hospital, they were taken on contract basis.

25. Additional affidavit had been filed. It clearly indicates that some other persons who had been taken on regular basis had qualified the test held in September, 2002. The applicants have had appeared below the names of the successful candidates. The respondents' learned counsel made available to us their names who have been arrayed as parties. The applicants could not make *the* marks because Ms. Anju Chanana (the applicant), was a general candidate and she had scored 27 marks and was declared failed. So far as Ms. Pushpa Sinha (the other applicant) is concerned, she has scored 16 marks in the OBC category and was declared failed and other OBCs who have been arrayed as private respondents had scored more marks than the present applicants. Consequently, the applicants cannot make grievance on that count.

26. When in the common test, other than the applicants have scored higher marks and they are so appointed, necessarily the meritorious persons only are stated to have been appointed.

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27. As regards the plea of 'equal pay for equal work', at the outset, it must be stated that the applicants had joined on fixed contract. They have not drawn parity that they are discharging the same duties and similar functions as regularly appointed persons. Once the applicants had been appointed on contract basis, in our considered opinion, they cannot ^{press} put into service the said rule. Somewhat similar was the situation in the case of **APANGSHU MOHAN LODHI & ORS. v. STATE OF TRIPURA & ORS.**, 2004(1) AISLJ 251. The facts were little different. A principle rejecting similar claim had been stated which reads:


"7. The appellants herein have been engaged on purely contractual basis. It is not the case of the appellants that they were appointed in terms of the extant rules for appointment of regular teacher. The question of determining the pay scale of a person serving the institute arises only in the event he is appointed in terms of the statute operating in the field and not by reason of the terms and conditions of a contract entered into by and between the State and the appellants. The appellants, therefore, in our opinion, had no legal right to obtain a writ of or in the nature of *mandamus* directing the respondents herein to grant the minimum scale of pay of the Assistant Professors. A direction to pay salary at the minimum of the pay scale of the post of Assistant Professor could not be given in favour of the appellants as they were not full time employees. Mr. Parikh has drawn our attention to the fact that apart from working as Part-Time Lecturers, the appellants were also bound to check the answer books of the examination and also set question papers in University examinations. The respondents in their counter affidavit have also explained, the said situation stating that for such work they are entitled to get extra remuneration from the University."


28. In face of the aforesaid, they must go as per the contract.

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29. The applicants, who are appointed on contract basis at a particular salary, cannot claim parity with regularly appointed persons.

30. For these reasons, the Original Applications being without merit must fail and are dismissed but subject to the statement that was made by the respondents' learned counsel at the Bar.


(S.K.Naik)
Member (A)


(V.S.Aggarwal)
Chairman

/NSN/