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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

**No. O.A. 350/01000/2015
M.A. 350/00029/2016**

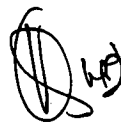
Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member

1. Shri Uday Chand Khamaru,
Son of Late Mahadeb Khamaru,
Aged about 35 years,
Ex-Trained Graduate Teacher of
Farakkar Barrage Project Higher Secondary School,
Residing at Qrts. No. C-58/IV, Street-5,
Farakka Barrage Project, MSD,
West Bengal, Pin – 742 212.
2. Shri Tapas Roy Sharma,
Son of late Tarasankar Roy Sharma,
Aged about 48 years,
Ex-Post Graduate Teacher of
Farakkar Barrage Project Higher Secondary School,
Residing at Subhas Pally,
P.O. : Jhaljhalia, Malda,
West Bengal, Pin – 732 102.
3. Smt. Dipanwita Pradhan,
Wife of Bireswar Pradhan,
Aged about 35 years,
Ex-Post Graduate Teacher of
Farakkar Barrage Project Higher Secondary School,
Residing at Qtr. No. C/38, Block-5, Road-6,
Farakka Barrage, MSC,
West Bengal, Pin – 742 212.

.. Applicants.

- V E R S U S -

1. Union of India through the
Secretary to the Govt. of India,
Ministry of Water Resources,
River Development & Ganga Rejuvenation,
Shram Shakti Bhawan, Rafi Marg,
New Delhi – 110 001.
2. The General Manager,
Farakka Barrage Project,
Dist. Murshidabad,
West Bengal, Pin : 742 212.



3. The Superintending Engineer,
Circle No. 1, Farakka Barrage Project,
Dist. Murshidabad, West Bengal,
Pin : 742 212.
4. The Senior Administrative Officer,
Farakka Barrage Project,
Dist. Murshidabad, West Bengal,
Pin : 742 212.
5. The Principal (Academic & Administration),
Farakka Barrage Project,
Higher Secondary School,
P.O. Farakka Barrage,
Dist. Murshidabad,
Pin : 742 212.

.. Respondents

For the Applicant : Mr. S.K. Dutta, Counsel
For the Respondents : Ms. P. Goswami, Counsel

Order dated: 09.12.2016

ORDER

Per Mr. Justice Shri Vishnu Chandra Gupta, Judicial Member:

This petition has been filed by the applicants, who are Teachers on Contract basis at Farakka Barrage Project, Higher Secondary School and whose services were discontinued w.e.f. 1.1.2015. They filed this application under Section 19 of Administrative Tribunal's Act seeking the following reliefs:-

- "8.a. An order granting leave to the applicants under Rule 4(5)(a) of the Central Administrative Tribunals (Procedure) Rules, 1987 to move this application jointly.
- b. An order quashing and/or setting aside the impugned Press Notification dated 23.6.2015.
- c. An order directing the respondents to continue the applicants as Teachers against the posts held by them treating the period of gap as on duty as Teachers on contract basis and to extend all consequential benefits to



- the applicants.*
- d. *An order directing the respondents to consider the case of the applicants for regularization/regular absorption as Teachers in the / against the respective posts which was held by them after granting age relaxation, if necessary.*
 - e. *An order directing the respondents to produce/cause production of all relevant records.*
 - f. *Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."*

2. The brief facts of the case are that the applicant in pursuance to a notification for filling up the posts of Teacher on contractual basis submitted their applications and after completing the process of selection was selected for appointment. The offers of appointments were issued to the applicants, on 15.7.2009 to petitioner No. 1, Sri Uday Chand Khamaru and Sri Tapas Roy Sharma and offer of appointment was issued to Smt. Dipanwita Pradhan on 1.1.2010. All the offers of appointments were same except the change of date. Hence, for ready reference we are extracting the offer of appointment issued to petitioner No. 1, Sri Uday Chand Khamaru as exemplar:-

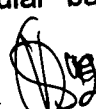
No. E/A-20(JCM)/XV/2189(7)
GOVERNMENT OF INDIA
MINISTRY OF WATER RESOURCES
OFFICE OF THE GENERAL MANAGER
FARAKKA BARRAGE PROJECT
P.O. FARAKKA BARRAGE
DIST. MURSHIDABAD
WEST BENGAL
PIN = 742212

Dated: 15.7.2009

MEMORANDUM

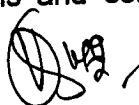
Shri/Smt. Uday Chand Khamaru is hereby offered an appointment to the post of TGT (Bengali) under Farakka Barrage Project Higher Secondary School, Post Office – Farakka Barrage, Dist. Murshidabad, West Bengal purely on contract basis with a consolidated salary of Rs. 6000/- (Rupees Six thousand) only per month for a period of one year from the date of his/her joining in the post on the following 'Terms & Conditions' –

- (i) that on the basis of the service rendered on contract basis, he/she will not have any claim/entitlement for regularization or for seniority or appointment on regular basis in the F.B.



Project.

- (ii) that his/her contract appointment is liable to be terminated at any point of time by giving one month notice without assigning any reasons, whatsoever.
- (iii) That he/she will maintain decent conduct and discipline.
- (iv) That the contract will be for one year and may be renewed further entirely at the discretion of F.B. Project.
- (v) That he/she is liable to serve in FBPHS School and would perform all jobs related to academics including evaluation of answer scripts, invigilation during examination and will also be responsible for performing other duties as assigned by the Principal.
- (vi) That apart from the consolidated salary as stated above, he/she will not be entitled to any other facilities like other regular staff.
- (vii) That it is abundantly made clear that the assignment is purely on temporary basis, as a stopgap arrangement and confers no right of appointment or his/her placement in the Farakka Barrage Project on termination or expiry of contract.
- (viii) That no travelling allowance will be admissible for his/her joining to the post and for return journey on termination or expiry of contract.
- (ix) That he/she will not be allowed to any payment for summer/winter/monsoon vacations.
- (x) That he/she will be entitled to one day of Casual Leave for a completed month of service. No medical or earned leave or any other leave except Casual Leave will be admissible.
- (xi) That it is further explicitly made clear that the offer made through this letter shall automatically come to an end after one year of his/her service or termination of contract by the employer or joining of regular teacher in his/her position, whichever comes first.
- (xii) That if any information given or declaration made by him/her proves to be false at any stage of time or if it is found that he/she has intentionally or unintentionally suppressed any material information relevant for the offer, he/she will liable to be removed from this contract basis service forthwith.
- (xiii) That accommodation on written request, may be provided in the Project Township as per availability on payment of licence fee on monthly basis.
- (xiv) (a) that if Shri/Smt. Khamaru is willing to accept the offer of appointment on the aforesaid terms and conditions he/she



may report himself/herself for duty to the office of the Principal, FBPH Secondary School, P.O. Farakka Barrage, Dist. Murshidabad, West Bengal within 15 days from the date of issue of this offer failing which the offer will stand cancelled and the employer will not be bound to re-consider for revival of offer.

(b) at the time of joining, the candidate should furnish an attestation form duly filled in with the identity certificate and a character certificate (specimen enclosed) attested by a District Magistrate or a Sub-Divisional Magistrate or Ex. Employer.

This issues with the approval of the General Manager, Farakka Barrage Project.

Encl.: - As stated.

**Sr. Administrative Officer(I/C)
Farakka Barrage Project**

**To
Sri Uday Chand Khamaru,
S/o. Mahadeb Khamaru,
Vill. - Khetput,
Post - Dhobapara,
P.S. - Balagarh,
Hooghly (WB)
Pin - 712512**

3. The applicant No. 1, Sri Uday Chand Khamaru, accepted the offer of appointment and joined the post on 30.7.2009, applicant No. 2, Sri Tapas Roy Sharma accepted the offer of appointment and joined the post on 27.7.2009 and applicant No. 3, Smt. Dipanwita Pradhan joined the post on 19.1.2010 and consequently they were continuing on their posts.

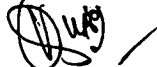
The letter of acceptance of Sri Uday Chand Khamaru is extracted hereinbelow:-

**"To
The Principal,
Farakka Barrage Project Higher Secondary School,
Farakka Barrage Project.**

Subject : - Acceptance of offer.

Sir,

In reference to Sr. Administrative Officer, Farakka Barrage Project's letter No. E/A-20(JCM)/XV/2189(7) regarding appointment to



the post of TGT (Bengali) purely on contract basis with a consolidated salary of Rs. 6000/- for a period of one year from the date of my joining in the post or till the joining of regular incumbents as per existing Recruitment Rules, whichever is earlier as a stop gap arrangement, I hereby convey my acceptance on the terms and conditions attached in your letter. I further promise that I shall never claim for regularization in the services or claim appointment as a teacher in FBPHS School.

Yours faithfully,

Udoy Chand Khamaru
TGT (Bengali)
FBPHS School"

One of the order of extension dated 4.8.2010 is also extracted
hereinbelow:-

NO. 2/12/2007-E-III
Government of India
Ministry of Water Resources

Rafi Marg, Shram Shakti
Bhawan,
New Delhi, 4/8/2010

To

The General Manager,
Farakka Barrage Project,
District Murshidabad,
West Bengal – 742 212.

Subject:- Filling up of the posts of PGT/TGT/Primary Teacher in
the

Farakka Barrage Project Higher Secondary School on
contract basis – continuation /extension thereof - reg.

Sir,

I am directed to refer to this Ministry's letter of even number dated 5/5/2008 & your letter No. E/A-135 Contract Teacher/2252 (we) dated 22/6/2010 and the subsequent reminders dated 14.7.2010 and 21.7.2010 on the subject mentioned above and to convey approval of the competent authority for the continuation of the contract appointments of teaching staff of FBPHSS (5 PGTs/4TGTs/2 Primary Teachers) till the completion of next academic session, i.e. upto 2011-2012 or till the joining of regular incumbents, whichever is earlier.

The other terms and conditions will remain the same.

Yours faithfully,

(N.K. GUPTA)
Under Secretary to the Government of India
Tele:- 2371 0333"



4. During the course of continuance of the job the applicant made a prayer to regularise their services to the post of PGT, TGT and Primary Teacher. A representation has been given by the applicant and some other persons for regularisation and for enhancement of the payment at par with contractual teachers of KVS. So far as the claim of enhancement of the salary is concerned the same has been accepted but no decision has been taken by the authorities with regard to regularisation of their services. But since 1.1.2015 the services of the applicants were discontinued and they were not allowed to work. It has been contended that on 1st of June, 2015 approval for extension of contract appointment of 5 PGT, TGT and 2 Primary Teachers was accorded for a period of six months w.e.f. 1.1.2016 to 30.6.2016. The copy of the order granting extension is annexed as Annexure A-15 to the O.A. and is extracted hereinbelow:-

**No. A-2/12/2007-E-III)FBPE
Government of India
Ministry of Water Resources RD & GR**

**Shram Shakti Bhawan, Rafi Marg,
New Delhi, Dated 1st June, 2015.**

To

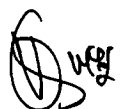
**The General Manager,
Farakka Barrage Project,
Distt. – Murshidabad,
West Bengal-742212.**

(Kind Attention: Shri S.K. Haldar, GM)

Sub: Proposal for filling up of the post of PGT/TGT/Primary Teachers in the Farakka Barrage Project Higher Secondary School on contract basis – extension reg.

Sir,

I am directed to refer to FBP's letter No. E/A-135/Contract Teacher/II/05 dated 1.1.2015 on the above cited subject and to convey the approval of Ministry of Finance (Department of Expenditure) for extension of contract appointment of 5 PGTs, 3 TGTs and 2 Primary Teachers in FBP Higher Secondary School, Dist. – Murshidabad (West Bengal) for 06 months i.e. from 1.1.2015 to 30.6.2015 or till the joining of regular incumbents whichever is earlier.



This issues with the approval of M/o. Finance, Department of Expenditure vide their I.D. No. 8869/E.Coord.I/2015 dated 28.5.2015.

Yours faithfully,

(Shankar)

Under Secretary to the Govt. of India
Tele.: 23718165"

5. All the applicants requested to allow them to join against the said post but the same was not allowed and a fresh advertisement dated 23.6.2015 has been issued for fresh appointment on contract basis for academic session 2015-2016. By this time, the walk in interview was the basis for purely contractual appointment. For ready reference the advertisement published on 23.6.2015 is extracted hereinbelow:-

GOVERNMENT OF INDIA
MINISTRY OF WATER RESOURCES
RIVER DEVELOPMENT & GANGA REJUVENATION
OFFICE OF THE PRINCIPAL,
FARAKKA BARRAGE PROJECT H.S. SCHOOL
P.O.-FARKKA BARRAGE
DIST.-MURSHIDABAD
WEST BENGAL – PIN-742 212
TEL: (03485) 253309

PRESS NOTIFICATION

No. PRIN/IG-II/2015/195

Dated: 23.6.2015

The following teachers are required on purely contractual basis for a maximum period of six in FBPHS School, P.O. Farakka Barrage, Dist. – Murshidabad [A Bengali Medium School (W.B. Board) under Ministry of Water Resources, River Development & Ganga Rejuvenation) for the academic session 2015-2016.

Sl. No.	Name of Post	Qualification	No. of Posts	Date of interview
1.	PGT-Maths	M.Sc/M.A. with minimum 50% marks in aggregate in respective subjects and B.Ed. from recognised University/Institution	01 No.	3.7.2015
2.	PGT-English		01 No.	
3.	PGT-Biology		01 No.	
4.	PGT-Bengali		01 No.	
5.	PGT-Computer Science	Minimum 50% marks in aggregate in BE/B.Tech (Computer Science) of BE/B.Tech (any stream) with PG Diploma in Computer or M.Sc. (Computer Science)/MCA or B.Sc. (Computer Science)/BCA	01 No.	

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		with PG Degree in any subject from recognised University/Institution		
6.	TGT-Arts (History with English)	B.A./B.Sc. (with respective subject combination in Degree level) with minimum 50% marks and B.Ed. from recognized University/Institution	01 No.	4.7.2015
7.	TGT-Pure Science (Physics, Chemistry & Math)		01 No.	
8.	TGT-Bengali		01 No.	
9.	Primary Teacher	Matriculation or H.S. from Board/Council with minimum 50% marks and D.Ed./Basic Trg. From a recognized Institution	2 Nos.	

6. Aggrieved by the action of the respondents this petition was filed for setting aside the aforesaid advertisement as well as with a prayer to permit them to continue as a teacher on contract basis and further request for considering them for regularisation.

7. The reply has been filed by the respondents. So far as the factual matrix is concerned till 1.1.2015 it is not in dispute. The appointment, the joining and the continuance of the applicants on contract basis till 31.12.2014 has not been denied nor challenged. It has been stated that the applicants were working purely on contract basis and have given an undertaking that they will not claim any regularisation while accepting the offer.

8. Hence, it has been prayed that the applicant has no right either to continue on the post of re-engagement or regularisation or absorption.

9. The order in pursuance of which advertisement of 2009 has been published has also been annexed with supplementary affidavit filed by the respondents as Annexure R-1 which is extracted herein below:-



No. 2/12/2007-E-III (FBPE)
Government of India
Ministry of Water Resources

Rafi Marg, Shram Shakti Bhawan,
New Delhi, 15th May, 2009.

To

The General Manager,
Farakka Barrage Project,
District Murshidabad,
West Bengal – 742 212.

Subject:- Filling up of the posts of PGT/TGT/Primary Teacher in
the
Farakka Barrage Project Higher Secondary School on
Contract basis – reg.

Sir,

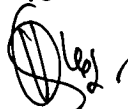
I am directed to refer to your letter No. E/A-20(JCM)/XV/1241(we) dated 23.4.2009 on the subject mentioned above and to say that FBP itself is competent to appoint the candidates selected by the Departmental Selection Committee against the vacant posts of PGT/TGT/Librarian/Primary Teacher in the FBP Higher Secondary School, purely on contract basis. The Ministry has already allowed contract appointment against these posts subject to certain terms and conditions.

2. It is, however, suggested that in the terms and conditions, the following inter-alia, may please be specifically inserted:-

- (i) That the candidates have been selected purely on contract basis, and are entitled only for the specified consolidated salary;
- (ii) That on the basis of the service rendered on contract basis, they shall not have any claim for regularisation on for seniority or appointment on regular basis in the FBP;
- (iii) That their contract appointment is liable to be terminated at any point of time by giving one month notice without assigning any reason, whatsoever;
- (iv) That they shall maintain proper conduct and discipline; and
- (v) That the contract will be for one year and can be renewed further depending upon their performance;

2. The character and antecedent verification reports of the candidates proposed to be appointed on contract basis may please be got done on priority basis in due course. Meanwhile, they may, however, be engaged on the basis of simple verification, i.e., the candidate should be asked to furnish an attestation form duly filled without the identity certificate and a character certificate (specimen enclosed) attested by a District Magistrate or a Sub-Divisional Magistrate on their superior officers.

Yours faithfully,



(N.K. Gupta)

Under Secretary to the Government of India
Tele:- 2371 0333"

10. On the strength of this it has been contended that the terms of the advertisement were also very clear and the claim of regularisation or re-engagement cannot be allowed. Ld. Counsel for the respondents emphasised that it is open to the applicant to participate in the fresh examination conducted in pursuance of the fresh notification and in case they are selected they may be engaged.

11. Rejoinder has been filed and thereafter supplementary affidavits were also filed reiterating the stand earlier taken by the parties.

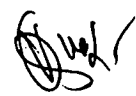
12. We have heard the Id. Counsel for the parties at length and perused the records.

13. Our attention has been drawn towards the procedure adopted for recruitment by fresh advertisement and it has been contended on behalf of applicants that it is a well settled rule of law that employees appointed on contract basis cannot be replaced by another set of contractual employees as held in the case of Hon'ble Apex Court in the case of *Rajbinder Singh v. State of Punjab & ors.* reported in 1988 SCC (L&S) 853 has held as under:

"2. This Court in a number of writ petitions (W.P. Nos. 125 of 1987 and 317 of 1987) has allowed the ad hoc teachers to continue in service until persons regularly selected by the PSC are appointed to the posts. The respondents ought to extent the benefit of that order to all other ad hoc lecturers. It is not proper to drive them to this Court for securing similar relief. We make it clear that the petitioner and other similar ad hoc teachers are entitled to the benefit of the order of this Court made in the aforesaid writ petitions."

Similar view has been propounded in *State of Haryana v. Piara Singh*. (1992 (21)ATC 403. The relevant paragraphs are quoted hereinbelow:-

"45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary



appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee.

46. Secondly, an adhoc or temporary employee should not be replaced by another adhoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."

14. It was further argued that the applicant have been selected after due publication of vacancies. They are qualified and were continued in service for considerably long time for about more than 4 years. Hence they are entitled to be considered for regularisation.

15. The applicant further relied upon judgment in *Nihal Singh & ors. v. State of Punjab & ors.* reported in (2013) 14 SCC 65 and on the strength of this judgment it has been argued that they deserves to be considered for regularisation even in the absence of the posts. The relevant para 39 is quoted, which runs as under:-

"39. We direct the State of Punjab to regularise the services of the appellants by creating necessary posts within a period of three months from today. Upon such regularisation, the appellants would be entitled to all the benefits of services attached to the post which are similar in nature already in the cadre of the police services of the State. We are of the opinion that the appellants are entitled to the costs throughout. In the circumstances, we quantify the cost to Rs. 10,000/- to be paid to each of the appellants."

16. It has further been contended that the case of *State of Haryana v. Uma Devi (3)* reported in (2006) 4 SCC 1 was also considered in the *Nihal Singh's* case. Hence the petition deserves to be allowed.

17. On the contrary, the Ld. Counsel for the respondents on the basis of the pleadings stated that the applicant being purely on contract cannot

claim regularisation or continuity of service or re-engagement as held by the Hon'ble Apex Court. It was further contended that there is no impediment in advertisement of the posts where no person is working and the applicant may have a right to participate in the same process of selection. There is nothing wrong on the part of the respondents. Only due to stay order passed by this Court on 13.7.2015 the selection process could not be completed. The order which has been passed on 13.7.2015 is reproduced herein below:-

" On prayer made by Ld. Counsel for the respondents the matter is adjourned to 24.7.2015.

2. The respondents are directed not to proceed with the notification dated 23.6.2015 till the next date of hearing. Ld. Counsel for the respondents shall also seek instructions whether any ex-post facto approval has been obtained from the Ministry regarding filling up of the said posts.

3. Plain copy of the order be handed over to the parties."

18. Having considered the submission of Ld. Counsel for the parties the following questions have to be answered:

- (i) Whether the applicants can be considered for regularisation?***
- (ii) Whether the discontinuity of the applicants is bad in view of the order of extension granted on 1.6.2015?***
- (iii) Whether the applicants can be replaced by Teachers appointed again on contract basis?***

Point No.1

19. So far as the question of regularisation is concerned it is no doubt true that the applicants were appointed on contract basis after due process of selection in pursuance of an open advertisement. It is also not in dispute that the applicants were having requisite qualification. It is also not in dispute that till the date of disengagement the applicant worked till 31.12.2014.

19.1. After pronouncement of the Constitutional Bench judgment in

Secretary, State of Karnataka v. Uma Devi (3) (supra) no regularisation

can be made except in accordance with the window provided in para 53 of the judgment which reads as under:-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA, R.N. NANJUNDAPPA and B.N. NAGARAJAN and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

19.2. The perusal of the judgment in *Uma Devi's* case further reveals that all earlier judgments passed in conflict with the judgment of the Constitutional Bench loses the precedential value.

19.3. In a latest judgment of the Hon'ble Apex Court in case of *State of Maharashtra & ors. v. Anita & anr. (2016) 8 SCC 293* their Lordship ruled that employees are stopped to challenge the nature of appointment once having duly accepted the same. This is also a case of contractual appointment. In this case the respondents at the time of appointment entered into an agreement in terms of which the appointments were purely contractual creating no right, interest or benefits of permanent service in respondents favour. It was further held that when a Government has taken a policy decision to fill up the posts on contractual basis, the Tribunal and

(Signature)

High Court ought not to have interfered with the said policy decision and the Court and Tribunals should not hold the appointments to be of permanent nature.

19.4. In view of directions contained in Uma Devi's case in para 53 only those employees who have completed the period of 10 years or more and they continued for 10 years or more without the aid of orders of the Court, having requisite qualification for the post, appointed in pursuance of Article 16 against a sanctioned post their cases can be considered for regularisation/absorption as a one-time measure. The applicant has not fulfilled the requisite period which has been given in Uma Devi's case. So in view of the direction and mandate contained in Uma Devi's case (supra) benefit of regularisation/absorption cannot be extended to the applicants.

Point No.2 and 3

20. As both the points are interlinked as such they are being decided simultaneously. It is not in dispute that the post advertised on 23.06.15 include the posts on which the applicants were working on contract basis.

20.1. The posts on which the applicants worked till 31.12.2014 was were allowed to continue till 30.6.2015. The applicants also made a request to re-engage them in view of order of continuity against the post. But in spite of taking a decision for continuance of the applicants pursuant the order dated 1.6.2015 by the respondents issued a fresh notification a day after when the applicant asked for joining on the post. It is not in dispute that extension was granted on the recommendation of the respondents to the Government and to the concerned Ministry. It is no doubt true that applicants were working on contract basis and they have given an undertaking as stated hereinabove. The effect of that undertaking at the most can debar them to claim regularisation but in absence of any order of

(Signature)

discontinuity of post against which they worked till 31.12.2014 there shall be no impediment to permit the applicants to join on the post on which they were working and sanction of which to continue the post till 30.6.2015 was accorded by the competent authority.

20.2. Even after the judgment pronounced in the case of Uma Devi (supra) this concept still holds good that an adhoc or temporary employee should not be replaced by another adhoc or temporary employee. He must be replaced only by a regularly selected employee which is necessary to avoid arbitrariness on the part of the competent authority as held by the Hon'ble Apex Court in *State of Haryana v. Piara Singh* reported in 1992 (21) ATC 403.=(1992) 4 SCC 118.

20.3. A bare perusal of the record reveals that continuity of service were subject to appointment of a regularly selected candidate against the post as is evident from extension order quoted hereinabove as well as from the offer of appointment.

20.4. In this case, there is no written order of discontinuity of service or terminating the services of the applicants. It is also a fact that department has made a proposal for extension of the posts and the same was under process and without waiting for the decision the applicants were orally asked not to work.

22.5. In view of the aforesaid dictum as held in *Piara Singh's* case(Supra), in absence of regularly appointed teachers against the posts and also keeping in view the fact that department is still willing to continue the teachers on contract basis against such posts the oral order to discontinue the applicant w.e.f. 1.1.2015 cannot be allowed to sustain.

Conclusion

(Signature)

23. Hence in view of the above, this Tribunal is of the view that the applicants must have been allowed to continue on the post till the regularly selected candidates are appointed in accordance with law or till the abolition of the posts.

23.1. Accordingly in view of the above the O.A. is liable to be partly allowed.

Relief

24. Consequently, the advertisement issued to appoint fresh teachers on contract basis dated 23.6.2015 (Annexure A-14) to application is quashed. However, liberty is granted to the respondents to make regular selection against the posts.

24.1. In case, the respondents take a decision to hold a regular selection as per recruitment rules they shall advertise the posts in accordance with the spirit of Article 16 of the Constitution of India inviting open applications wherein the applicants may also be permitted to participate.

24.2. If in such selection applicants succeed they may be given appointment, but in case they fail to succeed the regularly appointed candidates shall be appointed in place of the applicants.

24.3. In such recruitment for regular appointment, the applicants may be given the benefit of age relaxation for the period for which they have served the department, if required.

24.4. Till the regular selection is made and the department continuous with the decision to engage the teacher on contract basis, the applicants should be allowed to continue on the post on which they are working, till the posts are abolished or till regularly recruited candidates are appointed.

24.5. As the matter has been finally heard and decided, hence there is no need to pass any order as prayed in the Miscellaneous Application for



vacating the interim order. The application will follow the result of the O.A.

24.6. There shall be no order as to the cost.

(Vishnu Chandra Gupta)
Judicial Member

SP