

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

MAT 163 of 2021
+
IA NO:CAN/1/2021
Kausik Ghosh & Ors.
Vs.
The State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants : Mr. Samim Ahammed, Adv.
Ms. Saloni Bhattacharya, Adv.
Ms. Ambiya Khatun, Adv.

For the KMC : Mr. Alak Kumar Ghosh, Adv.
Mr. Subhrangsu Panda, Adv.

Judgment On : 21.06.2023

Apurba Sinha Ray, J. :-

Factual Matrix

1. According to the appellants/petitioners they are all working as Laboratory Technicians on contractual basis against sanctioned vacancies

during exigency of the Kolkata Municipal Corporation. The entry of the appellants into service was on the basis of walk-in interview in the year 2010. The said walk- in- interview was taken on the basis of a public advertisement. Accordingly, the petitioners were engaged initially on contractual basis for a period of six months and thereafter the period of engagement was extended from time to time. The petitioners are still working in the said capacity. The respondents are obliged to regularize the service of the petitioners. The Municipal authorities by taking advantage of the dominant position as employer imposed upon the petitioners the condition of not making any claim for regularization at the time of their initial appointment.

2. The West Bengal Municipal Service Commissioner at the instance of the Kolkata Municipal Corporation issued an advertisement dated 12/8/2020 for Recruitment Examination 2020 for the post of Medical Officer (General) and Laboratory Technician (Grade III). The advertisement fixed the upper age limit at 40 years for general candidates with relaxation only for reserved category candidates. The Writ Petitioners prayed for restraining the Municipal Authorities from removing the petitioners from service and/or for staying the operation of the advertisement dated 12/ 8/ 2020.

3. The Kolkata Municipal Corporation being the respondent No. 2 has pointed out that admittedly the appellants/ petitioners were engaged as laboratory technicians on contractual basis through walk- in- interview as advertised. The petitioners did not raise any objection to the process of the

engagement undertaken. It cannot be denied that in the matter of contractual engagement service is governed by the terms and conditions of engagement as offered to them. One of the terms and conditions of the offer was as follows:

“(9) Undertaking to be given at the time of joining no claim for regularization or permanent absorption apartment in the Kolkata Municipal Corporation in the post of Laboratory Technician would be made in future.”

3.1. The petitioners duly accepted the said condition of offer and submitted respective undertakings to that effect at the time of joining the service and they did not raise any objection to the terms and conditions of the offer and did not raise the issue of regularization until the date of issuance of the advertisement on 12/08/2020. The statute does not provide for any scope to regularize such appointment in the permanent post which is to be filled up through Municipal Service Commission. The walk-in- interview for engagement in service cannot and should not be equated with proper recruitment process and/or the Constitutional Scheme for appointment to any sanctioned post on regular basis.

4. There is no mode of recruitment under the law and/or regulation by way of regularization of contractual service of the incumbents. In the event the appointment is made in total disregard of the Constitutional Scheme as also the Recruitment Rules by the employer, the recruitment would be an illegal one. There may be cases when although substantial compliance with the Constitutional Scheme as also the Rules have been made, the

appointment may be irregular in the sense that some provisions of such Rules might not have been adhered to.

5. On the recommendation of the Mayor-in -Council dated 27/03/ 1992 the KMC at its meeting dated 29/05/1992, approved, the General Regulation to the effect that “notwithstanding anything contained in any Recruitment Regulation for “C” and “D” categories of posts, Municipal Service Commission acted as an agency for direct recruitments, if any such vacancy is referred to by the competent appointing authority for filling up posts by direct recruitment.” The said regulation was made in consonance with the relevant provisions of the KMC Act 1980. The petitioners are not inclined to participate in the selection process for appointment on a regular basis in the permanent sanctioned posts. The petitioners never expressed any such inclination and prayed for relaxation of age bar under advertisement when asked for the same by the Hon’ ble Court at the time of initial submission of the writ petition.

Submission from the Bar

6. The learned Counsel for the appellants has submitted that the recruitment of the appellants was not illegal. The Hon’ble Supreme Court has explained the difference between irregular and illegal appointment in the case of **State of Karnataka and other versus M.L. Kesari and others (2010) 9 SCC 247**. The learned Counsel has submitted that the Hon’ble Single Judge has erred in law by observing that the appointments of the

appellants/ petitioners were illegal. On the strength of such observation, the Hon'ble Single Judge did not issue any writ of Mandamus for regularization of the services of the appellants/petitioners.

7. According to the learned Counsel, in a similar factual scenario, the Hon'ble Central Administrative Tribunal, Principal Bench in **Ms. Harleen Kaur & others versus North Delhi Municipal Corporation and others** directed regularization of Entomologists recruited to combat the menace of malaria and dengue. The Hon'ble High Court of Delhi upheld the order of the Tribunal. Subsequently, the Hon'ble Supreme Court also upheld the order of the Tribunal by dismissing the special leave petition preferred by the municipal corporation.

8. Non- regularization leads to discriminatory working conditions which lead to violation of dignity of the person. The appellants discharged their duties as Frontline workers during the COVID-19 pandemic. However unlike their counterparts, they received less, despite similar types of dispensation of duties. On death, none of the family members received even a family pension.

In the current socio-economic scenario the employer has unequal bargaining power and the respondent authority being a model employer cannot be allowed to abuse such position. It cannot be allowed to extract work from employees appointed irregularly during some exigency and thereafter throw them out to the forces of the market when they are no longer of employable age.

9. Regularization Rules must be given pragmatic interpretation and if the appellants have completed 10 years of service they should be regularized. True purpose and intent of the judgment rendered in Uma Devi case was to stop back door appointments in violation of Articles 14 and 16 of the Constitution of India. Therefore, the said judgment is not a license for the State to make contractual appointments against permanent vacancies and thereafter exploit such employees by denying the benefits of their service.

10. Service conditions disentiing the appellants to make claim for regularization is opposed to public policy against exploitation as enshrined under Article 23 of the Constitution of India. Therefore, the same is not an enforceable agreement in terms of Section 23 of Indian Contract Act 1872. Thus, the appellants have an enforceable right for regularization to prevent their exploitation.

11. In support of his contention the learned Counsel appearing for the appellants has referred to the judicial decision reported in **State of Karnataka and other (para 7) (supra)**, one unreported decision passed by the Central Administration Tribunal, Principal Bench, New Delhi in TA No. 352 of 2009 (paragraphs 17, 18, 26, 28, 31), the appellate court's order passed in connection with the above matter on 20.11.2018, that is, **reported in AIR OnLine 2019 SC 1990 (New Delhi Municipal Corporation Vs. Harleen Kaur and Others)**, the judgment dated 19.11.2020 passed by the **Constitutional Court of South Africa in the matter of Sylvia Bongi Mahlangu and Others Vs. The Minister of Labour**

and Others (paras 6, 56, 106, 108, 113), (1986) 3 SCC 156 (paras 102, 110, 111) (Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another And Central Inland Water Transport Corporation Limited and Another Vs. Tarun Kanti Sengupta and Another), 2013 14 SCC 65 (paras 20, 22 and 37) (Nihal Singh and Others Vs. State of Punjab and Others with Bhupinder Singh and Others Vs. State of Punjab and Others),(2018) 8 SCC 238 (paras 4 to 7) (Narendra Kumar Tiwari and Others Vs. State of Jharkhand and Others), (2015) 8 SCC 265 (paras 2, 3, 13, 14) (Amarkant Rai Vs. State of Bihar and Others), (2014) 4 SCC 583 (paras 35, 38, 42, 45, 47, 48 and 50) (Amarendra Kumar Mahapatra and Other Vs. State of Orissa and Others), (2006) 4 SCC 1 (paras 52 and 53) (Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others).

12. The learned Counsel appearing for the KMC has submitted that at the time of appointment the appellants were engaged on the terms and conditions of engagement as offered to them and one of such conditions indicated that in case of their engagement on contractual basis they should not claim for relaxation or permanent absorption in the KMC in the post of Laboratory Technician. Therefore by virtue of such agreement the petitioners are not at all entitled to get relief as prayed for. According to him the Hon'ble Single Judge upon due consideration of the facts and circumstances of the case as well as the reported judgments cited by the respective parties was pleased to dispose of the writ petition without granting any relief as prayed for. The Hon'ble Single Judge observed, inter alia, that the appointment

shall be made only in accordance with the rules and not otherwise. The executive powers can be exercised to fill in the gaps as a short term measure and not in perpetuity. In the instant case the initial appointment of the petitioners was not in accordance with the recruitment rules and as such the prayers of the petitioners for regularization of service cannot be accepted by the court and the same was rightly rejected.

13. According to the learned Counsel, the appellants have no right under the law to be engaged permanently as claimed. In support of his contention the learned counsel has relied upon the decisions reported in **Umadevi (supra), (2008) 10 SCC 1 (Official Liquidator Vs. Dayanand and Others), (2011) AIR SCW 4252 (Union of India and Others Vs. Arul Mozhi Iniarasu and Others), (2006) 8 SCC 667 (State of MP and Others Vs. Yogesh Chandra Dubey and Others), (2009) 7 SCC 205 (General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and Others), 2006 (2) SCC 702 (MP Housing Board and Another Vs. Manoj Shrivastava), (2007) 1 SCC 575 (State of MP and Others Vs. Lalit Kumar Verma).**

14. The learned counsel has further argued that as the appellants were not appointed in terms of the applicable statutory rules, they are not entitled to any regular scale of pay to any post. Moreover, the court cannot pass any order directing the authority to regularize the services of the appellants having regard to the Constitutional Bench decision in Uma Devi (3) case. Having regard to the facts and circumstances of the case as well as the law laid down in the reported cases this court would be pleased to dismiss the appeal.

Decision

15. The learned Single Judge has been pleased to reject the prayer of the appellants, being the writ petitioners on the grounds, inter alia, that—

a) As the petitioners have been appointed contrary to law, accordingly their appointments cannot be said to be a legal one. In view of the judgment delivered by the Hon'ble Supreme Court in the matter of Uma Devi (supra), KMC is not obliged to regularize their engagement.

b) The apprehension of the appellants that KMC will terminate their services is unfounded.

c) The petitioners at the time of their initial appointment had to give an undertaking that they will not claim regularization or permanent absorption in the service in future. The petitioners are bound by the terms and conditions of their letter of engagement.

d) The nature of work and the post may be the same, but that does not mean that the service condition of the two sets of employees, one appointed through a regular process initiated by the Municipal Service Commission and the other by way of an advertisement by KMC, is the same.

e) In Service jurisprudence, the status of a contractual employee and that of a permanent employee is distinctly different. The financial benefits in respect of the two sets of employees are completely diverse. Permanent employees enjoy certain protection in service which the contractual employees don't.

Regularization of the engagement of contractual employees have varied ramification.

f) The Supreme Court on several occasions has deprecated the practice of the Courts to pass order of regularization of employees engaged dehors the recruitment rules. Admittedly, in the instant case the engagement of the petitioners was made without following the prescribed recruitment rules. KMC without routing the selection process through the Municipal Service Commission adopted a shortcut method and itself published an advertisement inviting applications from eligible candidates. The petitioners applied pursuant to the advertisement published by the KMC. Though the petitioners are reeling under the impression that the recruitment was made in a regular manner, through an open selection, but fact remains that the said selection was not made in accordance with the recruitment rules and accordingly the same cannot be said to be a valid one.

g) It is always open for the KMC to engage employees on contractual basis in times of need and on emergent basis. Areas with perennial nature of work ought to be manned by regular employees. The health clinics run by the KMC function on a regular basis. They are not meant to be run on temporary occasions. The need being perennial, KMC ought to have engaged employees through the regular recruitment process. However, since there is no bar to engaging employees on contractual basis KMC adopted the shortcut method.

h) Contractual employees cannot claim regularization on the basis of their long period in service. It is settled law that regularization is not a mode of

recruitment. In view of the conditions mentioned in the offer letter of engagement and the undertaking given, the petitioners cannot claim regularization/ absorption in regular service in KMC. Any order passed in favour of the petitioners, for regularization, will be contrary to the provisions of Articles 14 and 16 of the Constitution.

16. However, it appears that both the learned counsel of the parties and the learned Single Judge have placed reliance on the exceptions as laid down in Para 53 of the **Uma Devi's case (supra)** to buttress their standing. Para 53 of the said judgment is required to be perused and the same is set out hereunder :

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in Para 15 above, 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 regularization of 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 regularize as a one-time measure, the services of such irregularly appointed, who have worked ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure regular recruitments are undertaken to fill those vacant sanctioned posts that required 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 regularization, 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 regularizing or making permanent, those not only duly appointed as per the constitutional scheme.”

17. From the said paragraph, it appears that the Hon’ble Supreme Court has been pleased to lay down the exceptions to the main principle elaborated in the body of the said judgment, and in the second part of the said paragraph, the Hon’ble Supreme Court has further laid down the mandatory duties of the Union Government, State Governments and their instrumentalities. There are, in fact, two types of duties.

18. First, the Union of India, the State governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals.

19. Secondly, the Union of India, the State governments and their instrumentalities should further ensure regular recruitments are undertaken to fill those vacant sanctioned posts that are required to be filled up in cases where temporary employees or daily wagers are being now employed.

20. What we have understood from the above that by the first direction the authorities are bound to regularize the eligible candidates within six months from the date of judgment i.e., 10/04/2006 and from the second direction it is incumbent upon the said authorities and their

instrumentalities that they shall undertake regular recruitment process to fill up vacant sanctioned posts.

21. From the materials on record in the present case it transpires that the appellants were called upon to attend walk-in-interview in the year 2010 and the said walk-in-interview was taken on the basis of an open advertisement. Now the question is when the Hon'ble Supreme Court by its decision in *Uma Devi (supra)* delivered in 2006, has clearly directed the State Governments and its instrumentalities that they should ensure that regular recruitments are undertaken to fill up vacant sanctioned posts where temporary employees are being employed, could KMC bypass such direction in the year 2010? The said direction necessarily means that the vacant sanctioned posts cannot be filled up by temporary employees. In spite of such direction the KMC engaged the appellants as laboratory technicians on contractual basis in the year 2010. It is true that the Corporation is claiming that they were not engaged in respect of sanctioned vacant posts.

22. But when there is clear direction of the Hon'ble Apex Court for appointment of regular employees in the sanctioned vacancies instead of temporary workers, could the Corporation engage temporary workers in place of regular employees and compel them to do the same nature of work which the regular employees of sanctioned vacancies are supposed to do, at a lesser pay? Exactly that done here. The KMC engaged temporary workers at a lesser pay and asked them to do the same job which a regular employee in a sanctioned post would do. Therefore the KMC gets double bonanza by

adopting such practice. They get similar services of a regular employee from the contractual employees and they have to pay less for that. To bypass Uma Devi, the KMC has taken the plea that such engagement was not in sanctioned vacant posts but they engaged them for the time being. As such the observation of the Learned Single Judge that “it is always open for the KMC to engage employees on contractual basis in terms of need and on emergent basis. Since there is no bar to engage employees on contractual basis, KMC adopted the short cut method”, goes against the direction of the Hon’ble Supreme Court in Uma Devi (supra). Though the Learned Single Judge has pointed out the KMC’s power of engaging employees on contractual basis by adopting “short cut method”, the Learned Judge did not refer to any specific provision in the relevant Recruitment Rules showing that KMC is authorized to adopt such ‘short-cut method’.

23. The observation that “in the instant case the engagement of the petitioner was made without following the prescribed recruitment rules and KMC without routing the selection process through Municipal Service Commission adopted a short cut method and itself published an advertisement inviting applications from eligible candidates” is required to be scrutinized hereunder.

24. It appears that the relevant advertisement which was published in the year 2010 was as hereunder:-

“THE KOLKATA MUNICIPAL CORPORATION 5.S.N. BANERJEE ROAD, KOLKATA-700 072

Walk-in Interview for contractual appointments of LABORATORY TECHNICIANS (Contractual basis),

Venue of Interview: The Town Hall, Kolkata (Beside the Kolkata High Court)

1. Post-LABORATORY TECHNICIANS (75)

Date of Interview/ Reporting Time: 05/04/2010/ 10. a.m. Remuneration: Rs 5000/- p.m. (Consolidated).

*Eligibility
Essentials*

- i) Passed Higher Secondary Examination or its equivalent with Physics, Chemistry and Biology.*
- ii) Two years diploma course in Laboratory Technology recognized by the Govt. of West Bengal*

Desirable

- i) One year training after acquiring diploma in Laboratory Technology recognized by the Govt. of West Bengal, in any Government Hospital or in a Clinical Establishment licensed under the West Bengal Clinical Establishment Rules, 2003; or*
- ii) A Post-Graduate diploma in Laboratory Technology from any recognized University.*

Age: Not more than 37 years as on 01.01.2010.

Interested candidates are requested to report for interview with an application addressed to the Municipal Commissioner, Kolkata Municipal Corporation, 5. S.N. Banerjee Road, Kolkata-700 013, Bio-data and Photo identity proof along with all testimonials/documents in original and a set of attested copies thereof. An attested photograph shall also be kept ready.

Interviews, if necessary may continue on the next working day. No new applications will be entertained on the extended date(s).

The KMC reserves the right to change/modify any/all of the above conditions.

Municipal Commissioner”

25. From the said advertisement it appears that the essential qualification for said posts are Higher Secondary Examination or its equivalent

examination with subjects like physics, chemistry, biology and secondly two years diploma course in the laboratory technology recognized by the Government of West Bengal. The desirability of the employer in selecting candidates by virtue of the said advertisement was that the candidates should have one year training after acquiring diploma in laboratory technology recognized by Government of West Bengal, in any government hospital or in a clinical establishment licensed under the West Bengal Clinical Establishment Rules, 2003 or a post graduate diploma in laboratory technology from any recognized university. If that be the requirement of eligibility of the candidates, it can be safely said that as it was an open advertisement seeking candidature from eligible candidates as per the conditions mentioned therein, the same provides equal opportunity to all the eligible candidates. In other words, it cannot be said in any way that the advertisement was made for any particular category of people or the said advertisement is restricted to any class of persons. Therefore the advertisement was open for all, providing opportunity to every eligible candidate to appear in the relevant walk-in-interview and as such it cannot be said that there was any attempt to bypass the constitutional requirement as envisaged in our constitutional scheme.

26. It would be appropriate at this stage to compare the conditions of the advertisement which was published on August 12, 2020 for which the relevant writ petition was filed from the side of the appellants.

27. The advertisement dated August 12, 2020 is set out hereunder:-

WEST BENGAL MUNICIPAL SERVICE FAX/PHONE: 2286-0052
 COMMISSION 149, A.J.C. BOSE ROAD,
 KOLKATA-700 014

WEBSITE: www.msccb.org E-
 MAIL: sowb2015@gmail.com

Advertisement No. 14 of 2020.

Recruitment Examination, 2020 for the post of Medical Officer (General) & Laboratory Technician (Grade-III) under Kolkata Municipal Corporation.

On-line applications are invited through our website www.msccb.org from the Citizens of India for recruitment to the post of Medical Officer (General) & Laboratory Technician (Grade-i) under Kolkata Municipal Corporation on and from 13.08.2020.

Sl. No.	Name of the Post	No. of Vacancy	Category Wise Vacancy Position	Scale of Pay & Grade Pay	Age as an
1.	Medical Officer (General)	63	S.C.-11 S.T.-10 O.B.C. (A)-14 UR-08 Pay Level-16 of the 18-37 yrs. Pay Matrix of ROPA 2019, 01.01.2020 O.B.C. (B)-07 U.R. (PWD)-03 (01 Tor Blindness Low Vision, 01	Pay Level – 16 of the Pay Matrix of ROPA 2019	18-27 yrs

			for hearing Impaired, 01 for Locomotor Disability/ Cerebral Palsy		
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Minimum Educational Qualification

Essential: MBBS degree from a recognized University and duly registered in Medical Council.

Desirable: a) Preference will be given to candidates possessing post graduate qualification like DPH MD (Community Medicine) / MD (PSM) from a recognized University. b) 1 One) year experience in practice of Medicine/working experience in the field of Public Health.

Age: Lower and Upper age limit are 18 years and 37 years respectively as on 1 January 2020 UPPER AGE RELAXATION UP TO 5 (FIVE) YEARS IS ADMISSIBLE ONLY TO S.C. & ST. CANDIDATES AND UP TO 3 YEARS TO O.B.C. (A & B) CANDIDATES OF WEST BENGAL

Upper age limit for recruitment of Physically Challenged persons to State Government Services and Posts shall be 42 years.

Age limit can be relaxed for those who have served on contractual basis under Kolkata Municipal Corporation to an extent equivalent to the period of such full time contractual engagement, subject to a maximum of 3 years for the post of Medical Officer (General).

Sl No.	Name of the Post	No. of the vacancy	Category wise Scale of Pay &	Scale Of Pay & Grade Pay Pay Level – 6 of the pay matrix of ROPA 2019	Age as on 01.01.2020
2	Laboratory Technician (Grade-III)	18	U.R.-07 U.R. (Ex – Serviceman) – 02 SC.-05 ST.-01 OBC (A) – 01 OBC(b) – 01		18-40 yrs

			U.R. (PWD)-01 (for Locomotor Disability Cerebral Palsy)		
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Minimum Educational Qualification

Essential:

1. Madhyamik Examination Pass from WBBSE or its equivalent.
2. A diploma/certificate as Laboratory Technician from recognized-Institution.

Lower and Upper age limit are 18 years and 40 years respectively as on 1 January, 2020. UPPER AGE RELAXATION UP TO 5 (FIVE) YEARS IS ADMISSIBLE ONLY TO S.C. & S.T. CANDIDATES AND UP TO 3 YEARS TO O.B.C, (A & B) CANDIDATES OF WEST BENGAL.

28. From a comparative study of the advertisement of the year 2010 and that of 2020 inviting applications for appointment of laboratory technician Grade-III (18 posts), it appears that the essential qualification of candidates was higher in the advertisement of the year 2010 than the advertisement of 2020. It is also found that candidature was sought for from higher qualified candidates in 2020 than the candidates in connection with advertisement of 2020. Therefore, there is no doubt that candidates having higher qualification than the candidates in connection with advertisement No.14 of 2020 were appointed in the year 2010 on the basis of the walk-in-interview. Therefore, the appointment of the appellants cannot be said to be illegal. It is also found from such comparative study of the two advertisements that the mode of appointment in respect of post of technician Grade-III by virtue of advertisement of 2020 was either written test and interview or personality test depending upon number of applications received. It is further found from page no. 87 of the paper book that the West Bengal Municipal Service Commission held direct personality test/interview for recruitment to the

post of laboratory technician (Grade-III) in connection with Advertisement No. 14 of 2020, without holding any written test. It, therefore, goes to show that the mode of appointment in 2010 and 2020 was also the same. In other words, the mode of appointment which was adopted in the year 2020 was more or less the same or akin to the year 2010 in connection with the appointments of appellants though in different name, that is, walk-in-interview. As such I do not find that the persons having higher qualification than the appellants have been appointed or proposed to be appointed by virtue of advertisement No. 14 of 2020 and further the mode of appointment was same in respect of appointment of candidates in connection with both the advertisements as aforesaid. Therefore, the observation of the Learned Single Judge treating the appointment of regular employees in a higher pedestal than the appointment of temporary employees including the present appellants appears to be incorrect.

29. According to the Learned Single Judge, as the petitioners have been appointed contrary to law, the Kolkata Municipal Corporation is not obliged to regularize their engagement, in view of the judgment delivered by the Hon'ble Supreme Court in the matter of Uma Devi (*supra*). Now, the question arises as to who appointed the appellants in violation of law? From the records it transpires that paragraph 53 of Uma Devi's case (*supra*) has prohibited the State Government and its instrumentalities from appointing temporary or contractual employees in the sanctioned vacant posts but the Kolkata Municipal Authority without paying any heed to such direction appointed the appellants as contractual workers. But when the question of

regularization arises, the Kolkata Municipal Corporation has taken shelter behind the said case law of Uma Devi (*supra*) and has denied regularization of such engagement of the appellants. Can Kolkata Municipal Corporation blow hot and cold at the same time?

30. The Learned Single Judge has been pleased to comment that the apprehension of the appellants that Kolkata Municipal Corporation will terminate their services is unfounded but it appears that the appellants being employed as contractual workers are apprehensive of their termination and in my considered opinion such apprehension is certainly reasonable and it cannot be said to be unfounded.

31. The Learned Single Judge has also observed that the appellants gave an undertaking at the time of their initial appointment that they will not claim regularization or permanent absorption in service in future and therefore the appellants are bound by the terms and conditions of their letter of engagement. If we peruse the relevant advertisement of the year 2010 we shall find that the said advertisement does not indicate about such proposed undertaking to be given by the selected candidates at the time of their initial appointment. There is no whisper in the said advertisement that a separate contract containing terms and conditions was required to be executed at the time of their appointment. There is no whisper in the said advertisement that the employees cannot claim for regularization in future. The question arises whether the Kolkata Municipal Corporation is entitled to incorporate new conditions of service in the offer letter though such

essential conditions are not mentioned or indicated in the relevant advertisement.

32. The observation of the Learned Single Judge that the nature of work and the post may be the same but that does not mean that the service condition of two sets of employees must be the same, has also gone against the constitutional principle of equal pay for equal work. In **STATE OF PUNJAB AND OTHERS V. JAGJIT SINGH AND OTHERS, (2017) 1 SCC 148** the Supreme Court of India has been pleased to hold that the principle of “equal pay for equal work” is also applicable to temporary workers performing the same duties and responsibilities as regular employees. It is fallacious to determine artificial parameters to deny fruits of labour. More so in a welfare state, any act of paying less wages, as compared to other similarly situated, constitutes acts of exploitative enslavement, emerging out of domineering position of the State. Thus it was held by the Hon’ble Supreme Court that temporary employees possessing requisite qualifications and appointed against posts which were also available in the regular cadre, performing similar duties and responsibilities as are being discharged by regular employees holding same/corresponding posts were entitled to claims wages at par with minimum pay scale of regular methods holding the same posts. Therefore the distinction between regular and temporary employees as envisaged in the impugned judgment on the basis of nature of work and similarity in post does not find favour in the aforesaid judgment of the Hon’ble Apex Court.

33. By relying on judicial precedents, the Learned Single Judge has rightly and eloquently recorded that the Supreme Court on several occasions has deprecated the practice of the court in passing order for regularization of employees engaged dehors the recruitment rules. It is also the observation of the Learned Single Judge that “admittedly in the instant case the engagement of the petitioner was made without following the prescribed recruitment rules. Kolkata Municipal Corporation without routing the selection process through the municipal service commission adopted a shortcut method and itself published an advertisement inviting applications from eligible candidates”. In my considered view, the Kolkata Municipal Corporation could not have done so after emergence of the judicial decision of Uma Devi (*supra*). Even if such rules for appointment of temporary workers are there, but after emergence of the judicial decision as aforesaid such rules have become obsolete. It is also important to mention another observation of the Learned Single Judge “*that though the petitioners are reeling under the impression that the recruitment was made in a regular manner, through an open selection but fact remains that the said selection was not made in accordance with the recruitment rules and accordingly the same cannot said to be a valid one.*” In my view if the Kolkata Municipal Corporation does not follow its own Recruitment Rules and also the direction of the Hon’ble Supreme Court, we cannot make the appellants scapegoat for the wrongful acts of the Corporation.

34. Though the Learned Single Judge has been pleased to hold that it is always open for KMC to engage employees on contractual basis in times of

need and emergent basis, such observation goes against the judicial dictum passed in Uma Devi's case (*supra*).

35. The Learned Single Judge time and again, observed in the impugned judgment that the KMC did not follow the prescribed recruitment rules at the time of appointment of the appellants, and the KMC adopted a short-cut method for appointing the appellants as Laboratory Technician on contractual basis. It is also the observation of the Learned Single Judge that *“Areas with perennial nature of work ought to be manned by regular employees. The health clinics run by the KMC function on regular basis. They are not meant to be run on temporary occasions. The need being perennial, KMC ought to have engaged employees through the regular recruitment process. However, since there is no bar to engage employees on contractual basis KMC adopted the shortcut method.”*

36. No challenge was thrown from the side of the KMC to such observation of the Learned Single Judge. Therefore, from the above observation, it transpires that the KMC itself did not follow the prescribed recruitment rules at the time of appointment of the appellants, instead, it adopted a “short-cut method”.

Secondly, the nature of jobs in the health clinics run by the KMC is perennial.

Thirdly, such jobs ought to be done by regular employees.

Fourthly, such perennial jobs in health clinics have now been performed by the appellants who were and still are appointed on contractual basis.

Fifthly, according to the impugned judgment, as there is no bar to engaging contractual employees, the KMC can engage contractual staff to perform such perennial jobs, at a lesser pay.

37. The Learned Single Judge has elaborately discussed various case laws to point out that the present law of the land does not support regularization of temporary workers unless they are appointed in accordance with prescribed recruitment rules. The observation of the Learned Single Judge in this regard is absolutely correct and there is no iota of doubt that regularization of temporary workers or the employees who are appointed on contractual basis is not permitted under the present law. But at the same time it also must be kept in mind that the temporary employees on the basis of contractual services should not be engaged in perennial jobs and the KMC should not be allowed to exploit the services of temporary workers in place of regular employees for years together at a meagre pay. In this case the appellants were engaged for a period of six months and thereafter their services were extended from year to year and in this fashion their valuable services were taken by the KMC for more than 10 years (the writ application was filed in the year 2020). They were asked to perform perennial jobs though they were appointed on contractual basis. According to Learned Single Judge, such contractual staff can be engaged by the KMC to cope with any emergency or exigency. But extension of their services from six months to more than 10 years appears to be unconscionable. Had there been any emergency at the time of their appointment, duration of contractual period should have been shorter and in all probability, it would

have been much less than 10 years. It also appears that though their services were taken by the KMC for more than 10 years, they were not allowed to receive even minimum scale of pay in comparison with their counter-parts in the sanctioned vacancies. The conduct of KMC in this regard is not acceptable and they have compelled the appellants to perform perennial jobs which are supposed to be done by the regular employees with higher pay scale. The approach of the KMC is inhumane and cannot be endorsed in a welfare State.

38. It is true that the in view of the present law of the land, we cannot direct KMC to regularize the services of the appellants but the inhumane attitude of the KMC should be deprecated. They have appointed temporary workers on contractual basis not only beyond the prescribed recruitment rules but also against the relevant direction of the Hon'ble Supreme Court. From the records it transpires that the appellants have been performing their duties satisfactorily and, therefore, in my view the KMC should take the responsibility for such irregular appointment of the appellants beyond the prescribed recruitment rules and direction of the Hon'ble Supreme Court.

39. The Learned Single Judge was not properly assisted from this angle of the case and the Learned Single Judge has failed to appreciate the injustice caused to the appellants due to sheer incompetence of the KMC authorities. Moreover, a cursory glance over the relevant advertisement no, 14/2020 will further fortify this conclusion since it shows that though age relaxation for the post of Medical Officer (General) was allowed for the Medical Officers

who have served on contractual basis under KMC, no such corresponding age relaxation was provided for the laboratory technician who were already on contractual services in the KMC. Therefore, the injustice to and discrimination against the appellants are glaring and palpable. It is expected that a Court of law should not allow the KMC, a model employer, to become an unscrupulous employer. There is no reason for not extending the social security schemes to the appellants who are performing their duties satisfactorily at a lesser pay. We cannot shut our eyes to the services rendered by the persons like the appellants during Covid-19 and other emergent situations.

40. Considering all the aspects of the case in hand and also considering the present law of the land we are constrained to hold that the prayer for regularization of the services of the appellants cannot be allowed at this stage. However, we direct that the present services of the appellants on contractual basis cannot be terminated till they reach the age of 60 years respectively without formulating some reasonable social security scheme/beneficial scheme, etc for their benefit.

41. A question may arise that such prayer was not made in the writ petition and therefore this court cannot grant such relief to the appellants. But in my considered opinion the writ court can mould relief/reliefs in favour of the petitioners/appellants at the final stage for the purpose of doing complete justice. Moreover, in the writ application there was a prayer which is as follows:-

“(i) to pass such order or further order or orders as your Lordship may deem fit and proper.”

In view of such prayer we do think that the relevant relief as moulded by this Court can be extended to the appellants before us.

42. Accordingly the present appeal is allowed in part without any order as to costs. The impugned judgment passed in WPA No. 6896 of 2020 on 08.01.2021 is modified to the above extent. The connected application is also disposed of.

43. We also make it clear that this judgment should not be treated as a precedent.

44. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities

I agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)