

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2019
Delivered on : 28.03.2019

C O R A M

The Honourable Mr. Justice M.VENUGOPAL
and
The Honourable Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition Nos.29035, 29040 and 29045 of 2018
and

WMP Nos.33952, 33958 and 33964 of 2018

D.Noble Raj

.... Petitioner
(in W.P.No.29035 of 2018)

G.Velayutham

.... Petitioner
(in W.P.No.29040 of 2018)

S.Girirajan

.... Petitioner
(in W.P.No.29045 of 2018)

Vs

1. Central Administrative Tribunal,
Chennai Bench,
Rep. by its Registrar,
Madras High Court Campus,
Chennai- 600 104.

2. Union of India
Rep. by its Scientist F and HOD (HRD)
Ministry of Electronics and Information Technology,
Electronics Nikethan,
No.6, CGO Complex,
New Delhi - 110 003.

3. National Institute of Electronics and
Information Technology (NIELIT)
Rep. by its Director General,
NIELIT Bhavan,
Plot No.3, PSP Pocket,
Sector 8, Dwaraka,
New Delhi - 110 077.

4.The Director i/c

National Institute of Electronics and
Information Technology (NIELIT) Chennai Centre,
No.25, Gandhi Mandapam Road,
Chennai - 600 025.

5.Group Head (Administration and Finance)

National Institute of Electronics and
Information Technology (NIELIT) Chennai Centre,
No.25, Gandhi Mandapam Road,
Chennai- 600 025.

... Respondents
(in all Writ Petitions)

PRAYER in W.P.No.29035 of 2018: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari cum Mandamus after calling for the concerned records from the First Respondent, quash the order of the First Respondent dated 20.09.2018 in O.A/310/00807/2018 as illegal, arbitrary and contrary to law and consequently direct the respondents 2 to 5 to regularize the services of the Petitioner in the Post of Scientist B from the date of initial appointment.
PRAYER in W.P.No.29040 of 2018: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari cum Mandamus after calling for the concerned records from the First Respondent, quash the order of the First Respondent dated 20.09.2018 in O.A/310/00808/2018 as illegal, arbitrary and contrary to law and consequently direct the respondents 2 to 5 to regularize the services of the Petitioner in the Post of Junior Assistant from the date of initial appointment.

PRAYER in W.P.No.29045 of 2018: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari cum Mandamus after calling for the concerned records from the First Respondent, quash the order of the First Respondent dated 20.09.2018 in O.A/310/00806/2018 as illegal, arbitrary and contrary to law and consequently direct the respondents 2 to 5 to regularize the services of the Petitioner in the Post of Scientist B (Network System Administrator) from the date of initial appointment.

For Petitioner : Mr.Balan Haridas
(in All Writ Petitions)

For Respondent : Mr.K.Srinivasamurthy
CGSPC for R2 to R5

C O M M O N O R D E R
SENTHILKUMAR RAMAMOORTHY.J.,

These three Writ Petitions have been filed to quash the Orders dated 20.09.2018 of the First Respondent in O.A.Nos.806, 807 and 808/2018 and to consequently direct the Respondents 2 to 5 to regularize the services of the Petitioner, in each of the Writ Petitions, in the post of Scientist B or Junior Assistant (W.P. No.29040 of 2018), from the date of appointment.

2.The salient facts of the case are as set out herein. The 4th Respondent herein (previously known as the DOEACC Centre, Chennai) issued an advertisement for recruitment of technical and non-technical persons for the DOEACC Centre at Chennai, which was established for providing training and educational services in state-of-the-art areas, i.e. VLSI and Embedded Systems, Advance Networking, IT Security, Information Storage and Animation and multimedias. Significantly, the advertisement states that "the Centre is looking for dynamic, devoted and result oriented candidates for the following posts on contract basis for the duration of the project, i.e. four years and likely to be continued." It appears that this advertisement was preceded by a letter dated 19.05.2010 from the Third Respondent to Fourth Respondent stating that appointment against the posts transferred to the Chennai Centre shall be made on graded scale of pay (Pay Band plus Grade Pay) for the duration of project, likely to be regularized based on the performance and status of the Centre at the time of project termination.

3.Each of the Petitioners before this Court applied for appointment on the basis of the above mentioned advertisement and orders of appointment were issued to each of the Petitioners by separate offers of appointment dated 21.02.2011. The offer of the appointment of Mr.Velayutham (Petitioner in W.P.No.29040 of 2018) was for the post of Junior Assistant in the pay band PB1 : Rs.5200 - 20200 + GP Rs.1900 whereas the offers of appointment of both Mr. D.Noble Raj(Petitioner in W.P.No.29035 of 2018) and Mr.S.Giri Rajan(Petitioner in W.P.No.29045 of 2018) were for the post of Scientist B in the pay band PB-3 Rs.15600-39100 with GP 5400. The important clauses in the offers of appointment of each of the Petitioners are as under:

"1)Your appointment to the above post is temporary and for the sanctioned period of the project and co-terminus with the project "Setting-up of DOEACC Centre Chennai.

3)You will be on probation for a period of one year from the date of your joining the post at the DOEACC Society, Chennai Centre, which may be extended at the discretion of the competent

authority. During the period of probation, your service will be liable to be terminated without notice or without assigning any reason therefor, if your performance is found to be not satisfactory or if the Appointing Authority is satisfied that you were ineligible for recruitment to the post in the first instance itself. You will be entitled to draw annual increment only after satisfactory completion of the period of probation. You will not be eligible to draw increment for any extended period of probation.

10)The period of superannuation shall be up to the age of 60 years for all employees as per the rules of Government of India as applicable to DOEACC Society as amended from time to time."

4.Mr.D.Noble Raj accepted the offer of appointment by letter dated 28.02.2011 to the 4th Respondent. Similarly, Mr.G.Velayutham communicated his acceptance of the offer of appointment by letter dated 24.02.2011 and Mr.S.Giri Rajan communicated his acceptance of offer of appointment by letter dated 28.02.2011. Thereafter, the name of the DOEACC Society was changed to the National Institute of Electronics and Information Technology (NIELIT) and this was communicated to the Director of NIELIT Centre at Chennai by letter dated 02.12.2012. By letter dated 16.07.2013 from the Joint Director of NIELIT, New Delhi, to the 4th Respondent, it was communicated that the Competent Authority has approved the extension of the contract period of the employees at Chennai Centre of NIELIT up to June 2014 on the existing terms and conditions subject to the stipulation that the extension of the period of contract employment of such employees would be co-terminus with the project "Setting up of NIELIT Centre at Chennai" and the contractual employment shall not amount to any employment obligation on regular basis. Prior to the above said extension, each of the Petitioners completed their probation period of one year and increments were approved in respect of all the persons on completion of their probation satisfactorily, including each of the Petitioners. Thereafter, it appears that the Director of the NIELIT, Chennai(the 4th Respondent herein) by letter dated 31.03.2015 requested the Managing Director of NIELIT, New Delhi, to consider the regularization of the employees of NIELIT Chennai Centre. A reminder letter dated 07.07.2015 was also issued by the Director of NIELIT, Chennai Centre with regard to the said regularization. In response to the said reminder letter dated 07.07.2015, NIELIT New Delhi, by Office Memorandum dated 22.07.2015 informed the Director of NIELIT Chennai Centre as follows:

"2)Regarding Centre's proposal for regularization of services of contractual employees, it is stated that the employees appointed on co-terminus basis for the project cannot be regularized. Further, the Centre should refrain from making /considering such proposals."

5.As stated earlier, the tenure of the Petitioners were extended up to June 2014. Thereafter, it appears that these persons continued in service without a formal extension letter. A Committee was constituted by the NIELIT on 06.06.2017 to consider the service matters of the persons appointed on contract basis at Chennai and the said Committee submitted a report pursuant to a meeting on 29.06.2017. In the said report, the Committee has referred to the fact that the manpower appointed on contractual basis had continued to be employed in the said posts in spite of the fact that their appointment had not been extended beyond June 2014. Based on the said report, the Ministry of Electronics and Information Technology (MEITY) by letter No.6(29)/2017-ABCD dated 06.10.2017 stated that the Vigilance Unit, MEITY advised that the policy of regularizing the services of contractual employees should be dis-continued with immediate effect. Based on the committee report and the above mentioned communication from MEITY, the Registrar of NIELIT by letter dated 27.03.2018 to the 4th Respondent stated as follows:

"(a) Ex-post facto approval of the Competent Authority for extension of contractual appointment of the above contractual persons up to the date of formal closure of the project i.e. up to 31.07.2016 is hereby conveyed.

(b) As no action was taken by the Centre even after closure of the said project and the said contractual persons are still continuing, their contractual appointment is hereby extended up to 30.06.2018.

(c) A notice may be issued by Centre to all the concerned contractual persons that their contractual period may not be extended beyond 30.06.2018 and all concerned persons may be informed about this accordingly."

6.Meanwhile, each of the Petitioners, along with a couple of other contractual employees, submitted a representation dated 15.11.2007 to the 4th Respondent requesting that salary with all allowances and arrears may be released in accordance with the recommendation of the 7th Pay Commission. Eventually, by letter dated 09.05.2018, the 3rd Respondent communicated that the appointment of the Petitioners would end on 30.06.2018 and that no further extension would be granted beyond this date.

Thereafter, orders of termination dated 09.05.2018 were issued separately to each of the Petitioners. The said order of termination dated 09.05.2018 was challenged by each of the Petitioners by filing applications before the First Respondent. By separate orders dated 30.05.2018, the First Respondent permitted the Petitioners herein to submit a representation with regard to the termination of their services by also drawing reference to the regularization of similarly placed persons. The 3rd Respondent herein was directed to consider the said representation and pass a speaking order in accordance with law within two weeks from the date of receipt of the representation.

7. Pursuant to the said order, each of the Petitioners submitted a representation dated 01.06.2018 to the 3rd Respondent requesting that their services be regularized from the date of initial appointment. By separate speaking orders dated 25.06.2018, the representation of each of the Petitioners was rejected on the basis that the employment was purely contractual and on co-terminus basis. It was further stated that regularizing the services of the Petitioners would amount to back door entry and is against the law of the land. The speaking orders dated 25.06.2018 were impugned in O.A.Nos.806, 807 and 808/2018 by each of the Petitioners in the present Writ Petitions. The said Original Applications were disposed of by the First Respondent by Common Order dated 20.09.2018 wherein the First Respondent held that the appointment of each Applicant therein is on temporary basis and would come to an end with the completion of the project. Accordingly, the First Respondent held that they cannot be regularized but the Respondents were directed to consider the case of the Petitioners herein for appointment if they apply in future projects and fulfill the educational and other qualifications as per rules, other things being equal, preference should be given to these candidates with age relaxation to the extent of service rendered by them previously with the Respondents. The said Common Order dated 20.09.2018 is the Impugned Order in these three Writ Petitions.

8. The learned counsel appearing for the Petitioners submitted that the letter dated 19.05.2010 from the 3rd Respondent to the 4th Respondent, which preceded the advertisement, specified that the appointments at the Chennai Centre shall be made on graded scale of pay for the duration of the project but likely to be regularized based on the performance and status of the Centre at the time of project termination. Similarly, he pointed out that the advertisement also mentioned that the appointment is for the duration of the project but likely to be continued. He further invited the attention of the Court to the Service Rules of the 3rd Respondent and, in particular, he referred to Rule 3.1 which deals with appointment either on contract or on deputation for a period of five years against the sanctioned post on graded scale

of pay. The learned counsel appearing for the Petitioners further submitted that the appointments of the Petitioners were under Rule 3.1 which enables extension of contract based on performance. In this connection, the learned counsel appearing for the Petitioners also adverted to Rule 3.4, which relates to appointment on contract for specific assignment/project, and specifically states that the persons appointed on contract basis will be paid consolidated emoluments. In this regard, he also invited the attention of this Court to Page No.34 of the Volume containing the Service Rules of the 3rd Respondent and pointed out that temporary posts on consolidated pay are co-terminus with the project. Thereafter, he referred to the offers of appointment to each of the Petitioners and pointed out that the appointees were offered payment on a graded scale of pay and not on consolidated basis and contended that, therefore, the appointments were made as per Rule 3.1 and not Rule 3.4 of the Service Rules. In this regard, he also adverted to the fact that their appointments were subject to one year probation period, transfer to any of the Centres of DOEACC(now NIELIT) and that the offers of appointment specified that the period of superannuation shall be up to the age of 60 years for all employees as per the Rules of Government of India as applicable to the DOEACC Society from time to time. By drawing reference to the different clauses of the offers of appointment and the above mentioned Service Rules, it was the contention of the learned counsel appearing for the Petitioners that, on a holistic view, it can be inferred that the appointment was not on a project specific basis.

9.He further submitted that each of the Petitioners completed their probation period satisfactorily, received increments and their regularization was recommended on 31.03.2015 by the 4th Respondent in a communication addressed to the Managing Director of the 3rd Respondent. In spite of this, he contends that their services were terminated abruptly by order dated 09.05.2018 without a pre-termination notice or hearing. He further submitted that in the order dated 30.05.2018, the First Respondent had directed the Second Respondent to consider the representation for regularization and the allegations that other similarly situated persons had been regularized on a discriminatory basis. He also submitted that elaborate details of regularized employees were provided along with the representation and that the representation was unfairly rejected. He further submitted that all these grounds were not duly considered in the Impugned Order of the First Respondent and that the project has not been closed and work continues to be executed in connection with the project. In support of the contention that others who are similarly situated were regularized, the learned counsel invited the attention of the Court to the Additional Volumes of documents filed by the Petitioners. Volume-III contains appointment orders issued to

various persons by DOEACC Centre. He also invited the attention of the Court to Volume-II which contains documents evidencing that the services of each of the Petitioners were utilized not only for project specific work but for other activities.

10. In order to further substantiate his contentions, the learned counsel for the Petitioners relied upon the following judgments:

1) Union of India, rep. by the Chief Post Master General, Tamil Nadu Circle, Chennai and another Vs. S.Subramani and another reported in 2013 Writ L.R. 1010.

2) Jivanlal Vs. Pravin Krishna, Principal Secretary and others reported in (2016) 15 SCC 747.

3) Central Inland Water Transport Corporation Limited and another Vs. Brojo Nath Ganguly and another reported in (1986) 3 SCC 156.

4) Senior Divisional Commercial Manager, South Central Railways and others Vs. C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and another reported in (2016) 3 SCC 582.

5) D.Raja Vs. The Chief General Manager, State Bank of India, Local Head Office, Nungambakkam, Chennai and others in W.A.No.1902 of 2012.

6) Narendra Kumar Tiwari and others Vs. State of Jharkhand and others reported in (2018) 8 SCC 238.

11. In response, the learned counsel appearing for the Respondents 2 to 5 submitted that the 3rd Respondent did not have an Office in Chennai until 16.06.2009 when it was decided to transfer specific posts from various Centres of DOEACC Society to the DOEACC Chennai Centre on temporary basis. He also submitted that it was made clear, even at the time of establishment of the DOEACC Centre at Chennai, that the appointments would be on contract basis and that these posts would be terminated/dis-continued thereafter. The learned counsel for the Respondents 2 to 5 invited the attention of the Court to the orders of appointment of each of the Petitioners and pointed out that it was categorically stipulated that the appointment is temporary and co-terminus with the project. He also adverted to the fact that the said terms and conditions were expressly accepted by each of the Petitioners by issuing a letter of acceptance thereof. He also invited the attention of the Court to the extension orders and pointed out that the extension orders also stipulated that the extension of the period of contract employment would be co-terminus with the project and that the contractual employment shall not amount to an employment obligation on regular basis. Thereafter, he referred to the Office Memorandum dated 22.07.2005 from the 3rd Respondent to the 4th Respondent stating that employees appointed on co-terminus basis for the project cannot be

regularized and that the NIELIT Chennai Centre should refrain from making such proposals. He also referred to the further extension of employment by letter dated 27.03.2018 up to 30.06.2018. With regard to the contention of the learned counsel for the Petitioners that 34 similarly situated persons were regularised by NIELIT, he stated that the said persons were not appointed to or regularised by the NIELIT/ DOEACC Chennai Centre and that, therefore, it cannot be said that they are similarly situated persons.

12. In order to substantiate his submissions, the learned counsel for the Respondents 2 to 5 relied upon the following authorities:

- 1) State of Gujarat and another Vs. P.J.Kampavat and others reported in (1992) 3 SCC 226.
- 2) Dr.Chanchal Goyal (Mrs) Vs. State of Rajasthan reported in (2003) 3 SCC 485.
- 3) Municipal Council, Smarala Vs. Rajkumar reported in (2006) 3 SCC 81.
- 4) The Secretary, State of Karnataka Vs. Umadevi and others reported in (2006) 4 SCC 1.
- 5) Vidyavardhaka Sangha and another Vs. Y.D. Deshpande and others reported in (2006) 12 SCC 482.
- 6) Santokh Singh Vs. Chandigarh Administration and others reported in (2006) 13 SCC 751.
- 7) Pimpri Chinchwad New Township Development Authority Vs. Vishnudeve Cooperative Housing Society and others reported in (2018) 8 SCC 215.

13. This Court carefully considered the affidavit, counter affidavit, documents, oral submissions and notes of submissions of both sides.

14. The advertisement dated September 2010 indicates that the recruitment is on contract basis for the duration of the project, i.e. 4 years and likely to be continued. Similarly, the offers of appointment of each of the Petitioners specify that the post is temporary, for the sanctioned period of the project and co-terminus with the project. It is also beyond doubt that the said terms of appointments were expressly accepted by each of the Petitioners. The question that arises for consideration is whether an appointment made on these terms could be considered as an appointment on regular basis because the offers of appointment specify that the Petitioners would be required to complete a probation period or because the appointment is subject to transfer and the age of superannuation is specified in the said offers of appointment. The fact that a probation period is specified merely indicates that the project specific appointment for an initial period of 4 years may be terminated if the appointed candidate does not satisfactorily

complete the probation. It cannot be said that this indicates that the appointed person is entitled to be regularized. Equally, the fact that the appointee may be transferred during the term of contract employment also does not indicate that it is a post that is liable to be regularized.

15. The next issue that arises for consideration is with regard to the Service Rules. The contention of the learned counsel for the Petitioners that the Petitioners were appointed in terms of Rule 3.1 and not in terms of Rule 3.4 cannot be accepted. This contention is made entirely on the basis that Rule 3.4, which deals with project specific appointments on contract basis provides for payment of consolidated emoluments, whereas the Petitioners herein were paid on graded scale of pay. However, this Court is unable to accept that merely because the Petitioners' were appointed on graded scale of pay, it can be said that they were not appointed for a specific duration on project specific basis. The advertisement for these posts and the offers of appointment make it abundantly clear that the appointment is on temporary, project specific basis and co-terminus with the project. Thus, the contention of the learned counsel for the Petitioners, in this regard, is directly contradictory to the material documents on record.

16. Equally, as rightly contended by the learned counsel for the Respondents 2 to 5, both the extension letters dated 16.07.2013 and 27.03.2018 provided in no uncertain terms that the extensions are project specific and co-terminus with the project. Once again, this underscores the fact that the appointments are project specific and co-terminus with the project. The findings of this Court on the rival submissions on discriminatory treatment are set out while dealing with the case law on the subject.

17. Notwithstanding the factual analysis, the case law cited by the learned counsel and their implications should be considered. In this regard, the judgment of the Hon'ble Supreme Court reported in (2018) 8 SCC 238 (cited supra) was relied upon by the learned counsel for the Petitioners to contend that persons who were irregularly appointed by the State Government were directed to be regularized by the Hon'ble Supreme Court on the basis that they had completed 10 years of service and that they should be regularized unless there is some valid objection to their regularization such as misconduct. The said judgment was not made in the context of a contractual appointment, which is project specific and co-terminus with the project.

18. The learned counsel for the Petitioners also referred to various judgments to contend that there cannot be discrimination as between similarly situated persons and that the respondents are obligated to regularize the services of the

Petitioners in view of the fact that several other similarly situated persons' services were regularized. In this connection, the Division Bench judgment of this Court reported in (2013) Writ.L.R. 1010 (cited supra) was relied upon, wherein the Division Bench of this Court concluded that the Petitioners had not shown any distinguishing factor as between the Petitioners therein and 202 other candidates who were granted regularization. On that basis, the Division Bench of this Court directed the respondents to regularize the services of the Writ Petitioners therein. Likewise, in the judgment reported in (2016) 15 SCC 747 (cited supra), the Hon'ble Supreme Court held that the policy has to be applied uniformly and not on a pick and choose basis. The 3rd judgment that was relied upon by the learned counsel for the Petitioners, in this regard, is the famous case of CENTRAL INLAND WATER TRANSPORT CORPORATION LIMITED AND ANOTHER (cited supra) wherein the Hon'ble Supreme Court held that it could interfere with a contract that is unconscionable especially when the parties have unequal bargaining power. This was in the context of a contract that enabled the employer to terminate a permanent employee by giving him three months notice or pay in lieu of notice. The 4th Judgment relied upon by the learned counsel for the Petitioners, in this regard which is reported in (2016) 3 SCC 582, (cited supra) holds that the Government policy should be interpreted taking into consideration the right to livelihood of weaker sections of the society. In all the cases dealing with the discriminatory treatment of similarly situated persons, the Division Bench of this Court and the Hon'ble Supreme Court proceeded on the established basis that the Petitioners therein were in the same position as others who were regularized. On the other hand, in the present Writ Petition, the respondents have categorically denied that any employee of the 4th Respondent namely, NIELIT Chennai Centre, who was appointed on project specific and co-terminus basis was regularized. The learned counsel for the Petitioners is unable to establish that the persons who were regularized were recruited for the Chennai Centre of NIELIT/DOEACC for setting up of the NIELIT/DOEACC Centre Chennai. Therefore, the above mentioned judgments do not advance the case of the Petitioners.

19. The learned counsel for the Petitioners also relied upon the judgment reported in (2018) 8 SCC 238 (cited supra) to contend that, even as per the Constitution Bench Judgment in the UMADEVI CASE, persons who have worked for more than 10 years without the protection of any interim order of any Court or Tribunal, in vacant post, possessing requisite qualification are entitled to be considered for regularization. However, the said judgment also does not advance the case of the Petitioners for the following reasons. First, the Petitioners have not completed 10 years in contractual employment. Secondly, in the instant case, there are no vacant sanctioned posts.

20. The learned counsel for the Respondents 2 to 5 referred to and relied upon several judgments, which have been cited in Paragraph 8 supra, with regard to employment on contract or project specific basis. It is sufficient to refer to a view of them. In the Judgment reported in (1992) 3 SCC 266 (cited supra), the Hon'ble Supreme Court categorically held that the order of appointment shows that the appointment was purely contractual and co-terminus. In those circumstances, the Hon'ble Supreme Court held that even an order of termination was not required much less prior notice before termination. Likewise, in the Judgment reported in (2003) 3 SCC 485 (cited supra), the Hon'ble Supreme Court held that there is no scope for regularization unless the appointment was on regular basis and that the fact that the appointment was preceded by a selection process is of no consequence. Likewise, in the judgment reported in (2006) 3 SCC 81 (cited supra), the Hon'ble Supreme Court held that the employee understood fully that the employment is for a short duration and, therefore, such appointees are not entitled to appointment on a permanent basis. Significantly, in the Judgment reported in (2006) 4 SCC 1 (UMADEVI CASE), the Constitution Bench of the Hon'ble Supreme Court held 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, regularisation, 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.

"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned 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 open eyes. It may be true that he is not in a position to bargain—not at arm's 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 any 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 succour 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.

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."

21. In addition to the Judgments cited by the learned counsel, the following Judgments of the Hon'ble Supreme Court also deal with the issue of regularization of temporary or contractual employees:

- 1) Union of India and others Vs. A.S. Pillai and others reported in (2010) 13 SCC 448.
- 2) State of Rajasthan and others Vs. Daya Lal and others reported in (2011) 2 SCC 429.
- 3) Secretary to Government, School Education Department, Chennai and others. Vs. R. Govindaswamy and others reported in (2014) 4 SCC 769.

All the above judgments, which are referred to in Paragraphs 20 and 21, make it abundantly clear that contractual employees should not be regularized or made permanent.

22.The first Respondent in the Impugned Order has carefully examined the question as to whether an employee appointed on temporary, co-terminus basis can be regularized and has concluded that such persons cannot be regularized after adverting to judgments of the Hon'ble Supreme Court. Therefore, we do not find any infirmities or errors apparent on the face of the record in the Impugned Order of the first respondent. Accordingly, we do not see any reason to interfere with the Impugned Order in the exercise of supervisory jurisdiction.

23.In fine, these Writ Petitions are dismissed. There shall be no order as to costs. Consequently, connected WMPs. are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

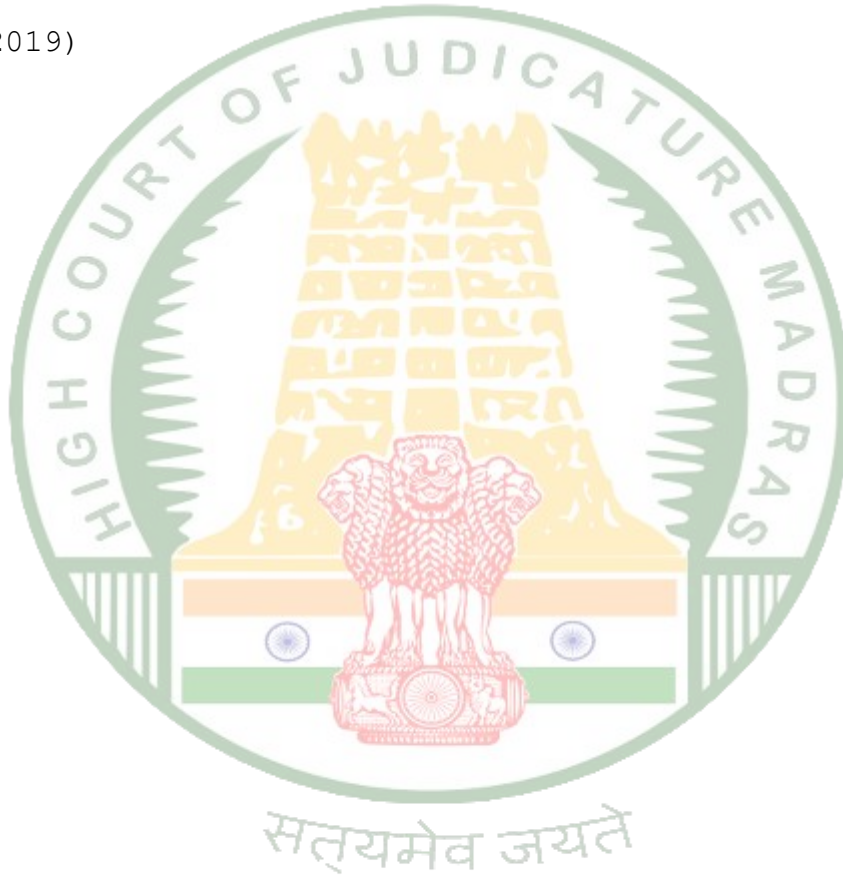
- 1.The Registrar
Central Administrative Tribunal,
Chennai Bench, Madras High Court Campus,
Chennai- 600 104.
- 2.The Scientist F and HOD (HRD)
Union of India
Ministry of Electronics and Information Technology,
Electronics Nikethan, No.6, CGO Complex,
New Delhi - 110 003.
- 3.The Director General,
National Institute of Electronics and
Information Technology(NIELIT)
NIELIT Bhavan, Plot No.3, PSP Pocket,
Sector 8, Dwaraka, New Delhi - 110 077.
- 4.The Director i/c
National Institute of Electronics and
Information Technology (NIELIT) Chennai Centre,
No.25, Gandhi Mandapam Road,
Chennai - 600 025.

5.Group Head (Administration and Finance)
National Institute of Electronics and
Information Technology (NIELIT) Chennai Centre,
No.25, Gandhi Mandapam Road,
Chennai- 600 025.

+2 Ccs to Mr.K.Srinivasamoorthy, Advocate sr 29524 & 29525.

W.P.Nos.29035, 29040 and
29045 of 2018

RV(CO)
SP(27/04/2019)



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