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

% ***Judgment dated 21st September, 2016***

+ W.P.(C) 8373/2016

SANJAY RAWAT & ORS.

..... Petitioners

Through : Ms.Jyoti Singh, Senior Advocate with
Ms. Tinu Bajwa and Mr. Sameer
Sharma, Advocates

versus

REGISTRAR GENERAL, DELHI HIGH COURT Respondent

Through : Mr.Sanjoy Ghose, Ms. Pratishta Vij
and Mr. Rhishabh Jetely, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. The four petitioners were appointed on co-terminus basis. Upon the retirement of concerned Judges, the services of the petitioners stand terminated. Learned Senior Counsel for the petitioners has drawn the attention of this Court to the offer letter dated 05.08.2011 to show that the petitioners were initially to work on probation for a period of two years, which period was extendable by one year. The learned Senior Counsel submits that the petitioners were under the impression that their services would be made permanent. The learned Senior Counsel has also placed strong reliance on the guidelines dated 07.02.2008 of the Hon'ble Supreme Court of India with regard to co-terminus employees.
2. Mr. Ghose, who enters appearance on behalf of the respondent on an

advance copy, submits that the Office Order of different dates of different employees placed on record would show that it was abundantly made clear to the petitioners that they have been appointed on co-terminus basis upto the tenure of the concerned Judge. Sample office order dated 08.08.2011 is reproduced as under:

“Hon’ble the Chief Justice has been pleased to make the following appointment on the Establishment of this Court:-

S.No.	Name of the candidate	Post to which appointed	Remarks
1.	Mr.Sandeep Kumar, S/o Sh. Rajesh Kumar	Temporary Court Attendant in the pay band of Rs.5200-20200 plus Grade pay of Rs.2000.	With effect From 06.08.2011(A/N) on co-terminus basis with the tenure of Hon’ble Mr. Justice G.P. Mittal against a vacant post of Court Attendant.

3. Mr. Ghose has also relied upon two judgments in the case of *The Chief Executive Officer, Pondicherry Khadi and village Industries Board and Anr. v. K. Aroquia Radja and Ors.*, reported at JT 2013(4) SC 137 and *State of Gujarat and Another v. P.J. Kampavat and Others.*, reported at JT 1992(Suppl) SC 102 in support of his submission that the services of co-terminus employee would stand terminated with the tenure of the concerned person at whose instance he was employed. Paragraphs 14 and 19 of the judgment in the case of *The Chief Executive Officer, Pondicherry Khadi and village Industries Board and Anr.*(supra) read as under:

“14. The principle contention of the appellants is that as seen from the above narration of facts, the engagement of the respondents was clearly on a co-terminus basis. There was no assurance to them that they will be continuing in service after the

tenure of the Chairman of the Board was over. There are recruitment rules and a procedure by which the employees under the Board are to be engaged. It was submitted on behalf of the appellant that any departure therefrom would mean allowing a back door entry in Government Establishment/Quasi Government employment 1 Page 15 which would be violative of Articles 14 and 16 of the Constitution of India. As against this submission of the appellant, it was pointed out by the respondents that in their case there has been an approval by the Board and then by the Lt. Governor. That being so, there was no reason to interfere into the orders passed by the Division Bench as well as by the Single Judge in the two matters before us directing implementation.

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19. In another judgment of this Court in *State of Gujarat and Anr. Vs. P.J. Kampavat and Ors.* reported in 1992 (3) SCC 226, this Court had occasion to look into a similar situation. That was a case where persons concerned were appointed directly in the office of the Chief Minister on purely temporary basis for a limited period up to the tenure of the Chief Minister. This Court held that such an appointment was purely a contractual one, and it was coterminus with that of the Chief Minister's tenure, and such service came to an end simultaneously with the end of tenure of the Chief Minister. No separate order of 1 Page 20 termination or even a notice was necessary for putting an end to such a service.

4. Paragraphs 8 and 12 of the judgment in the case of *State of Gujarat and Another*(supra) read as under:

“ 8. It is evident from a reading of the order of appointment of the writ petitioners that it was purely a contractual appointment co-terminus with the tenure of the Minister's establishment, at whose choice and instance they were appointed. The order expressly stated that they shall not get any right to appointment in regular cadre. Their services were, it was expressly stated, liable to be terminated at any time without giving any notice and/or without assigning any reasons. Indeed, they were asked to furnish under-takings in the above terms which they did. The order no doubt employs the words "appointed as direct recruits on purely temporary basis"-and these are the words which constitute the sheet-anchor of the writ petitioners' contention. We are, however, of the opinion that the order must be read as a whole

and so read, it is clear that the appointment of the respondents/writ petitioners was made otherwise than in accordance with the rules, at the choice and on the recommendation of the concerned Minister who wanted them to serve in his establishment. That the State has the power to make such contractual appointment is recognised by clause (2) of Article 310. clauses (1) and (2) of Article 310 read as follows:

"310. Tenure of office of persons serving the Union or a State:-(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provided for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate the post.

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12. For the reasons given above, we are of the opinion that the appointment of the respondents was a pure and simple contractual appointment and that such appointment does not attract and is outside the purview of the Bombay Civil Service Rules, 1959. Since the tenure of the ministers at whose instance and on whose recommendation they were appointed has come to an end with 10.12.1989 their service also came to an end simultaneously. No order of termination as such was necessary for putting an end to their service, much less a prior notice. They ought to go out in the manner they have come in."

5. Mr. Ghose also submits that a similar writ petition also on the identical ground being W.P. (C)No.9777/2015 titled '*Pooja Kumari v. Delhi*

High Court and Anr. ', was also dismissed as withdrawn by an order dated 17.02.2016.

6. At this stage, the learned Senior Counsel for the petitioners wishes to withdraw the petition to enable the petitioners to make a representation while placing reliance on the guidelines of the Supreme Court and also on the Minutes of the Meeting dated 25.08.2009.
7. The petition is accordingly dismissed as withdrawn.

G.S.SISTANI, J

I.S. MEHTA, J

SEPTEMBER 21, 2016

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