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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 1647 OF 2017
WITH
NOTICE OF MOTION (L) No. 375 OF 2017
WITH
CONTEMPT PETITION No. 46 OF 2017

Dr. Hemalatha Muthulingom,)
of Mumbai, Indian Inhabitant,)
Residing at F-1, Academic Staff)
Quarters, University of Mumbai)
Kalina, Santacruz (East),)
Mumbai 400 098) ... Petitioner /
(Applicant in NMWL. 375/2017)

Vs.

1. The University of Mumbai and)
Department of Atomic Energy)
Centre for Excellence in Basic)
Sciences, University of Mumbai,)
Kalina Campus, Santacruz (East))
Mumbai 400 098.)
2. Union of India,)
Through the Secretary,)
Department of Atomic Energy,)
Anushakti Bhavan, C. S. M. Marg,)
Mumbai 400 001)
3. Vice Chancellor,)
University of Mumbai,)
Fort, M. G. Road, Mumbai 400 032)

4. Dr. R. V. Hosur,
Director, the University of Mumbai)
and Department of Atomic Energy)
Centre for Excellence in Basic)
Sciences, University of Mumbai,)
Kalina Campus, Santacruz (East))
Mumbai 400 098. ... Respondents

WITH

WRIT PETITION No. 1034 OF 2017

WITH

NOTICE OF MOTION (L) No. 667 OF 2017

Dr. Gargi Shaw,)
of Mumbai, Indian Inhabitant,)
Residing at 904, Bhaskara, TFIR)
Housing Complex, Homi Bhabha)
Road, Mumbai 400 005)

AND

Department of Physics, UM-DAE)
Centre For Excellence in Basic)
Sciences, University of Mumbai,)
Kalina Campus, Santacruz (East),)
Mumbai 400 098 ... Petitioner

Vs.

1. The University of Mumbai and)
Department of Atomic Energy)
Centre for Excellence in Basic)
Sciences, University of Mumbai,)
Kalina Campus, Santacruz (East))
Mumbai 400 098.)

2. Union of India,)
Through the Secretary,)

- Department of Atomic Energy,)
 Anushakti Bhavan, C. S. M. Marg,)
 Mumbai 400 001)
3. Vice Chancellor,)
 University of Mumbai,)
 Fort, M. G. Road, Mumbai 400 032)
4. Dr. R. V. Hosur,)
 Director, the University of Mumbai)
 and Department of Atomic Energy)
 Centre for Excellence in Basic)
 Sciences, University of Mumbai,)
 Kalina Campus, Santacruz (East))
 Mumbai 400 098.)
5. Prof. S. M. Chitre,)
 Senior Faculty,)
 The University of Mumbai and)
 Department of Atomic energy Centre)
 for Excellence in Basic Sciences,)
 University of Mumbai)
 Kalina Campus, Santacruz (East),)
 Mumbai 400 098. ... Respondents

And

1. University of Mumbai & Department)
 of Atomic Energy Centre for)
 Excellence in basic Sciences,)
 University of Mumbai, Kalina)
 Campus, Santacruz (East),)
 Mumbai 400 098.)
2. Dr. R. V. Hosur, Director,)
 University of Mumbai & Department)
 of Atomic Energy Centre for)
 Excellence in basic Sciences,)

University of Mumbai, Kalina)
Campus, Santacruz (East),)
Mumbai 400 098. ... Applicants
(in WPL. No. 667/2017)

WITH
WRIT PETITION (L) No. 2442 OF 2017

1. Dr. Gargi Shaw,)
of Mumbai, Indian Inhabitant,)
Residing at 904, Bhaskara, TFIR)
Housing Complex, Homi Bhabha)
Road, Mumbai 400 005)
2. Dr. Hemalatha Muthulingom,)
of Mumbai, Indian Inhabitant,)
Residing at F-1, Academic Staff)
Quarters, University of Mumbai)
Kalina, Santacruz (East),)
Mumbai 400 098 ... Petitioners

Vs.

1. The University of Mumbai and)
Department of Atomic Energy)
Centre for Excellence in Basic)
Sciences, University of Mumbai,)
Kalina Campus, Santacruz (East))
Mumbai 400 098.)
2. Union of India,)
Through the Secretary,)
Department of Atomic Energy,)
Anushakti Bhavan, C. S. M. Marg,)
Mumbai 400 001)
3. Vice Chancellor,)

University of Mumbai,)
Fort, M. G. Road, Mumbai 400 032)

4. Dr. R. V. Hosur,)
Director, the University of Mumbai)
and Department of Atomic Energy)
Centre for Excellence in Basic)
Sciences, University of Mumbai,)
Kalina Campus, Santacruz (East))
Mumbai 400 098.)

5. Prof. S. M. Chitre,)
Senior Faculty,)
The University of Mumbai and)
Department of Atomic energy Centre)
for Excellence in Basic Sciences,)
University of Mumbai)
Kalina Campus, Santacruz (East),)
Mumbai 400 098. ... Respondents

Mr. Mihir Desai, Sr. Counsel a/w C. K. Thomas i/b M/s. C. K. Thomas
& Associates, for the Petitioners in all writ petitions.

Mr. S. S. Pakale a/w Saurabha Pakale i/b S. M. Katkar, for Respondent
No. 1 in all writ petitions.

Mr. P. M. Palshikar, for Respondent No. 2 in all writ petitions.

Mr. Rui Rodrigues, for Respondent No. 3 in all writ petitions.

CORAM : B. R. GAVAI, &
MANISH PITALE, JJ.

RESERVED ON : DECEMBER 8, 2017

PRONOUNCED ON : DECEMBER 19, 2017

JUDGMENT : [PER : MANISH PITALE, J.]

1. Heard. Rule (in all petitions). Rule (in all petitions) is made returnable forthwith. The learned counsel Mr. S. S. Pakale, waives service of notice for Respondent No. 1 and 4; the learned counsel Mr. P. M. Palshikar waives service of notice for Respondent No. 2; the learned counsel Mr. Rui Rodrigues waives service of notice for Respondent No.3, in all the writ petitions. By consent of parties, all the petitions are taken up for final hearing.

2. The question that arises for consideration in these petitions is, as to whether the Petitioners are entitled to be continued in their respective posts with Respondent No. 1 till their superannuation, having been in service since 22.1.2009, in the case of Dr. Hemalatha Muthulingom (Petitioner in Writ Petition No. 1647 of 2017) and 1.1.2010 in the case of Dr. Gargi Shaw (Petitioner in Writ Petition No. 1034 of 2017). The main grievance of the Petitioners is that having put in long years of service and being part of the Centre for Excellence, which helped development of Respondent No. 1 Centre in all these years, could the Petitioners be told that their services would no longer continue and that they should now apply for appointment in

the Respondent No. 1 Centre in pursuance of advertisement, inviting applications for all the posts in the faculty of Respondent No. 1. In other words, whether the Petitioners are entitled to the posts held by them in the Respondent No. 1 Centre, and whether they were entitled to continue as if they were permanent employees with Respondent No. 1 Centre.

3. Respondent No. 1 i.e. Centre for Excellence in Basic Sciences was established by the Department of Atomic Energy, Government of India and the University of Mumbai for which a Memorandum of Understanding dated 27.3.2007 was executed. A Memorandum of Association was also executed between the said two parties with the objective of establishing a brand institution in the field of Basic Sciences, in which high quality undergraduate training embodied in a Post Graduate Research environment would be created, with strong linkages to existing National Research Institutes like BARC, TIFR, IIT and other institutes for providing an innovative and flexible five years integrated course after Higher Secondary Certificate or equivalent examination.

4. A student entering such a course with Respondent No. 1

Centre would be awarded a Masters Degree (M. Sc.) at the end of the 5th year and in addition, the Centre would provide avenues for doctoral degrees for carrying out advanced research in Science and Technology. The Centre was initially set up for a period of five years and depending upon its further development and funding, it was to be set up as a permanent Centre. The Respondent No. 2, Union of India through Department of Atomic Energy has financed the said Respondent No. 1 Centre while infrastructure and other facilities have been provided by Respondent No. 3 – University of Mumbai, as per the aforesaid Memorandum of Understanding.

5. There are three writ petitions and one contempt petition and two notices of motion that are being disposed by this common judgment.

. The facts pertaining to the case of two Petitioners are as follows:

6. The Petitioner in Writ Petition No. 1647 of 2017 (Dr. Hemalatha Muthulingom) holds a Ph.D. in Physics and she claims to have applied to the Respondent No. 1 Centre in pursuance of an advertisement on the website of Respondent No. 1. There are two

advertisements placed on record, claimed to have been available on the website of Respondent No. 1, in the year 2008-2009. One of the advertisements shows availability of the posts of Assistant Professor and Research Associate and other posts, prescribing required qualifications while the other shows the said posts in the Respondent No. 1 Centre available for the specific periods of five years and three years. The said Petitioner claims to have applied for appointment in Respondent No. 1 – Centre in pursuance of the first advertisement wherein specific tenure for the posts was not provided. The said Petitioner claims that upon her application, she was interviewed by the Selection Committee comprising of the then Director and Chairman of the academic Board of Respondent No. 1 and that upon successively qualifying the interview, by letter dated 22.1.2009 she was invited to join Respondent No. 1 Centre as Research Associate for a period of two years in the first instance. Thereafter, on 3.5.2010 her designation was changed to that of a lecturer on the same terms and conditions, and further, by a letter dated 22.6.2010, she was given designation of Assistant Professor with the terms and conditions remaining unchanged. It is further placed on record by the said Petitioner that by

letters dated 11.1.2011 her appointment was extended upto 31.3.2012 and thereafter on 23.3.2012 it was extended for one more year till 31.3.2013. Such extensions were regularly granted to the said Petitioner for a period of one year till 31.12.2015.

7. After the said extension, Respondent Nos. 1 and 4 conducted a evaluation / review of the services of all the teaching staff of the Centre, including the Petitioner. But, pursuant to the said exercise of evaluation, the services of all the teaching staff other than the said Petitioner and the Petitioner in Writ Petition No. 1034 of 2017 – Dr. Gargi Shaw, were extended for three years, while the services of the said Petitioners were extended only for one year w.e.f 1.1.2016. It is the case of the said Petitioners that other members of the teaching staff were junior to them and they were granted extensions for three years while depriving the Petitioners of the said benefit.

8. The said Petitioner further contends that during the period of her service, she had helped to develop Respondent No. 1 Centre into an Institute of Excellence by teaching students and undertaking research activities, apart from the administrative duties including that of being warden of the hostel. The said Petitioner claims that having

put in about 8 years of service in developing Respondent No. 1 as a Centre of Excellence, it was most unfair and arbitrary on the part of Respondent Nos. 1 and 4 to have extended her service only for a period of one year and that she deserved to be continued in service as a permanent employee. The Respondent No. 1 was getting rid of the Petitioner after having utilised her services for all these years and that the said action of Respondent Nos. 1 and 4 was wholly unsustainable.

9. The Petitioner Dr. Hemalatha Muthulingom had earlier filed Writ Petition No. 13699 of 2016, against the communication dated 19.10.2016, whereby Respondent No. 4 informed her that her tenure would expire on 31.12.2016. The said writ petition was disposed by this Court on 20.12.2016 with liberty to the said Petitioner to approach the Grievance Committee constituted under Clause 9 of the Regulations of the Respondent No. 1 Centre. The Grievance Committee was directed to give opportunity of hearing to the Petitioner and to decide her representation on or before 30.12.2016. On 29.12.2016, Respondent No. 4 informed the Petitioner that the Grievance Committee found her grievance to be misconceived as the review process was elaborate and objective and that there was no

evidence of any bias. It is thereafter that the said Petitioner has filed aforesaid Writ Petition No. 1647 of 2017, not only against the findings of the Grievance Committee, but also seeking relief of continuity in service with Respondent No. 1 till her superannuation.

10. During pendency of the writ petition, filed by the Petitioner claiming relief of direction to the Respondents to continue her in service till superannuation, Respondent No. 1 issued an advertisement for making appointment on the posts of teaching staff, including the post held by the Petitioner. This action of Respondent No. 1 was also challenged by the Petitioner as being an afterthought, only with a view to deny her claim of continuation in service till her superannuation.

11. The facts pertaining to the case of – Dr. Gargi Shaw (Writ Petition No. 1034 2017) are also similar to those stated by the Petitioner Dr. Hemalatha Muthulingom. It is the case of the Petitioner Dr. Gargi Shaw that she was appointed by Respondent No. 1 Centre, initially, as an Assistant Professor for two years and thereafter as Reader. She was continued on the said post with extensions every year and she was also granted extension only for one year w.e.f. 1.1.2016,

while her juniors were granted extension of three years in service. She has also claimed the relief of direction to the Respondent No. 1 to continue her in service till her superannuation.

12. Writ Petition (L) No. 2442 of 2017 has been filed together by both the Petitioners viz. Dr. Hemalatha Muthulingom and Dr. Gargi Shaw to challenge advertisement dated 26.8.2017 that was published by Respondent No. 1 during pendency of the earlier writ petitions, inviting applications for appointments in the posts of teaching staff, including the posts held by the Petitioners. This Court had passed an order dated 14.6.2017 in Writ Petition No. 1034 of 2017, directing the Respondents not to take any further steps for filling the posts, which were occupied by the Petitioners until further orders. On 22.9.2017 this Court continued the said interim order in writ petition filed by the Petitioners challenging the said advertisement. Despite the said interim order, the Respondents issued advertisement for filling the posts, that were occupied by the Petitioners and by order dated 4.10.2017 passed in Writ Petition (L) No. 2442 of 2017, this Court was constrained to observe that such advertisement was in breach of the said interim order of this Court

further directing that no steps should be taken by Respondent No. 1 for filling the posts occupied by the Petitioners. Thereafter, on 12.10.2017 the counsel appearing for the Respondents stated that Respondent No. 1 would not take any steps in furtherance of the advertisement for filling of the posts, which were occupied by the Petitioners, and therefore, even today the said posts are lying vacant.

13. Mr. Mihir Desai, learned senior counsel appearing on behalf of the Petitioners has contended that since the Petitioners were appointed in 2007 and 2010 in pursuance of advertisements and interviews, and when they had been continued in service with Respondent No. 1 Centre for long years upto 2016, it was evident that their status was that of permanent employees and that they deserve to continue in service with Respondent No. 1 till their superannuation. It was contended on behalf of the Petitioners that they had put in vital years of service, helping to build the reputation of the Respondent No. 1 Centre for Excellence and that they could not be suddenly told after long years of service that they would not be continued further and that they would now have to participate in a new selection process for being appointed as regular employees. It was contended that the

Petitioners, being highly qualified in their respective fields, did not deserve such treatment at the hands of Respondent No. 1 and that they were entitled to be treated as permanent employees.

14. It was further submitted on behalf of the Petitioners that the appointment in Respondent No. 1 Centre was of permanent nature and that in some communications it was stated that the Petitioners were regular employees. It was further submitted that the reports of Referees in evaluation / review, conducted in the year 2015, were biased and that the Evaluation / Review Committee could not have been constituted, as Regulation 15 was misconstrued by the Respondents. In the case of Petitioner Dr. Hemalatha Muthulingom, it was additionally submitted that she had been selected as UGC faculty under the Faculty Recharge Programme, as communicated to her on 6.3.2016 and that she could be absorbed and continued in Respondent No. 1 Centre since the UGC would bear the financial burden of her emoluments till her superannuation. In support of the said submissions, the learned senior counsel relied on the following judgments:

(i) *Sachin Ambadas Dawale & Ors, Petitioners Vs. The*

State of Maharashtra & Anr.¹;

(ii) *Nihal Singh & Ors., Appellants Vs. State of Punjab & Ors., Respondents².*

15. On the other hand, Mr. S. S. Pakale, learned counsel appearing for Respondent No. 1 and 4 submitted that Respondent No. 1 Centre for Excellence was itself established initially for a period of five years and that its continuation as a regular institution with funding was to be crystalised with passage of time. Since the institute itself was yet to be established as a permanent entity, the appointment of the Petitioners could never have been on permanent posts. It was further contended that the initial appointment of the Petitioners and subsequent extensions were all for specific periods of time, which demonstrated that such appointments were contractual and that they were not permanent in nature. It was specifically contended that the Petitioners were never appointed by any process of regular selection and that the claim of the Petitioners that they were interviewed, was not correct. It was contended that initial appointments of the Petitioners were on the basis of recommendations from experts in the

¹ 2014 (2) Mh. L. J. 36.

² (2013) 14 SCC 65.

respective fields and that there were no applications invited from competing claimants when the Petitioners were appointed. It was claimed that when the appointments were not regular in nature, the Petitioners were not justified in claiming relief of permanency in service. In support of the said contentions, reliance was placed on the judgment in the case of *Secretary, State of Karnataka & Ors., Appellants Vs. Umadevi (3) & Ors., Respondents*³.

16. It was further submitted on behalf of Respondent No. 1 that in the representation filed by Dr. Hemalatha Muthulingom, the prayer was for grant of extension of three years on par with others or till regular appointments were made, upon finalisation of Rules. Thus, according to the counsel for Respondent No. 1, the Petitioners themselves were aware that their employment was contractual in nature and that regular appointments would be made in future. It was submitted that the word “regular” used in the context of service of the Petitioners in some communications, was used in contradistinction to visiting faculty. It was further submitted that approval for registration of Respondent No. 1 Centre as a Society was granted by the

³ (2006) 4 Supreme Court Cases 1

Management Council of Respondent No. 3 University in the year 2013, so as to give legal status to the Centre to receive money from the department of Atomic Energy in perpetuity. It was only in December, 2015 that the Union Cabinet granted approval to the same, further granting approval in principle to 13 posts i.e. one Director and 12 teaching faculty. Eventually, on 31.5.2017 Respondent No. 1 Centre was registered as a Society under the Societies Registration Act, 1860. It was further contended that only thereafter Respondent No. 1 Centre issued advertisement in August, 2017 for filling of the aforesaid posts, approved by the Union Cabinet.

17. On this basis, it was submitted that the appointment of the Petitioners and other teaching staff in Respondent No. 1 Centre was contractual in nature. In respect of allegations of the Petitioners that the reports of the Referees were biased, it was submitted on behalf of Respondent No. 1 that as per law laid down by the Hon'ble Supreme Court, the Court cannot enter in the arena of experts and that only the process of decision making could be judicially reviewed. The learned counsel has relied upon following judgments, in support of his contentions:

- (i) *Director, Panchayat Raj, U P Vs. Babu Singh Gaur*⁴;
- (ii) *Director, Institute of Management Development, U.P. Vs. Pushpa Srivastava*⁵;
- (iii) *Shobha M. Bhawe (Dr.) & Ors., Petitioners Vs. State of Maharashtra & Anr., Respondents*⁶
- (iv) *Basavaiah (Dr.), Appellant Vs. Dr. H. L. Ramesh & Ors., Respondents*⁷

18. We have heard the learned counsel appearing for the respective parties, and having perused the pleadings and documents on record, we find that the issues that need to be decided in the present petitions are as to what was the nature of appointment of the Petitioners, and whether the Petitioners were justified in claiming permanency in service, further being entitled to be continued in service with Respondent No. 1 till their superannuation.

19. In order to decide the said issues, it would be necessary to refer to the law laid down by the Hon'ble Supreme Court in respect of the nature of employment that could qualify for holding that the employees were entitled for status of permanent employees with

4 1972(1) SCC 227

5 1992 (4) SCC 33

6 2004 (1)Mh.L.J. 97

7 (2010) 8 SCC 372

consequential benefits. In the context of large number of temporary appointments being made in Government Departments and instrumentalities of the State, and the question of the status of such employees, the Hon'ble Supreme Court has held in the case of *Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors. (supra)* as follows:

“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. The High Courts acting under Article 226 of the Constitution, 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 the 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.

20. It has been further held by the Hon'ble Supreme Court in the context of contractual appointments in the case of *GRIDCO Limited & Anr., Appellants Vs. Sadananda Doloi & Ors., Respondents*⁸ as follows:

8 (2011) 15 SCC 16

“13. Having said that, let us now see the background in which the appointment was made in the present case. As seen above, the selection process culminating in the appointment of the respondent started with the publication of an advertisement to fill up two vacancies of human resource professionals at senior management level. The advertisement, it is common ground, did not indicate the nature of appointment (whether regular or contractual) that may be offered to the selected candidates. The absence of any such indication in the advertisement notice did not, in our opinion, make any material difference having regard to the fact that the offer of appointment made to respondent No.1 in terms of appellant-Corporation’s letter dated 8th January, 1997, specifically described the appointment to be a tenure appointment.”

...

“39. A writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the arm chair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ Court would do well to respect the decision under challenge.

40. Applying the above principles to the case at hand, we have no hesitation in saying that there is no material to show that there is any unreasonableness, unfairness, perversity or

irrationality in the action taken by the Corporation. The Regulations governing the service conditions of the employees of the Corporation, make it clear that officers in the category above E-9 had to be appointed only on contractual basis.

41. It is also evident that the renewal of the contract of employment depended upon the perception of the management as to the usefulness of the respondent and the need for an incumbent in the position held by him. Both these aspects rested entirely in the discretion of the Corporation. The respondent was in the service of another employer before he chose to accept a contractual employment offered to him by the Corporation which was limited in tenure and terminable by three months' notice on either side. In that view, therefore, there was no element of any unfair treatment or unequal bargaining power between the appellant and the respondent to call for an over-sympathetic or protective approach towards the latter.

42. We need to remind ourselves that in the modern commercial world, executives are engaged on account of their expertise in a particular field and those who are so employed are free to leave or be asked to leave by the employer. Contractual appointments work only if the same are mutually beneficial to both the contracting parties and not otherwise."

21. Thus, it is evident that the law laid down by the Hon'ble Supreme Court clearly states that unless an appointment is made after proper competition among qualified persons, the same would not confer any right on the appointee as a permanent employee and further

that if it is a contractual appointment, the appointment comes to an end at the end of the contract. Only because such contractual appointment is continued for further fixed period on same terms and conditions, it does not result in such appointment becoming a regular appointment on permanent vacancy.

22. The facts of the present case and the documents on record do not show that the initial appointments of the Petitioners were made upon proper competition amongst qualified persons. The advertisement relied upon by the Petitioners is said to have been a rolling advertisement on the website of Respondent No. 1. One of such advertisements shows the faculty positions without specific tenure and other advertisement shows the same faculty positions with specific tenure of appointments. Both these advertisements do not carry any date and they are said to have been available on the website of Respondent No. 1 Centre in the year 2008-2009. There is no material to show as to whether any advertisements with wide publicity were issued during this period by Respondent No. 1 Centre, and whether persons qualified, like the Petitioners, were put to notice regarding availability of such faculty posts. There is no material on

record to show that there were other applicants for the posts, on which the Petitioners were appointed and that there had been any selection committee, which conducted interviews so as to evaluate the *inter se* merit of applicants to the said posts. There are no proceedings regarding any selection process leading to the appointment of the Petitioners.

23. Apart from this, the initial appointment orders of the Petitioners are specifically for a period of two years. The subsequent extensions granted to the Petitioners are also for specific periods. The evaluation / review conducted in the years 2013 and 2015 were also for the purpose of ascertaining as to which of the teaching staff could be granted further extensions and for what period. It is on record that two members of the teaching staff were not even offered extensions pursuant to such evaluation / review conducted in the year 2015. The Petitioners were granted extensions for periods of one year, while the other teaching staff were granted extensions for a period of only three years.

24. Thus, the initial appointment order as well as subsequent extensions were for specific periods and the Petitioners as well as all

other teaching staff were clearly aware that such appointments would continue only for a specified periods. In the communications on record issued by Respondent No. 4, it has been stated that Respondent No. 1 Centre itself was initially established on an experimental basis for a period of five years and it was on a project mode, and that it would continue, subject to the Department of Atomic Energy and University of Mumbai continuing with the Memorandum of Understanding and the Memorandum of Association executed for establishment of the Respondent No. 1 Centre. It was only when the Management Council of the Respondent – University of Mumbai accorded approval in the year 2013 for Respondent No. 1 Centre to be registered as a Society and the Union Cabinet granted approval for the same in December, 2015, that the status of the Respondent No. 1 Centre moved towards being enhanced as a permanent centre of learning. Respondent No. 1 Centre was eventually registered as a Society under the Societies Registration Act, 1860 on 31.5.2017 and approval was granted for 13 posts i.e. one Director and 12 teaching staff. Thus, it is clear that all appointments made prior to such enhancement of status of Respondent No. 1, were contractual in

nature. All the teaching staff, including the Petitioners, were appointed on contractual basis for specific periods and not a single person was appointed on permanent vacancy, since no such permanent vacancy existed. It is brought on record on behalf of Respondent Nos. 1 and 4 that even the Director of Respondent No. 1 – Centre was on deputation.

25. It is evident from the record that the initial grievance of the Petitioners was that they were granted extensions only for a period of one year w.e.f. 1.1.2016, while other teaching staff were granted extensions of three years, although they were appointed after the Petitioners and that they were junior in service. In fact, the grievance raised by the Petitioner Dr. Hemalatha Muthulingom before the Grievance Committee was for grant of extension for a period of three years, instead of one year or till regular appointments were made upon finalisation of Service Rules. Thus, the Petitioners were also clearly aware that their appointments and continuation for specific periods with Respondent No. 1 Centre were contractual in nature.

26. As regards allegations of the Petitioners that reports of the Referees in the evaluation / review conducted in the year 2015

were biased, we had requested the counsel for Respondent No. 1 to make available the original record in respect of proceedings of the evaluation / review committee, not only for the year 2015, but also for the year 2013. We found that the procedure adopted by the evaluation / review committee could not be faulted. We could not have gone into merits of the findings of the evaluation / review committee as the same is in the arena of experts, which cannot be judicially reviewed. In this regard, the learned counsel for Respondent No. 1 is correct in relying upon the judgment of the Hon'ble Supreme Court in the case of *Basavaiah (Dr.), Appellant Vs. Dr. H. L. Ramesh & Ors., Respondents (supra)* wherein it has been reiterated that in academic matters, in the decisions of committee of experts, it is not the function of the Court to hear appeals over their decisions or to scrutinise relative merits of candidates. Therefore, the contentions raised on behalf of the Petitioners regarding defects, errors and bias in the reports of the Referees are unsustainable.

27. Even otherwise, the members of the teaching staff, who have been granted extension of three years, are also required to face the process of regular selection pursuant to advertisements issued by

Respondent No. 1 Centre in August, 2017 for appointment in various posts. It is not as if the members granted a better rating by the evaluation / review committee, have been exempted from the process of regular selection or that they have been continued as regular employees. The only difference between the Petitioners and the other teaching staff is that the Petitioners were lastly granted contractual extension in their posts for one year, while the others were granted such contractual extensions for a period of three years. The nature of appointment of all employees with the Respondent No. 1 Centre was clearly contractual in nature and they would all cease to hold their respective posts on expiry of such periods of contractual employment.

28. Therefore, it would be evident that the reliance placed by the learned senior counsel appearing for the Petitioners on aforementioned judgments does not take the case of the Petitioners any further. The reliance placed on the judgment of a Division Bench of this Court in the case of *Sachin Ambadas Dawale Vs. The State of Maharashtra & Anr. (supra)* is misplaced because in that case appointments were made in the posts of lecturer in Government Polytechnics pursuant to proper selection process by interviews

conducted by the Selection Committee, consisting of five members including subject experts, on the basis of applications invited by notification. It was found in that case by the Court that the appointments were made on permanent and full time posts, which were sanctioned posts. It was also found that advertisement had been issued whereby all interested candidates had proper opportunity to apply and take part in the selection process. In the facts of that case, it was held by the Division Bench of this Court that the Petitioners deserved relief.

29. In the instant case, as we have noted above, there is no material on record to show that the posts on which the Petitioners were appointed were widely advertised giving opportunity to qualified persons to apply and to compete for selection. There is nothing to show that selection committee conducted interviews to select the Petitioners on merits. It is also evident that the posts on which the Petitioners were appointed could not be categorised as sanctioned posts that could be said to be permanent or full time posts. When Respondent No. 1 Centre itself at the relevant time had been set up on an experimental basis in a project mode, subject to extension as would

be agreed between the Department of Atomic Energy and the Respondent – University of Mumbai, it could not be said that the posts on which the Petitioners were appointed were permanent or sanctioned in nature.

30. The process of Respondent No. 1 Centre attaining legal status for receiving finance from the Department of Atomic Energy in perpetuity took shape in the year 2013 and December 2015, as also May 2017 when the Centre was registered as a Society, and the Union Cabinet granted approval to 13 posts, including that of the Director. It is only after such legal status has been achieved by Respondent No. 1 Centre that the question of appointment on regular sanctioned posts has arisen. The process has been undertaken by Respondent No. 1 Centre by issuing advertisements in August, 2017 inviting applications for appointment in 13 sanctioned posts. Since all the members of the teaching staff, who hitherto were working with Respondent No. 1 Centre, are required to apply for regular appointment to the sanctioned posts, it cannot be said that the Petitioners have been discriminated against or that their claim for being continued in service with Respondent No. 1 till their superannuation is justified.

31. The learned senior counsel appearing for the Petitioners has also relied upon judgment of the Hon'ble Supreme Court in the case of *Nihal Singh & Ors. Vs. State of Punjab & Ors. (supra)* to claim that it was for the Respondents to create sanctioned posts and to absorb the Petitioners therein, having taken work from them for a long period of time. But it is clearly stated in para 24 of the said judgment that the initial appointments of the appellants therein could never be categorised as irregular appointments and that such appointments were made in accordance with the statutory procedure, contemplated under the relevant statute. This is a distinguishing feature in the said case because in the instant case, the initial appointments of the Petitioners and extensions given thereafter cannot be said to be regular and such appointments and extensions were contractual appointments for specified periods, on terms and conditions stated in such orders of appointments and extension. Thus, the ratio of the said judgment does not enure to the benefit to the Petitioners herein.

32. Mr. Pakale, the learned counsel appearing for Respondent No. 1 and 4 has relied on various judgments, mentioned hereinabove, in support of his contention that the posts on which the Petitioners

were appointed were not permanent posts and that initial appointments and subsequent extensions were not through open competition. As we have already concluded in favour of the Respondents in this regard, we do not think that it is necessary to discuss the said judgments in detail.

33. The aforesaid discussion leads to a clear conclusion that the appointments and subsequent extensions granted to the Petitioners were purely contractual in nature. They were not appointed against any regular, permanent or sanctioned posts, because till December 2015, the very status of Respondent No. 1 Centre was not established as a permanent institution. It is only after Respondent No. 1 Centre has been registered as a Society in May, 2017 that steps for making regular appointments on the 13 posts have been undertaken by Respondent No. 1. All the members of the teaching staff appointed before this exercise of issuance of advertisements in August, 2017, including the Petitioners, were appointed only on contractual basis. The appointments were made on recommendations and not through a proper process of widely published advertisements, followed by interview, by a properly constituted selection committee. All the

members of the teaching staff are now required to apply and face open competition alongwith other applicants, who have responded pursuant to advertisements published in August, 2017. We find that the Petitioners have not been able to make out a case of any vested right in the posts that were held by them and alongwith other members of the teaching staff, they could also take part in the regular selection process initiated by Respondent No. 1 in pursuance of aforesaid advertisements issued in August, 2017. We do not find that the Petitioners are entitled to the reliefs claimed in Writ Petition Nos. 1647 of 2017 and 1034 of 2017.

34. We had enquired with the counsel for Respondent No. 1 that if the Petitioners wish to apply in pursuance of the advertisements issued in August, 2017, whether Respondent No. 1 would extend the period for submission of applications. The counsel for Respondent No. 1 and 4 stated that the period could be extended for the Petitioners to submit their applications and to participate in the regular selection process, but the learned senior counsel appearing on behalf of the Petitioners, on instructions from the Petitioners present in the Court, stated that the Petitioners are not interested in applying in pursuance to

the said advertisements for posts in Respondent No. 1 Centre.

35. As regards the submissions made on behalf of the Petitioner Dr. Hemalatha Muthulingom regarding selection as UGC faculty under the Faculty Recharge Programme, to claim continuity in service with Respondent No. 1 Centre, we find that upon being selected under the said Programme, the said Petitioner can be appointed in any one of the seven universities, which she has indicated in her preference list under the Programme. The said Petitioner has given her first preference as University of Mumbai and thereafter listed other universities. But only on the basis of selection under the said Programme, the said Petitioner cannot claim any vested right for continuity in service with Respondent No. 1 Centre. She could participate in the process of regular selection initiated by Respondent No. 1 Centre even in future.

36. As far as Writ Petition (L) No. 2442 of 2017 is concerned, the subject matter of challenge are the aforesaid advertisements. Since we are not inclined to hold in favour of the Petitioners on their main prayer of continuation of service with Respondent No. 1 till their superannuation, we do not find any

substance in the challenge raised against the said advertisements. Accordingly, Writ Petition (L) No. 2442 of 2017 deserves to be dismissed.

37. The Petitioner Dr. Hemalatha Muthulingom had filed Contempt Petition No. 46 of 2017 against the Respondents on the ground that of tampering and fabrication in the copies of Review Committee reports placed on record by Respondent No. 1 and its failure to produce original reports. We find that the Respondents had submitted copies of the Review Committee reports and they had submitted unsigned copies of the same to maintain confidentiality regarding names of the members of the Committee. In any case, the Respondents produced the entire original records of the Review Committee reports and the reports of the Referees for the perusal of this Court. Therefore, we do not find any reason to entertain the contempt petition as the entire record and full information was placed before this Court during the course of hearing. Accordingly, we do not find any substance in the said contempt petition.

38. In the light of the above, since we have held that the Petitioners have failed to make out their case on merits in Writ

Petition Nos. 1647 of 2017 and 1034 of 2017, the said petitions are dismissed. We also do not find any substance in the challenge to the aforesaid advertisements raised by the Petitioners in Writ Petition (L) No. 2442 of 2017, and accordingly it is dismissed. The Contempt Petition No. 46 of 2017 also stands dismissed. Needless to state that the interim order, granting protection to the Petitioners by an order dated 4.10.2017, shall stand vacated. Rule is discharged in all the petitions, with no order as to costs.

39. In view of disposal of Writ Petition Nos. 1647 of 2017 and 1034 of 2017, Notice of Motion (L) Nos. 375 of 2017 and 667 of 2017 filed in the respective petitions do not survive, and are accordingly disposed of.

Sd/-
[MANISH PITALE, J.]

Sd/-
[B. R. GAVAI, J.]

Vinayak Halemath