Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00486/2018

Jabalpur, this Wednesday, the 23rd day of January, 2019

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

Amit Singh Bhadoria,
Aged about 36 years
S/o Shri Shamsher Singh Bhadoria
Occupation: Storekeeper
All India Institute of Medical Sciences,
Bhopal 462020
R/o 2016 Type II AIIMS Campus
Saket Nagar Bhopal **-Applicants**

(By Advocate **–Shri N.S. Ruprah**)

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**)
(Date of reserving the order:19.11.2018)

O R D E R

By Navin Tandon, AM:-

The applicant through this Original Application is seeking regularization in All India Institute of Medical Sciences, Bhopal, where he is working as Store Keeper for the last 4-5 years on Contractual basis.

2. The applicant has made the following submissions:-

2.1 All India Institute of Medical Sciences (hereinafter referred to as '**AIIMS**') issued an advertisement dated 18.06.2013 (Annexure A/5) inviting applications for a period of 11 months on outsourcing basis.

2.2 The applicant applied against the said advertisement. He cleared the written test and interview and was offered appointment letter dated 22.01.2014 (Annexure A/11) on contract basis for a period of 11 months.

2.3 He was granted extension upto 30.01.2016, 31.01.2017 and 01.01.2018 vide orders dated 22.01.2015 (Annexure A/12), 29.04.2016 (Annexure A/13) and 03.04.2017 (Annexure A/14) respectively. He is still continuing in the post as on the date of filling of the O.A.

2.4 Director AIIMS Bhopal (respondent No.1) issued a corrigendum dated 27.11.2014 (Annexure A/16) wherein it was stated that all previous orders, nature of appointment shown as "Contractual" or "Adhoc" shall be treated/read as "Temporary Appointment". It further stated that this is applicable for all the officials appointed in persuation of six advertisement detailed therein.

2.5 Recruitment Rules for Non-Faculty posts for new AIIMS, 2015 have been issued by Respondent No.3 on 29.08.2015 (Annexure A/17).

2.6 AIIMS has published advertisement dated 31.03.2018 (Annexure A/1) for recruitment in which there are 14 posts of Storekeeper including 7 posts for unreserved.

3. The applicant in this Original Application has prayed for the following reliefs:-

*"**8. Reliefs Sought**:-*
It is, therefore, most humbly prayed that this Hon'ble Tribunal be pleased:

"8.1 To declare that the applicant is a regularly appointed Store Keeper OR to direct the respondents to regularize the applicant on the post of Storekeeper;

8.2 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:-

> *"3. That the applicant was never appointed on regular scale of pay as claim in the original application he is working on contractual basis on consolidated pay of Rs.26000/- per month and his services can be terminated without any notice or assigning any reason as per the term of appointment.*
>
> *4. It is respectfully submitted that the applicant is claiming that his appointment to the post of Store Keeper was followed by a regular selection process, but has miserably failed to appreciate that his selection is not as per the constitutional scheme of public employment. The applicant has approached the Hon'ble Tribunal with a prayer to regularize his services. In fact, the applicant is attempting to treat his contractual engagement equivalent to the regular or permanent employment in respondent's institute which is not permissible under the rules.*
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> *xxx xxx xxx*
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> *6. It is submitted that during the year 2012-13 various advertisements were issued for engagement of persons on contractual basis to meet the contingencies. The selected candidates were issued appointment letters for various posts on contractual basis. The respondents inadvertently used different terms for contractual employees to indicate the status of the candidates engaged on the post for example in some cases appointment letter bears 'Contractual Appointment' whereas other bear 'Ad hoc Appointment' or both together. In order to have uniformity with regard to status of employment, the offer of appointment letters issued against specific advertisement Nos. were treated/read as 'Temporary' by issuing Corrigendum dated 27.11.2014. Copy of corrigendum is filed herewith as Annexure R/1. But by any stretch of the term 'Temporary' it cannot be equated with the quasi permanent or regularly selected employee of the respondent institute. Unless the appointment is in terms of the relevant rules and after a proper competition among qualified and eligible candidates, the applicant cannot claim*

or has right to be called quasi permanent or permanent appointee.

7. It is further submitted that the respondents have issued the Advertisement (Annexure A/1) following the laid down public employment procedure as per constitutional scheme and among others the applicant has also applied against the post of Store Keeper under the referred Advertisement. A copy of the print out showing the receipt of application form submitted by the applicant is filed herewith as Annexure R/2.

8. It is submitted that the applicant claiming to be in permanent employment of respondents' Institute but at the same time he has applied against the post advertisement under (Annexure A/1). It seems that the applicant is not aware of his actual status of employment. It is also stated in the application that he is holding the post in question for several years and his services may be treated to be treated as quasi permanent or equivalent to permanent employee is not just and proper as it is against the settled principles of law laid down by Hon'ble Apex Court in Umadevi's judgment (supra).

9. That in the present case when the applicant was appointment on contractual basis on 22.01.2014, the Recruitment Rules for Non-faculty Posts were not in existence or framed and they were appointed as a stop gap arrangement. These Recruitment Rules came into existence in the year 2015 and circulated by the Ministry of Health & Family Welfare (MoHFW) on 21.08.2015. A copy of the circular and extract copy of Recruitment Rules for Non-faculty Posts 2015 are jointly filed herewith as ANNEXURE R/3.

5. We have heard learned counsel for both the parties and perused the pleadings and documents placed on record.

6. Learned counsel for the applicant submitted that there was no recruitment rules when the applicant was selected. The appointment was done on the basis of open advertisement after a

tough competition and he continued without any judicial intervention.

7. Learned counsel for the applicant placed reliance on judgment passed by Hon'ble Apex Court in the matters of ***Sheo Narain Nagar and others*** vs. ***State of Uttar Pradesh and others*** (2017 SCC OnLine SC 1502) decided on 13.11.2017. He read out Para 11, wherein the Hon'ble Apex Court has held as under:

> "*11. The High Court dismissed the writ application relying on the decision in Uma Devi (supra). But the appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of time, when their temporary status was conferred w.e.f. 2.10.2002. The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of Uma Devi (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 2.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 2.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today."*

7.1 It is the case of the applicant that there was no back door entry. He was appointed on the basis of an open advertisement and since he has already worked for a long period, he should be appointed on regular basis.

7.2 Learned counsel for the applicant also places reliance on the judgment of the Hon'ble Apex Court in the matters of ***Narendra Kumar Tiwari and others*** vs. ***The State of Jharkhand and Others*** 2018 (9) SCALE 384, decided on 01.08.2018, wherein it has held as under:-

> *"9. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3), is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15th November, 2000 and the cut-off date was fixed as 10th April, 2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.*
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> *10. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.*
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> *11. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct etc.*

8. Learned counsel for the respondents argued that all the cases referred by the learned counsel for the applicant namely ***Uma Devi***

(infra), ***Sheo Narain*** (supra) and ***Narendra Kumar Tiwari*** (supra) are dealing with the cases where the appellants have completed more than 10 years of service. In the instant case, the applicant has only completed a period of service much less than 10 years.

9. Learned counsel for the respondents places reliance on the following judgments by the Hon'ble Apex Court in the matters:-

9.1 ***Director Institute of Management Development U.P***. Vs. ***Pushpa Srivastava (Smt)*** (1992) 4 SCC 33 decided on 04.08.1992, wherein the Hon'ble Apex court has held that:

> *"**19.** The following are clear from the above order :*
> *(i) The respondent was appointed on a contractual basis.*
> *(ii) The post was to carry a consolidated pay of Rs.2400 per month.*
> *(iii) The duration of appointment was six months from the date of the respondent joining charge.*
> *(iv) It is purely on ad hoc basis.*
> *(v) It is terminable without any notice.*
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> ***20.** Because the six months' period was coming to an end on 28th February, 1991, she preferred the Writ petition a few days before and prayed for mandamus which was granted by the learned Judge under the impugned judgment. The question is whether the directions are valid in law. To our mind, it is clear that where the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent could have no right to continue in the post……."*

9.2 ***Vidyavardhaka Sandha and another*** vs. ***Y.D. Deshpande and other***s with ***Vidyavardhaka Sandha and another*** vs. ***S.K.***

Joshi and others, 2006 (12) SCC 482, decided on 21.09.2006. It has been held that the respondents having accepted the terms and conditions stipulated in the appointment order and allowed the period for which they were appointed to have been elapsed by efflux of time, they are not now permitted to turn their back and say that their appointments could not be terminated on the basis of their appointment letters nor they could be treated as temporary employee or on contract basis. It is well-settled law by several other decisions of this Court that appointment on ad hoc basis/temporary basis comes to an end by efflux of time and persons holding such post have no right to continue on the post and ask for regularisation etc.

9.3 ***State Bank of India and others*** vs. ***S.N. Goyal*** 2008 (8) SCC 92, decided on 02.05.2008, wherein Hon'ble Apex Court has held as under:-

> *"17. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well recognized exceptions to this rule are:*

(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules."

10. 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) SC 1] has held that 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.

10.1 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."*

(emphasis supplied)

10.2 The Hon'ble Apex Court in ***Uma Devi's*** case (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."*

11. Perusal of the judgment of ***Uma Devi*** (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*** (supra).

12. Perusal of the advertisement dated 18.06.2013 (Annexure A/5) very clearly indicates that it was on **purely for a period of 11 months on outsourcing basis**. In the absence of any Recruitment Rules at the time of appointment/extension, the terms and conditions of the appointment letter would be applicable.

13. 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-department has prepared their Recruitment Rules on 29.08.2015 (Annexure A/17) and thereafter they have already notified through an open advertisement. The applicant has been given an opportunity to compete along with others for such regular appointment. In the spirit of ***Piara Singh's*** case (supra) if he does not get selected he has to give way to regularly selected candidates.

14. It is undisputed fact that applicant was given contractual appointment for 11 months period which was subsequently extended by 11, 12, 11 months respectively at a time. The applicant was fully aware of the terms and conditions of his employment and cannot demand regularization only because of his continuing to work in the said posts.

15. It is also noted that the advertisement for regular appointment was issued on 31.03.2018 (Annexure A/1) after Recruitment Rules were framed on 29.08.2015 (Annexure A/17). The applicant has applied against the advertised post. Thus, the applicant has not 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 at this age (36 years), the

applicant would not be able to compete with graduates coming fresh out of Universities.

16. In view of the foregoing, we have no hesitation in saying that placing reliance of Hon'ble Supreme Court judgment in ***Uma Devi*** (supra), there is no merit in the regularization plea submitted by applicant through this Original Application.

17. Hence, this Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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