

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1996 of 2016**

Dr. Smt. Archana Khare W/o Pradeep Khare, Aged About 44 Years Working As Lecturer, R/o Dindayal Awas, L.I.G.- 25, Vaishali Nagar, Kaurinabhata, Rajnandgaon, District Rajnandgaon, (Chhattisgarh).

---- **Petitioner**

Versus

1. State of Chhattisgarh Through: The Secretary, Government of Chhattisgarh, Department of Technical Education, Man Power & Planning, Man Power & Planning, Mahanadi Bhawan, Mantralaya, Naya Raipur, (Chhattisgarh).
2. The Director, Directorate of Technical Education, Raipur, Indrawati Bhawan, Naya Raipur, Raipur, (Chhattisgarh).
3. The Public Service Commission, Through: The Secretary, PSC, Raipur, (Chhattisgarh).

---- **Respondents**

For Petitioner	:	Smt Renu Kochar, Advocate.
For Respondent/State	:	Shri Lav Sharma, Panel Lawyer.
For Respondent/PSC	:	Ms. S. Harshita, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board**

10/02/2017

1. The present petition under Article 226 of the Constitution of India has been preferred seeking substantial relief stated in paragraph 10.2 as under :

“This Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus directing the respondents to absorb/regularize the services in the regular post with all consequential benefits.”

2. The claim of the petitioner is that, she was initially appointed as part time Lecturer for the first time on 08.08.1995 and since then she continuously worked as part time Lecturer till 2003 with break, in between. Subsequently, the petitioner was appointed as contractual

Lecturer w.e.f. 12.05.2004 for a fixed period of three years which got renewed after a regular interval on completion of the previous contractual period with break.

3. The case of the petitioner is that she has been continuously working with the respondents for a period of more than 20 years, therefore, now the respondents should consider her case for grant of benefit of absorption/regularization in service. According to the petitioner, since she has been appointed by the respondents after conducting due process of law, therefore, it cannot be said that her appointment was back door entry and therefore she is eligible for regularization in service. It was also contended that during the service period of these 20 years, taking into consideration the hard and exemplary work that she has discharged, she was also made the in-charge as well as the Warden of the Hostel where she had discharged her duties with utmost competency and therefore her case should have been considered for regularization, but the respondents have not consider her case in this regard. Counsel for the petitioner further submits that the petitioner was engaged in service at the time of when the institution was facing acute shortage of regular Lecturer in the Technical Education Department. In the light of acute shortage of Lecturers, the State Government themselves had issued a circular taking a policy decision of appointing part time and Contractual Lecturer and it was only thereafter that the petitioner was selected and appointed on the said post. Therefore, considering the service rendered by the petitioner, she may be directed to be considered for regularization by the respondents.

4. Counsel for the petitioner also took the court through document dated 10.03.2006 issued from Swami Vivekanand Technical University which shows that the petitioner was also entrusted with the responsibility of setting up question papers and preparation of model answers which also would show and reflect her competency and that now after serving out more than 20 years, the petitioner should not be thrown out by her employer only because her services were on contractual basis. It is also submitted that the petitioner has been discharging her duties sincerely for the last 20 years which itself should have been as good ground for the respondent authorities to consider her claim for regularization. Reliance has been placed in case of Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors, reported in 2006(4)SCC 1, wherein also the observations of the Supreme Court was that persons who have put in continuous employment for a period of more than 10 years and whose appointment are not illegal but are only irregular, their cases can be considered for regularization, however, in the instant case the State authorities have not taken any steps. Thus, prayed for a direction in this regard by this court.
5. On a query being put to the counsel for the petitioner whether she is still continuing in employment since her contractual period stands completed, the counsel was not very sure about the renewal of the contract.
6. State counsel however opposes the petition on the ground that the petitioner all along was appointed either as part time Lecturer or a contractual Lecturer. Therefore, the petitioner does not have any

substantive right accrued in her favour on account of her appointment on the basis of which she could be considered for regularization. It is also submitted that the case of the petitioner cannot be equated with the regular employees of the department. The regular employees are appointed after following due procedure prescribed by the government under the rules framed in this regard. In the instant case, the petitioner was not appointed after due process prescribed for appointment of regular Lecturer/Teacher. Thus, the petitioner does not have any indefeasible right in her favour and the petition deserves to be rejected.

7. The same arguments have been adopted by the counsel for the respondent-Public Service Commission. It is also submitted on behalf of PSC that similar issue has already been decided by this court on 02.01.2017 in batch of writ petitions i.e. in case of Tukesh Singh Thakur & Another Vs. State of Chhattisgarh & Others (Writ Petition (S) No.1656 of 2016 and other connected matters). In the light of decision dated 02.01.2017 already taken by this court, all the contentions put forth by the counsel for the petitioner stands answered. Therefore, the present petition may also be dismissed in the light of said judgment dated 02.01.2017.
8. Having considered the contentions put forth on either side and on perusal of record, there is no dispute in respect of the fact that the case in hand is squarely covered by the decision of this court rendered in case of Tukesh Singh Thakur (Supra) and other connected cases. Judgment cited and relied upon by the counsel for the petitioner in case of Umadevi (Supra) has already been discussed by this court in the

said judgment. The court has also extensively dealt with the rights which are attached to a contractual employee and other similarly placed persons.

9. This court has no hesitation in reaching to the conclusion that the present case also is squarely covered by the said judgment. Thus, the present petition also deserves to be decided in the same terms.
10. Before considering the submissions put forth by the counsel for the petitioners it would be relevant to refer to certain judicial pronouncements which have been made in the recent past in respect of the contractual employment. One of the most recent decisions in this field is the judgment of the Supreme Court in the case of **State of Maharashtra and others vs. Anita and another** reported in **(2016) 8 SCC 293** which has also been referred by the counsel appearing for the PSC. In paragraph-14 of the said judgment it has been emphatically held that:

“14. It is relevant to note that the respondents at the time of appointment have accepted an agreement in accordance with Appendix 'B' attached to the 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.”

11. The Supreme Court has time and again reiterated the said proposition of law that the Courts cannot direct for creation of post nor grant the status of permanency where the post does not exist.
12. The Supreme Court in the land mark judgment in the case of Umadevi (supra) while dealing with the question of equality in public employment and also comparing the rights of a contractual employee or

for that matter the rights of a daily wage employee or temporary employee has held as under:

“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.”

Further In Paragraph-52 it has been held as under:

52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.”

13. In the case of **Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College** reported in **1962 AIR 1210** the Constitutional Bench of the Supreme Court has held that “In order that mandamus may issue to compel the respondents to do something it must be shown that the Statutes impose a legal duty and the appellant has a legal right under the Statutes to enforce its performance.”

14. It has been the consistent view of the Supreme Court as also of various High Courts that appointment to a Govt. service or in the service of only of its instrumentality can only be by way of proper selection in the manner recognized by the relevant legislation in this context. The individual rights in respect of a few cannot prevail upon the rights of numerous other persons who are also equally eligible and are waiting for an opportunity to be given to participate in the selection procedure as per the rules governing the field so that they can also attempt for getting an employment in Govt. service. The Supreme Court has been

emphatical while considering the rights of individual under Article 21 of the Constitution of India envisaging the ratio that in the name of individualizing justice it is not possible to shut our eyes to the Constitutional scheme and the rights of numerous other eligible persons as against few who are before the Court. The directive principles of the State policy have also to be reconciled with the rights available to the citizens under Part-III of the Constitution of India and the obligation of the State to one and all and not to a particular group of citizens.

15. It would be relevant at this juncture to refer to the decision of the Supreme Court in the case of **State of Karnataka and Others Vs. G. V. Chandrashekar** reported in **(2009) 4 SCC 342** wherein again reiterating the principles of law laid down by the constitutional Bench of the Supreme Court in the case of Umadevi (supra) referring to paragraph-43 has held that if it is a contractual appointment, the appointment comes to an end at the end of the contract.
16. The High Court of Delhi in the case of **Union of India v. Phool Dev Singh** in WPC No. 12479/2009 decided on 18.08.2010 in paragraph-18 has held that the Govt. is not precluded from from engaging workers on daily wages but any appointment to public posts can only be made in terms of the statutory rules framed under Article 309 of Constitution of India. An employee engaged on daily wage basis cannot claim to be made a permanent employee.
17. From the aforesaid legal dictum what clearly culls out is the fact that the doctrine of legitimate expectations cannot be invoked by a person who

has been engaged on contractual basis particularly when he is aware of his nature of employment and has accepted it with wide open eyes though he may not be in a position of bargain. Furthermore, a regular post in Govt. employment has to be filled up purely and strictly in accordance with the rules governing the field. When an order of appointment is on contractual basis, it is implied that it is for a fixed period, terminable without notice and it comes to end by efflux of time. Such appointees do not have a right to continue in the post or claim for regularization after the period of service or while in continuation of contractual employment. In absence of any rule providing for such regularization, the High Court cannot and must not transgress its limit only on the basis of having sympathy with the petitioners before the Court taking into consideration their length of service. A sanctioned vacant post must be filled up by way of selection in accordance with the rules governing the field where the petitioners may also compete with others for the regular permanent appointment.

18. The law of regularization has undergone a substantial change in view of the decision of the Supreme Court in the case of Umadevi. It has been reiterated by the Supreme Court on repeated occasions that the constitutional scheme of public employment must be headed by a larger public interest and it should be ensured that the sanctity of the constitutional scheme for employment should not be watered down by the Courts by issuing directions for regularization. It has also been enunciated in a *catena* of decisions that the regularization defeats the principle of equality enshrined under Article 14 of the Constitution of

India. Mere fact that a contractual employee has worked for a long duration does not automatically entitle such person to be regularized on that post as he has been quite aware of the nature of his employment and the order of appointment itself very specifically stipulates the fact that he does not acquire any legal right to that post.

- 19.** At this juncture it would also be relevant to quote Paragraph-47 of the judgment of Umadevi case:

“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 cases concerned, 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.”

- 20.** This court, however, only intends to add one small observation in the present case that the present case is slightly different on the facts with the other cases to the extent that in that cases only a couple of persons had put their service over 10 years whereas, in the instant case, from the experience certificate issued from the respondents and also from the documents which are attached to petition clearly shows that the petitioner has put in more than 20 years of service with the respondents. A Lecturer having put 20 years of service with the respondents in whatever capacity should be given due weightage by

the respondents. Therefore, this court while deciding the petition only intends to make an observation that the State Government should take into consideration such similarly placed persons who have performed their duties satisfactorily with the respondents for a considerable long period of time. That, taking their experience in the future would be more beneficial for the State Government and also for the Technical Education Department where they have been performing their duties particularly when the department is facing acute crisis of senior experienced Teacher/Lecturer. Therefore, it is expected that the State Government may take an appropriate policy decision in this regard, if better wisdom prevails upon the State Government.

21. The petitioner would also be at liberty to approach the respondents by making suitable representation in this regard for redressal of her grievance.
22. With the aforesaid observations, the present writ petition stands disposed off.

Sd/-
(P.Sam Koshy)
Judge