

Central Administrative Tribunal
Principal Bench
New Delhi

T.A.No.352/2009
M.A.No.1284/2014

Order Reserved on: 24.07.2015
Order pronounced on 29.09.2015

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

1. Ms. Harleen Kaur (Entomologist)
Age about 45 years
w/o Mr. D. S. Mahendru
R/o 28/111 West Patel Nagar,
New Delhi-110 008.
2. Dr. Jaysree Menon(Entomologist)
Aged about 54 years
w/o P. Chandermohan
R/o Flat No.17, Rashtrapati Bhawan Appt.
Sector X, Plot No.3, Dwarka
New Delhi-110 075.
3. Mr. Parvez Akhtar(Entomologist)
Aged about 57 years
s/o Shri Shafiullah
R/o 3A Noor Nagar, Main Road
Jamia Nagar,
New Delhi-110 025.
4. Ms. Shalini Kohli (Entomologist)
Aged about 39 years
w/o Mr. Peeyush Kohli
R/o H-193, Phase I, Ashok Vihar,
Delhi-110 052.
5. Dr. (Ms) Mamta Singh (Entomologist)

Aged about 42 years
W/o Mr. Vinod Verma
R/o 1101/37, Faridabad (Haryana).

6. Mr. Rajiv Ranjan Sinha(Entomologist)
Aged about 39 years
S/o Shri Umesh Prasad
R/o Flat No.400, MIG, Pocket-2
Sector 10, DDA Flat, Narela,
Delhi.

7. Ms. Babita Bisht(Entomologist)
Aged about 41 years
W/o Shri Akhilesh Kamal
R/o B-56, Krishna Enclave
Co-Co-Maltin Compound
Ghaziabad. ..Applicants

(By Advocates: Sh. M.K.Bhardwaj)

Versus

North Delhi Municipal Corporation & Ors.

1. The Director
Local Bodies
Delhi Secretariat
Players Building, IP Estate
New Delhi.
2. The Commissioner
North Delhi Municipal Corporation
Dr. S.P.M.Civic Centre
Minto Road
New Delhi.
3. The Commissioner
South Delhi Municipal Corporation
Dr. S.P.M.Civic Centre
Minto Road

New Delhi.

4. The Commissioner
East Delhi Municipal Corporation
Patpar Ganj, Delhi.

... Respondents

(By Advocates: Sh. R.N.Singh for R-2, Shri S.N.Verma for R-3
and Sh. S.P.Jain for R-4)

ORDER

By V. Ajay Kumar, Member (J):

M.A.No.1284/2014, for amendment of the TA is allowed, in the circumstances and for the reasons mentioned therein, and accordingly, proceeded to hear the arguments in the TA. The applicants in the TA, who are seven in number and who are working as Entomologists, on contract basis, under the respondent-Municipal Corporations of Delhi, filed the present application, seeking the following relief(s):

- (a) Issue any appropriate writ, order or direction directing the respondents to pay the applicants full emoluments including usual allowances in the pay scale of Rs.6500-10500 from the date of appointment with all arrears of pay.
- (b) To direct the respondents to treat the applicants as regular Entomologist in the pay scale of Rs.6500-10500/7450-11500 from due date and grant all consequential benefits.
- (c) To declare the action of respondents in not treating the applicants as regular Entomologist as illegal and issue appropriate directions for regularizing the services of applicants as Entomologist with all consequential benefits.
- (d) Pass any other further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- (e) To allow the petition with cost.

2. The brief facts as narrated in the application are as under:

An epidemic of dengue with haemorrhagic fever had occurred in the NCT of Delhi in the year 1996, which was worst ever in India's history. Due to the dengue mortality was 423 and morbidity was 10252 in the year 1996 which seems to be highest in the recent history. Thereafter the NMEP as well as the Govt. functionaries have resolved to prevent any such occurrence in future. For this a workshop was organised by MDC on 14-3-97 where Addl. Commissioner (Health), MCD along with other doctors of NICD, NMEP Entomologists and all the DMOs had participated, where it was decided to establish the Entomologists Unit each zone under the Entomologist to monitor vector surveillance and vector density in the zone. More so to monitor larval density of aedes mosquitoes in houses to calculate house index, container index, etc. addition to above the duties of Entomologist includes programme of killing adult mosquitoes and breeding of mosquitoes in and around house of the zone. Regular anti-larval measures and supervision by domestic breeding checkers and mass awareness campaign should also be lodged for prevention and control of dengue. Dengue haemorrhagic fever had been declared dangerous and notifiable disease under the DMCA Act by the order of Commissioner of MCD. A meeting was held under the Chairmanship of Hon'ble Health Minister on dated 18-3-97, where it was decided to appoint 12 Entomologists, one in each zone immediately on fixed rate. This has also been raised before the High Court of Delhi in the form of a PIL wherein appropriate directions have been issued to the authorities to be more meticulous in methodology and man power to tackle the situation.

3. Accordingly, the respondents by way of a public Advertisement, vide Annexure P1, invited applications for engaging 12 Entomologists on contract basis in Anti-Malaria Department of Municipal Corporation of Delhi on fixed emoluments of Rs.5000/- per month for a period of six months initially and likely to be extended. It was stated in the said Advertisement that persons possessing M.Sc. degree in Zoology with Entomology of a recognized University or equivalent with three years experience in teaching and/or Research and/or control in the field of Medical Entomology or Filariology as the essential qualifications, and Training in Advanced Medical Entomology or Malariology or Filariology, as desirable qualifications.

4. The applicants having fully satisfied the requirements under the above advertisement have submitted their applications and accordingly they were interviewed, along with others, by a duly constituted Selection Committee consisting of Additional Commissioner (H), MHO, Deputy MHO (Malaria), DHO (Malaria) and AO (Malaria). On their selection, the applicants No.1 to 3 were appointed as Entomologists, on contract basis initially in the Unified Municipal Corporation of Delhi, for a period of six months w.e.f. 21.07.1997 to 31.12.1997 and the applicants No.4 to 7 were appointed w.e.f. 01.04.1998. The same has been extended from time to time till date. After the trifurcation of the respondent-Municipal Corporation, they were allotted to the respective Municipal Corporations. It is also submitted that the remuneration of the applicants was also enhanced from time to time. The respondents also extended all the Leave benefits, on par with regular employees, to the applicants w.e.f. 30.03.2005.

5. When the representations made by the applicants seeking for payment of regular pay scales attached to the post of Entomologists, and for

regularisation of their services as Entomologists against the sanctioned posts, were unanswered, they filed WP(C) No.18006/2005 to 18012/2005, which were later transferred to this Tribunal as the present TA.

6. Heard Shri M.K.Bhardwaj, the learned counsel for the applicants and Shri R.N.Singh, Shri S.N.Verma and Shri S.P.Jain, the learned counsel for the respondents, and perused the pleadings on record.

7. Earlier, this Tribunal by order dated 18.09.2009, after hearing both sides, disposed of the TA as under:

"13. In the above view of the matter, as there has been a Resolution and Commissioners approval to enhance their emoluments, which is pending before the Finance Committee, we direct the respondent-MCD to take a final decision in the matter within a period of two months from the date of receipt of a copy of this order, so that the applicants are paid the emoluments with arrears from 19.2.2007 and continue to be paid such emoluments unless revised upwardly in future.

14. Insofar as the regularization is concerned, in view of decision in Umadevis case (supra) and also the recent decision of Apex Court in Official Liquidator v. Dayanand & others, (2008) 10 SCC 1, we cannot issue such a direction. But being a category not having any reference in Umadevi (supra), the different set of decisions by the Apex Court on contractual worker covers the issue in all fours. We, in this process, direct the respondents to finalize the recruitment rules to the post of Entomologist within a period of three months from the date of receipt of a copy of this order and thereafter whenever the posts are notified, applicants shall be allowed to apply and participate in the selection process and in such an event, not only the age relaxation be accorded to them but also weightage for their past experience shall also be considered. If they are appointed on being eligible, law shall take its own course. However, till then, respondents shall maintain the status quo as to the continuance of the applicants as Entomologist.

15. With this, TA stands disposed of. No costs."

8. However, the applicants filed RA No.231/2010 contending that the finding of this Tribunal while disposing of the TA on 18.09.2009, that "there is no availability of the posts of Entomologists", basing on which their prayer for regularisation was mainly not found favour with the Tribunal, is an error apparent on the face of the record and that 12 vacancies of Entomologists are available and in 7 vacancies out of the same, the applicants are working.

They further submitted that a letter No.AMO/HQ/D-1521 dated 10.12.2008 addressed to the Director (Personnel), Central Establishment Department, Municipal Corporation of Delhi clearly shows that the sanctioned strength of the Entomologists is 12 and out of the same, 7 are already filled up and the applicants in spite of exercising due diligence could not place the same before this Tribunal at the time of disposal of the TA. Finding merit therein, the said RA was allowed on 05.03.2014, and the TA was restored to its original number.

9. In the meanwhile, the respondents started paying the regular pay scale attached to the post of Entomologists along with all the usual allowances thereto to the applicants.

10. Shri M.K.Bhardwaj, the learned counsel appearing for the applicants, submits that the applicants are fully qualified and eligible for appointment on regular basis as Entomologists as on the date of their initial appointment itself. They are also possessing all the essential qualifications for the post of Entomologists, as required under the Recruitment Rules, approved vide Resolution No.52, dated 17.06.2011 for the post of Entomologists in the Municipal Corporation of Delhi. Out of the total number of 12 sanctioned posts of Entomologists, the applicants are working against 7 posts for the last more than 16 years, after having been selected by a duly constituted Selection Committee and in pursuance of a valid advertisement whereunder full and fair opportunity was provided to all. Accordingly, the learned counsel submits that the applicants are fully entitled for consideration of their cases for regularisation as Entomologists.

11. The learned counsel further submits that one Shri G.S.Nelson was also appointed, in the similar circumstances, in the year 1996, i.e., at the time of

appointment of the applicants, as Physiotherapist, initially on contract basis, vide Office Order dated 09.01.1996, and later on ad hoc basis vide Office Order dated 12.11.1998. The respondents, in relaxation of the provisions of the Recruitment Rules for the post of Physiotherapist, regarding age limit, educational qualification and employment exchange procedure, appointed him on regular basis with effect from 18.01.2000, vide Office Order dated 04.02.2000. But the respondents have not extended the same benefit to the applicants though they are also similarly situated, and the said action is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

12. It is also submitted that the applicants were regularly sent for trainings and workshops on various subjects relating to Malaria and Dengue control and other related subjects for all these about 16 years. They have been working hard, to the best satisfaction of one and all and without any blemish, in view of the pressing needs in Delhi relating to Malaria and Dengue menaces occurring every year.

13. The learned counsel, to buttress his contentions, placed reliance on the Constitution Bench Judgment of the Hon'ble Apex Court in **Secretary, State of Karnataka and others v. Umadevi(3) and Others**, (2006) 4 SCC 1 and on the other decisions referred hereunder.

14. Shri S.N.Verma, the learned counsel appearing for SDMC, and Shri R.K.Jain, the learned counsel appearing for EDMC, and Shri R.N.Singh, the learned counsel for NDMC, not disputed the fact of prevalent menaces of

Malaria and Dengue, and its recurring raising on every year in Delhi, and the satisfactory service being rendered by the applicants, and also the compelling need of their services till the posts of Entomologists are filled up on regular basis.

15. However, they pray for dismissal of the OA on the following grounds:

- i) In view of the Constitution Bench Judgement of the Hon'ble Apex Court in **Secretary, State of Karnataka and Others v. Uma Devi(3) and Others**, (2006) 4 SCC 1 and other subsequent decisions, no Court/Tribunal can issue directions for regularisation of services of any employee.
- ii) Though the Recruitment Rules for the post of Entomologists, a category 'B' post, were approved and sent to Service Department of GNCTD but the same are not notified till date. In the absence of the duly notified Recruitment Rules, no post can be filled up either by way of regularisation or by way of regular recruitment.
- iii) The applicants are being continued as Entomologists and being paid the minimum of the regular pay scales attached thereto by virtue of the orders of this Tribunal in TA No.352/2009, dated 18.09.2009. Hence, they cannot seek regularization on the basis of their continuation and payment of regular pay scale.
- iv) The applicants were not selected as per the proper and valid selection process at the time of their initial engagement on contractual basis.

- v) Applicants No.2 and 3 were over-aged and Applicant No.6 did not have the required qualification at the time of their initial engagement, and after relaxing the said conditions, they were appointed on contract basis.

16. The law relating to regularisation of services of Casual/Daily Wage/ Temporary/ad hoc/contract employees can be divided into two parts, i.e., one, prior to the decision of the Constitution Bench in **Uma Devi** (supra) and another, after the said Judgement. Both sides, placed reliance on the same judgement and the other decisions where under the said Judgement was followed and explained.

17. In **Uma Devi** (supra) the Constitution Bench of the Hon'ble Apex Court reviewed the entire case law, prior to the said decision, on the issue of regularization of services and observed as under:

"54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents. "

In view of the above observation, there is no need to consider any of the decisions prior to **Uma Devi's** decision.

18. Since, in **Nihal Singh & Others v. State of Punjab and Others**, (2013) 14 SCC 65, which we have quoted in the following paras, the decision of the Constitution Bench Judgement in **Uma Devi** is explained in detail, we are not quoting Uma Devi separately.

19. In **Official Liquidator v. Dayanand**, (2008) 10 SCC 1, the Hon'ble Apex Court, noticing that in **U.P.State Electricity Board v. Pooran Chandra Pandey**, (2007) 11 SCC 92, a 2 Judge Bench of the Hon'ble Apex Court, observed that the decision of the Constitution Bench of **Uma Devi** is

in conflict with the Judgement of the 7 Bench in **Mrs. Maneka Gandhi v. Union of India**, (1978) 1 SCC 248, clarified that "the comments and observations made by the two judges bench in 'Pooran Chandra Pandey' should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunals and other judicial fora nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench".

20. In **Nihal Singh & Others v. State of Punjab and Others**, (2013) 14 SCC 65, the Hon'ble Apex Court observed as under:

"19. No doubt that the powers under section 17 are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts.

20. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. The State has to create them by a conscious choice on the basis of some rational assessment of the need.

21. The question is whether this court can compel the State of Punjab to create posts and absorb the appellants into the services of the State on a permanent basis consistent with the Constitution Bench decision of this court in Umadevi's case. To answer this question, the ratio decidendi of the Umadevi's case is required to be examined. In that case, this Court was considering the legality of the action of the State in resorting to irregular appointments without reference to the duty to comply with the proper appointment procedure contemplated by the Constitution.

"4. ... The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have

not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over."

(emphasis supplied)

It can be seen from the above that the entire issue pivoted around the fact that the State initially made appointments without following any rational procedure envisaged under the Scheme of the Constitution in the matters of public appointments. This court while recognising the authority of the State to make temporary appointments engaging workers on daily wages 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 appointments cannot become an alternate mode of recruitment to public appointment.

22. It was further declared in Umadevi (3) case [State of Karnataka v, Umadevi (3), 2006 SCC (K&S) 753] 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. This court 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.

23. Even going by the principles laid down in Umadevi's case, we are of the opinion that the State of Punjab cannot be heard to say that the appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.

24. In our opinion, the initial appointment of the appellants can never be categorized as an irregular appointment. The initial appointment of the appellants is made in accordance with the statutory procedure contemplated under the Act. The decision to resort to such a procedure was taken at the highest level of the State by conscious choice as already noticed by us.

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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.

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37. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi's judgment cannot become a licence for exploitation by the State and its instrumentalities."

21. In **Amkant Rai v. State of Bihar and Ors.**, 2015(3) SCALE 505, the Hon'ble Apex Court observed as under:

"9. Insofar as contention of the respondent that the appointment of the appellant was made by the principal who is not a competent authority to make such appointment and is in violation of the Bihar State Universities Act and hence the appointment is illegal appointment, it is pertinent to note that the appointment of the appellant as Night Guard was done out of necessity and concern for the college. As noticed earlier, the Principal of the college vide letters dated 11.03.1988, 07.10.1993, 08.01.2002 and 12.07.2004 recommended the case of the appellant for regularization on the post of Night Guard and the University was thus well acquainted with the appointment of the appellant by the then principal even though Principal was not a competent authority to make such appointments and thus the appointment of the appellant and other employees was brought to the notice of the University in 1988. In spite of that, the process for termination was initiated only in the year 2001 and the appellant was reinstated w.e.f. 3.01.2002 and was removed from services finally in the year 2007. As rightly contended by the learned counsel for the appellant, for a considerable time, University never raised the issue that the appointment of the appellant by the Principal is ultra vires the rules of BSU Act. Having regard to the various communications between the Principal and the University and also the education authorities and the facts of the case, in our view, the appointment of the appellant cannot be termed to be illegal, but it can only be termed as irregular.

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14. In our view, the exception carved out in para 53 of Umadevi is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bear any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularization viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of Clerk was regularized w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 03.1.2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits be paid from 01.01.2010."

22. In **Abraham Jacob and Others v. Union of India**, 1998 SCC (L&S) 995, the Hon'ble Apex Court held that draft rules can be acted upon, where there are no rules governing the matter.

23. In **State of Jharkhand and Others v. Kamal Prasad and Others**, (2014) 7 SCC 223, the Hon'ble Apex Court, after considering *Uma Devi* (supra), observed that the respondents therein, who have been working as Assistant Engineers on ad hoc basis since long time, are entitled for extending the benefits of *Uma Devi*.

24. In **Sonia Gandhi & Others v. Govt. of NCT of Delhi & Ors**, WP(C) No.6798/2002, decided on 06.11.2013 of the Hon'ble High Court of Delhi, the Hon'ble High Court of Delhi, after considering the engagement and continuation of number of contract para-medical staff, in view of the necessity and public convenience, and also after considering the Constitution Bench decision in *Uma Devi* (supra), directed the respondents to assess the manpower requirement in all its departments and to frame a one-time policy of regularization by amending the existing Recruitment Rules and accordingly to consider the existing contractual employees for regularization.

25. In **State of Karnataka & Others v. M.L.Kesari & Others**, AIR 2010 SC 2587, having held that the respondents therein are entitled for extension of benefit of para 53 of ***Uma Devi*** (supra) also directed that, "if the employees who have completed ten years service do not possess the educational qualifications prescribed for the post, at the

time of their appointment, they may be considered for regularization in suitable lower posts.”

26. Admittedly, the respondents engaged the services of the applicants as Entomologists, on contract basis, during the years 1996 and 1997, to meet the great need and urgency, i.e., to curb the menace of Malaria and Dengue. It is also an admitted fact, even as on today, in Delhi, more glooming situation with regard to the Dengue and the other related diseases is prevalent and giving the public and administration of Delhi, many sleepless nights. Therefore, there is a great need for the services of Entomologists even as on today in Delhi. That is why the respondents though engaged the applicants, initially, only for a period of six months, but continued them till date, i.e., for the last about 16 years.

27. The Recruitment Rules for the post of Entomologist in Municipal Corporation of Delhi, which were approved vide Resolution No.52 dated 17.06.2011, are as follows:-

1	Name of post	Entomologist
2	No. of post	12
3	Classification	Category `B’
4	Scale of pay	Rs.9300-34800 GP Rs.4600
5	Whether selection or non-selection post	Not applicable
6	Age	22-35 years (relaxation 5 years for SC/ST and 3 years for OBC)
7	Educational qualification	<i>Essential</i> -Master’s Degree in Zoology with Entomology of recognized University or equivalent.

		<i>Desirable</i> -3 yrs. Experience in teaching/research/control of the field of Medical Entomology or Malariology or filariology.
8	Whether age and educational qualifications prescribed for direct recruits will apply in case of promotions	Not applicable
9	Whether a benefit of previous similar	No
10	Period of probation, if any	2 years
11	Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and % of vacancy to be filled by various methods	By direct recruitment
12	In case of recruitment by promotion or deputation/transfer, grades from which promotion or deputation/transfer to be made	Not applicable
13	If a DPC exists what is its composition	DPC consists of: 1. Addl. Com.(H) Chairman 2. ADC (Health) Member 3.Dy. MHO (Mal. & OVBD) Member
14	Circumstances in which UPSC is to be consulted to make recruitment	As required under the Union Public Service Commission (Exemption from Consultation) Regulation, 1958

28. It is also an admitted fact that all the applicants (except applicant No.6, as contended by the respondents) are possessing the essential educational qualifications and the required experience, as on the date of their initial appointment, on contract basis and also as per the aforesaid approved Rules. The only objection raised by the respondents is that applicants No.2 and 3 were over-aged and applicant No.6 did not have the required qualification at the time of their initial engagement, in respect of their eligibility. However, it is also stated that after relaxing the same, they have appointed them on contract basis.

29. It is the specific contention of the respondents that though the Recruitment Rules for the post of Entomologists have been approved but the same are not notified till date and in the absence of the same, they cannot make any regular recruitment, and they cannot also regularise the services of the applicants. However, it is to be seen that the applicants are working against the seven posts of Entomologists, out of the total 12 sanctioned posts. Though the respondents submit that the applicants are being continued, on contract basis, by virtue of the orders dated 18.09.2009 of this Tribunal in this TA, but admittedly, they continued the services of the applicant from 1996/1997 to till that date, without any such orders were in existence. Further, the said order dated 18.09.2009 is recalled in RA No.231/2009 by order dated 05.03.2014, but even thereafter the respondents continued the services of the applicants till date, on their own, without there being any intervention of any Court/Tribunal. It is also to be seen that the respondents considered the cases of others who were also appointed in the year 1996, in the similar circumstances, i.e., to counter the Dengue menace, such as Physiotherapist on contract basis and later appointed them on regular basis by relaxing the relevant Recruitment Rules regarding age, educational qualifications and employment exchange procedure.

30. In view of the decision of the Hon'ble Apex Court in **Abraham Jacob** (supra) to the effect that when there are no rules governing the recruitment, the draft rules can be acted upon, the contention of the

respondents that since the RRs though approved but not notified, they cannot consider the applicants for regularization or cannot proceed with the regular recruitment, is unsustainable. Further, as observed in **Nihal Singh** (supra) when the persons were engaged and continued, due to sheer need and necessity of the administration and in public interest, later denying them regularization, is not permissible.

31. In the light of the aforesaid decisions of the Hon'ble Apex Court and of the facts in the present TA, we hold that the appointment and continuation of the applicants, in the posts of Entomologists, can never be categorised either as illegal or irregular appointments. The exception carved out in Para 53 of **Uma Devi** (supra) and also in **Nihal Singh** (supra) are applicable to the facts of the present case.

32. In the circumstances, the TA is allowed and the respondents are directed to consider the cases of the applicants for regularization as Entomologists, w.e.f. the date of their appointment, by granting relaxations, such as age, etc., wherever necessary, with all consequential benefits. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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