

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

(1)Original Application No.200/00083/2018 &
(2) Original Application No.200/00183/2019

Jabalpur, this Tuesday, the 30th day of April, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

(1) Original Application No.200/00083/2018

1. Mrs. Enid Chandra, aged about 38 years, W/o Mr. Sumit Chandra, Occupation: Sr. Nursing Officer (Staff Nurse Grade I) All India Institute of Medical Sciences, Bhopal 462020, R/o 2036 Type II, Block 'C' AIIMS Residential Campus, Saket Nagar, Bhopal.
2. Mrs. Anjana Kavdikar (ST), aged about 34 years, D/o Francis Joseph, Occupatoin: Sr. Nursing Officer (Staff Nurse Grade I), All India Institute of Medical Sciences, Bhopal 462020, R/o 26 Nav Bahar Colony, Near Railway Station, Bhopal (M.P.) 402010.
3. Miss Reena Kumre (ST), aged about 32 years, D/o Late Shri J.R. Kumre, Occupation: Sr. Nursing Officer (Staff Nurse Grade I) All India Institute of Medical Sciences, Bhopal 462020, R/o A-53, Fortune Soumya Atlantis, Katara Hills, Bhopal (M.P.).
4. Mohammed Ashiq Mansuri, aged about 33 years, S/o Mr. Yusuf Ali Mansuri, Occupation : Nursing Officer (Staff Nurse Grade II), All India Institute of Medical Sciences, Bhopal 462020, R/o 38-A, Hazrat Nizamuddin Colony, BHEL, Bhopal (M.P.) 462021.
5. Deleted.
6. Sujith A, aged about 34 years, S/o V. Arvindakshan Pillai, Occupation : Sr. Nursing Officer (Staff Nurse Grade II) All India Institute of Medical Sciences, Bhopal 462020, R/o 1005 Type I, Block 'A' AIIMS Residential Campus, Saket Nagar, Bhopal.

7. Mrs. Manisha Dcosta, aged about 40 years, W/o Mr. John 'D' Costa, Occupation : Nursing Officer (Staff Nurse Grade II), All India Institute of Medical Sciences, Bhopal 462020, R/o C-41, Type IV, BMHRC campus, Karond Bhopal (M.P.).

8. Rohitashv Sharma, aged about 34 years, S/o Mahendra Kumar Sharma, Occupation : Nursing Officer (Staff Nurse Grade II), All India Institute of Medical Sciences, Bhopal 462020, R/o 1026 Type I, Block 'B', AIIMS Residential Campus, Saket Nagar, Bhopal.

9. Deleted.

10. Mrs. Nokku Sireesha (SC), aged about 28 years, W/o Vishal James, Occupation : Nursing Officer (Staff Nurse Grade II), All India Institute of Medical Sciences, Bhopal 462020, R/o 1023 Type-I, Block 'B' AIIMS Residential Campus, Saket Nagar, Bhopal.

11. Deleted.

12. Miss. Pooja Anusha (SC), aged about 29 years, D/o Late Ravi Kumar, Occupation : Nursing Officer (Staff Nurse Grade II), All India Institute of Medical Sciences, Bhopal 462020, R/o 1008 Type I, Block 'A' AIIMS Residential Campus, Saket Nagar, Bhopal.

13. Satyendra Kumar Khichi (SC), aged about 28 years, S/o Naveen Kumar Kichi, Occupation : Nursing Officer (Staff Nurse Grade II), All India Institute of Medical Sciences, Bhopal 462020, R/o 1003 Type I, Block 'A' AIIMS Residential Campus, Saket Nagar, Bhopal.

14. Deleted.

15. Bhagwan Singh Meena (ST), aged about 32 years, S/o Rameshchand Meena, Occupation : Nursing Officer (Staff Nurse Grade II), All India Institute of Medical Sciences, Bhopal 462020, R/o 1028 Type I, Block 'B' AIIMS Residential Campus, Saket Nagar, Bhopal

-Applicants

(By Advocate – Smt. Shobha Menon, Sr. Advocate, assisted by Shri Rahul Choubey)

V e r s u s

1. All India Institute of Medical Sciences, Saket Nagar, Bhopal 462020 through its Director.
2. Deputy Director (Administration) All India Institute of Medical Sciences, Saket Nagar, Bhopal 462020.
3. Union of India through the Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi – 110011.

- Respondents

(By Advocate – Shri Gopi Chourasia)

(2) Original Application No.200/00183/2019

1. Rakesh Sharma, S/o Late Shri Gopilal Sharma, aged about 40 years, working as Technical Assistant, Resident of Quarter No 1014 Type-1, AIIMS Residential Campus, Block-A, Saket Nagar, Bhopal (M.P.) – 462024.
2. Neetu Rathore, W/o Shri Jitendra Rathore, aged about 43 years, working as Technical Assistant, R/o Quarter No.2014, Type-2, AIIMS Residential Campus, Saket Nagar, Bhopal (M.P.) – 462020.
3. Pradeep Kumar Mehra, S/o Shri Sukhram Mehra, aged about 38 years, Working as Technical Assistant, Resident of Quarter no.1015, 3rd Floor, Type – 1, A Block, AIIMS Residential Campus, Saket Nagar, Bhopal (M.P.)- 462020.
4. Ms. Shakuntala Thakur, D/o Shri Suraj Lal Thakur, aged about 36 years, working as Technical Assistant, Resident of Quarter No.1012, Type-1, AIIMS Residential Campus, Saket Nagar, Bhopal (M.P.) – 462020.
5. Sachin Kumar Oad, S/o Shri Raj Kumar Oad, aged about 36 years, working as Technical Assistant, Resident of Quarter No.1002, Type-1, AIIMS Residential Campus, Saket Nagar, Bhopal (M.P.) – 462020.

6. Saroj Bala Barasker, D/o Shri Manik Rao Barasker, aged about 33 years, working as Technical Assistant, Resident of Quarter No.1016, Type-1, AIIMS Residential Campus, Saket Nagar, Bhopal (M.P.) – 462020.
7. Mukesh Mehra, S/o Late Shri P.N. Mehra, aged about 36 years, working as Technical Assistant, Resident of House No.45, Anand Nagar, Bijli Colony, Bhopal (M.P.) – 462022.
8. Zenab Fatima, D/o Shri Azhar Latif, aged about 32 years, working as Technical Assistant, Resident of House No.18, Behind Fire Brigade, Fatehgarh, Bhopal (M.P.) – 462001.
9. Ajay Kumar Kannojiya, S/o Shri Kishan Lal Kannojiya, aged about 42 years, working as Technical Assistant, Resident of Shed A-19, New Ashoka Garden, Near Dussehra Maidan, Jain Temple Lane, Bhopal (M.P.) – 462023.
10. Deepak Enheji, S/o Shri Kishori Lal Enheji, aged about 36 years, Working as Technical Assistant, R/o C/o Shri V.K. Shukla, 2/17, Saurabh Colony, Chandbadh, Near Shiv Temple, Bhopal (M.P.) – 462010.
11. Mohd.d Imran Alam, S/o Mohd. Qumrul Hoda, aged about 33 years, working as Technical Assistant, Resident of 217 Pipaliya Penede Khan, Near Saket Nagar, Bhopal (M.P.) – 462024.
12. Shreekumari Dhurve, W/o Shri Kamlesh Dhurve, aged about 39 years, working as Technical Assistant, R/o House No.148, Priyanka Nagar, Nayapura, Kolar Road, Bhopal (MP) – 462042.

13. Robin Sharma, S/o Shri Shyam Sunder Sharma, aged about 35 years, working as Techincal Assistant, R/o 128, Bharat Nagar, J.K. Road, BHEL, Bhopal (M.P.) – 462022.

14. Vishwakarma Chaudhary, S/o Shri Kailash Chandra Chaudhary, aged about 36 years, R/o Quarter No.1012, Type-I, Block A, AIIMS Campus, Saket Nagar, Bhopal (M.P.) – 462020

- Applicants

(By Advocate – Smt. Shobha Menon, Sr. Advocate, assisted by Shri Rahul Choubey)

V e r s u s

1. All India Institute of Medical Sciences, Saket Nagar, Bhopal 462020 through its Director.

2. Deleted.

3. Deputy Director (Administration), All India Institute of Medical Sciences, Bhopal, Saket Nagar, Bhopal 462020.

3. Union of India through the Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi – 110011.

- Respondents

(By Advocate – Shri Gopi Chourasia)

(Date of reserving order: 11.04.2019)

Common Order

By Navin Tandon, AM.

The applicants, through these Original Applications, are seeking regularization in All India Institute of Medical Sciences (AIIMS) Bhopal. Since the facts are identical and issues involved in both the Original Applications are similar, they are being disposed of by way of this common order.

O.A.No.200/00083/2018

2. The applicants have made the following submissions in this O.A.:-

2.1 All India Institute of Medical Sciences (hereinafter referred to as ‘AIIMS’) issued an advertisement dated 18.06.2013 (Annexure A/3) for filling up various posts mentioned in the advertisement including 50 posts of Staff Nurse Grade-I (Nursing Sisters) and 300 posts of Staff Nurse Grade-II (Sister Grade-II) on contractual basis.

2.2 The applicants applied against the said advertisement. They appeared for written examination in January, 2014, interviewed in February, 2014 and were declared selected (Annexure A/4). Accordingly, appointment letters were issued in July, 2014 (Annexure A-5 colly.). The applicants Nos.1 to 3 were selected as Staff Nurse Grade-I, whereas rest of the applicants were selected as Staff Nurse Grade-II. AIIMS, Bhopal issued letters for offer of Appointment on temporary basis for a period of eleven months on consolidated pay.

2.3 Respondent No.1 issued corrigendum dated 27.11.2014 (Annexure A-6), wherein the appointment orders of applicants

were modified and they were conferred the status of temporary employees.

2.4 No orders of extension or renewal of the original appointment orders were issued and the applicants are continuing on their respective posts on which they were originally appointed.

2.5 The applicants have placed on record orders dated 04.04.2013 (Annexure A-7A) and 06.08.2013 (Annexure A-7B) to show that a total of 279 posts of Staff Nurse Grade-I and 726 posts of Staff Nurse Grade-II were there in AIIMS Bhopal at the time of their appointment, which shows that they were appointed against the regular posts.

2.6 The applicants preferred a joint representation dated 03.09.2015 (Annexure A-8 and A-9 colly.) and thereafter represented on 18.12.2017 (Annexure A-10) and 10.01.2018 (Annexure A-11) requesting for regularization. However, no decision was taken on their representations.

2.7 Meanwhile, the respondent No.2 issued a notification dated 03.02.2018, inviting applications for 100 posts of Staff Nurse Grade-I and 600 posts of Staff Nurse Grade-II.

2.8 The applicants submit that they fulfill the prescribed qualifications as per advertisement dated 18.06.2013. They faced

written test and interview and merit list was prepared by the regular selection committee. Further, their appointments were on regular basis, against the sanctioned posts and, therefore, they are entitled for regularisation.

3. The following reliefs were sought at the time of filing of Original Application:

“(8). RELIEFS SOUGHT :

It is, therefore, most humbly prayed that this Hon'ble Tribunal be pleased:

8.1 To direct the respondents to regularize the applicant nos.1 to 3 on the post of Staff Nurse Grade 1 and the applicant nos.4 to 15 on the post of Staff Nurse Grade II;

8.2 To quash Annexure A-1 in so far as it advertises the posts including the posts occupied by the applicants;

8.3 To pass such other orders as it may deem fit under the circumstances of the case.”

4. The respondents have filed their reply and have submitted as under:-

4.1 AIIMS Bhopal is established by the Ministry of Health & Family Welfare (hereinafter known as **MoHFW**) under Pradhan Mantri Swastha Seva Yojna (PMSSY), Government of India, aiming at correcting the imbalances in the availability of affordable healthcare facilities in different parts of the country in general and augmenting facility for quality medical education in the under-served. The AIIMS, Bhopal is a Hospital of National importance to

serve the under privileged class by providing them quality healthcare.

4.2 The MoHFW, on 04.04.2013 and again on 06.08.2013, issued letters sanctioning posts for AIIMS, Bhopal, which include the posts of Staff Nurse Gr.I (Sister Grade I – Nursing Sisters) and Staff Nurse Gr.II (Sister Gr.II).

4.3 Since the framing of recruitment rules for non-faculty posts at AIIMS Bhopal were under process, the Institute published the advertisement dated 18.06.2013 with the heading “**Recruitment of Staff for Hospital Nursing Services on Contractual Basis.**”, inviting applications from the candidates for various posts including the post of Staff Nurse Gr. I and Staff Nurse Gr. II on contractual basis.

4.4 Under **Terms and Conditions**, it was categorically mentioned in Para 1 of the advertisement that the period of appointment will be initially for a period of 11 months or till regularly incumbents join the Institute, whichever is earlier. It was also mentioned that the remuneration will be given per month on consolidated basis. No regular scale of pay was granted to the applicants.

4.5 The applicants were issued offer of appointment on the post of Staff Nurse Gr.I and Staff Nurse Gr.II purely on contractual basis (Annexure A-5). Merely working for 3 to 4 years in the respondent department on contractual basis, cannot entitle them for regularisation.

4.6 The appointment of the applicants on contractual basis do not confer any right to get themselves regularised or getting themselves appointed on regular basis without following the due process of law as the applicants were appointed on contractual basis for limited period in AIIMS Bhopal and they have fully accepted the terms and conditions of the offer of appointment with the undertaking that he or she will not put forth any claim for regularisation of his or her services on the basis of contractual appointment.

4.7 The Recruitment Rules for non-faculty posts for New All India Institute of Medical Sciences, 2015 (Annexure R-1) were approved on 21.08.2015 for appointment to various posts on regular basis including the post of Staff Nurse Gr.I and Gr.II, which is a Group B post and the recruitment has to be done either by direct recruitment through open selection by publishing advertisement on all India basis or by promoting the existing

regular employees or by deputation from different State/Central Government departments as the case may be. The MoHFW had further reviewed the Recruitment Regulations for Nursing Staff in six New AIIMS vide letter dated 09.08.2017 (Annexure R-2).

4.8 On the basis of the Recruitment Rules, the respondent Institute has published the advertisement dated 03.02.2018 (Annexure R-3) for the posts of Senior Nursing Officer (earlier Staff Nurse Gr. I) and Nursing Officer (earlier Staff Nurse Gr.II) for the College of Nursing at AIIMS, Bhopal. All the applicants having requisite qualification, experience and other eligibility criteria were entitled to apply against these posts.

4.9 The competent authority, in its meeting held on 20.07.2017, has considered for one time age relaxation for the contractual and outsourced employees working in AIIMS Bhopal and recommended for the relaxation in upper age limit in favour of contractual employees for a period of his or her continuous service in AIIMS Bhopal to equivalent post or up to 5 years, whichever is less, as a one-time dispensation.

4.10 The applicants, instead of participating in the selection process for regular appointment, started claiming regularisation.

They do not have any right under the rules for getting themselves regularised on the basis of contractual appointment.

4.11 The applicants were never given the temporary status. They were initially appointed as contractual employees and are working as such till date. There is no rule or policy to regularise the services of contractual employees.

5. The applicants have filed their rejoinder in which they have made the following submissions:

5.1 The MoHFW issued letters dated 04.04.2013 (A-7A) and 06.08.2013 (A-7B) sanctioning posts for AIIMS Bhopal including the post of staff nurses Gr. – I and Gr. – II. This date therefore fully explains the date of advertisement which is 18.06.2013 (A-3). Thus, immediately after creation of the posts, the process of advertisement, written examination and interview was held which culminated in the appointment orders dated 08.07.2014 (A-5 Series). It is therefore conclusively proved that the applicants' appointments were preceded by a regular selection process and were not done arbitrarily.

5.2 The respondents have always treated the applicants as temporary employees and not as contractual employees (Annexure RJ-4) collectively).

5.3 It has been submitted that all the applicants, except applicants Nos.4 and 14 (since deleted), have appeared in the written test held on 22.05.2018 and 23.05.2018 for Staff Nurse Grade – I and II.

6. The applicants have filed an application for amending the O.A, which was allowed on 02.01.2019. They have submitted following through this M.A:

6.1 When the advertisement for filling up the post of Staff Nurse Grade – I and Grade – II was issued in the year 2013 or at the time of applicants' appointment in the year 2014, there was no service rules governing the conditions for recruitment on the said posts. In absence of recruitment rules in the year 2013, the provisions contained in All India Institute of Medical Sciences Regulations, 1999 (in short '**1999 Regulations**') would be relevant and crucial.

6.2 1999 Regulations do not empower the respondents to fill the vacant and sanctioned posts on contractual basis and, therefore, the assertion of the respondents that applicants are contractual appointees, is not tenable in law.

6.3 The applicants have, therefore, sought for adding the following relief in Para 8.1A of the O.A, which was allowed:

“8.1A To declare the applicants were appointed by following due process of law i.e. regular procedure, as such, their status is that of regular employee.”

7. The respondents have also filed their additional reply to the amendments and made the following submissions:

7.1 Ministry of Health and Family Welfare's letter dated 06.08.2013 (Annexure RJ-7) is regarding the process for filling up the additional posts. Para 4 of the said letter states that, Institute Body (IB) for each new AIIMS has been formed, framing of Rules and Regulations for each new AIIMS would be as provided under the AIIMS Act, 1956 and AIIMS (Amendment) Act, 2012. Till such times Rules and Regulations are framed for each new AIIMS, Rules and Regulations of AIIMS New Delhi would apply as already approved and communicated.

7.2 Regulation -25 provides that unless otherwise decided by the appointing authority in any case, all employees shall be on probation for two years. In the instant case, the applicants have not been put on probation neither they were given regular scale of pay as applicable to regular or direct employees.

7.3 Nowhere in the rules, it has been mentioned that contractual/ad-hoc/temporary employees are entitled for regularisation in their services.

8. Heard the learned counsel for the parties and perused the pleadings and documents available on record.

9. Learned counsel for the applicants argued that at the time when the advertisement (Annexure A-3) was issued on 18.06.2013, the respondents had already issued letters dated 04.04.2013 (Annexure A/7A) and 06.08.2013 (Annexure A/7B). The letter dated 04.04.2013 communicated the sanction of 1145 posts, which included 231 posts of Staff Nurse Grade –I and 600 posts of Staff Nurse Grade – II. Further, Para 8 (f) of the letter dated 06.08.2013 (Annexure A/7B) stated that the Appointing Authority for the posts will be as per Rules/Regulations i.e. AIIMS Rules, 1958/AIIMS Regulations 1999. In this letter, it has been stated that till such time Rules and Regulations are framed for each new AIIMS, Rules and Regulations of AIIMS New Delhi would apply as already approved and communicated.

9.1 The 1999 Regulations have been filed as Annexure A-13 in which Para 23 speaks of only permanent and temporary posts. There is no classification of contractual employees. Therefore, the advertisement dated 18.06.2013 (Annexure A-3), calling for contractual appointment, was contrary to the Rules and Regulations.

9.2 The applicants have faced the written examination and interview and, therefore, they cannot be treated as backdoor entrants.

9.3 She places reliance on the following judicial pronouncements:

9.3.1 Judgment of Hon'ble Rajasthan High Court in the case of **Ayurved Chikitsaks Weflare vs. State of Rajasthan and Ors.**, 1994 (2) WLC 452.

9.3.2 Judgment of Hon'ble High Court of Madhya Pradesh in the case of **Dr. Kumud Shrivastava vs. The State of Madhya Pradesh** in Writ Petition No. 2724 of 2012 (S) & other connected W.P, dated 04.04.2012.

9.3.3 Judgment of Hon'ble Apex Court in the matters of **Alka Ojha vs. Rajasthan Public Service Commission and another**, (2011) 9 SCC 438:

10. Learned counsel for the respondents submitted that the advertisement very clearly speaks that the period of employment will be for 11 months on contractual basis. Since, the applicants

have worked for only about 3/4 years, they cannot claim for regularisation, the provisions of which do not exist.

10.1 Learned counsel for the respondents placed reliance on the orders passed by this Tribunal in OA No.200/00043/2018 dated 20.09.2018 (**Dr. Amit Kumar Verma & Ors. vs. All India Institute of Medical Sciences, Bhopal & Ors.**), where O.A has been dismissed under similar circumstances.

11. On the other hand, learned counsel for the applicants submitted that in Para 13 of the order in **Amit Kumar Verma** (supra), it has been stated that in the absence of any Recruitment Rules at the time of appointment/extension, the terms and conditions of the appointment letter would be applicable. In the present case, the advertisement dated 18.06.2013 (Annexure A-3) was subsequent to the letters dated 04.04.2013 and 06.08.2013 (Annexure A/7A and A/7B). Therefore, the Recruitment Rules were already in place and the applicants have got every right to be regularised.

FINDINGS

12. Constitution Bench of Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others vs. Uma Devi (3) and others**, (2006) 4 SCC 1 has held the absorption, regularization or

permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees appointed/recruited and continued for long in public employment, dehors the constitutional scheme of public employment.

12.1 Some relevant portions of the said judgment are extracted below:-

“(4). But, sometimes this process is not adhered to and the constitutional scheme of public employment is bypassed. 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. It is time, that the courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasised that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

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33. *It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularisation. The cases directing regularisation have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment.*

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43. *Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution*

and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such

cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

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

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

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47. *When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the*

post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

12.2 The Hon'ble Apex Court in **Uma Devi (3)** (supra) has also relied upon the case of **State of Haryana and others vs. Piara Singh and others** (1992) 4 SCC 118, wherein it has been held as under:-

“(45). The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/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 ad hoc/temporary employee.”

13. Perusal of the judgment of **Uma Devi (3)** (supra) clearly establishes the law that all public employment should be done with

proper rules in place and all eligible persons should be in a position to participate in it in a fair competition. Only as a one-time relaxation, some relief were given to those who had completed more than 10 year of service as per para 53 of **Uma Devi (3)** (supra).

14. The advertisement dated 18.06.2013 (Annexure A-3) clearly indicated that the appointment of the applicants was purely on contractual basis. The terms & conditions mentioned in the advertisement clearly specify that, *“the period of employment will be initially for a period of 11 months or till regular incumbent joins the Institute whichever is earlier. The services of the appointee are liable to be terminated by either side by giving 30 days’ notice or salary in lieu thereof. The appointment is purely contractual in nature and does not confer any right for regularization or permanent absorption.”*

15. Hon’ble Supreme Court in **Piara Singh’s** case (supra) has laid down the law that in exigencies, some temporary appointment may be made, but the effort should be to replace by regularly selected employee as early as possible. In the instant case, the respondent-Institute has prepared the Recruitment Rules on 21.08.2015 (Annexure R-1) and thereafter they have already

notified through an open advertisement. The respondents, in their reply, have stated that the competent authority has considered for one time age relaxation for the contractual and outsourced employees presently working in the AIIMS, Bhopal and recommended for the relaxation in upper age limit for a period of his or her continuous service in AIIMS Bhopal to equivalent post or up to 5 years, whichever is less, as a one-time dispensation.

15.1 The respondents have specifically submitted that the applicants were at liberty to apply against the advertised posts, but instead of participating in the selection process for regular appointment, they have started claiming regularisation, without participating in the prescribed process of recruitment.

15.2 In fact, we find that all the applicants except one have participated in the selection process for regular appointment.

16. In the matters of **Alka Ojha** (supra), relied upon by the learned counsel for the applicants, the issue before the Hon'ble Apex Court was regarding the prescribed qualification on the date of advertisement. This is clearly not the issue in the present case. Hence, the said decision is distinguishable on facts and is, therefore, not applicable in the present cases.

16.1 As regards the matter of **Ayurved Chikitsaks Welfare** (supra) decided by Hon'ble High Court of Rajasthan, we may reproduce relevant paragraphs of the said judgment as under:-

*"There is yet another reason for declaring the action of respondents as arbitrary. As per the version of respondents themselves, appointment on the post of Ayurved Chikitsak could be made by the Director, Ayurved Department and the Director, Ayurved Department did make these appointments after regular selection. Once the mode of recruitment has been followed, mere use of the word 'adhoc/temporary' in the order of appointment or mere fixing the tenure of appointment, cannot by itself be sufficient to treat the appointment as nothing else than a substantive appointment. In *Rajendra Singh Rawat v. The Navodaya Vidyalaya Samiti 1993 (1) WLC 79* this Court has examined the difference between an ad-hoc appointment and a regular appointment and held that once an appointment is made after selection by a duly constituted selection committee, such appointment will have to be treated as a regular appointment and the appointee will have a right to be treated as substantive in service.*

5. In view of the aforesaid decision the action of respondents in treating those members of the petitioner association who have been appointed after regular selection as ad-hoc appointees; has to be treated as arbitrary and unjustified".

16.1.1 On perusal of the above judgment of Hon'ble Rajasthan High Court we firstly find that the said judgment was delivered on 19.04.1994 i.e. much earlier to the decision of the Hon'ble Supreme Court in the matters of **Uma Devi (3)** (supra). Secondly in the said matter it was specifically held by the Hon'ble Rajasthan High Court that "*Government has,*

as a measure of policy, decided to regularise the service of the existing Ayurved Chikitsaks who had been appointed by the Director, Ayurved Department. Having been taken that decision, the Government cannot now be permitted to discriminate between the Ayurved Chikitsaks who were appointed upto 31.10.83". Since the facts of the present case are totally different from those in the matter of **Ayurved Chikitsaks Welfare** (supra) decided by Hon'ble High Court of Rajasthan, the reliance placed by the learned counsel for the applicants of said decision, will not be of any help to the present applicants.

16.2 As regards the matter of **Dr. Kumud Shrivastava** (supra), relied upon by the learned counsel for the applicants is concerned, we find that in the said matter the main question involved was whether the period under emergency appointment was to be counted as service for grant of promotion as well as for grant of senior pay scale and selection grade. After analyzing the issue and also finding that various other employees in the department had received the said benefit, on the principle of 'equality', the benefit had been granted to the petitioners of the said case. It is also clear that emergency appointments in this case have been made as provided in Rule 13(5) of Rules, 1967. No such mode of

appointment is specified in AIIMS Rules/Regulations. Thus, looking to the facts of the present case, we are of the considered view that the decision in the matter of **Dr. Kumud Shrivastava** (supra) is also not applicable in present cases.

17. The Hon'ble Apex Court in the case of **Uma Devi (3)** (supra), has very clearly spelt out that all the public employment should be as per constitutional scheme of public employment. This would include the advertisement as well as the process for selection. The very fact that that advertisement was for contract employment for 11 months, it would discourage a very large number of candidates who would have already been under gainful employment at another place. Therefore, the scope of open competition has already been compromised in the advertisement when the recruitment is not for regular employment. Therefore, the advertisement itself fails the test of inviting all the eligible and willful candidates for employment in a premium institute like AIIMS, Bhopal.

18. It is undisputed fact that the applicants were given contractual appointment for 11 months period and they are working as such. They were fully aware of the terms and conditions of their

employment and cannot demand regularization only because of their continuing to work in the said posts.

19. It is also noted that the advertisement for regular appointment (Annexure A-1) was issued after Recruitment Rules were framed on 21.08.2015 (Annexure R-1). The applicants have been given one time age relaxation. Thus, none of the applicants have been denied any opportunity to appear against the said advertised post. We find no merit in the argument of the learned counsel for the applicant that since the applicants have already been working for the last several years, they would not be able to compete with graduates coming fresh out of Universities.

20. In view of the foregoing, we do not find any merit in this Original Application.

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21. Learned counsel for the applicants as well as respondents submitted that O.A. No. 200/000183/2019 is identical to O.A 200/00083/2018 except, in this case, the applicants are Technical Assistant/Technician and the advertisement was on outsourcing basis for a period of 11 months.

22. In view of the detailed deliberations done in O.A 200/00083/2018 above, we also do not find any merit in O.A. No. 200/000183/2019.

23. In the result, both the Original Applications are dismissed.

No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am&rkv