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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 1045/2013

3rd May, 2013

AMRISH CHANANA AND ORS.

.....Petitioners

Through: Mr. P.N.Mishra Senior Advocate with Mr.
Sanjay Visen, Advocate.

VERSUS

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Rajeev Mehra, ASG with Ms. Zubeda
Begum, Ms. Sana Ansari and Mr. Ashish,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by 16 petitioners. One petitioner, namely, the petitioner No. 5-Dr. Subhash Sahu has resigned and, therefore, the writ petition has to be decided qua the remaining 15 petitioners. Petitioners have been appointed as either Readers or Lecturers or Professors in the respondent No. 2-institute. The petitioners are seeking appropriate writs, orders or directions for quashing of the impugned newspaper advertisement dated 02.02.2013 by which the respondent No. 2-institute/employer/ Chaudhary Brahm Prakash Ayurvedic Charak Sansthan is

seeking to call and appoint persons as Readers, Lecturers and Professors to the posts to which the petitioners stand appointed.

2. Instead of referring to the contentions and pleadings of the petitioners, let me at the outset refer to the contentions urged on behalf of respondent No.2, inasmuch as, it is that contention which has to be examined with respect to the facts of the case. The contention on behalf of the respondent No. 2 is that the petitioners having taken their appointments with open eyes for a contractual period of one year, consequently, these contractual appointees/petitioners cannot claim to be regularly appointed persons and seek reliefs as prayed for in this writ petition because such reliefs are barred in view of the ratio of Constitutional Bench judgment of Hon'ble Supreme Court in the case of *Secretary, State of Karnataka & Ors Vs. Umadevi & Ors. 2006 (4) SCC 1*.

3. It is argued on behalf of respondent No. 2 in support of the above stated proposition that as there were no sanctioned posts existing when petitioners were appointed on account of the fact that the recruitment rules of the respondent No. 2 were not framed at the time of appointments of the petitioners, and consequently since existence of sanctioned posts were lacking, the appointments of the petitioners cannot be regularized as the regular appointments can only be against sanctioned posts.

4. The petitioners counter that they have been appointed through a regular recruitment process against vacancies in sanctioned posts, they were duly qualified for the posts, and therefore, the judgment in the case of *Umadevi (supra)* does not bar the reliefs which have been claimed in the present petition. It is argued that the recruitment rules prevalent and applicable at the time of appointments of the petitioners were the recruitment rules of Government of NCT of Delhi. It is also argued that even if the recruitment rules were not existing for arguments sake, but since there existed sanctioned posts, and for which posts qualifications were specified, the appointments cannot be argued by respondent no.2 as being temporary appointments for a contractual period. It is finally argued that since regular recruitment process was followed for the appointments of the petitioners, the expression 'temporary' used in their appointment letters have to be read as related to the expression 'on probation' as found in the appointment letters and not as if the petitioners were contractual appointees for specific period.

5. In view of the aforesaid stands of both the parties, the issue requiring decision by this Court is whether the employment of the petitioners was or was not a regular employment, or was it only a contractual employment for a fixed period incapable of being regularized as contended on behalf of respondent No. 2.

6. The Constitution Bench of the Hon'ble Supreme Court in *Secretary, State of Karnataka & Ors Vs. Umadevi & Ors. 2006 (4) SCC 1* has laid down the following ratio:-

“(I) The questions to be asked before regularization are:-

(a)(i) Was there a sanctioned post (court cannot order creation of posts because finances of the state may go haywire), (ii) is there a vacancy, (iii) are the persons qualified persons and (iv) are the appointments through regular recruitment process of calling all possible persons and which process involves inter-se competition among the candidates

(b) A court can condone an irregularity in the appointment procedure only if the irregularity does not go to the root of the matter.

(II) For sanctioned posts having vacancies, such posts have to be filled by regular recruitment process of prescribed procedure otherwise, the constitutional mandate flowing from Articles 14,16,309, 315, 320 etc is violated.

(III) In case of existence of necessary circumstances the government has a right to appoint contract employees or casual labour or employees for a project, but, such persons form a class in themselves and they cannot claim equality(except possibly for equal pay for equal work) with regular employees who form a separate class. Such temporary employees cannot claim legitimate expectation of absorption/regularization as they knew when they were appointed that they were temporary inasmuch as the

government did not give and nor could have given an assurance of regularization without the regular recruitment process being followed. Such irregularly appointed persons cannot claim to be regularized alleging violation of Article 21. Also the equity in favour of the millions who await public employment through the regular recruitment process outweighs the equity in favour of the limited number of irregularly appointed persons who claim regularization.

(IV) Once there are vacancies in sanctioned posts such vacancies cannot be filled in except without regular recruitment process, and thus neither the court nor the executive can frame a scheme to absorb or regularize persons appointed to such posts without following the regular recruitment process.

(V) At the instance of persons irregularly appointed the process of regular recruitment shall not be stopped. Courts should not pass interim orders to continue employment of such irregularly appointed persons because the same will result in stoppage of recruitment through regular appointment procedure.

(VI) If there are sanctioned posts with vacancies, and qualified persons were appointed without a regular recruitment process, then, such persons who when the judgment of *Uma Devi* is passed have worked for over 10 years without court orders, such persons be regularized under schemes to be framed by the concerned organization.

(VII) The aforesaid law which applies to the Union and the States will also apply to all instrumentalities of the State governed by Article 12 of the Constitution”.

7. What is therefore to be examined in the present case is whether sanctioned posts existed in the respondent No. 2-Institute to which petitioners were appointed, were there vacancies in these sanctioned posts, were the petitioners qualified for appointment in the posts and finally whether the recruitments of the petitioners were through open competition where candidates have been called by advertisements hence the appointments cannot be said to be made in an illegal or irregular manner. To complete the narration, it is stated that reference in this judgment to posts, will wherever the context so requires qua each of the petitioners, mean reference either to the post of a Reader or a Lecturer or a Professor.

8. Now, firstly on the aspect that whether there existed sanctioned posts, there cannot be any doubt whatsoever because the sanctioned posts were specifically created for respondent No. 2 in terms of the circular issued by the Government of NCT of Delhi dated 05.06.2006. This circular specifically created various sanctioned posts, including those posts to which the petitioners were appointed. Since the chart of sanctioned posts is a detailed chart as contained in the Circular dated 05.06.2006, I am not reproducing the same, but, it is suffice to state that the posts to which the petitioners were appointed in the respondent No. 2/Institute are duly mentioned in this circular dated 05.06.2006.

9. A para of this circular dated 5.6.2006 is important to show that the only condition which was required to be fulfilled for the sanctioned posts to come into existence was a declaration by the Government of NCT of Delhi to commence academic activities in respondent No. 2. This para reads as under :-

“The Government is pleased to sanction the creation of following posts the Rajkiya Ahyrvedic Sansthan at Khera Dabar in the scales of pay indicated against each, subject to the condition that appointments to the posts except those indicated against S. Nos 1, 3, 4, 84 & 94 to 97 in the table given below (to 1 extent approved by Government from time to time) shall not be made until time the Government makes a declaration about its intention to commence academic activities in the proposed educational institution. However this would not come in the way of the Project Director taking such steps as are required make selections for recruitment to these posts as per the approved recruitment rules for similar posts in the Government of NCT of Delhi”.

For the sake of clarity, it is clarified that the serial numbers mentioned in this aforesaid para do not pertain to the petitioners but pertain to the posts of a peon or PA etc and therefore no reference is required to be made to the posts as stated in the serial numbers in the aforesaid para.

So far as the condition of existence of declaration of intention to commence academic activities, it is not disputed before me that in the respondent

No.2/Institute academic activities/ teaching activities have in fact commenced since last about three years.

10. It should also be noted that the contents of the circular dated 5.6.2006 with respect to creation/sanction of posts is further made clear by para 5 of the note dated 9.5.2008 put up to the Council of Ministers and which reads as under:-

“5. 407 posts have been sanctioned for the project with the stipulation that appointment to teaching posts shall not be made till a decision is taken by the Government regarding commencement of academic activities. (Annexure-VI) Recruitment will be as per the recruitment Rules for similar posts in the Government of NCT of Delhi. All Group ‘A’ appointments shall be made by the Sansthan directly (without reference to UPSC), being an autonomous body. Recruitment to Group ‘B’ and ‘C’ posts shall be made through DSSSB as per standing instructions of Government of the NCT of Delhi. Group ‘D’ posts will be ‘Out-sourced’ to the extent possible.”

Therefore, in my opinion there can remain no doubt whatsoever that sanctioned posts were created, and the sanctioned posts did come into existence. The first requirement as per the ratio of *Uma Devi’s case (supra)* of existence of sanctioned posts hence stands satisfied.

11. The second aspect is of existence of vacancies in the sanctioned posts and as to whether all the petitioners were duly qualified for the posts. On the aspect of vacancies existing in the posts are concerned, it is not disputed on behalf of respondent No. 2 that it is because that the vacancies were existing, advertisements were issued in the newspapers for filling up the vacancies, and the only contention of respondent No. 2 is that the appointments of the petitioners were contractual

appointments and therefore not regular appointments. I thus conclude that in view of the advertisements issued for the posts in question to which the petitioners were appointed it could not be open for the respondent No.2 to contend that there did not exist vacancies in the posts.

So far as the qualifications of the petitioners are concerned, it is not an issue that the petitioners met the required qualifications as specified in the advertisements issued, as also otherwise specified by respondent no.2 for the posts of Readers, Lecturers or Professors. The learned counsel for the petitioners has filed a copy of the Gazette Notification with respect to the posts of Lecturers in various disciplines in Ayurveda and another schedule (V), both of Government of NCT of Delhi prescribing qualifications for the appointments to the posts of Lecturers in Ayurveda, Associate Professor in Ayurveda and Professors of Ayurveda. Thus the second requirement of *Umadevi's* case (supra) stands satisfied.

12. The aspect which then arises is as to whether the qualifications of the petitioners could not be said to exist, and also that sanctioned posts did not/could not exist because there were no recruitment rules of respondent No. 2 existing when the petitioners were appointed. This aspect in my opinion is clarified by the para of Circular dated 05.06.2006 which has been reproduced by me as above. The last line of the aforesaid Circular dated 05.06.2006 states that the recruitment to the

post has to be as per the approved recruitment rules for similar posts in the Government of NCT of Delhi. Since the rules of respondent No. 2 did not exist at the stage when the Circular dated 05.06.2006 was issued by Government of NCT of Delhi, the rules of Government of NCT of Delhi with respect to similar posts were adopted and to be applied for the appointments of various Readers, Lecturers and Professors to the posts which are stated in the Circular dated 05.06.2006. I do not think that any ambiguity can be said to exist for respondent no.2 to argue that the appointments of the petitioners were without following the recruitment rules inasmuch as the last line of the para of the circular dated 5.6.2006 reproduced above makes it more than abundantly clear that the recruitment rules to be applied were those of the respondent No. 2 for similar posts in Government of NCT of Delhi. Merely because respondent No. 2 has subsequently framed its own recruitment rules cannot mean adoption of the recruitment rules of Governments of NCT of Delhi made at the relevant time by virtue of circular dated 05.06.2006 can in any manner be doubted so as to contend that there were no recruitment rules for appointment of petitioners to the posts of Readers, Lecturers or Professors in the respondent No. 2/ Institute.

13. On behalf of respondent No. 2 reliance is placed on a judgment dated 03.10.2012 passed by a Division Bench of this Court in W.P.C. 2604/2012 in

Mitraon Uthan Samiti (Regd.) V. Govt. of NCT of Delhi & Ors. (which is a

decision in public interest litigation petition) to argue that the Court by the judgment dated 03.10.2012 directed the framing of recruitment rules of respondent No. 2 and which were only thereafter framed on 17.12.2012, and accordingly, it is contended that the respondent No. 2 is justified in taking up the stand that when the petitioners were appointed there were no recruitment rules of respondent No. 2 and therefore petitioners cannot be said to have been appointed against sanctioned posts. What the contention of respondent No. 2 is that sanctioned posts can only exist if the recruitment rules exist and since the recruitment rules of the respondent No.2 did not exist when petitioners were appointed but the same were directed to be framed subsequently in terms of judgment dated 03.10.2012, hence, the appointment of the petitioners in 2008/2009 are not regular appointments but only the contractual appointments. The recruitment rules are stated to have been framed by Governing Council in its ninth meeting on 17.12.2012.

14. In my opinion, the ratio of a judgment has to be read in the context of the facts of the case. In this regard one can refer to the Constitutional Bench judgment of the Hon'ble Supreme Court in the case *Padma Sundara Rao & Ors. v. State of Tamil Nadu & Ors., 2002 (3) SCC 533* wherein the Constitution Bench of the Hon'ble Supreme Court held that the ratio of a case is dependent on the facts of each individual case, and difference of even a single fact can make difference to

the ratio of two cases. The Supreme Court cautioned against reading of language of judgment as if it was the language of a statute.

The judgment in the case of *Mitraon Uthan Samiti (supra)* shows that really what was in question in the said judgment was the post as stated in para 1 of the said judgment viz of Project Director of the respondent No. 2 and not those posts to which the petitioners have been appointed. Observations in the said judgment therefore have to be read really with reference to recruitment rules when the post of Project Director was required to be filled up. I do not think that the ratio of the said judgment can be read to mean that there did not at all exist any recruitment rules for the posts of Readers, Lecturers or Professors of the respondent No. 2. The judgment in *Mitraon Uthan Samiti (supra)* surely did not have bearing to the applicable recruitment rules of Government of NCT of Delhi so far as the Readers, Lecturers and Professors are concerned because the circular dated 05.06.2006 of the Government of NCT of Delhi does not find mention in the said judgment and which obviously would be because the said circular dated 05.06.2006 would not have been pointed out by the respondent No.2 herein to the Division Bench at the time of passing of judgment dated 03.10.2012. Assuming for the sake of arguments that the posts of Readers, Lecturers or Professors were in issue in the case of *Mitraon Uthan Samiti (supra)*. Therefore, the judgment in *Mitraon Uthan Samiti(supra)* has no application so far as the facts of the present

case are concerned. Most importantly and finally I must state that even if the judgment in the case of *Mitraon Uthan Samiti (supra)* did direct framing of rules it would be as regards rules framed by respondent No.2 for itself for the first time and that would not be a reflection on the aspect that till then there existed and were applicable the relevant rules of Govt. of NCT of Delhi for various posts in respondent No.2.

15. The conclusion which thus emerges is that there is not even an iota of doubt that the petitioners have been regularly appointed through a regular recruitment process of open competition, and the petitioners were appointed as they were successful in the selection process as they cleared the written tests and thereafter the interviews conducted by the Selection Committee. So far as the petitioners who were appointed as Professors no written test was required and these Professors were selected on undergoing only the interview process. This was obviously because the post of Professor being an extremely high post, the need was only felt to have an interview for the post of Professors and who were not required to go through the written test. Professors appointed in many Universities similarly undergo selection only through interviews. That no doubt remains on this aspect that so far as the posts of Professors are concerned only interviews were required and written test was required inasmuch as the respondent No. 2 itself has placed on record the guidelines/procedure for holding regular recruitments to various posts in

respondent No. 2(annexurer-R1/1) and which guidelines show that whereas with respect to the posts of Lecturers and Readers candidates have to clear both a screening test/written test and interview, however with respect to appointments to the posts of Professors there is no screening test/written test, but selection is only through interview.

16. Finally I would like to observe that what *Umadevi's (supra)* case only required was existence of sanctioned posts and the qualifications required for such posts. Creation of sanctioned posts with qualifications can no doubt be prescribed by recruitment rules, but creation of sanctioned posts with required qualifications can also be done independently of framing of recruitment rules. Thus the argument of respondent No.2 that sanctioned posts with specific qualification can only exist under recruitment rules is a wholly misconceived argument once a competent authority otherwise creates sanctioned posts.

17. The upshot of the above discussion is that duly qualified petitioners were appointed on open competition between candidates called through advertisements in newspapers. Petitioners cleared the written tests, and the petitioners also cleared the interview conducted by the Selection Committee. Appointments of the petitioners were also against the sanctioned posts created by means of Government of NCT of Delhi's circular dated 05.06.2006. The petitioners' appointments were as per the extant recruitment rules, being the recruitment rules of Government of

NCT of Delhi. The petitioners' appointments are in accordance with the ratio of *Umadevi's(supra)* case and hence are regular appointments and not illegal appointments. Neither the letter nor the spirit of the ratio of *Umadevi's (supra)* case is violated by the appointments of the petitioners. After all what *Umadevi's case (supra)* prohibited was back door illegal appointments without following an open recruitment process and which illegal backdoor appointments used to be got regularized subsequently.

18. Before going to the next aspect, I may at this stage put on record the objection which was raised on behalf of respondent No. 2 for not considering the additional documents filed by the petitioner along with an additional affidavit dated 01.05.2013. However, since the documents have been filed supported by an affidavit, I do not find any reason not to refer to them and taken with the fact that the very nature of the documents of the same being affidavits of petitioners counter signed by the Principal of respondent No. 2/ institute, minutes of the meeting of the Selection Committee of respondent No. 2 and Assessment Visitation Report prepared by the Central Council of Indian Medicine with respect to the respondent No. 2 for the year 2011-12 etc etc show that the documents are indubitably genuine documents.

19. The only issue which now remains to be addressed is as to whether the respondent No.2 is correct in contending that the appointments of the petitioners

are contractual in nature and hence appointments cannot be said to be regular appointments. It is argued that once the appointments are only contractual appointments and not regular appointments, the reliefs claimed by the petitioners that no fresh recruitments should take place through advertisements have to be denied/dismissed in view of the ratio of *Umadevi's case (supra)* because *Umadevi's case (supra)* held that contractual appointees cannot be regularized.

20. In my opinion even this argument raised on behalf of respondent No. 2 is quite clearly incorrect. In order to understand whether at all appointments of petitioners were contractual appointments for contractual period, let me reproduce one sample appointment letter qua the petitioners, and which is reproduced below:-

“The Ch. Brahm Prakash Ayurvedic Charak Sansthan

(Government of Delhi Undertaking)

3, Warden Flats, Maulana Azad Medical College complex, New Delhi.

OFFER OF APPOINTMENT

On the basis of the recommendation of the Selection Board, and in anticipation of the approval of Governing Council, Dr. Amrish Chanana is hereby offered the post of Lecturer (Rachna Sarir) in the Ch. Brahm Prakash Ayurved Charak Sansthan in the pay scale of `

15600/-39100/-+grade pay 5400/+NPA 25% + DA +HRA, CCA, etc., as per Govt. of NCT Delhi orders. In case the above pay, etc., is revised or amended by the Govt. of Delhi, the same will be applicable and no representation to this effect will be entertained. The following terms and conditions shall govern the offer of appointment:

1 The services of Dr. Chanana will be purely on temporary basis initially for a period of two years, which may be extended from time to time.

2 The appointment will be on probation for a period of one year. During the probation period, the appointment can be terminated by the Sansthan or by Dr. Chanana during the currency of the engagement without assigning any reason whatsoever with one month's notice. It is also terminable by either party before the expire of the period of one year by giving one month's notice or payment/deposit of one month's pay in lieu of notice period by either party.

3 Dr. Chanana is required to perform the duties assigned to him by the Sansthan sincerely and to the satisfaction of Sansthan and would mainly be assigned the role of Lecturer in the Medical College of the Sansthan. During this process, he is required to assume a role model for the students and for his colleagues in the Sansthan and to take the necessary responsibilities as

well as assume leadership and also to actually perform various tasks and assignments that may be required to set up a State of the Art institute and a Centre of Excellence, best of its kind in India under the guidance and direction of the authorities of the Sansthan.

4 The employee, initially will have to make his own arrangement for stay at Delhi. However, the employer may, if it is necessary in the interest of the Sansthan, provide the employee with official accommodation within the campus of the Sansthan and my charge reasonable license fee as may be decided.

5 Leave admissibility to the Employee during the employment will be as per Govt. of NCT Delhi leave entitlement, viz., Casual leave, earned leave, medical leave, etc.

6 The engagement on temporary basis would not confer any right for permanent appointment to any post.

7 Conduct Rules, Service Rules, etc., as applicable to the employees of Govt. of NCT Delhi will be mutandis, applicable to the employee. Any unauthorized absence from duty for more than fifteen days would be sufficient ground for the employer to terminate the employment.

8 Tax, as may be applicable, will be deducted at source from the salary of the employee.

9 The appointment is provisional and is subject to medical fitness and verification of character and

antecedents and testimonials/certificates for educational qualifications and other claims.

10 The appointment is also subject to the approval of the competent authority/Governing Council, the appointment will be cancelled.

11 Dr. Chanana may also have to agree to any other terms and conditions that may be mutually agreed upon in due course of time or that may be decided and imposed by the Govt. of NCT Delhi from time to time.

Dr. Chanana is requested to convey his acceptance of the offer immediately and not later than 30 days. On receipt of the acceptance of the offer, the Sansthan will intimate the date, by which the employee is required to join the duties.

(Dr. B.S. Banerjee)

Project Director

Dr. Amrish Chanana,
s/o Sh. K.C. Chanana,
A-165, Deen Dayal nagar,
Nandanpura,
Jhansi-284003
(U.P.)

21. Relying upon paras 1, 2 and 6 of the aforesaid offer of appointment, it is contended on behalf of respondent No. 2 that this Court should hold that appointments of petitioners are only contractual appointments because they were appointments on temporary basis for one year and it was specified that appointment on temporary basis does not confer any right for permanent employment to any posts.

22. In my opinion, there is clearly a difference between the expressions “temporary basis” and “contractual appointment”. If the appointment was contractual appointment then the appointment would be for a particular period i.e from a particular date to a particular date. In the present case, since the appointment letter is not from a particular date to another particular date on which the period expires, merely because it is mentioned that the initial appointment is for two years and the probation period will be of one year cannot mean that the appointments to the post is on contractual basis. In my opinion the very fact that appointment is on probation negates the argument of contractual appointment. The appointment letter nowhere stated that appointments are ‘contractual appointments’. The fact that probation is of one year and only in which first year period employment can be terminated by a month’s notice (i.e not after one year and till the end of second year) is another clear pointer of the employment being not a contractual employment. The period specified of two years is really for the

purpose that the maximum period of probation would be of two years. Clause 11 using the expression ‘from time to time’ again shows the employment to be regular employment and not merely a contractual employment.

23. I may note at this stage that when the petitioners were appointed, candidates were called through advertisements which did not mention that appointments of the petitioners are specifically to be temporary /contractual because no recruitment rules of the respondent No. 2 have been finalized as yet. The advertisement did not use the expression “appointments on contractual basis”. Therefore, taking the advertisements along with the appointment letters into account, in my opinion, the expression “temporary basis” is to be taken along with the aspect that appointments at the initial stage is on probation basis. It is only on a successful completion of probation that the petitioners would be taken as regular appointees.

Whatever doubt remains on this aspect is quite clearly removed on the Principal of respondent No. 2 counter signing the affidavits submitted to Central Council of Indian Medicine, and in which affidavits the nature of appointments of the petitioners is specifically stated to be “regular” so far as most of the petitioners are concerned. Affidavits came to be submitted to the Central Council for Indian Medicine stating the appointments of petitioners on regular basis because in the Assessment Visitation Report by the Indian Council of Medicine for the year 2011-12 conducted for the respondent No. 2, it was observed/doubted that the teaching

staff of the respondent no.2 is appointed on contractual basis and they should be appointed on regular basis. To deny this observation of the inspection committee affidavits were taken from the petitioners counter signed by the Principal of respondent No. 2 for filing with Indian Council of Medicine to show that most of the petitioners have been appointed as regular appointments. So far as some of the petitioners are concerned, no doubt expression in some affidavits may be “temporary appointments” , however, the same could not mean that expression should be taken as “contractual appointments” because I have already referred to the appointment letters and on reading of the appointment letters as a whole the expression “temporary basis” only means that the petitioners were appointed on probation for a period of one year and to be confirmed/regularized thereafter.

24. In my opinion, whatever doubt which remains in the nature of appointments of the petitioners as to they being allegedly only contractual appointees, is removed by reference to the circular of Government of NCT OF Delhi dated 05.06.2006 which specifically created sanctioned posts and hence regular posts for regular appointments of Readers, Lecturers and Professors. Once there are sanctioned posts and the appointments were through the regular recruitment process of duly qualified persons against the vacancies in the sanctioned posts, I would definitely not like to read the appointment letters when it uses the expression “temporary basis” to mean as if appointments are only on contractual basis.

To buttress this point I would like to emphasize that there is nothing mentioned in the Circular of the Government of NCT of Delhi dated 05.06.2006 that the respondent No. 2 will appoint persons on contractual basis. Appointments in terms of the Circular dated 05.06.2006 was against sanctioned posts and once appointment is to sanctioned posts through regular recruitment by clearing of examination and clearing of interview conducted by the Selection Committee, the appointments would in my opinion be regular appointments; and definitely not contractual appointments.

25. As an epitaph I must put on record my unhappiness with the stand taken by respondent No. 2 in view of the unimpeachable documents stated above which have come on record showing creation of sanctioned posts and appointments of qualified persons through regular recruitment process. After all many of the petitioners had left their permanent jobs with various organizations including certain State Governments to take appointments to the posts in respondent No. 2. No reasonable person can read the appointment letters as petitioners having been appointed on contractual basis. I have in any case definitely refused to do so in the categorical facts which have emerged in the present case.

26. In view of the above, the writ petition is allowed with costs of Rs.10,000/- for each of the petitioners. Costs shall be paid within a period of three months from today. The impugned advertisement dated 02.02.2013 is quashed. The petitioners

will be treated to have been appointed on regular basis on the posts to which they have been selected and appointed, subject to their having successfully completed the probation periods. Respondents are restrained from in any manner treating the services of the petitioners as contractual in any manner. The writ petition is allowed and disposed of in terms of the aforesaid conclusions and observations.

MAY 03, 2013

j

VALMIKI J. MEHTA, J.