

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on October 30, 2015
Judgment delivered on December 23, 2015

+ W.P.(C) 3474/2015, CM No.6207/2015
MUKUL MISHRA Petitioner

Through: In person

Versus

DELHI ELECTRICITY REGULATORY COMMISSION &
ORS Respondent

Through: Mr.Meet Malhotra, Sr.
Advocate with Ms.Pratima
Gupta and Ms.Palak Singh,
Advocates for R-1 & R-2
Mr. Vinod Kumar Bhati,
Adv. for
Mr. Devesh Singh, Adv. for
R-3

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The present petition has been filed by the petitioner seeking the following reliefs:-

“a) issue writ of mandamus or any other appropriate writ/direction/orders and further order/orders to the effect that the respondent Nos.1 to 3 shall permit the petitioner to work on the present post of Advisor (Law) at office of respondent No.2 on present terms and conditions and salary until the respondent No.3 takes a final view on its notification No.F-19(01)2014/S-IV/223-224 dated 16.02.2015. Secondly he may kindly be allowed to work on the present post till continuation of the scheme, whichever lasts later.

b) direct the respondent Nos.1 & 2 not to take any

action/shall withdraw any action already taken on the basis of interviews (personal interaction) dated 30.03.2015 until final view is taken by the respondent No.3 on its notification;

c) direct the respondent Nos.1 & 2 to take action consistent to final view taken by respondent No.3 regarding notification dated 16.02.2015;

d) Any other order(s) as may be deemed fit and appropriate may also kindly be passed.”

2. Meaningfully read, the relief is primarily for a direction to permit the petitioner to work on the post of Advisor (Law) at the office of respondent No.2 i.e Electricity Ombudsman on present terms, conditions and salary on which he was initially appointed until respondent No.3 Government of NCT of Delhi takes a final view on the notification dated February 16, 2015 whereby it was decided by the Govt. of NCT, not to terminate the services of the contractual employees engaged by the departments till further instructions in the matter. It is also prayed that the respondent Nos.1 & 2 not to take any action on the basis of interview held on March 30, 2015 for the post of Advisor (Law).

3. Mr. Mukul Mishra, petitioner appeared in person and would submit that he was appointed as Advisor (Law) on February 10, 2012 in the office of the Electricity Ombudsman. According to him, the said appointment was for a period of three years. The petitioner has been discharging duties to the best of his ability. As the term of the

appointment was coming to an end on February 12, 2015, the respondent No.1 was supposed to start the process for reappointment/fresh appointment, six months prior to the date on which the term was to expire. The respondent No.1 advertised two posts of (i) Secretary and (ii) Advisor (Law) on December 11, 2014. The petitioner was also eligible for a second term being 54 years of age and his work and conduct was found excellent during the initial period of three years of appointment. He also applied for the post of Advisor (Law) for the second term. As the process of interview could not take place before the tenure of the petitioner was due to expire on February 12, 2015, the appointment of the petitioner was extended to a further period of 60 days i.e. up to April 13, 2015. It is his case that on February 16, 2015, the Govt. of NCT issued notification to the effect, if any terminations, are likely to take place, the same shall be stopped till further orders. The petitioner's case is that, he had made a representation dated March 26, 2015 to extend his services in terms of the notification dated February 16, 2015, till further orders. He also states, that he appeared in the personal interaction, held on March 30, 2015. No reply to the said representation dated March 26, 2015 was ever received by the petitioner. He concedes to the fact that the respondent No.1 had not notified Recruitment Rules for various posts under respondent No.2. The respondent No.1 is engaging officers on contractual basis. He would

also submit, that the respondent could not have replaced a contractual employee by a further contractual employee by appointing a new Advisor (Law). That apart, it is his endeavour to submit that there is no concluded contract between the petitioner and the respondents, inasmuch as after every year, there is an increase in the pay of the Advisor (Law) by 5%. According to him, absence of Rules has led to lack of transparency. He states, that the provision of clause 17 of the Regulations, 2003 provides that Commission shall provide the staff to the Ombudsman. He would state, that the case of the respondents that the notification dated February 16, 2015 is not applicable to the respondent or to the office of Ombudsman, is not correct, inasmuch as the said notification stipulates that it applies to autonomous bodies. The appointment of Chairman and Members, DERC are made by the Govt. of NCT and their salaries are being paid out of consolidated fund of Govt. of NCT of Delhi, only some funds are being generated by respondent No.1 itself. Therefore, respondent No.1 squarely falls within the category of autonomous body and Statutory Institution. Except doing tariff determination, for all other purposes like establishment, recruitment etc are under the Govt. of NCT of Delhi. He would rely upon the following judgments in support of his contention that a contractual employee cannot be replaced by another contractual employee.

- (i) ***(1992) 4 SCC 118 State of Haryana & Ors vs. Piara Singh and ors;***
- (ii) ***(2006) 4 SCC 1 Secretary State of Karnataka & ors vs. Uma Devi;***
- (iii) ***Dalip Kumar Jha vs. New Delhi Municipal Council, Writ Petition Nos.16499-16502/2004 decided by this Court on September 1, 2006;***
- (iv) ***Dr. Manish Arora & Ors vs. Union of India & Ors of Central Administrative Tribunal, Chandigarh Bench reported as 2007 (2) SLJ 198;***
- (v) ***(2009) 6 SCC 611 Mohd. Abdul Kadir & Anr. Vs. Director General of Police, Assam & ors;***
- (vi) ***2012 (1) CAT 55 Vandana Jain & Ors vs. Union of India & ors***
- (vii) ***(2015) 1 SLR 634 Ashok Godara & Anr. Vs. State & Ors;***
- (viii) ***2014 (146) DRJ 167 Narinder Singh Ahuja & Ors vs. Secretary Ministry of health & Family Welfare & Ors;***
- (ix) ***Abhinav Choudhary & Others vs. Delhi Technological & Anr. Writ Petition (Civil) No.3512/2014 and Writ Petition (Civil) No.3834/2014 decided on January 20, 2015 by this Court;***
- (x) ***Dr. Parmod Kumar Dhailwal vs. GNCT of Delhi & Ors. Writ Petition No.7942/2014 and connected writ petitions decided on May 26, 2015 by this Court.***

4. On the issue that the contract between the parties is not a concluded contract, the petitioner relied upon the following judgments :-

- (i) ***Gostho Behari Sirkar vs. Surs' Estates Ltd. AIR 1960 Calcutta 752;***
- (ii) ***(1975) 1 SCC 199 The Godhra Electricity Co. Ltd. & Anr. Vs. The State of Gujarat;***
- (iii) ***DERC vs. BSES Rajdhani Power Pvt. Ltd. Review Petition No.5/2009 in Appeal No.181/2008 decided on January 27, 2012.***

5. On the issue of waiver and estoppel, the petitioner relied upon the following judgments:-

- (i) ***AIR 1986 SC 180 Olga Tellis and others vs. Bombay Municipal Corporation and ors;***
- (ii) ***(1979) 2 SCC 409 M/s Motilal Padampat Sugar Mills Co. Ltd. Vs.***

State of Uttar Pradesh and ors;

(iii) AIR 1984 SC 921 A.C. Jose vs. Sivan Pillai and ors;

(iv) AIR 1987 SC 2414 Delhi Cloth & General Mills Ltd. vs. Union of India;

(v) AIR 1989 SC 1834 Provash Chandra Dalui and another vs. Biswanath Banerjee and another;

(vi) AIR 1991 Gujarat 43 Dr. Sida Nitinkumar Laxmankumar Laxmanbhai and anothers vs. Gujarat University and ors;

(vii) AIR 1984 Bombay 161 Tapti Oil Industries and another vs. State of Maharashtra and ors;

(viii) AIR 1982 Bombay 135 Yousuf Ali Abdulla Fazalbhoy and ors vs. M.S. Kasbekar and another;

(ix) (1982) 1 SCC 223 Chhaganlal Keshavlal Mehta vs. Patel Narandas Haribhai;

(x) AIR 1984 Patna 61 Rameshwar Prasad Sinha vs. State of Bihar and ors;

(xi) AIR 1982 Gujarat 183 C.J. Thakor vs. Ahmedabad Distt. Panchayat and ors;

(xii) AIR 1998 Rajasthan 100 M/s. Phoneix Impex vs. State of Rajasthan and ors;

(xiii) (1974) 2 SCC 725 P. Dasa Muni Reddy vs. P. Appa Rao.

6. On the other hand, Mr. Meet Malhotra, learned Senior Counsel for the respondent would submit that the respondent No.1 is a statutory authority constituted under Section 82 of the Electricity Act, 2003. Section 42 (6) and (7) of the Electricity Act provides that every consumer, who is aggrieved by non redressal of his grievance by the Consumer Redressal Forum, may make a representation for the redressal of his grievance to any Authority to be known as Ombudsman to be appointed or designated by the State Commission. The Ombudsman shall settle the grievance of the consumer within such time and in such a manner as may be specified by the State Commission. Accordingly, Institution of

Ombudsman was constituted under the DERC (Guidelines for establishment of forum for redressal of grievance of the Consumers and Ombudsman) Regulations, 2003, wherein Regulation 17 stipulate that Commission shall provide secretariat and such staff to the Ombudsman as it may consider necessary. The Commission provided, Advisor (Law) to the Ombudsman on a predetermined eligibility criteria laid down by the Commission on lump-sum payment basis for a fixed term. The appointment is not against a regular sanctioned post carrying scale of pay plus grade pay. Keeping in view the nature of duties of Ombudsman, post of Advisor (Law) to the Ombudsman is filled on contract basis on payment of a consolidated salary and no other mode of recruitment is assigned to it. From time to time, the Commission has been advertising the post of Advisor (Law) and incumbent is selected on assessment of suitability by the Selection Committee. Accordingly, an advertisement was issued in the newspapers in 2012, in pursuance of which the petitioner had applied and went through the selection process and appointed by the Selection Committee. Before joining as Advisor (Law), the petitioner had executed a contract, which clearly stipulated the appointment for a period of three years. He would also state, that the appointment comes to an end by efflux of time, on the expiry of the said period. Noting that the tenure of the petitioner was coming to an end, an

advertisement dated December 11, 2014 was issued. The selection process thereto was completed on March 30, 2015 when the petitioner had also appeared in the interview. He would also state, that the offer of appointment to the selected candidate was sent. He takes a plea, that such a candidate was a necessary party but has not been made so in the writ petition and would disentitle the petitioner, the relief as prayed for. It is only, when the petitioner had come to know that he was not selected and another candidate was selected, he has filed the instant petition. Therefore, the Rule of Estoppel be invoked in the instant petition and the petition be dismissed.

7. I may only state here, during the course of the submissions, the petitioner, had shown Draft Regulations, which inter-alia stipulate that no staff Member can continue in the office upon attaining the age of 65 years, to contend that he can continue till the age of 65 years. This Court deemed it proper to seek a response on the submission made by the petitioner. Accordingly, an additional affidavit was filed, wherein it was mentioned that the said Draft Regulations remained so, as it did not come into force. It was also clarified in the additional affidavit, that the intent of framing the Draft Regulations was, to allow any candidate with the legal knowledge to work as Advisor (Law) to Ombudsman on contractual basis for three years and not exceeding the age of 65 years, does not mean

that the individual, so appointed on contractual basis, would continue till the age of 65 years. At the end of the contractual period, the individual has to demit the office.

8. Insofar as the issue of notification dated February 16, 2015 is concerned, it was the stand of the respondent No.1 that the same is not applicable to it. In support of this stand, the Commission relied upon Section 95 of the Electricity Act to say that all the proceedings before it are judicial proceedings including for the purposes of Section 193 and 228 of the Indian Penal Code and the Commission shall be deemed to be a Civil Court for the purposes of Section 345 and 346 of the Code of Criminal Procedure, 1973. The additional affidavit was responded to by the petitioner, the contents of which have already been noted above.

9. Having heard the petitioner and Mr. Meet Malhotra in detail, suffice to state that the relief as sought for by the petitioner is of limited nature to the effect that the respondents should continue to permit the petitioner on the post of Advisor (Law) till they take a final view on the notification dated February 16, 2015 and till such time they should not take any action on the basis of the interview held on March 30, 2015. Suffice to state, that the respondent No.1 is on record, to state that the said notification is not applicable to it for the reason that the same is a body discharging judicial function. Without going into the reasoning given by

the respondent No.1, the fact that a view has been taken by the respondent No.1, the writ petition needs to be dismissed.

10. I note that during the submissions, both the parties have referred to the provisions of the Electricity Act, The Rules and the Regulations, 2003.

I reproduce the same as under:-

“42. Constitution of State Commission:-

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.”

“7. Consumer Redressal Forum and Ombudsman-

(1) The distribution licensee shall establish a Forum for Redressal of Grievances of Consumers under subsection (5) of section 42 which shall consist of officers of the licensee. The Appropriate Commission shall nominate one independent member who is familiar with the consumer affairs.

Provided that the manner of appointment and the qualification and experience of the persons to be appointed as member of the Forum and the procedure of dealing with the grievances of the consumers by the Forum and other similar matters would be as per the guidelines specified by the State Commission.

(2) The Ombudsman to be appointed or designated by the State Commission under subsection (6) of section 42 of the Act shall be such person as the State Commission may decide from time to time.

(3) The Ombudsman shall consider the representations of the consumers consistent with the provisions of the Act, the Rules and Regulations made hereunder or general orders or directions given by the Appropriate Government or the Appropriate Commission in this regard before settling their grievances.

(4) (a) The Ombudsman shall prepare a report on a six monthly basis giving details of the nature of the grievances of the consumer dealt by the ombudsman, the response of the Licensees in the redressal of the grievances and the opinion of the ombudsman on the Licensee's compliance of the standards of performance as specified by the Commission under section 57 of the Act during the preceding six months.

(b) The report under sub-clause (a) above shall be forwarded to the State Commission and the State Government within 45 days after the end of the relevant period of six months."

"181.(Powers of State Commissions to make regulations):

(2) (r) guidelines under sub-section (5) of section 42;

(s) the time and manner for settlement of grievances under sub-section (7) of section 42;

(zk) the terms and conditions of service of the secretary, officers and other employees of the State Commission under sub-section (2) of section 91;"

"Section 91. (Secretary, officers and other employees of Appropriate Commission):--- (1) The Appropriate

Commission may appoint a Secretary to exercise such powers and perform such duties as may be specified.

(2) The Appropriate Commission may, with the approval of the Appropriate Government, specify the numbers, nature and categories of other officers and employees.

(3) The salaries and allowances payable to, and other terms and conditions of service of, the Secretary, officers and other employees shall be such as may be specified with the approval of the Appropriate Government.

(4) The Appropriate Commission may appoint consultants required to assist that Commission in the discharge of its functions on the terms and conditions as may be specified.”

“17. Staff

The Commission shall provide secretariat and such staff to the Ombudsman as it may consider necessary. Without prejudice to any other arrangement that may be made, the Commission may also direct the distribution licensees to make available such staff for the Ombudsman as it considers necessary and the licensees shall promptly comply with such direction/order. The staff so provided for the Ombudsman shall work under his administrative control.”

11. From the perusal of the provisions noted above, it is clear that Section 42 (6) and (7) contemplate redressal of grievance by an Authority to be known as Ombudsman, appointed by the Commission within such time and in such a manner as may be specified by the Commission. In exercise of power under Section 181 (2) (s), it appears that the Commission had framed regulations for establishment of forum for redressal of grievances of the Consumers and Ombudsman as

contemplated under section 42 (5), (6) and (7) on March 11, 2004. The said Regulations also stipulate, the staff of the Ombudsman. It may be clarified here that Section 91 of the Electricity Act contemplates the appointment/existence of certain functionaries of the Commission. Suffice to state, that the provisions afore stated makes a distinction between the staff of Ombudsman and the staff of the Commission. If that be so, one must proceed on a premise that the terms and conditions of their appointment would be regulated separately. The petitioner concedes to the fact that his appointment was an appointment in the office of the Ombudsman. It is the case of the respondents that the appointment to the position of Advisor (Law) is being made on predetermined eligibility criteria laid down by the Commission on lump-sum payment basis for a fixed term, which is amply reflected by the Commission in the advertisements issued from time to time for making appointments. There is no challenge to the eligibility criteria laid down by the Commission in the advertisements. Neither it is the prayer of the petitioner, that the respondent No.1, instead of evolving a criteria of filling up the position of Advisor (Law) on contractual basis, should be made on permanent basis. There is no dispute to the proposition of law that discretion surely vests with the concerned Authority to the manner in which a particular appointment has to be made to cater to its

convenience/purpose. No doubt, if the implementation of such a process is arbitrary, the same can be questioned. The facts of this case demonstrate, that the petitioner had initially applied against an advertisement and was selected on a term of three years. The petitioner had accepted the same by joining the position and continue to work on the said position for three years. Thereafter, on a fresh advertisement, the petitioner had applied against the same. He participated in the selection process by appearing in the interview before the Selection Committee without any protest and demur. If that be so, surely, the petitioner cannot challenge the very process, which he had accepted without protest and demur, only on knowing that he may not be selected. In this regard, I rely on the judgment of the Supreme Court in the case reported as **(1995) 3 SCC 486 Madan Lal and others vs. State of J & K and others**, wherein the Supreme Court in para 9 has held as under:-

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondent herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondent. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their

*combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of **Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.**, (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”*

The aforesaid position of law is reiterated by the Supreme Court in the case reported as **(2011) 1 SCC 150 Vijendra Kumar Verma vs. Public Service Commission, Uttarakhand and others**, wherein, the Supreme Court in para 24 has held as under:-

“24. When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office operation. Knowing the said

criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.”

In view of the above, the reliance placed by the petitioner on the judgments of *Olga Tellis and others (supra)*, *M/s Motilal Padampat Sugar Mills Co. Ltd. (supra)*, *A.C. Jose (supra)*, *Delhi Cloth & General Mills Ltd. (supra)*, *Provash Chandra Dalui and another (supra)*, *Dr. Sida Nitinkumar Laxmankumar Laxmanbhai and anothers (supra)*, *Tapti Oil Industries and another (supra)*, *Yousuf Ali Abdulla Fazalbhoj and ors (supra)*, *Chhaganlal Keshavlal Mehta (supra)*, *Rameshwar Prasad Sinha (supra)*, *C.J. Thakor (supra)*, *M/s. Phoneix Impex (supra)* and *P. Dasa Muni Reddy (supra)*, would not help the petitioner.

12. Insofar as the plea of the petitioner, that a contractual appointment cannot be replaced by a further contractual appointment is concerned, the judgments as relied upon by the petitioner in the case of *State of Haryana & Ors vs. Piara Singh*, there is no dispute that Recruitment Rules existed for making a regular appointment. It is noted, de-hors, the Recruitment Rules, appointments were being made on ad hoc basis. The Supreme Court, in the said case, has held that as regards temporary and ad hoc employees in Government Service, the normal Rule is regular recruitment

through the prescribed agency but exigencies of administration may, some time calls for an ad hoc or temporary appointment to be made. In such a situation, efforts should always be made to replace such an ad hoc employee by a regular selected employee as early as possible. This has been held so by the Supreme Court to avoid arbitrary action on the part of the Appointing Authority. Suffice to state, in *Piara Singh's* case, the normal recruitment rules were in place, which contemplated an appointment to be made on regular basis. The Supreme Court dicta, that an ad hoc employee should be replaced by an ad hoc employee, was only with a view to avoid arbitrariness. In the case in hand, the scheme determined by the Commission itself contemplated an appointment on tenural basis/contractual basis. As noted above, it is not the case of the petitioner that there should be a scheme for appointment of an Advisor (Law) on regular basis. In *State of Karnataka & Ors vs. Uma Devi* (supra), the Supreme Court had not disturbed the ratio in *Piara Singh's* case. Even in the case of *Dalip Kumar Jha & Ors* (supra), it is noted this Court was concerned with facts where NDMC was appointing TGTs on contract basis. The terms of appointment of the petitioners had clearly stipulated that their appointment on contract basis, was for a particular period or till regular selection is made. It appears, there is no dispute on the existence of the recruitment rules for making appointment on regular

basis. The petitioners therein had expressed their apprehension that the respondent may appoint persons on regular basis as TGTs and PGTs. This Court had rejected their plea of regularization keeping in view the judgment of the Supreme Court in *Uma Devi's* case. But an observation was made that, as they have been appointed on contractual basis, they cannot be replaced by further contractual employees. In other words, a contractual employee can be replaced by a regular employee but where the scheme of appointment itself suggests, the appointment to be made on contractual basis, not on regular basis, the ratio of the Supreme Court in *Piara Singh's* case as upheld in *Uma Devi's* case would not be applicable. The judgment relied upon will not help the petitioner.

13. In *Mohd. Abdul Kadir & Anr. (supra)*, the Supreme Court was concerned with appointment made against a scheme wherein the Supreme Court held that as the staff appointed against a particular scheme, which was temporary in nature, ought to be continued till the scheme is continued without any artificial break. The Supreme Court had observed that termination can be effected on other grounds like unfitness etc.

14. On a reading of the judgment of the Supreme Court, it is clear when an appointment is against a scheme, such appointment must continue till the tenure of the scheme without terminating the staff and appointing fresh ones in between, which is not the case here and the judgment has no

applicability.

15. In the case of *Ashok Godara & Ors*, the said case would not help the petitioner, inasmuch as the High Court has only held that the Court cannot extend the contractual employment of contractual employees. It also made an observation that it is not a case where a contractual employee is replaced by another contractual employee. Similarly, the reliance placed by the petitioner in the case of *Narinder Singh Ahuja & Ors* would not help his case, inasmuch as there, the petitioners were engaged against a project funded by foreign donor agency including World Bank. This Court had held, reasons for discontinuance of the petitioner's employment is not because of their replacement with regular appointees, but, with another set of contractual employees. Direction was given to the respondent to continue the petitioners in contractual employment on annual renewal basis till the scheme expires in 2017.

16. Insofar as the judgment in *Abhinav Chaturvedi (supra)* is concerned, there is no dispute that despite Rules in existence, appointments were being made on contractual basis. It was in the said background, this Court had held relying upon the judgment of the Supreme Court in *Piara Singh (supra)*, so also in *Mohd. Abdul Kadir (supra)* and *Uma Devi & Ors (supra)*, that a contractual employee cannot be replaced by another contractual employee. Similar is the conclusion in

the case of *Parmod Kumar Dhailwal and connected writ petitions (supra)*. Suffice to state, it is reiterated that the judgments are not applicable to the facts of this case when the scheme of appointment to the position of Advisor (Law), as decided by the Commission contemplate appointment only on contract basis.

17. Insofar as the submission that there is no concluded contract is concerned, the same is untenable. The petitioner was given the terms of appointment, pursuant thereto an agreement was executed, which lays down clear terms and conditions governing the appointment as Advisor (Law). The agreement has a stipulation, of the appointment being of three years. The petitioner knowingly, with open eyes accepted the same. Merely, because the remuneration given to the petitioner was being increased by 5% on each completed year, would not make the contract as not a concluded contract. The 5% increase is a condition of contract in itself and the same was being accepted by the petitioner. It is not the case of the petitioner that the said stipulation was not adhered to. Even assuming, the extension of two months was not part of a formal agreement, suffice to state the petitioner had in fact worked and was paid for those two months, the petitioner, having accepted the extension of two months, now, cannot plead that the contract was not concluded in that regard. The judgments relied upon by the petitioner in the case of *Gostho*

Behari Sirkar, The Godhra Electricity Company Ltd (supra) and the judgment in *DERC vs. BSES Rajdhani Power Pvt. Ltd. (supra)*, are not applicable to the facts of this case.

18. Insofar as the submission of the petitioner, on the applicability of O.M. dated February 16, 2015 is concerned, the same reads as under:-

“No.F-19(01)/2014/S-IV/223-224 dated 16.02.2015

- 1. All Pr. Secretaries/Secretaries/HODs Govt. of NCT of Delhi.*
- 2. All Heads of Local Bodies/Autonomous Bodies/Undertaking/Corporation/Boards/Institutions under GNCTD, Govt. of NCT of Delhi.*

Subject: Regarding engagement of contractual employees.

The Government of N.C.T of Delhi would like to take a view on the existing policy regarding status of contractual employees engaged in various departments and organizations under this Government.

Therefore, services of Contractual employees engaged by the departments should NOT be terminated till further instructions in the matter. If any terminations are likely to take place, the same should be stopped till further orders.”

19. The said notification is addressed to all Heads of Local Bodies/Autonomous Bodies/Undertaking/Corporation/Boards/Institutions under GNCTD, Govt. of NCT of Delhi. The text of the body states that “*contractual employees engaged by the departments*”. The DERC or office of the Ombudsman cannot be termed as the departments of the

GNCTD. I note an order dated October 19, 2015 has been issued by the Govt. of NCT. The same reads as under:-

“The Government of National Capital Territory of Delhi has considered the issue of regularization of the Contractual employees working in various departments of Govt. of N.C.T. of Delhi and approved the following general policy for regularization of the contractual employees vide Cabinet Decision No.2223 dated 06.10.2015:-

In line with the Uma Devi judgment, Government of National Capital Territory of Delhi makes the following policy for contractual employees working against regular posts:-

1. Every department should formulate a scheme to fill up all vacant posts.

2. Contractual employees working against these posts should be allowed to apply with following conditions:-

(a) They should be given age relaxation.

(b) They should be given appropriate and adequate weightage of experience for that post in evaluation.

(c) An contractual employee, whose service was terminated due to unsatisfactory work during their contractual employment, shall be treated as ineligible, under the scheme.

3. Policy in para-2 shall also be applicable to the contractual employees who have worked against these posts for an aggregate period of 6 months or more after 01.04.2013.

It is, therefore, requested that the necessary action with regard to implementation of above decisions may be initiated at the earliest.”

20. Taking a cue from the order dated October 19, 2015 and noting the nature of office of the Ombudsman is of a permanent character, surely, the staff appointed in the office of the Ombudsman must also be of a

permanent nature and not a stopgap arrangement as sought to be done by the respondent No.1. This would encourage persons with higher qualifications and qualitative experience apply to the post, but that is possible when the post is filled on a permanent basis. I hope, the concerned Authorities shall keep in mind this particular aspect and take a considered decision keeping in view the requirement and necessity of having the position of Advisor (Law).

21. In view of my above discussion in paras 9 to 18, the petitioner is not entitled to the reliefs as prayed for. The petition is dismissed. No costs.

CM No.6207/2015

22. In view of the order passed in the writ petition, the present application is dismissed as infructuous.

**(V.KAMESWAR RAO)
JUDGE**

DECEMBER 23, 2015/ak