

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4495 OF 2016

1.Shri Tushar Gajanan Savlajkar)
 5/244/6,1ST FLOOR, Paranjpe Apartment,)
 Fire Brigade Road, Ichalkaranji,)
 Dist.Kolhapur-416115)

2.Shri.Mahesh Laxman Mane)
 1,Patil Chawl, Trimurti Devipada,)
 Tata Power House Road, Borivali (E),)
 Mumbai-400066.)

3. Shri.Parag Madhukar Mandpe)
 C/o. D.Rajasekharan, B-104, Devi Orchid)
 Bhau Patil road, Bopodi, Pune-411020,)

4.Shri.Matin Iqbal Khalifa)
 18, Laxmi Park, Gitanjali Colony,)
 Opp.Mahila Bank, Indira Nagar,)
 Nashik-422006.)

5. Shri.Anant Kumar Das)
 Plot 823, At Post Chandil,)
 Dist.Saraikela Kharswan, Jharkhand-832401) ...Petitioners.

Versus

Life Insurance Corporation Of India)
 Central Office, Yogeshema, J.B.Marg,)
 Mumbai-400 021.) ...Respondent

with

Writ Petition NO. 5365 OF 2016

1.Shri Harshal Ramesh Darwade)
 Age 42 years, C-303, Sai Complex,)
 New Link Road, Kanderpada, Dahisar (W))

Mumbai-400068.	)	
2.Sarika Bhushan Kulkarni	)	
Age-36 years, A-102, Dosti Vithika,	)	
Dosti Vihar, Vartak Nagar,	)	
Thane (W) - 400606	)	
3.Shri.Shekhar Jagdish Maheshwari	)	
Age 37 years, E-24, Nebula Tower,	)	
Near Grant Bhagwati Hotel, Bodakdev	)	
Ahmedabad-380054.	)	...Petitioners.

vs.

Life Insurance Corporation Of India	)	
Central Office, Yogeshema, J.B.Marg,	)	
Mumbai-400 021.	)	...Respondent

Mr.Gopal K.S.Hegde with Ms.Pinky Bhansali, for the Petitioners.

Mr.S. K.Talsania, Senior Advocate with Mr.R.K.Cheulkar, for the Respondent.

**CORAM : ANOOP V. MOHTA &
G.S. KULKARNI, JJ.**

Reserved on : 9th August, 2016
Pronounced on : 18th August, 2016

JUDGMENT: (Per G.S.Kulkarni, J.)

1. These two petitions raise common issues of law and facts, the prayers are also similar therefore, both the petitions are being adjudicated by this common judgment.

2. For the sake of convenience, as also the parties having advanced submissions on Writ Petition No.4495 of 2016, we refer to the pleadings in this Writ Petition.

3. The Petitioners have interalia prayed for a writ of mandamus directing the Respondent – Corporation to absorb the Petitioners in service as permanent employees and to grant benefits of permanency to the Petitioners. The next prayer is for a writ of certiorari seeking to strike down part of the clause in the engagement letters issued by the Respondent-Corporation, to the Petitioners, restricting the renewal of the contract for three terms. The third prayer is that this Court should read down the terms of engagement and declare that the Petitioners are entitled to continue in the service of Respondent-Corporation as permanent employees on the basis of engagement orders issued to them by the Respondent-Corporation.

4. The facts lie in a narrow compass:-

The Respondent-Life Insurance Corporation (LIC) is a body constituted under the Life Insurance Corporation Act, 1956. The Respondent had framed a scheme for engaging services of Senior Marketing Executives on contract basis. The scheme was called as “Life

Insurance Corporation of India, Senior Marketing Executives (on Contract Basis) Scheme, 2009” (for short “the 2009 Scheme”). Clause 3 of the scheme pertains to “*Nature of Engagement*” which provides that the engagement shall be for the marketing assignment purely on contractual basis for a period of three years. Some of the clauses of this scheme are relevant in the context of the controversy as involved in these petitions. We, therefore, feel it appropriate to note these clauses of the 2009 Scheme and more particularly clauses 3, 7(a), 8, 16 and 17.

“3. *Nature of Engagement*

(a) *Engagement shall be for the marketing assignment and it shall be purely on contractual basis for a period of 3 years.*

(b) *Renewal of Contract*

The contract may be further renewed for a period of three years subject to the satisfactory performance, suitability of the person during the contractual period and needs of the Corporation. In no case the contractual engagement shall be more than three terms.

.....

7. *Eligibility*

(a) *Age:*

Minimum age of engaging shall be 24 (completed) years and Maximum age shall be 40 years as on the date of notification.

.....

8. *Remuneration*

Remuneration Package shall be Rs.600,000/- (Rs.Six Lacs) per annum which includes Employee & Employer's contribution to Provident Fund and Gratuity component. The package components shall be 70% fixed and 30%

variable based on the performance criteria. Annual reset of remuneration may be considered based on annual appraisal of performance upto a maximum of 10% of the previous year's remuneration.

... ..

16. Working Hours

This being a contractual, full time marketing assignment, the Senior Marketing Executive has to work for minimum 8 hours a day and he shall not be engaged by any other Organisation during the period of contractual engagement with the Corporation. There shall be no fixed working hours and he/she may be required to work as per the directions of the reporting officer.

17. Applicability of LIC of India (Staff) Regulations, 1960

The provisions of LIC of India (staff) Regulations, 1960 shall not be applicable to Senior Marketing Executives selected under this scheme. The engagement of Senior Marketing Executives shall be governed by such instructions as may be issued from time to time and the Senior Marketing Executives shall obey all orders and direction given to them in the course of official duties by person/persons under whose jurisdiction /superintendence or control they are placed from time to time."

5. In pursuance of the 2009 Scheme, the Respondent issued an advertisement titled as "*LIC is Hiring Senior Marketing Executives (On Contract Basis)*" dated 22 August 2009 inviting applications for contractual engagements to be engaged as Senior Marketing Executive. The advertisement interalia contains the details of the nature of engagement. Some of the clauses of the Advertisement are required to be noted which read thus:-

“LIC is Hiring Senior Marketing Executives (On Contract Basis)”

Applications are invited from eligible Indian Citizens with a flair for marketing for engagement as Senior Marketing Executives on contract basis for a period of three years in one of the following areas:-

- (i) The Pension & Group Schemes (P&GS)
- (ii) The Bancassurance & Alternate Channel (B&AC)
- (iii) The Chief Life Insurance Advisor (CLIA),
- (iv) The Direct Marketing Channel

OR

- (v) any other new Alternate Channel which may be introduced by the Corporation in future.

... ..

Eligibility & Terms of Engagement shall be as under:

Age	Minimum Age for engaging shall be 24 (completed) years and Maximum Age shall be 40 years as on 1 st August, 2009.																
Age Relaxation	Relaxation in upper age limit for different categories shall be as under:- <table> <tr> <td>SC/ST</td><td>5 years</td></tr> <tr> <td>OBC</td><td>3 years</td></tr> <tr> <td>PH(Gen)</td><td>10 years</td></tr> <tr> <td>PH (SC/ST)</td><td>15 years</td></tr> <tr> <td>PH (OBC)</td><td>13 years</td></tr> <tr> <td>ECO/SSRCO/XS M (GEN)</td><td>5 years</td></tr> <tr> <td>ECO/SSRCO/XS M (SC/ST)</td><td>10 years</td></tr> <tr> <td>ECO/SSRCO/XS M (OBC)</td><td>8 years</td></tr> </table>	SC/ST	5 years	OBC	3 years	PH(Gen)	10 years	PH (SC/ST)	15 years	PH (OBC)	13 years	ECO/SSRCO/XS M (GEN)	5 years	ECO/SSRCO/XS M (SC/ST)	10 years	ECO/SSRCO/XS M (OBC)	8 years
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ECO/SSRCO/XS M (SC/ST)	10 years																
ECO/SSRCO/XS M (OBC)	8 years																
Period of contractual engagement	The assignment shall be full time, for a period of three years purely on contractual basis. The services of selected candidates should be available full time and should not have any other work related engagements with any other organization.																

	The contract may be further renewed for a period of three years thereafter depending upon the performance, suitability of the person during the contractual period and the needs of the Corporation. In no case the contractual engagement shall be for more than three terms (including the initial term of Engagement). However, in no case the engagement shall be extended beyond age 60. Performance criteria shall be fixed by the Corporation from time to time and performance of the person shall be reviewed periodically to decide termination/continuation and/or extension of contractual engagement.
Termination of contract	The contractual engagement can be terminated by either party by giving 30 days notice in writing or remuneration in lieu thereof without assigning any reasons whatsoever.

Remuneration	Remuneration package shall be Rs.600,000/- per annum (Rupees Six Lacs only) which includes Employee & Employer's contribution to Provident Fund & contribution to Gratuity, wherever applicable. The package components shall be 70% fixed and 30% variable. Variable components shall be based on the performance criteria. Annual reset of remuneration may be considered based on annual appraisal of performance upto a maximum of 10% of the previous year's remuneration.
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Working Hours	There shall be no fixed working hours as they may be required to work as per the directions of the reporting officer, subject to a minimum of eight hours per day.
Leave	During the period of contractual engagement, the Senior Marketing

	Executives are eligible for Casual Leave at the rate of one day for each completed month. Not more than 6 days casual leave will be availed at a stretch.
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6. The Petitioners applied under the said advertisement and were selected by issuance of what is termed as “Engagement letter - Senior Marketing Executives” on contract basis. This letter of engagement in its several clauses specified that the engagement of the Petitioners was a contractual engagement. It would be useful to refer to the relevant clauses of the appointment letter, as both parties refer to the clauses contained therein as also to appreciate the nature of contractual appointment. These clauses read as under:-

2. Your engagement shall initially be for a period of three years from your date of reporting for duties. Depending upon your performance and needs of the Corporation, your contract may be extended for a further period of three years. Further, if your performance is not satisfactory as per the performance criteria annexed herewith, your contractual engagement is liable to be terminated. However in no case, the contractual engagement shall be for more than three terms of three years each or exceed 60 years of your age.

... ..

17. Your engagement as Senior Marketing Executive on contractual basis does not make you eligible for any preference for recruitment to any post or claim absorption/regularization in the permanent services of the Corporation. Your contractual engagement shall be covered under the Life Insurance Corporation of India Senior Marketing Executives (On contract Basis) Scheme, 2009 and as amended from time to time and such

instructions as may be issued from time to time and you shall obey all orders and directions given to you in the course of official duties by person/persons under whose jurisdiction/superintendence or control you are placed from time to time.

18. To signify the acceptance of the Terms and Conditions of your Engagement as Senior Marketing Executive in Life Insurance Corporation of India, you are required to append your signature on the undertaking given below and get it properly witnessed. Duplicate copy of this letter duly signed and witnessed shall be returned to your Engaging Authority while the original may be retained with you for your records.”

7. The Petitioners by their individual letters issued in favour of the Respondent accepted their engagement as Senior Marketing Executive on contract basis and agreed to all the terms and conditions set out therein.

8. As per clause (2) of the appointment letter read with clause (3) of the 2009 Scheme, the Petitioners were granted extension of the contract for a further period of three years. Illustratively the learned Counsel for the Petitioners has referred to extension letter dated 18 April 2013 issued in favour of one of the Petitioner Shri. Anant Kumar Das. The extension letter provided that the contract is extended for a further period of three years in the same channel on the terms and conditions mentioned in the original contract dated 20 April 2010. It provided for the following

terms and conditions to be applicable for the extension:-

“....

1. *There will be a periodic review of your performance as a SME and on basis of consistent good performance only will you be allowed to continue to work for the Corporation.*

2. *In case of performance not being up to the mark, the contract shall be liable to be terminated by giving one month's notice or proportionate remuneration in lieu thereof, even before completion of 3 years.*

3. *The extension of the contract as SME on a contractual basis does not make you eligible for any preference for recruitment to any post or claim absorption/ regularization in the permanent services of the Corporation.”*

9. The Petitioners again by their individual letters accepted the terms and conditions of the letter of extension. At the end of the extended contractual term, the Respondent issued a letter to each of the Petitioners informing that the contractual term was coming to an end and the Petitioners were advised to return to the Senior Divisional Manager the Identity Card and other materials supplied by the Respondent. As also the Petitioners were advised to contact the Senior Divisional Manager within 15 days alongwith a copy of that letter from the date of expiry of the contract, for settling of the dues, if any. The Petitioners being aggrieved by this action, which they refer it as termination of service, have approached this Court with the prayers as we have noted above.

10. Respondent-Corporation has appeared and has filed a counter affidavit of Shri.Nitin S.Bhosle, A.O.-Legal, opposing the prayers as made in the Writ Petition. The Respondent interalia contends that the Petitioners have no legal right to seek the reliefs as prayed in the Writ Petition inasmuch as the Petitioners were appointed purely on contractual basis under the 2009 scheme. It is contended that the advertisement issued to engage the services of the Petitioners was clear and unambiguous, that the applications were invited only for contractual engagement. It was not an advertisement for filling any permanent post, as also the job-seekers were put to notice that those who wish to have a permanent employment with the Respondent were not eligible and were not supposed to apply. It is contended that the Petitioners have completely misconstrued the clause in the advertisement pertaining to “period of contractual engagements” as also the corresponding clauses of the 2009 Scheme (supra) which provides for “Nature of Engagement” (supra). It is contended that the non-renewal of the contract of the Petitioners was in pursuance of the policy decision which was informed to the Zonal Manager by communication dated 15 December 2015 of the Executive Director (Personnel) which interalia recorded that the competent authority had decided not to extend the contract of Senior Marketing Executives any further. The Zonal Managers were accordingly requested to issue notice at

the proper time for termination of the contract so that services of the Senior Marketing Executives are terminated from the last day of their extended contractual period. The Respondent also relies on the orders which are passed by the Kerala High Court, Allahabad High Court, Kolkata High Court and the Punjab & Haryana High Court, whereby similar challenge as raised in the present petition, came to be rejected on the ground that there was no legal right in such contractual appointees to seek any permanent employment/absorption in the services of the Respondent. Reference is also made to an order by the Supreme Court whereby a Special Leave Petition filed against the orders of the Division Bench of the Kerala High Court came to be rejected.

11. Learned Counsel for the Petitioners in support of the reliefs in the Writ Petition has made the following submissions:-

(i) The terms and conditions of the 2009 scheme read with advertisement in question and the engagement letters issued in favour of the Petitioners show that the intention of the Respondent was to create a permanent employment in favour of the Petitioners. This submission is principally on the basis of clause (3) of the scheme which pertains to the “*nature of engagement*” and a clause in the advertisement which is titled as “*period of contractual engagement*”.

(ii) In view of the above clauses of 2009 Scheme, advertisement and the engagement letters, as also in view of the extensions which are granted to the Petitioners, there is a 'legitimate expectation' that the Petitioners should be continued in their contractual engagement till they attain age of 60 years. This is on the premise that as there is an implied representation that the Petitioners would be continued upto 60 years

(iii) The Respondent cannot resort to a hire and fire policy in suddenly discontinuing the contractual engagement.

(iv) The action on the part of the Respondent is also arbitrary inasmuch as thirty days notice in terms of the directions of the Executive Director dated 15 December 2015 has not been given.

(v) The Respondent was under an obligation to continue the Petitioners at least for three terms, therefore, the Respondent ought not to have terminated the services at the end of the second term.

In support of the above submissions, the learned Counsel for the Petitioners has relied on the decision of the Supreme Court in the case of “*Union of India & Anr. Vs. Lt.Col.PK.Choudhary & Ors.*”¹, and in the case of “*Central Inland Water Transport Corporation Ltd. & Anr. vs. Brojo Nath Ganguly & Anr.*”².

1(Supreme Today 2016(2) Supreme 730)

2 AIR 1985 SC 1571

12. On the other hand, the learned Senior Counsel appearing for the Respondent – Corporation submits that the Petitioners cannot contend that they have any legal right to seek absorption or a permanent employment, as admittedly the Petitioners were granted engagement on contract basis under the 2009 scheme. It is submitted that for the said reason there cannot be a legitimate expectation for absorption. It is submitted that the emphasis on behalf of the Petitioners on the clause in the 2009 Scheme pertaining to 'period of contractual engagements' cannot be read in isolation. The submission is that the scheme and the advertisement in question under which the contractual engagements were granted to the Petitioners ought to be considered and read in their entirety. It is submitted that not only the scheme and the advertisement, but the engagement letters issued to each of the Petitioner clearly spell out the nature of the contractual engagement. Learned Senior Counsel referring to clause (17) of the letter of engagement submits that the Petitioners cannot claim any relief in the teeth of these clauses which sets out that the engagement was purely for a fixed term of three years on contractual basis and further that it would not make the Petitioners eligible for any preference for recruitment to any post or claim, absorption/ regularization in the permanent service of the Corporation. It is submitted that it is not the case that the Respondent has acted

arbitrarily or has singled out the Petitioners by not extending their contractual engagement but as a matter of policy decision, the Corporation has decided not to continue the contractual engagements made under the 2009 Scheme. In this regard our attention has been drawn to the letter of the Executive Director dated 15 December 2015 which we have noted above. The learned Senior Counsel has drawn our attention to the various orders passed by the different High Courts where similar challenge as raised in different proceedings, were negated. In support of his submission, the learned Senior Counsel relies on the decision of the Constitution Bench of the Supreme Court in the case of *“Secretary, State of Karnataka and others Vs. Umadevi (3) and others”*³

13. We have heard the learned Counsel appearing for the parties. With their assistance, we have also gone through various documents as placed on record.

14. Considering the nature of the controversy, we feel it appropriate to first examine the 2009 Scheme under which the Petitioners are engaged as 'Senior Marketing Executives'. On a perusal of the 2009 Scheme, it is quite clear that the scheme itself contemplates engagement of Senior Marketing Executives on contract basis. Clause 3 which

3 (2006)4 SCC 1

provides for '*Nature of Engagement*' specifically records that an engagement under the Scheme shall be for the marketing assignment and it shall be purely on contractual basis for a period of three years. Sub-clause (b) of clause 3 pertains to '*Renewal of Contract*' which provides that the contract may be renewed for a further period of three years subject to the satisfactory performance, suitability of the person during contractual period and needs of the Corporation. It further provides that in no case the contractual engagement shall be more than three terms that is a total period of nine years. Clause 4 of the 2009 Scheme provides for '*Termination of Contractual Period*' which recites that the contractual period can be terminated by either party by giving 30 days notice in writing or by payment of proportionate remuneration in lieu thereof without assigning any reason thereof. Clause 8 of the 2009 Scheme pertains to '*Remuneration*' which provides that remuneration package shall be Rs.6,00,000/- per annum and that the annual reset of remuneration may be considered based on annual appraisal of performance upto a maximum of 10% of the previous year's remuneration. Clause 16 pertains to "*Working Hours*" and does not indicate any fixed time of working hours during the course of day, but only provides that the Senior Marketing Executive has to work for a minimum 8 hours a day. It records that: *there shall not be any fixed working hours and that he or she may be required to*

work as per the directions of the Reporting Officer. Clause 17 pertains to *non applicability of the LIC of India (Staff) Regulations, 1960* to the Senior Marketing Executive engaged under the Scheme.

15. A cumulative reading of the above clauses of the 2009 Scheme makes it quite clear that the Respondent intended engaging Senior Marketing Executives under the Scheme, purely on contract basis, with an initial engagement for three years and to be extended maximum for three terms. Thus, the 2009 Scheme in no manner indicates that the engagement made thereunder has any trait of any permanent post/vacancy and an appointment thereon, which is clear from the fact that the LIC of India (Staff) Regulations, 1960 are not made applicable. Significantly the letters issued to the Petitioners are termed as 'Engagement Letters' and not 'appointment letters'.

16. Having noted the 2009 Scheme, we now refer to the advertisement issued inviting applications titled as "*LIC is hiring Senior Marketing Executives (On Contract Basis)*". The various clauses of the advertisement also leaves no manner of doubt that there was any intention on the part of the Respondent to engage the Petitioners for any work except on contractual basis. On behalf of the Petitioners emphasis has been laid on the columns of *Age, Age Relaxation and Period of*

Contractual Engagement, as contained in the advertisement, to submit that as the advertisement speaks that minimum age for engagement shall be 24 years and maximum age shall be 40 years as on 1 August 2009 coupled with the fact that it provides that in no case, the engagement shall be extended beyond age 60, it is contended that this would confer a legal right in the Petitioners to be continued till the age of 60. We find no merit in this submission as urged on behalf of the Petitioners. The Petitioners cannot pick and choose clauses in the advertisement to assert that there is any legal right to engage the Petitioners till attaining the age of 60 years. The advertisement is required to be read in its entirety and not in isolation. In making this submission, the Petitioners have completely overlooked the clause pertaining to age relaxation as applicable to different categories which is between 5 years to 15 years at the maximum. It also cannot be overlooked that an eligible candidate under a particular reserved category would be entitled to a relaxation of 5 to 15 years and in a given case may not get three terms of full three years (2009 Scheme provided three terms of three years) as it may happen that such candidate attains the age of 60 years before he completes three terms. Such a candidate, therefore, would not get a maximum term under the Scheme and thus the Respondent would be necessarily required to terminate contract when such candidate attains age of 60 years. We therefore do

not agree with the interpretation of this clause as made on behalf of the Petitioners. This submission any how, need not detain us any further, as in any case clause pertaining to “*period of contractual engagement*” in the advertisement makes the position abundantly clear that the engagement/assignment is for a period of three years, purely on contractual basis and that the contract may be further renewed for a period of three years depending upon the performance, suitability of the persons during the contractual period and most importantly the needs of the Respondent-Corporation. It also categorically provides that: “*in no case the engagement shall be more than three terms including the initial term of engagement*”. In this context if the clause refers that: “*in no case the engagement shall be extended beyond the age of 60*”, then the Petitioners in our opinion are in a complete error in contending that right of continuation of contractual engagement upto the age of 60 years stands conferred on the Petitioners. The submissions of a right to absorption as made on behalf of the Petitioners also cannot be accepted in view of specific clauses of the engagement letter, which in no uncertain terms record that the engagement of the Petitioners is a contractual engagement. Further clause 17 of the engagement letter categorically provides that the engagement as Senior Marketing Executive on contractual basis does not make the person eligible for any preference for

any recruitment to any post, claim, absorption / regularization in the permanent service of the Corporation. It also provides for such contractual engagement to be covered under the 2009 scheme and as amended from time to time and on such instructions issued from time to time, which the engagees shall obey. There is no dispute that these terms and conditions are accepted by the Petitioners not only in respect of initial appointment but also in respect of the extension availed by the Petitioners. This being the clear position on record, then we fail to appreciate as to how the Petitioners can assert a right of permanent employment/absorption in the service of the Respondent.

17. The next contention that there is a legitimate expectation in the Petitioners for being absorbed and of a permanent post to be granted to the Petitioners by virtue of engagement in question, also cannot be sustained. It is a settled principle of law that a contractual engagement will not create any vested legal right. Considering the facts of the case, it is not in dispute that the initial appointment as also the extension was purely contractual and subject to the terms and conditions under the 2009 Scheme. If the Respondent has taken a policy decision not to continue such engagement under the 2009 Scheme, then, the Petitioners certainly cannot assert that the Respondent should continue engagement of the Petitioners. In specific terms the Petitioners were put to notice that their

engagement was under the terms and conditions of the 2009 Scheme and subject to further orders and directions as may be issued by the Respondent-Corporation as per the need of the Corporation issued from time to time. The Petitioners with open eyes had accepted the engagement on contract basis. The Petitioners, therefore, cannot turn around and contend that only because a further extension or a third extension is not granted to the Petitioners, the same amounts to termination of their services. We have noted that the letters issued to the Petitioners are nothing but simplicitor letters, by which the Petitioners are informed that they would not be granted any further extension after the contractual period under the second extension comes to an end by efflux of time. The approach of the Petitioners in importing the concept of termination, to read expiry of the contractual term, as a termination of their service itself is misconceived. This is also for the reason that even assuming that the Respondent was not to issue such letters informing the Petitioners that no further extension would be granted, even in that case the Petitioners could not have continued on their contractual engagement as the extended term itself would come to an end by efflux of time. The Petitioners are not in a position to justify the situation which would otherwise prevail if the Respondent was not to issue such a letter informing the Petitioners that the contract of engagement would not be

extended any further. The submission on behalf of the Petitioners that the Respondent has resorted to hire and fire thus also deserves to be rejected. Thus, considering the facts of the case, we are of the clear opinion that the submission on behalf of the Petitioners of any legitimate expectation created in them of a permanent employment, is devoid of merit. None of the clauses of the 2009 Scheme nor the advertisement or the engagement letters in any manner support such contention of the Petitioners. Though not material nonetheless when we made a specific query to the learned Counsel appearing for the Petitioners to show whether any substantive permanent post was available of a nature occupied by the Petitioners, the learned Counsel for the Petitioners was unable to point out any material to that effect. In any case, the engagement of the Petitioners is indisputedly on contract basis and thus the same would not confer any legal right whatsoever on the Petitioners to seek the prayers as made in the present Petitions.

18. Having deliberated on the submissions as made on behalf of the Petitioners, we are of the opinion that the reliance on behalf of the Petitioners on the decision of the Supreme Court in the case *Union of India & Anr. Vs. Lt.Col.PK.Choudhary & Ors.* (supra) is not well founded, in the facts of the present case. In the said decision the Supreme Court was considering a challenge to the decision of the Armed Forces

Tribunal which had allowed the original applications filed by the Respondents whereby a policy circular dated 20 January 2009 issued by the Government of India was quashed with a direction to the Appellant – Union of India to consider the Respondents' promotion to the rank of Colonel by creating supernumerary posts with effect from the date the Respondents therein were eligible for such promotion. The issue in this background was as to whether there was any legitimate expectation for Officers commissioned into the Indian Army in a given batch, that in the matter of their future promotion whether the Government will maintain batch parity among officers allocated to Arms, Arms Support and Services. It is in this context the Court discussed the doctrine of legitimate expectation. Notably in discussing the doctrine of legitimate expectation, the Court has observed that if it is a question of policy, even by way of change of old policy, the Courts cannot interfere with a decision. The Court also observed that in a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact.

Considering the facts of the present case which we have discussed extensively, we are unable to agree with the submissions of the learned Counsel for the Petitioners that there is a legitimate expectation in the Petitioners or that the decision on the part of the Respondent to not

continue the contractual engagement of the Petitioners is in any manner arbitrary or wholly unjustified applying the test of “Wednesbury reasonableness”.

19. The reliance on behalf of the Petitioners on the decision of the Supreme Court in the case “*Central Inland Water Transport Corporation Ltd. & Anr. vs. Brojo Nath Ganguly & Anr.*” (supra) is also not well founded. The said decision in our opinion cannot be applied to the facts of the present case. The Supreme Court in the said case was considering Rule 9(i) of the Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules (1979) which provided for termination of services of permanent employees without giving a notice and without giving any reason. The Supreme Court held that such clause is opposed to public policy and void in view of Section 23 of the Indian Contract Act as also violative of Articles 14 and 16 of the Constitution as it confers absolute, arbitrary and unguided power upon the Corporation. There cannot be any quarrel on the proposition as laid down in this decision of the Supreme Court. In this case we are not concerned with any rule as fell for consideration of the Supreme Court in the said decision, which would confer any power in the Respondent herein to terminate the permanent employees without notice and without reason. In the present case admittedly the Petitioners are appointed on contractual post under

2009 Scheme. The contract has come to an end by efflux of time and the Respondent as a matter of policy decision has decided not to renew the contract. If this be the position as observed above, there is no indefeasible right or any other legal right in the Petitioners to seek permanent employment and/or absorption.

20. We may also refer to the Judgment of the Supreme Court in the case of *State of M.P. And Anr. Vs. Dharam Bir*⁴ wherein the Supreme Court has held that the nature of appointment becomes relevant to consider the issue of regularization or permanency. It is held that it is not open to any employee to claim automatic alteration of status unless that result is specifically envisaged by some provision in the statutory rules, and in the absence of any such provision, which is definitely absent in the facts of the present case, it is not open to any contractual employee to claim a status different from that which was conferred upon him at the stage of appointment.

21. The law laid down in the Constitution Bench decision of the Supreme Court in the case of '*Secretary, State of Karnataka and others Vs. Umadevi (3) and others*', in the present context needs to be noted. The Supreme Court has considered the scope of contractual appointment in paragraph 43 to hold that once the term of the contract comes to an

4 (1998)6 SCC 165

end, no right whatsoever is created in such contractual appointee to seek any absorption, continuation or permanency. It is also held that the theory of legitimate expectation cannot be pressed in service on behalf of the temporary contractual casual employee. It would be imperative to note the observations of the Supreme Court in paragraphs 43, 47 and 48 which read thus:-

“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. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, 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 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.

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 recognized 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 concerned cases, 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.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the

Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.”

(emphasis supplied)

22. We may also usefully refer to a recent decision of the Supreme Court in the case of ***State of Maharashtra & Ors. Vs. Anita & Anr.***⁵ wherein the Supreme Court has reiterated the principles of law to hold that the contractual appointees have no legal right whatsoever to seek permanency and absorption. The Supreme Court held thus:-

“11. We have carefully considered the rival submissions made by learned counsel for the parties and perused the impugned judgment and the material on record.

12. In the Government Resolution dated 21.08.2006 while creating 471 posts in various cadres including Legal Advisors, Law Officers and Law Instructors in clause (3) of the said Resolution, it was made clear that the posts created ought to be filled up on contractual basis. Clause (3) reads as under:-

“The said posts instead of being filled in the regular manner should be kept vacant and should be filled on the contract basis as per the terms and conditions prescribed by the government or having prepared the Recruitment Rules should be filled as per the provisions therein.”

....

14. The intention of the State Government to fill up the posts of Legal Advisors, Law Officers and Law Instructors on contractual basis is manifest from the above clauses in Government Resolutions dated 21.08.2006 and 15.09.2006. While creating 471 posts vide Resolution dated 21.08.2006, the Government made it clear that the posts should be filled up on contractual basis as per terms and conditions prescribed by the Government. As per clause 'B' of the Government Resolution dated 15.09.2006, the initial contractual period of appointment is eleven months and there is a

provision for extension of contract for further eleven months. Clause 'B' makes it clear that the appointment could be made maximum three times and extension of contract beyond the third term is not allowed. If the competent authority is of the opinion that the reappointment of such candidates is necessary then such candidates would again have to face the selection process.

15. It is relevant to note that the respondents at the time of appointment have accepted an agreement in accordance with Appendix 'B' attached to Government Resolution dated 15.09.2006. The terms of the agreement specifically lay down that the appointment is purely contractual and that the respondents will not be entitled to claim any rights, interest and benefits whatsoever of the permanent service in the government.

16. The above terms of the agreement further reiterate the stand of the State that the appointments were purely contractual and that the respondents shall not be entitled to claim any right or interest of permanent service in the government. The appointments of respondents were made initially for eleven months but were renewed twice and after serving the maximum contractual period, the services of the respondents came to an end and the Government initiated a fresh process of selection. Conditions of respondents' engagement is governed by the terms of agreement. After having accepted contractual appointment, the respondents are estopped from challenging the terms of their appointment. Furthermore, respondents are not precluded from applying for the said posts afresh subject to the satisfaction of other eligibility criteria.

17. The High Court did not keep in view the various clauses in the Government Resolutions dated 21.08.2006 and 15.09.2006 and also the terms of the agreement entered into by the respondents with the government. Creation of posts was only for administrative purposes for sanction of the amount towards expenditure incurred but merely because the posts were created, they cannot be held to be permanent in nature. When the government has taken a policy decision to fill up 471 posts of Legal Advisors, Law Officers and Law Instructors on contractual basis, the tribunal and the High Court ought not to have interfered with the policy decision to hold that the appointments are permanent in nature."

(emphasis supplied)

23. For the above reasons, we find definite substance in the contentions as urged on behalf of the 1st Respondent. We may also note

that a similar challenge was considered by the Punjab & Haryana High Court, the Allahabad High Court. Taking into consideration similar arguments which are not different from what is asserted by the Petitioners in this petition, the Courts considering the legal position have refused to interfere and grant reliefs which were similar to the reliefs as prayed in these Petitions. Similar challenge was raised by the Financial Service Executives Welfare Association against *the* Corporation. By a decision of the Division Bench dated 9 March 2015, considering the law on the issue, the Writ appeals came to be rejected. This judgment of the Division Bench has attained finality in view of dismissal of the Special Leave to Appeal (C) No.14641 of 2015 by the Supreme Court by an order dated 9 March 2016. We thus observe that the reliance on these decisions on behalf of the Respondent is apposite.

24. As a result of the above discussion, the Writ Petitions lack merit and stand rejected. Rule is accordingly discharged. No order as to costs.

(G.S.KULKARNI, J.)

(ANOOP V. MOHTA, J.)