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

+ **W.P.(C) 4668/2016**

JYOTI

..... Petitioner

Through: Mr. G. Tushar Rao and Mr. Anshul
Kulshreshtha, Advs.

versus

**LIFE INSURANCE CORPORATION OF INDIA
& ORS.**

..... Respondents

Through: Mr. Kamal Mehta and Mr. Sudeep
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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14.07.2016

CM. No. 19388/2016

Exemption allowed subject to all just exceptions.

Application is disposed of

W.P.(C) 4668/2016

1. The challenge in the Writ Petition is to the order dated 5th May, 2016 whereby the representation of the petitioner dated 27th January, 2016 was rejected.
2. Suffice to state that the petitioner had earlier approached this Court in Writ Petition no. 925/2016 which was disposed of by this Court on 3rd February, 2016 on the basis of the statement made by learned counsel

appearing for the respondents that the representation made by the petitioner shall be decided within two weeks.

3. It is the submission of Mr. G. Tushar Rao, learned counsel for the petitioner that the respondents, have formulated the LIC (Financial Services Executive) Scheme, 2007 and the petitioner was engaged as Financial Service Executive vide letter dated 1st February, 2008. He has drawn my attention to the said letter. It is noted that the engagement of the petitioner as Financial Service Executive was on contract basis initially for three years, to be renewed at the sole discretion of the Corporation for another two years only. He states that on 12th April, 2010 and on 26th February 2014, the engagement of the petitioner was renewed for one year each because of the excellent work done by her. Finally, vide letter dated 30th December, 2015 the engagement was extended for 8th year till 31st January, 2016. Learned counsel for the petitioner concedes that after 31st January, 2016, the engagement has not been extended.

4. It is his submission that the work in question is of perennial in nature and the respondents could not have terminated the services of the petitioner. That apart it is his submission that the Authority concerned has not considered the representation made by the petitioner on 27th January, 2016

in proper perspective and rejected it by an unreasoned order. He would rely on different orders passed by the High Courts restraining the respondents from terminating the Financial Service Executives in those cases. He would state that the Supreme Court, even though, not in relation to the Scheme in question, (FES), but with regard to a different Scheme has directed the respondents not to terminate the services of the petitioners therein. He seeks similar orders and the continuance of the petitioner, even beyond January 31, 2016 as FES.

5. On the other hand, Mr. Kamal Mehta, learned counsel for the respondents, who appears on advance notice, states that the issue regarding regularisation/continuance under the FES Scheme is no more *res integra* having been decided by the Kerala High Court on 17th November, 2014 in a petition filed by the Financial Services Executives Welfare Association in Writ Petition No. 9608/2014. He also states that the said order was challenged before the Division Bench in the Kerala High Court, in W.A. 1707/2014 which appeal was also dismissed, on 9th March, 2015 and the said order has upheld by the Supreme Court in SLP NO. 14641/2015 on 9th March, 2016.

6. Having heard the learned counsel for the parties, there is no dispute to

the fact that the Scheme known as **“LIC of India (Financial Services Executives) Scheme – 2007”** contemplates appointment of Financial Service Executives. It also contemplates vide Clause 2 the minimum age of 21 years and the maximum age of 35 years for appointment as Financial Services Executive in relation to the general category candidates. Clause 3 stipulates nature of engagement, which is reproduced as under;

“The engagement shall be purely on Contractual Basis initially for a period of three years. The terms and conditions of engagement will be governed by LIC of India (Financial Services Executives) Scheme, 2007.”

Clause 6 stipulates Mode of Selection; Clause 14 stipulates Field Training; Clause 15 stipulates Minimum Business Parameters; Clause 17 stipulates remuneration; Clause 18 stipulates Incentives and clause 23 stipulates termination of contract. Clause 26 Renewal of Contract, which is reproduced as under:

“The contract can be extended for another term of one year and again for another year subject to performance and suitability. The minimum requirement of performance shall be that the Financial Service Executives should have received New Business Incentive for at least 1 year out of 3 years. Once a Financial Services Executive procures the minimum New Business during the three year contract period as per stipulated norms and is otherwise found suitable, the period of contract may be renewed with some increase in incentive and remuneration, which Chairman is authorized to decide.”

7. There is no dispute that the scheme itself postulates that the nature of engagement would be on contractual basis initially for a period of three years. There is also no dispute that the contractual appointment can be terminated in certain eventualities. There is no dispute that extension of the term of engagement is initially for one year and then for another year in terms of clause 26.

8. It is noted that the initial engagement of the petitioner was in the year 2008 and her engagement was extended from time to time for 8 years. There is also no dispute that the last renewal of engagement stipulated that the engagement of the petitioner would come to an end on 31st January, 2016. It is conceded by Mr. G. Tushar Rao, learned counsel for the petitioner, there is no extension thereafter and the said terms have not been challenged by the petitioner. Rather, I find an attempt has been made by the petitioner to challenge the maximum period for which an extension can be given in these proceedings. Surely, having taken the benefit of the scheme for eight years, the petitioner is precluded from challenging the same now, that too, when her engagement has not been continued. The non extension of engagement is as per the FES scheme and the ground taken by the competent authority rejecting the representation, cannot be faulted and

further, this Court cannot substitute the view of the competent authority by its own view, more particularly in view the nature of Scheme under which the engagement has been made. The submission of the learned counsel for the petitioner that the competent authority has not considered the representation made by the petitioner in proper perspective is concerned, the authority concerned while disposing off the representation did rely upon the nature of appointment, the terms of appointment of contract under which the petitioner was engaged, in as much as the authority has stated that the terms of contract clearly mention that the contract would automatically ceases on 31st January, 2016 without any further notice. In view of such a conclusion by the authority concerned, it may not be relevant for the authority to consider the plea that the work is of perennial nature as argued by the learned counsel for the petitioner. The petitioner has no right under the Scheme to seek further continuance, which, if given, would be in violation.

9. I note, from the Judgment of the Single Bench of the Kerala High Court dated 17th November, 2014 in ***Writ Petition no. 9608/2014, Financial Service Executives Welfare Association and Anr. V. Life Insurance Corporation of India and Ors.***, that the learned Single Judge in Para 28 to 31 has held as under:

“28. In the present case, the FSEs were appointed as per Ext.P1 administrative instructions. Therefore, it will not come within the purview of the Contract Labour Abolition Act, 1970. As the person appointed is on a contract basis and such relationship between the persons employed and person employing could only be as that of principal and agent, violation under Articles 14, 19 and 21 of the Constitution of India cannot be complained of as rightly pointed out by the learned standing counsel for the respondent Corporation.

29. Relying on Ext.P14 which is the copy of the Insurance Regulatory and Development Authority (Licensing of Corporate Agent) Amendment Regulation, 2010, it was argued by the learned senior counsel for the petitioner that the respondent Corporation is not insisting enforcement of a class in Ext.P14 clarifying that the bank with specified person is the agent and consequently, the FSCs who are engaged to deal with the specified person of the bank would be wrongly treated as agent, though the intention was to treat the bank employee as the specified person 'Corporate Agent'. However, such a contention has no relevance at all in the case of the petitioners who are claiming regularisation in the service of the respondent Corporation. The fact that the FSEs are entitled to claim appointment as agent after the period of contract as FSEs is over, leads to the conclusion that what is envisaged in Ext.P1 is that such FSEs are not entitled for regularisation in any of the regular posts under the respondent Corporation.

30. So long as the appointment of the petitioners are not under the statutory scheme or rules, it is not possible for this Court to accept the argument that the inaction on the part of the respondent Corporation in not regularising FSEs was unfair within the domain of rules of law.

31. The power of judicial review under Article 226 of the Constitution of India cannot be invoked by the petitioners to review the terms and conditions of appointment which is purely on contract basis. A direction to the respondent

Corporation by this Court to regularise the service of the petitioners would result in re-writing the contract of appointment which is not envisaged by law.

On a consideration of the entire materials now placed on record, this Court is of the view that the petitioners are not entitled to succeed.

In the result, this writ petition fails and accordingly, it is dismissed.”

10. Even the Division Bench of the Kerala High Court in the Appeal being WA NO. 1707/2014 in Para 9 of the Judgment dated November 17, 2014 had framed four issues for its consideration, which are reproduced as under:

- I. Whether the Life Insurance Corporation (Financial Service Executive) Scheme, 2007 is a statutory Scheme?
- II. Whether the FSEs engaged by the Corporation after selection under contract of service are entitled to be regularised in the service of the corporation?
- III. Whether Ex.P1 Scheme, which mentions the engagement of contractual appointment, is illegally, arbitrary and violative of the Contract Labour Abolition Act, 1970?
- IV. Whether the FSEs are entitled to be granted the benefit of provident fund, maternity leave, gratuity etc.?

11. The Appellate Court on issue no. 1 (Paras 16 to 19) and on issue nos. 2 and 3 (Paras 20 to 31) has held as under:

ISSUE-I:

16. *The first issue relates to the nature of the Scheme, 2007. The submission of learned counsel for the petitioners is that the Scheme, 2007 is a statutory scheme. As noted above, under Section 23 of the Life Insurance Corporation Act, 1956, the Corporation is entitled to employ such number of persons as it thinks fit. The Corporation is, thus, a statutory body, which is empowered to employ such number of persons as it thinks fit. As noted above, regulations are framed, i.e., Regulations, 1960 in exercise of power vested in the Corporation under clauses (b) and (bb) of sub-section (2) of Section 49. Section 49(2)(b) and (bb) as it existed at the time of the Scheme, 2007 was to the following effect:*

"(b) the method of recruitment of employees and agents of the Corporation and the terms and conditions of service of such employees or agents; (bb) the terms and conditions of service of persons who have become employees of the Corporation under subsection (1) of Section 11:"

Section 49(2)(b) has been substituted in the Life Insurance Corporation Act, 1956 by Act 8 of 2012 in the following manner:

“49.Power to make regulations.-

(1) ...

(2) ...

(b) the method of recruitment of employees and agents of the Corporation and the terms and conditions of the agents.”

17. *The Regulations, 1960 contemplate employment of staff as classified in the Regulations, 1960 and recruitment is contemplated against the vacancies in sanctioned post as per Regulation 7. Schedule-I of the Regulations, 1960 enumerates different categories of staff, i.e., Class-I officers, Class-II Development Officers, Class-III Supervisors and clerical staff and Class-IV subordinate staff. The engagement of the members of FSEs is in accordance with the Scheme, 2007 and has not been made in accordance with Regulations, 1960. FSEs are not included in the category of staff as contemplated*

in Regulations, 1960. Thus, the engagement of members of FSEs is not in accordance with Regulations, 1960. Whether the Scheme, 2007 is statutory in nature is the question to be answered. Although the engagement of FSEs is not covered by the Regulations, 1960, but the jurisdiction and power of the Corporation to engage any other category of staff apart from regular staff cannot be denied, which flows from power under Section 23 as noted above. Every employer is entitled to engage the staff including daily wage employees/contractual employees in exigency of service. That situation has been very well accepted by the the Constitution Bench of the Supreme Court in Secretary, State of Karnataka and others v. Umadevi and others [(2006)4 SCC 1]. In paragraph 12 of the judgment it was held as follows:

“12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article

32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.”

18. The Scheme, 2007 has been framed by the Corporation, which is a statutory authority. The Corporation is a State within the meaning of Article 12 of the Constitution of India and the Corporation has to conform to the provisions of Articles 14 and 16 of the Constitution of India in discharge of its function. Learned counsel for the petitioners has placed reliance on Life Insurance Corporation of India v. D.J.Bahadur and others (AIR 1980 SC 2181). The Apex Court had laid down the following in paragraph 88 of the judgment:

“88. Section 23 of the L. I. C. Act gave to the Corporation the power to employ such number of persons as it thought fit for the purpose of enabling it to discharge its functions under the Act and declared that every person so employed or whose services stood transferred to the Corporation under Section 11 would be liable to serve anywhere in India. Section 49 conferred on the Corporation the power to make regulations for the purpose of giving effect to the provisions of the Act with the previous approval of the Central Government. Sub-section (2) of that section enumerated various matters in relation to which such power was particular conferred. Clauses (b) and (bb) of sub-section (2) read thus :-

"(b) the method of recruitment of employees and agents of the Corporation and the terms and conditions of service of such employees or agents;

"(bb) the terms and conditions of service of persons who have become employees of the Corporation under sub-section (1) of Section 11:"

Another judgment relied on by learned counsel for the petitioners is an Apex Court judgment in Jayantilal Amratlal v. F.N.Bana and others (AIR 1964 SC 648). The Apex Court in the said case had

occasion to consider the definition of 'law' as given in Section 2(d) of the Bombay Reorganisation Act, 1960. The question was as to whether the notification by President issued under Article 258(1) of the Constitution of India has force of law. In the above context the Apex Court had considered various expressions including Subordinate Legislation, Regulation, Scheme etc. Paragraph 40 of the judgment is as follows:

“40. Let us now look to the definition in S. 2(d) in the light of this basic concept of law and see how the various terms included within "law" as having the force of law satisfy this basic concept. The first term included in S. 2(d) is enactment. An enactment has necessarily the force of law because it is an expression of the legislative will and is expressly enacted as law by the legislature and would necessarily contain a body of rules which have to be obeyed by persons living in the particular community. The second term used in S. 2(d) is ordinance having the force of law. If an ordinance is passed, say under Art. 123 or Art. 213 of the Constitution, it stands exactly on the same footing as an enactment and would necessarily have the force of law. If it is another kind of ordinance, it can have the force of law if it lays down a binding rule of conduct and the body passing it has the authority of law to lay down such a binding rule of conduct. Such an ordinance would usually be subordinate legislation. The third term is regulation. A regulation may be a direct command of the legislature in which case it will stand on the same footing as an enactment. Examples of this kind of regulations are to be found in the old regulations passed by the Governor-General before 1857 under his law-making power, some of which are still in force in this country. Secondly, regulations may be a kind of subordinate legislation and in such a case they are bound to consist of a body of rules which regulate the conduct of persons living in the community and are enforceable by courts or other authorities provided the body passing the regulations has the

authority to do so. The fourth term is order. Orders may be two kinds; they may be merely executive orders laying down no course of conduct for anybody, though they may have the authority of law or may not be opposed to any law and courts or other authorities may recognise them. Another kind of orders will be in the form of subordinate legislation laying down rules of conduct which can be enforced by courts or other authorities. An example of such orders may be found in various orders passed under the Defence of Indian Act, 1939 or the Essential Commodities Act, 1955. These orders lay down a body of rules which regulate the conduct of person or person living in the community and are enforceable by courts or other authorities. The next term is bye-law. Bye-laws are a wellknown species of subordinate legislation. They lay down general rules of conduct governing persons and are enforceable by courts or other authorities if passed by a body having the authority of law to do so. The next term is rule. Rules are again a well-known species of subordinate legislation laying down general rules of conduct and if they are passed by a body having the authority to do so they are enforceable by courts or other authorities. The next term is scheme. Schemes may be of two kinds. They may embody subordinate legislation containing a body on rules binding of persons with whom they are concerned and in such a case if passed by a body having the necessary authority they will be enforceable by courts or other authorities and would have the force of law. But there may be another kind of schemes which are merely executive in nature and they do not contain any rules of conduct for anybody to follow. This will not have the force of law and will not be enforceable by courts or other authorities, as they lay down no rule of conduct which courts or other authorities may enforce. The next term is notification. Notifications again may be of two kinds. Most government orders are notified so that the public may know them. All of them have not the

force of law. Only such notifications have the force of law which are a species of subordinate legislation passed by a body having the authority to promulgate them and which lay down rules of conduct for persons in the community to obey. But there may be notifications which lay down no rule of conduct. For example, all appointments, and transfers of officers are notified through notifications and these are merely executive orders for the purpose of the information of public and do not lay down any rule of conduct to be followed by persons in the community. The last term is "other instruments" and these again may be of two kinds, like schemes. If they have the characteristic of subordinate legislation and contain a rule or body of rules to be followed by persons living in the community they will have the force of law and will be enforced by courts or other authorities. But they can also be merely executive in nature; for example, sale-deeds, mortgage deeds etc. are all instruments but have not the force of law. Similarly treaties between sovereign powers are also instruments but they have by themselves no force of law. That is why we find specific provision in Art. 253 for legislation to give effect to international agreements."

From the above paragraph it is clear that while considering the expression 'scheme' the Apex Court referred to two kinds of scheme. Firstly, they may embody subordinate legislation containing a body of rules binding on persons with whom they are concerned and in such a case if passed by a body having the necessary authority they will be enforceable by Courts or other authorities and would have the force of law. But there may be another kind of scheme which is merely executive in nature and they do not contain any rules of conduct for anybody to follow. This will not have the force of law and will not be enforceable by Courts or other authorities as they lay down no rule of conduct which Courts or other authorities may enforce. The power under Section 23 given to the Corporation to employ staff is not a power of subordinate legislation, rather it is a statutory power to employ staff to carry out the purpose of the Act. The said power is a

statutory/administrative power given to the Corporation. The Corporation is empowered to make regulations under Section 49 of the Life Insurance Corporation Act, 1956, which is in the nature of subordinate legislation. From the above judgment of the Supreme Court it is clear that the scheme 2007 cannot be held to be subordinate legislation. But, as observed above, the Corporation being a State within the meaning of Article 12 of the Constitution, it has to conform with the provisions of the Constitution of India. Even in its administrative action the Corporation is bound to act in a fair and reasonable manner and any scheme framed by it for engagement of staff has to be tested on the touchstone of Articles 14 and 16 of the Constitution of India. Thus, the fact that the Scheme, 2007 whether a statutory scheme or non statutory scheme does not make much difference. When the Corporation has floated a scheme exercising statutory power, the scheme has to be reasonable, fair and conforming to mandate of Article 14 and 16 of the Constitution of India.

19. We, thus, are of the view that the Scheme, 2007 framed by the Corporation has to conform to various constitutional obligations on the Corporation. The first issue is answered accordingly.

ISSUES II & III 20.

20. Issues II and III being inter connected are being taken together. The Corporation issued a Scheme for engagement of Financial Services Executives on contractual basis. Various salient features of the Scheme have already been noticed above. The Scheme provided for a mode of selection, training, allocation, minimum business parameters, remuneration, leave, travelling expenses, termination of contract etc. As noted above, Annexure-6, which is part of Exhibit P1 is on the subject engagement as Financial Services Executives. Paragraph 1 of Annexure-6 terms of selection mentions “contractual appointment for a period of 3 years as a Financial services Executive - renewable at the sole discretion of the Corporation subject to certain terms and conditions for another 2 years only”.

21. The Scheme, thus, clearly and expressly stated that the

appointment is a contractual appointment for three years with renewal of two years further. One of the submissions is that even the Scheme itself contemplated continuance for seven years, since details of remuneration to be paid in 7th year have been mentioned in the Scheme itself. It is further submitted that most of the FSEs are continuing even in the 7th year. Be that as it may, the FSEs having been appointed on contractual basis and the services have been extended upto 6th or 7th year does not change the nature and character of the Scheme. As noted above, the engagement of FSEs is not an engagement under Regulations, 1960, which Regulations contemplate appointment in regular services in different categories of staff as enumerated therein. We have already noted above that Regulation 8, which deals with appointment of staff on temporary basis subject to general or special directions issued by the Chairman, shall not give any right for absorption in the services of the Corporation or claim preference for recruitment for any post. This has been clearly stated in Regulation 8 as noted above. The statutory provision thus, indicate that persons engaged on temporary basis cannot claim any absorption in the regular service.

22. Learned counsel for the appellants attacked the provisions in the Scheme, 2007, wherein the engagement of FSEs has been treated to be engagement on contractual basis. The submission is that the clause defining the engagement on contractual basis is arbitrary and violative of Articles 14 and 16 of the Constitution of India. He submitted that all members of FSEs have gone through regular selection process, they should be treated to be appointed on regular basis. Mere undergoing through a process for selection for a particular job whether contractual or temporary does not change the nature and character of the engagement. Learned counsel for the appellants has relied on the judgment of the Apex Court in Central Inland Water Transport Corporation Ltd. v. Brojo Nath (AIR 1986 SC 1571). The appellants have submitted that in the changing scenario and the changing method of engagement, the Court should take a progressive view and should protect the party, who is not in a position to obtain any better conditions of service. The Apex 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 any reason and without giving a notice. The Apex Court in the said case has laid down that such clause is opposed to public policy and void in view of Section 23 of the Indian Contract Act. The Apex Court held that Rule 9(i) was violative of Articles 14 and 16 of the Constitution of India and it confers an absolute, arbitrary and unguided power upon the Corporation. The following was laid down in paragraphs 90, 100 and 101 of the judgment:

“90. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Art. 14. This principle is that, the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of

bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its, own facts and circumstances.

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100. The power conferred by Rule 9(i) is not only arbitrary but is also discriminatory for it enables the Corporation to discriminate between employee and employee. It can pick up one employee and apply to him clause (i) of Rule 9. It can pick up another employed and apply to him clause (ii) of Rule 9. It can pick up yet another employee and apply to him sub-clause (iv) of

clause (b) of Rule 36 read with Rule 38 and to yet another employee it can apply Rule 37. All this the Corporation can do when the same circumstances exist as would justify the Corporation in holding under Rule 38 a regular disciplinary inquiry into the alleged misconduct of the employee. Both the contesting Respondents had, in fact, been asked to submit their explanation to the charges made against them. Sengupta had been informed that a disciplinary inquiry was proposed to be held in his case. The charges made against both the Respondents were such that a disciplinary inquiry could easily have been held. It was, however, not held but instead resort was had to Rule 9(i).

101. The Corporation is a large organization. It has offices in various parts of West Bengal, Bihar and Assam as shown by the said Rules, and possibly in other States also. The said Rules form part of the contract of employment between the Corporation and its employees who are not workmen. These employees had no powerful workmen's Union to support them. They had no voice in the framing of the said Rules. They had no choice but to accept the said Rules as part of their contract of employment. There is gross disparity between the Corporation and its employees, whether they be workmen or officers. The Corporation can afford to dispense with the services of an officer. It will find hundreds of others to take his place but an officer cannot afford to lose his job because if he does so, there are not hundreds of jobs waiting for him. A clause such as clause (i) of Rule 9 is against right and reason. It is wholly unconscionable. It has been entered into between parties between whom there is gross inequality of bargaining power. Rule 9(i) is a term of the contract between the Corporation and all its officers. It affects a large number of persons and it squarely falls within the principle formulated by us above. Several statutory authorities have a clause

similar to Rule 9(i) in their contracts of employment. As appears from the decided cases, the West Bengal State Electricity Board and Air India International have it. Several Government companies apart from the Corporation (which is the First Appellant before us) must be having it. There are 970 Government companies with paid-up capital of Rs. 16,414.9 crores as stated in the written arguments submitted on behalf of the Union of India. The Government and its agencies and instrumentalities constitute the largest employer in the country. A clause such as Rule 9(i) in a contract of employment affecting large sections of the public is harmful and injurious to the public interest for it tends to create a sense of insecurity in the minds of those to whom it applies and consequently it is against public good. Such a clause, therefore, is opposed to public policy and being opposed to public policy, it is void under section 23 of the Indian Contract Act.”

23. There cannot be any dispute to the proposition laid down by the Apex Court in the above judgment. Rule 9(i), which came up for consideration in the above case was a power given to the Corporation to terminate the permanent employees without notice and without reason. In the present case the Scheme under which the FSEs are engaged is defined as a contractual scheme and the terms of the scheme and appointment letter clearly indicate that the FSEs are engaged on contractual basis. It was also clearly mentioned in the engagement order that Regulations, 1960 is not applicable to the engagement of FSEs. Thus, we cannot accept the submission of learned counsel for the appellants that engagement of the appellants has to be treated as engagement on regular basis and contractual engagement is arbitrary and violative of Articles 14 and 16 of the Constitution. As noted above, employer has full authority and jurisdiction to engage temporary casual and contractual staff in exigency of service. But, the mere fact that casual, temporary and contractual staff have been engaged and allowed to continue for a few years, that itself will not entitle them to claim right for regularisation in service.

24. *The Apex Court in National Fertilizers Ltd. v. Somvir Singh [(2006) 5 SCC 493] had occasion to consider regularisation of employees, who were appointed without intimation of vacancy to the Employment Exchange. The appointments were contractual and the Apex Court held that a person, who obtained recruitment on contractual basis cannot claim regularisation in service. In paragraph 2 of the judgment it was stated as follows:*

“2.The respondent, thus, on his own showing was appointed on a contractual basis. It is trite that a person who obtained recruitment on contractual basis cannot claim regularisation in service....”

25. *The Constitution Bench of the Apex Court in Umadevi's case (supra) has clearly laid down that casual/temporary members, who were appointed ad hoc basis de hors Rules cannot claim absorption or regularisation in service, even though they were allowed to continue for several years. It is useful to refer to paragraphs 26 and 33 of the judgment, which are to the following effect:*

“26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent - the distinction between regularization and making permanent, was not emphasized here - can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 of Piara Singh (supra) are to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc,

temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.”

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

26. Thus, in view of the pronouncement of the judgment by the Apex Court in Umadevi's case (supra) this Court exercising jurisdiction under Article 226 of the Constitution cannot issue any direction to absorb the contractual employees, i.e., FSEs in the regular establishment of the Corporation.

27. Learned counsel for the appellants has placed reliance on the judgment of the Apex Court in Nihal Singh v. State of Punjab (AIR 2013 SC 3547). In the above case the Apex Court was considering the claim of Special Police Officers, who were appointed on daily wage basis in exercise of power under Section 17 of the Police Act, 1861 and they were allowed to continue and their claim for regularisation was denied by the High Court. The Special Officers took the matter to Apex Court, wherein the claim of the petitioners were allowed. The facts of the case have been noted in paragraphs 5 and 8 of the judgment, which are to the following effect:

“5. The factual background in which persons such as the appellants herein came to be appointed is recorded in the judgment in LPA No. 209 of 1992 as follows:-

"I was at the meeting held on March 24, 1984 between the Advisor to the Governor of Punjab and Senior officers of the banks in the public Sector Operating in Punjab that, after reviewing the security arrangements for banks in Punjab, it was decided that SPOs be appointed for the said purpose in terms of section 17 of the Police Act, 1861 (hereinafter referred to as the Act). This step was taken as it was felt that it would not be possible for the State Govt. to provide the requisite police guards to banks and that, thereafter, this additional force be raised, in order to do so, the banks undertook to take over the financial burden of the SPOs to be appointed, but it was clearly understood that as per the provisions of the Act, such Police Officers would be under the discipline and control of the Senior Superintendent of Police of the district concerned. As regards their remuneration it was decided that SPOs would be paid an honorarium of Rs. 15/- per day. This was, however, later enhanced to Rs. 30/- per day. Relevant in the context of the SPOs to be appointed, was the further decision"

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8. In the background of such appointments, various persons who were appointed, including the appellants herein, approached the High Court of Punjab and Haryana from time to time seeking appropriate directions for regularisation of their services. It appears that the petitioners herein also had approached the High Court earlier in CWP No.19390 of 2001 praying that their services be regularized in the light of notification No.11/34/2000- 4PP-III/1301 dated 23.1.2001. The said writ petition was dismissed by order dated 12.12.2001 directing consideration of the cases of the petitioners therein (appellants herein) in accordance with the law and pass a speaking order."

In the above case the Apex Court noticed the statutory provisions and the nature of appointment and held that appointment of the Police Officers was made in accordance with the statutory procedure contemplated under the Act. The following was laid down in paragraphs 24, 25, 29 and 32 of the judgment:

“24. Even going by the principles laid down in Umadevi's case, we are of the opinion that the State of Punjab cannot be heard to say that the appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.

25. In our opinion, the initial appointment of the appellants can never be categorized as an irregular appointment. The initial appointment of the appellants is made in accordance with the statutory procedure contemplated under the Act. The decision to resort to such a procedure was taken at the highest level of the State by conscious choice as already noticed by us. The High Court in its decision in LPA No.209 of 1992 recorded that the decision to resort to the procedure under section 17 of the Act was taken in a meeting dated 24.3.1984 between the Advisor to the Government of Punjab and senior officers of the various Banks in the public sector. Such a decision was taken as there was a need to provide necessary security to the public sector banks. As the State was not in a position to provide requisite police guards to the banks, it was decided by the State to resort to section 17 of the Act. As the employment of such additional force would create a further financial burden on the State, various public sector banks undertook to take over the financial burden arising out of such employment. In this regard, the written statement filed before the High Court in the instant case by respondent Nos.1 to 3 through the Assistant Inspector General of Police (Welfare and Litigation) is necessary to be noticed. It is stated in the said affidavit:

"2. That in meeting of higher officers held on 27.3.1984 in Governor House, Chandigarh with Shri Surinder Nath, IPS, Advisor to Governor of Punjab, in which following decisions were taken:-

i) That it will not be possible to provide police guard to banks unless the Banks were willing to pay for the same and additional force could be arranged on that basis, it was decided that police guards should be requisitioned by the Banks for their biggest branches located at the Distt. and Sub-Divisional towns. They should place the requisition with the Dist. SSPs endorsing a copy of IG CID. In the requisition, they should clearly state that the costs of guard would be met by them. It will then be for the police department to get additional force sanctioned. This task should be done on a top priority. In the meantime depending upon the urgency of the need of any particular branch, police deptt. may provide from police strength for its protection.

ii) For all other branches guards will be provided by Dist. SSP after selecting suitable ex-servicemen or other able bodied persons who will be appointed as Special Police Officer in terms of Section 17 of the Police Act. Preference may be given to persons who may already be in possession of licenced weapons. All persons appointed as SPO for this purpose will be given a brief training for about 7 days in the Police Lines in the handling of weapons taking suitable position for protection of branches. These SPOs will work under the discipline and control and as per Police Act, they will have the same powers, privileges and protection and shall be amenable to same penalty as an ordinary police personnel."

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29. The abovementioned process clearly indicates it is not a case where persons like the appellants were arbitrarily chosen to the exclusion of other eligible candidates. It required all able bodied persons to be considered by the SSP who was charged with the responsibility of selecting suitable candidates.

32. *Therefore, we are of the opinion that the process of selection adopted in identifying the appellants herein cannot be said to be unreasonable or arbitrary in the sense that it was devised to eliminate other eligible candidates. It may be worthwhile to note that in Umadevi's case (AIR 2006 SC 1806 : 2006 AIR SCW 1991) , this Court was dealing with appointments made without following any rational procedure in the lower rungs of various services of the Union and the States."*

28. *Thus, the case of Nihal Singh (supra) was on its own facts and in view of the special feature, as noted in the judgment itself, the Apex Court held the appointment not to be irregular appointment. In the above circumstances, the Apex Court held that those employees were entitled to be regularised in service.*

29. *Thus, the above case is clearly distinguishable from the present case. In the present case the appointment has been offered as contractual appointment for limited period of service. Therefore, the above case cannot help the appellants in the present case.*

30. *Learned counsel for the appellants has also relied on District Transport Officer v. Kunchan (2009(3) KLT 954). In the above Full Bench case the Court considered the claim of daily wage drivers/conductors appointed in the Kerala State Road Transport Corporation, who were subsequently absorbed in the regular employment of the Corporation on the advice made by the Kerala Public Service Commission. The question which arose before the Full Bench was as to whether the daily wage period of the said employees could be reckoned for purpose of pension. In the above case there was a settlement between the Corporation and the employees, wherein it was agreed that daily wage periods of such drivers and conductors, who were appointed on daily wage basis, and fulfill certain conditions, shall be reckoned for purpose of pension. The said case was on different issue and does not help the appellants in the present case.*

31. In view of the foregoing discussion, we are of the view that the contractual appointment of the appellants cannot be said to be arbitrary or violative of Article 14 of the Constitution, nor the appellants can be held to have any right to claim absorption in the regular service of the Corporation. Both Issues II and III are answered accordingly.

12. The said judgment having been upheld by the Supreme Court in SLP No. 14641/2015, on 9th March, 2016 the plea of the learned counsel for the petitioner that the issue before the Kerala High Court was with regard to regularisation of the FES, and not of their continuance is rejected, inasmuch as, when regularisation cannot be granted, as held by the learned Single Judge and the Appellate Court of the Kerala High Court, which view has been upheld by the Supreme Court, the continuance also cannot be granted, more particularly in violation of the Scheme.

The petition is dismissed.

V. KAMESWAR RAO, J

JULY 14, 2016

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