

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

(1) **Civil Writ Petition No. 3730 of 2017 (O&M)**
Date of Decision: 13.09.2018

Sunil Kumar and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

(2) **Civil Writ Petition No. 12743 of 2017 (O&M)**

Kuljit Kaur and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

(3) **Civil Writ Petition No. 9596 of 2017 (O&M)**

Renu Bala and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Hari Chand Arora, Advocate for the petitioner(s)
(CWP Nos. 3730 & 12743 of 2017)

Mr. Jasbir Singh Dadwal, Advocate for the petitioner(s)
(CWP No. 9596 of 2017)

Mrs. Sudeepti Sharma, Additional Advocate General, Punjab
for the respondents/State.

JASWANT SINGH, J.

1. By this common order, the aforementioned three writ petitions
bearing CWP Nos. 3730, 12743 & 9596 of 2017 are disposed of. The instant

petitions have been filed under Article 226 and 227 of the Constitution of India seeking regularization of services of the petitioners, who are/were working as Proof Reader-cum-Data Entry Operators on contract basis with the respondents/under the Department of Elections, Punjab.

2. The petitioners were recruited as **Proof Reader-cum-Data Entry Operators** and are **deployed** in various District Electoral Offices on **contract basis** on payment of consolidated salaries against temporary posts sanctioned by respondent for fixed periods of time. The tenure of petitioners came would to an end on 28th February of the next year and respondent after discontinuing their services for some period would re-employ them upon creation/sanction of fresh temporary posts till February of next year. The petitioners have worked in this fashion for last 7 years and there are few petitioners who have worked for last about 10 years.

3. Mr. H.C. Arora, counsel for the petitioner relying upon Punjab Ad hoc, Contractual, Daily Wager, Temporary, Work Charged and Outsourced employees Welfare Act, 2016 (for short 'the Act') and order of Hon'ble Supreme Court in the case of **Hargurpratap Singh Vs State of Punjab and Ors. 2017 (13) SCC 292** vehemently contended that services of petitioners should be regularized and at least they cannot be substituted by another contractual employees. The petitioners are working for last more than seven years whereas respondents acting in an arbitrary manner are not considering claim of the petitioners for regularization rather respondents are trying to outsource employees from private companies/Labour Contractors. He also contended that Election Commission of India vide guidelines dated 04.03.2014 (**Annexure P-6**) has directed creation of a large number of

permanent employees would work even during “non-election period”.

4. Learned State Counsel pleaded that the petitioners do not comply with mandate/essential condition of Section 3 of the Act *qua* continuation of service for not less than three preceding years from the date of coming into force of said Act. The services of petitioners were discontinued from time to time so they had not worked for continuous period of three years. The appointment of petitioners was made on contract basis and without complying with procedure prescribed for appointment of regular employees so they do not deserve protection of Article 311 of the Constitution of India as well benefit under the said Act.

5. The undisputed facts emerging from record are that the petitioners were appointed on contractual basis and terms and conditions of contract are mentioned in public notice issued from time to time. The common prominent terms and conditions of contract are as under:

1. This appointment is not an assurance to give permanent appointment.
2. The employee can be removed from service without issuing any notice.
3. At the time of appointment the age of the candidate should be between 18 years to 35 years.
4. The educational qualifications shall not less than B.A and the candidate must have passed the Punjabi of Matric Standard and must have knowledge of Punjabi and English typing.
5. While filling up reserved posts, the candidates appointed against these posts shall be given age relaxation of 5 years.
6. The tenure of these posts shall be up to 28.02.2011.
7. The candidate to be appointed shall not have any claim against the government.

8. Fixed salary of Rs. 5,000/- shall be given for these posts and no other allowance in addition to that shall be given.
9. The candidate having one year course in computer or possessing higher qualification in computer from institution recognized by the government shall be given preference.

The services of petitioners were discontinued even though for a short span and no petitioner had worked for uninterrupted period of three (03) years preceding the date of enforcement of the Act. Section 3 of the Act which is basis of claim of the petitioners for regularization is reproduced as under:

3. (1) *Notwithstanding anything contrary contained in any law, judgment, decree or order of any court, tribunal or any other authority, services of such Group 'A', 'B' and 'C' **employees**, who are **working** on ad hoc, **contractual**, daily wage, temporary or work charged **basis** under the State Government or its entities for a **continuous period of not less than three years preceding the date of coming into force of this Act shall be regularized** by the competent authority in such service of the State Government or its entities, subject to the following conditions, namely:-*

- (a) *fulfill the eligibility with regard to minimum and maximum age limit;*
- (b) *possess requisite educational qualification and experience as specified for the post under the service rules at the time of initial appointment;*
- (c) *initial appointment was made by following transparent process;*
- (d) *satisfactory verification of antecedents;*
- (e) *have good character and conduct; and*
- (f) *have not been indicted or undergoing any civil, criminal or departmental proceedings;*

Provided that the entities of the State shall consider

regularization only if such entity is in a financial position to take the burden of such regularization on its own without transferring any liability to the State exchequer.

6. In the above back ground, the following questions need to be considered and answered:

i) Whether the contractual employee can be replaced, their services can be done away with by the employer Government / its instrumentality and the protection under Article 311 of the Constitution of India is available to contractual and ad hoc employees?

ii) Whether the contractual employee has a right to regularization?

Iii) Whether “Hargurpratap Singh Vs State of Punjab and Ors.” 2007 (13) SCC 292 lays down the law of universal application and is a binding precedent?

I. STATUS OF CONTRACTUAL EMPLOYEE AND AVAILABILITY OF PROTECTION UNDER ARTICLE 311 OF THE CONSTITUTION OF INDIA

7. Article 16(1) of the Constitution of India, mandates that equal opportunity is to be granted to all the citizens relating to employment and appointment to any office under the State i.e. public offices. Article 311 extends protection to them from termination and dismissal. Article 311 reads as under:

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in

which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided *that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:*

Provided *further that this clause shall not apply-*

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) if, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

8. Time and again Hon'ble Supreme Court deprecated practice of appointment of employees on ad hoc or contractual basis because it amounts to back door entry, nevertheless contractual appointments cannot be prohibited in view of administrative exigencies, nature of work undertaken and urgent need for employees.

In case of appointment against public post, authorities are bound to comply with mandate of Article 14 and 16 of the Constitution which includes proper advertisement of the post; testing on rational

selection process by Public Service Commission or Staff Selection Commission or committee duly appointed under statutory Recruitment Rules & Regulations governing the post and compliance of all mandatory & procedural formalities. It is well known fact that in case of contractual appointments or appointments for limited tenure which may or may not be extended, very few people apply and many competent people do not apply. In spite of said ground reality, the State Authorities as well as private employers opt for contractual appointments because services of contractual employees can be terminated as per terms and conditions of contract e.g. completion of tenure of contract or completion of project or prior notice or salary in lieu of notice. Every employer wants competent and honest men of integrity. By way of appointment on contract basis, employer gets opportunity to revisit its selection process and search better employees. If an employer is satisfied with its existing contractual employees, there is no need to go for fresh appointments. In case an employer feels that he needs and may get better employees, he has every right to go for search of fresh employees instead of continuing services of old employees.

It is settled principle of service jurisprudence dealing with contractual and ad-hoc service that equity can exist only so long as it does not conflict with statutory provisions under the law. If a fresh contract contemplated is to secure better talent with higher qualifications, a contractual employee, whose contract comes to an end, cannot dictate to an employer that he must allow his human resources potential on status quo qualifications. The employer will always have the authority to decide on what is best for improving its functioning with better qualifications which can be need based and based on work requirement. There cannot be a carte

blanche that the fresh recruitment of contractual employees itself must stop or the replacement by higher qualified / better qualified contractual employees cannot be made.

In *UPSC versus Girish Jayanti Lal Vaghela*, (2006) 2 SCC

482 at page 494 in Para 21, the Hon'ble Supreme Court has held as under :

“ 21. It is neither pleaded nor is there any material to show that the appointment of Respondent 1 had been made after issuing public advertisement or the body authorised under the relevant rules governing the conditions of service of Drugs Inspectors in the Union Territory of Daman and Diu had selected him. His contractual appointment for six months was dehors the rules. The appointment was not made in a manner which could even remotely be said to be compliant with Article 16 of the Constitution. The appointment being purely contractual, the stage of acquiring the status of a government servant had not arrived. While working as a contractual employee Respondent 1 was not governed by the relevant service rules applicable to Drugs Inspector. He did not enjoy the privilege of availing casual or earned leave. He was not entitled to avail the benefit of general provident fund nor was he entitled to any pension which are normal incidents of a government service. Similarly, he could neither be placed under suspension entitling him to a suspension allowance nor could he be transferred. Some of the minor penalties which can be inflicted on a government servant while he continues to be in government service could not be imposed upon him nor was he entitled to any protection under Article 311 of the Constitution. In view of these features it is not possible to hold that Respondent 1 was a government servant.”

9. The contractual employee working purely on contractual terms acquires no status under the Government and is governed by the terms of such employment. Regarding the applicability of provisions of Article 311

of the Constitution of India, a Constitutional Judges Bench of the Hon'ble Supreme Court in ***Jagdish Mitter v. Union of India***, AIR 1964 SC 449 in Para 10 & 11 held as under :

“ 10. It is true that the tenure held by a temporary public servant or a probationer is of a precarious character. His services can be terminated by one month's notice without assigning any reason either under the terms of contract which expressly provide for such termination or under the relevant statutory rules governing temporary appointments or appointments of probationers. Such a temporary servant can also be dismissed in a punitive way; that means that the appropriate authority possesses two powers to terminate the services of a temporary public servant; it can either discharge him purporting to exercise its power under the terms of contract or the relevant rule, and in that case, it would be a straightforward and direct case of discharge and nothing more; in such a case, Article 311 will not apply. The authority can also act under its power to dismiss a temporary servant and make an order of dismissal in a straightforward way; in such a case, Article 311 will apply.

11. This simple position is sometimes complicated by the fact that even while exercising its power to terminate the services of a temporary servant under the contract or the relevant rule, the authority may in fairness enquire whether the temporary servant should be continued in service or not. It is obvious that temporary servants or probationers are generally discharged, because they are not found to be competent or suitable for the post they hold. In other words, if a temporary servant or a probationer is found to be satisfactory in his work, efficient, and otherwise eligible, it is unlikely that his services would be terminated, and so, before discharging a temporary servant, the authority may have to examine the question about the suitability of the said servant to be continued and acting bona fide in that behalf, the authority may also give a chance to the servant to explain, if any complaints are made against him, or his competence or

suitability is disputed on some grounds arising from the discharge of his work; but such an enquiry would be held only for the purpose of deciding whether the temporary servant should be continued or not. There is no element of punitive proceedings in such an enquiry; the idea in holding such an enquiry is not to punish the temporary servant but just to decide whether he deserves to be continued in service or not. If as a result of such an enquiry, the authority comes to the conclusion that the temporary servant is not suitable to be continued, it may pass a simple order of discharge by virtue of the powers conferred on it by the contract or the relevant rule; in such a case, it would not be open to the temporary servant to invoke the protection of Article 311 for the simple reason that the enquiry which ultimately led to his discharge was held only for the purpose of deciding whether the power under the contract or the relevant rule should be exercised and the temporary servant discharged.”

The aforestated principles were reiterated by the Hon’ble Supreme Court in ***State of U.P. v. Kaushal Kishore Shukla, (1991) 1 SCC 691*** at page 697 as :

7. A temporary government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary government servants. A temporary government servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary

government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the government servant in accordance with the provisions of Article 311 of the Constitution. Since, a temporary government servant is also entitled to the protection of Article 311(2) in the same manner as a permanent government servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment... ..”

The Hon’ble Supreme Court in ***State of M.P. versus Arjunlal Rajak, (2006) 2 SCC 711***, in Para 6 at page 713 held while dealing with the daily wager that :

6. It is beyond any doubt or dispute that a daily-wager does not hold a post. The Forest Department is a wing of the State. Its employees hold a status. For acquiring that status and for obtaining the constitutional protection in terms of Article 311 of the Constitution, all appointments must be made in conformity with the constitutional scheme as laid down under Articles 14 and 16 of the Constitution as well as the rules made in terms of the proviso to Article 309 of the Constitution or in terms of a legislative Act. Concededly, while appointing the respondent, the constitutional provision or the statutory provisions had not been followed. The rights and liabilities of the parties are, therefore, governed by the terms of the contract and/or the provisions of the statute applicable in relation thereto.”

10. Further, while dealing with termination of a contractual employee, Hon’ble Supreme Court in the case of **Gridco Ltd Vs Sri Sadananda Doloi 2011(15) SCC 16**, after noticing its earlier decisions has concluded in Para 26 to 28 as under:

“26. A conspectus of the pronouncements of this court and

the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. 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.

27. 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.

28. 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. 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.

While dealing with the case of the 'Daily Wagers' the Hon'ble Supreme Court in **M.P. Housing Board versus Manoj Shrivastava (2006) 2 SCC 702**, opined that:

- (1) a daily-wager does not hold a post as he is not appointed in terms of the provisions of the Act and the Rules framed thereunder and in that view of the matter he does not derive any legal right;
- (2) only because an employee had been working for more than 240 days that by itself would not confer any legal right upon him to be regularised in service;
- (3) if an appointment has been made contrary to the provisions of the statute the same would be void and the effect thereof would be that no legal right was derived by the employee by reason thereof.

11. Thus, it is clear that the contractual employees can be removed / replaced based on the terms of the contract. From the aforestated

discussion and judicial pronouncements, the following principles in respect of the contractual employee regarding their replacement / termination of their services and the protection under Article 311 of the Constitution of India is available to contractual and ad hoc employees are enunciated :

- (i) For acquiring that status and for obtaining the constitutional protection in terms of Article 311 of the Constitution, all appointments must be made in conformity with the constitutional scheme as laid down under Articles 14 and 16 of the Constitution as well as the rules made in terms of the proviso to Article 309 of the Constitution or in terms of a legislative Act.
- (ii) for any 'right' or 'status' on the post, the appointments have to be made in compliance with the mandate of Article 14 and 16 of the Constitution which includes proper advertisement of the post; testing on rational selection process by Selection Commission or committee duly appointed under statutory Rules & Regulations governing the post and compliance of all mandatory & procedural formalities.
- (iii) the services of contractual employees can be terminated as per terms and conditions of contract e.g. completion of tenure of contract or completion of project or prior notice or salary in lieu of notice.
- (iv) the equity can exist only so long as it does not conflict with statutory provisions under the law. If a fresh contract contemplated is to secure better talent with higher qualifications, a contractual employee, whose contract comes to an end, cannot dictate to an employer that he must allow his human resources potential on status quo-ist qualifications.
- (v) The contractual employee does not enjoy the privilege of availing casual or earned leave. He is not entitled to avail the benefit of general provident fund

nor is he entitled to any pension, which are normal incidents of a government service. In these circumstances, he doesnot become a Government servant.

(vi) The contractual employee has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination

(vii) Whenever, the competent authority is satisfied that the work and conduct of a contractual employee is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service

(viii) the termination of a contractual employment in accordance with the terms of the contract is permissible but for a breach of a contractual condition the validity of a termination order passed by public authority can be judicially reviewed and determined 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.

(ix) The renewal of the contract of employment of the contractual employee depends upon the perception of the management / Employer as to the usefulness of the Employee concerned and the need for an incumbent in the position held by him.

(x) Contractual appointments work only if the same are mutually beneficial to both the contracting parties and not otherwise.

It can be safely concluded based on the aforestated principles

can be replaced based on the perception of the Employer / Authority and the status of being in contractual employment does not entitle the contractual employee to the protection under Article 311 of the Constitution of India, which would be available only to the employees appointed on regular basis in accordance with the Recruitment Rules, and thereby becoming members of the service governed by such Recruitment Rules. However, based on the provisions of Section 3 of the Punjab Ad Hoc, Contractual, Daily Wage, Temporary, Work Charged and Outsourced Employees' Welfare Act, 2016, the eligible contractual employees may be considered for regularization purely within the domain of the state Entity upon the fulfilling of the conditions and norms prescribed therein.

Since in view of the above discussion, it assumes relevance to discuss the status of the workers / employee in Government Departments for works which are outsourced and performed by the manpower provided by the Service Provider and carves out a category of “***Outsourced Employees***”. Section 2 (b) of the Punjab Ad Hoc, Contractual, Daily Wage, Temporary, Work Charged and Outsourced Employees' Welfare Act, 2016, defines “***Outsourced Employee***” as under :

(b) 'outsourced employee' means an employee taken on the roll of the State Government or its entities through a private manpower agency for performing duties assigned to him from time to time;

Under Section 6 of the aforestated Act of 2016, the outsourced employees recruited through private man power agency in the service of the State Government or its entities has been given a right to be taken on contract on yearly basis upon fulfilling of the conditions prescribed in this Section and have not been given any right to be considered for

regularization. It is fundamental to the outsourced employee that there is no employer – employee relationship between the outsourced employee and the Government Department which outsourced work through service provider. The selection for the appointment of the outsourced employee is made by the Service Provider with the bare minimum qualifications and its own level without adhering to any Recruitment Rules of the relevant post / department and solely for the purpose of providing service to the Department which has outsourced the work. The outsourced employee is not a government servant or holding any post or has any status under the Government. There is no protection to the outsourced employee under Article 311 of the Constitution of India and the outsourced employee has no right or entitlement to seek regularization in service.

II. CONTRACTUAL EMPLOYEE AND REGULARIZATION

12. It would be useful to look into enunciation of law by Hon'ble Supreme Court on the issue involved. Hon'ble Supreme Court in the case of **Secretary, State of Karnataka Vs Uma Devi 2006 (4) SCC 1** has dealt with question of appointment, regularization and removal of contractual, ad hoc and daily wager. Supreme Court after noticing its earlier judgments in Para 34 and 36 has concluded as under:

34. 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.....*

X x x x x

36. *While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain- not at*

arms length- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant my relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and

would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

X x x x

53. One aspect needs to be clarified. There **may be cases where irregular appointments (not illegal appointments)** as explained in *S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071]*, *R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799]* and *B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937]* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might **have been made and the employees have continued to work** for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise **as a one-time measure**, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, **but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.**

13. The judgment in *Umadevi's case (supra)* subsequently became the subject-matter of consideration before Hon'ble Supreme Court

(2010) 9 SCC 247, where the import of the judgment was discussed in Para No. 11 thereof. It was summed up that the object behind directions in Para No. 53 in Umadevi (3) and others' case (supra) is two-fold-- first to consider the cases for regularisation of the employees, who had been working for more than 10 years as a onetime measure and second to ensure that the departments or its instrumentalities do not perpetuate the practice of employing persons on ad-hoc/ daily-wage/contract/part-time basis for long period and then regularise them.

In *Official Liquidator versus Dayanand*, (2008) 10 SCC 1 at page 50, the Hon'ble Supreme Court has held that :

75. By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed by different two-Judge Benches for declining to entertain the claim of regularisation of service made by ad hoc/temporary/daily-wage/casual employees or for reversing the orders of the High Court granting relief to such employees — Indian Drugs and Pharmaceuticals Ltd. v. Workmen [(2007) 1 SCC 408 : (2007) 1 SCC (L&S) 270], Gangadhar Pillai v. Siemens Ltd. [(2007) 1 SCC 533 : (2007) 1 SCC (L&S) 346], Kendriya Vidyalaya Sangathan v. L.V. Subramanyeswara [(2007) 5 SCC 326 : (2007) 2 SCC (L&S) 143], Hindustan Aeronautics Ltd. Versus Dan Bahadur Singh [(2007) 6 SCC 207 : (2007) 2 SCC (L&S) 441].

In case of *Director, Institute of Management Development, U.P. v. Pushpa Srivastava (Smt.)*, 1992(3) SCT 742 (SC) Hon'ble Court held that since appointment was on purely contractual and ad hoc basis on

consolidated pay for a fixed period and terminable without notice, when the

appointment came to an end by efflux of time, the appointee had no right to continue in the post and to claim regularization in service in the absence of any rule providing for regularization after the period of service. A limited relief of directing that the appointee be permitted on sympathetic consideration to be continued in service till the end of the concerned calendar year was issued. When the appointment was purely on ad hoc and contractual basis for a limited period, on the expiry of the period, the right to remain in the post came to an end. Being this view possible, set aside the judgment of the High Court which had given relief to the appointee.

The Hon'ble Supreme Court in "**State of Jammu and Kashmir and others versus District Bar Association, Bandipora**", reported at (2017) 3 SCC 410, held that an irregular appointment may *per se* is not illegal, if made on the basis of administrative exigencies, but would be illegal if there was no administrative exigencies or procedure adopted is violative of Articles 14 and 16 of the Constitution of India and/or where recruitment process was overridden by the vice of nepotism, bias or mala fides. In Para 12 of this judgment it was held that :

"12. The third aspect of Umadevi (3) which bears notice is the distinction between an "irregular" and "illegal" appointment. While answering the question of whether an appointment is irregular or illegal, the Court would have to enquire as to whether the appointment process adopted was tainted by the vice of non-adherence to an essential prerequisite or is liable to be faulted on account of the lack of a fair process of recruitment. There may be varied circumstances in which an ad hoc or temporary appointment may be made. The power of the employer to make a temporary appointment, if the exigencies of the situation so demand, cannot be disputed. The exercise of power however

stand vitiated if it is found that the exercise undertaken (a) was not in the exigencies of administration; or (b) where the procedure adopted was violative of Articles 14 and 16 of the Constitution; and/or (c) where the recruitment process was overridden by the vice of nepotism, bias or mala fides.”

Further in Para 26 of this Judgment it is held that :

“26. The principles will have to be formulated bearing in mind the position set out in the above judgments. Regularisation is not a source of recruitment nor is it intended to confer permanency upon appointments which have been made without following the due process envisaged by Articles 14 and 16 of the Constitution. Essentially a scheme for regularisation, in order to be held to be legally valid, must be one which is aimed at validating certain irregular appointments which may have come to be made in genuine and legitimate administrative exigencies. In all such cases it may be left open to courts to lift the veil to enquire whether the scheme is aimed at achieving the above objective and is a genuine attempt at validating irregular appointments. The State and its instrumentalities cannot be permitted to use this window to validate illegal appointments. The second rider which must necessarily be placed is that the principle as formulated above is not meant to create or invest in a temporary or ad hoc employee the right to seek a writ commanding the State to frame a scheme for regularisation. Otherwise, this would simply reinvigorate a class of claims which has been shut out permanently by Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . Ultimately, it would have to be left to the State and its instrumentalities to consider whether the circumstances warrant such a scheme being formulated. The formulation of such a scheme cannot be accorded the status of an enforceable right. It would perhaps be prudent to leave it to a claimant to establish whether he or she falls within the exceptions carved out in para 53 and falls within the ambit of a scheme that may be formulated by

the State. Subject to the riders referred to above, a scheme of regularisation could fall within the permissible limits of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] and be upheld.

In “**National Fertilizers Ltd. v. Somvir Singh**”, reported at (2006) 5 SCC 493, the Hon’ble Supreme Court held that :

“18. Regularization, furthermore, is not a mode of appointment. If appointment is made without following the rules, the same being a nullity the question of confirmation of an employee upon the expiry of the purported period of probation would not arise. The Constitution Bench in Umadevi (3) [(2006) 4 SCC 1 : (2006) 4 Scale 197] made a detailed survey of the case-laws operating in the field.”

14. The Hon’ble Division Bench of this Court in a decision dated May 31, 2018, passed in case CWP No. 17206 of 2014 titled “**Yogesh Tyagi and another versus State of Haryana and others**” dealt with the issue of the various policies drafted in respect of the regularization of the employees. In this judgment, the various Policies of regularization by the State of Haryana are declared to be framed in violation of the law laid down by Hon’ble Supreme Court in Uma Devi’s case (supra) are quashed and any benefit already granted to any employee under such policies is directed to be withdrawn.

15. The creation and abolition of posts, formation and structuring/ restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and lay down the qualification etc. is not immune from judicial

review, the Court will always be extremely cautious and circumspect in

tinkering with the exercise of discretion by the employer. In *Secretary, State of Karnataka vs. Uma Devi (supra)*, the Constitution Bench adverted its attention to financial implications of creation of extra posts and held that the Courts should not pass orders which impose unwarranted burden on the State and its instrumentalities by directing creation of particular number of posts for absorption of employees appointed on ad hoc or temporary basis or as daily wagers. Regularization in service falls in the domain of the State Government and its instrumentalities.

It is culled out from the aforesaid judgments that in the 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. 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. The High Courts cannot 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. Regularization is not a source of recruitment nor is it intended to confer permanency upon appointments which have been made without following the due process envisaged by Articles 14 and 16 of the Constitution. As such, the contractual employee by virtue of the terms of its contract itself cannot seek regularization in service as a matter of right.

III. “HARGURPRATAP SINGH VS STATE OF PUNJAB AND ORS.”

2007 (13) SCC 292 : A BINDING PRECEDENT & LAYING DOWN

LAW OF UNIVERSAL APPLICATION

16. In ‘Hargurpratap Singh v. State of Punjab’, (2007) 13 SCC 292, the issue involved was that the Appellants were employed on ad hoc basis in several colleges in the State of Punjab and alleging threat of termination of their services (after having served for long periods), they filed CWPs before this High Court seeking for the relief of regularization / minimum pay scale etc. but the relief claimed were rejected. The Hon’ble Supreme Court passed the following Order :

*3. We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. **It is clear that though the appellants may not be entitled to regular appointment** as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly.*

17. While dealing with question of binding precedent, in the case of **State of Punjab Vs Surinder Kumar 1992(1) SCC 489** Hon’ble Supreme Court has held that a decision is available as a precedent only if it decides a question of law. **Para 6** of said judgment reads as under:

“ A decision is available as a precedent only if it decides a

question of law. The respondents are, therefore, not entitled to rely upon an order of this Court which directs a temporary employee to be regularized in his service without assigning reasons. It has to be presumed that for special grounds which must have been available to the temporary employees in those cases, they were entitled to the relief granted. Merely because grounds are not mentioned in a judgment of this Court, it cannot be understood to have been passed without an adequate legal basis there for. On the question of the requirement to assign reasons for an order, a distinction has to be kept in mind between a Court whose judgment is not subject to further appeal and other Courts. One of the main reasons for disclosing and discussing the grounds in support of a judgment is to enable a higher Court to examine the same in case of a challenge. It is, of course, desirable to assign reasons for every order or judgment, but the requirement is not imperative in the case of this Court. It is, therefore, futile to suggest that if this Court has issued an order which apparently seems to be similar to the impugned order, the High Court can also do so. There is still another reason why the High Court cannot be equated with this Court. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it", which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by the judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge. "

18. In view of judgment of Hon'ble Supreme Court in the case of **Surinder Kumar (Supra)**, it can be safely concluded that every order of Apex Court is not binding precedent. In the case of **Hargurpratap Singh Vs State of Punjab (Supra)**, the Hon'ble Supreme Court has not decided

any question of law so said order cannot be treated as binding precedent.

Applying the afore-stated judgments, this Court finds that Petitioners have no right to claim continuation of service because they were appointed on contract basis and it was their contract which is basis of employment. Even otherwise, if claim of Petitioners is accepted that Respondent has no right to issue fresh vacancy circular, it would amount to automatic renewal of the services of the Petitioners which is not the law of the land.

19. Adverting to judgments / orders cited by Counsel of the petitioner, this Court finds that the petitioner has heavily/primarily relied upon judgment of Hon'ble Supreme Court in the case of **Hargurpratap Singh (supra)**. In the case of *Hargurpratap Singh*, employees were appointed on ad hoc basis and there were number of employees who were appointed in several colleges of State of Punjab. The Hon'ble Supreme Court ordered to continue their services because interest of students was involved and teachers were working for a quite long time and it was not in the interest of college as well as students to appoint fresh teachers. In case of appointment of teachers and doctors, interest of students and patients is always involved and it is always safe to continue services of teachers/doctors who are working for quite long time instead of new appointees. Supreme Court did not lay down law in the case of Hargurpratap Singh so it is not a binding precedent.

20. As regards, the right of the contractual employees for regularization, having been appointed on a position even though advertised by public notices and in following the Rules but by advertising the nature of post to be "Contractual" would render numerous meritorious and deserving candidates to refrain from applying from such post awaiting to be selected

on a 'permanent' - 'quasi permanent' post. Hence, even in that process of selection even if the post is advertised for contractual period but by following criteria for recruitment as per Rules, there would be violation of Articles 14 and 16 of the Constitution if such candidates are later on taken in the fold by "regularization". In such circumstances, the "exception" / "one time measure" as held in Uma Devi's case (Supra) becomes a rule, which cannot be permitted being not in public interest; and not contemplated in service jurisprudence.

21. In view of aforesaid findings, the present petitions deserve to be dismissed and accordingly **dismissed**.

The petitioners cannot claim regularization once their appointment was made on contractual basis and without complying with procedure prescribed for appointment of regular employees so they do not deserve protection of Article 311 of the Constitution of India once their service are discontinued upon the expiry of the contract as well said Act.

22. Before parting with this order, this Court finds it appropriate to observe that State Governments are time and again appointing contractual or ad hoc employees who after completion of few years of service start claiming their regularization which is against the Article 14, 16 of the Constitution as well as mandate of Hon'ble Supreme Court. It has also been found that State Governments for their political gains and publicity regularize these employees by adopting one or another mean including introduction of legislation which is against the basic structure of our Constitution as Article 14 and 16 are part of basic structure of Constitution.

In the present era where there is scarcity of public jobs, it is unfair and discrimination with others to allow backdoor entry. The Competent and

more qualified people do not get opportunity to serve the state whereas incompetent and less qualified people are appointed.

The above practice of the State Government is to be deprecated and the State Governments of Punjab, Haryana and UT Chandigarh Administration shall ensure that there are adequate checks and balances against such back door entries and the deserving candidates should find their way to the positions to be advertised even though on contractual or adhoc basis but through a defined criteria and process with meeting of the qualifications prescribed for such positions with adequate safeguards and defined clarity that such contractual employments do not entail any claim to regularization and continuation of service.

Since the main cases have been decided, no orders are required to be passed in the pending miscellaneous application(s), if any, and the same stand(s) disposed of.

September 13, 2018

'dk kamra'

**(JASWANT SINGH)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>