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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 21st March, 2023

+ W.P.(C) 6014/2021 & CM APPL. 19021/2021, 4348/2022

MS. NEERU KALHER & ORS.

..... Petitioners

Through: Ms. Rashmi Chopra,
Mr. Puneet Rathi and Ms. Vatsala C.
Chaturvedi, Advocates.

versus

DELHI SKILL AND ENTREPRENEURSHIP
UNIVERSITY & ORS.

..... Respondents

Through: Mr. Shivendra Singh and
Mr. Bikram Dwivedi, Advocates for R-1.
Mr. Zoheb Hossain, Additional Standing
Counsel for R-2 and R-3.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. By this writ petition, Petitioners seek quashing of Notification dated 08.06.2021, published by Respondent No. 1/Delhi Skill and Entrepreneurship University (hereinafter referred to as the 'University') for filling up the posts of Master Trainers on contractual basis. Direction is also sought to the University not to replace the services of the Petitioners by other contractual employees except by way of regular appointment.

2. Facts to the extent relevant and emerging from the narrative in the writ petition are that Petitioners were appointed on contractual basis on a consolidated remuneration at the World Class Scale Centers (WCSCs), Vivek Vihar, Department of Training and Technical Education (DTTE), Government of NCT of Delhi. Respective dates of

appointment of the Petitioners and the dates of renewal of their contracts are given hereunder in a tabulation form:-

Serial No.	Name of the Petitioner	Initial Contract Period	Renewal periods
1.	Ms. Neeru Kalher	30.10.2015 till 29.10.2016	31.10.2016 to 30.10.2017 01.11.2017 to 31.03.2018 03.04.2018 to 31.03.2019 02.04.2019 to 31.03.2020 02.04.2020 to 31.03.2021
2.	Mr. Rakesh Razdan	26.12.2016 till 25.12.2017	27.12.2017 to 31.03.2018 03.04.2018 to 31.03.2019 02.04.2019 to 31.03.2020 02.04.2020 to 31.03.2021
3.	Mr. Harsh Upreti	16.05.2018 till 31.03.2019	02.04.2019 to 31.03.2020 02.04.2020 to 31.03.2021
4.	Ms. Priyanka Chandra	16.05.2018 till 31.03.2019	02.04.2019 to 31.03.2020 02.04.2020 to 31.03.2021
5.	Ms. Gurjapna Kaur	08.01.2018 till 31.03.2018	03.04.2018 to 31.03.2019 03.04.2019 to 31.03.2020 02.04.2020 to 31.03.2021
6.	Ms. Seema Ghanghas	26.12.2016 till 25.12.2017	27.12.2017 to 31.03.2018 03.04.2018 to 31.03.2019

			02.04.2019 to 31.03.2020
			02.04.2020 to 31.03.2021

3. As can be seen from the above table, Petitioners were appointed on various dates between 2015 to 2018 and worked continuously, as their contracts were renewed from time to time. It is also averred in the petition that Petitioners otherwise fulfill all requisite criteria for appointment to the posts of Master Trainers under the Recruitment Rules (RRs) and they worked dedicatedly, without any blemish or complaint.

4. Vide Notification No. F.14(65)/LA-2020/cons2law/82-91 dated 26.05.2020, the Delhi Skill and Entrepreneurship University Act, 2019 (hereinafter referred to as the '2019 Act') was notified and the University was incorporated under this Act. Respondent No. 3/DTTE published a Notification No. F.1(235)/ Inclusion of WCSC/DSEU/SB/DTTE/2020/104 dated 20.01.2021 by which the 6 WCSCs were integrated into the University, for all academic and certification purposes. Integration was only a reorganization as not only the work remained the same, but the Centers continued to operate on the same premises, the only change being in the Management. The Notification categorically stipulated that 58 posts existing in the 6 WCSCs were *en-masse* shifted to the University and most importantly, this Notification was published by DTTE, which is the parent Department, under the aegis of which the University functions and by which it is financed. DTTE vide Notice dated 28.01.2021 notified the integration of WCSCs into the University, including their movable assets and the 58 sanctioned posts, on existing terms and conditions and all members of the WCSCs, including the Petitioners were called for a joint meeting for work allocation. Thereafter, DTTE

issued an order dated 08.02.2021 pertaining to transfer/posting of the staff and called all Master Trainers again for a meeting which included the Petitioners. By this Notice, all Master Trainers working at various WCSCs were asked to report at Dwarka Centre from 09.02.2021 to work on the designated work locations and the Petitioners were assured that their services will be continued.

5. However, contrary to the assurance, DTTE issued a Notice dated 25.03.2021, calling upon all Master Trainers of WCSCs, including the Petitioners to hand over complete charge of all consumables/non-consumables and the Petitioners were informed that since their contracts were expiring on 31.03.2021, their services will be discontinued thereafter. Contracts of the Petitioners came to an end on 31.03.2021 and on account of the 2nd lockdown due to Pandemic COVID-19, work of the University was also suspended. However, as a matter of abundant caution and to ensure continuity of their service, Petitioners made a representation to Respondent No.2/GNCTD seeking extension of their services at the University. Petitioner No. 3 also sent an e-mail on 27.03.2021 to the University seeking release of salary and emoluments for the months of February and April, 2021, as also seeking clarification with regard to renewal of their contracts. Insofar as the salary was concerned, the same was released for the months of February and March, 2021, however, no action was taken to renew the contracts.

6. GNCTD issued a Notification on 16.04.2021 notifying its approval for integration of 10 Government Institutes of Technology (erstwhile Polytechnics) into the University for academic and certification purposes. In the Notification, it was specified that 666 sanctioned posts for Group 'A' in teaching and 421 sanctioned posts in Group 'C', were transferred to the University on existing terms and

conditions. Respondent No. 2, thereafter, issued an order dated 25.03.2021 to all Government Institutes of Technology in DTTE, approving extension of contracts for the contractual staff from 01.03.2021 to 28.02.2022, but similar extensions were not granted to the Petitioners.

7. Petitioners herein are aggrieved by the General Instructions dated 08.06.2021 notified on the website of the University, calling for applications to 13 courses for Master Trainers on contractual basis, thereby intending to replace the Petitioners who were awaiting renewal of their contracts. When the writ petition was first listed on 25.06.2021, this Court left it open to the Petitioners to apply/re-apply for contractual engagement with the University under the impugned Notification/General Instructions dated 08.06.2021, without prejudice to their rights and contentions in the writ petition, and Court is apprised that the Petitioners had applied against the said advertisement. When the writ petition came up on 23.08.2021, Court was informed that the selection process was complete but results were not declared for all the positions. Court, accordingly, directed the University to place before the Court, in a sealed cover, results of the Petitioners and also granted liberty to the University to fill up other positions for which the applications had been made by other candidates. Results have been filed reflecting the scores of the Petitioners.

8. **CONTENTIONS ON BEHALF OF THE PETITIONERS:-**

(A) The advertisement along with General Instructions dated 08.06.2021 is *per se* illegal and has been published with an intent to oust the Petitioners. Petitioners were appointed on contract basis and from time to time their contracts were renewed. Petitioners fulfill all requisite criteria and

qualifications under the RRs of posts and were appointed against sanctioned posts, after following the due process of selection and not *de hors* the RRs.

(B) It is a settled law that a contractual employee cannot be replaced by another contractual employee. This law was propounded by the Supreme Court in *State of Haryana and Others v. Piara Singh and Others*, (1992) 4 SCC 118, and has been consistently followed in several judgments. The Division Bench of this Court in *Narender Singh Ahuja and Ors. v. The Secretary, Ministry of Health and Family Welfare and Ors.*, 2014 SCC OnLine Del 2243, has held that employer cannot discontinue the services of contractual employee by replacing existing employees with another set of contractual employees. This position has been consistently reiterated in a number of judgments by the Supreme Court, this Court and the Central Administrative Tribunal, wherein contractual appointees have been protected. It is urged that the action of replacing contractual employees with contractual employees like the Petitioners, who have continuously worked for long periods, is prohibited by the binding dictum of the Supreme Court in *Secretary, State of Karnataka and Others v. Uma Devi (3) and Others*, (2006) 4 SCC 1 and *Kamlesh Kumar Vyas and Anr. v. State of Rajasthan and Ors.*, MANU/SCOR/10082/2015.

(C) Contracts of the Petitioners have been renewed from time to time and Petitioners cannot be removed without any plausible or just reason or without any cause for complaint, at the whims and fancies of the University, oblivious of the fact that Petitioners will lose their only source of livelihood. In *Commissioner, Kendriya Vidyalaya Sangathan and Others v.*

Anil Kumar Singh and Others, (2003) 10 SCC 284, the Supreme Court ruled that contractual employees can only be replaced with regular employees, as and when the regular process of recruitment starts and culminates. It is an undisputed position in the present case that the impugned advertisement is for employing a fresh set of employees on contract basis and is not for regular appointments. Petitioners have clearly stated in the writ petition that they are not seeking regularization and their contracts be renewed till they are replaced with regular appointees. It is an obligation of the State under Article 39-A of the Constitution of India to ensure that all citizens have equal rights to adequate needs of livelihood. Constitution guarantees social justice to all individuals and the impugned action of the University/DTTE will inevitably result in the Petitioners being replaced by contractual employees and loss of their livelihood at this stage of life, where they have no alternate source of income.

9. **CONTENTIONS ON BEHALF OF THE UNIVERSITY:-**

- (A) The impugned Notification does not in any manner prevent or preclude the Petitioners from applying to secure appointment as Master Trainers and in fact, pursuant to the liberty granted by the Court on 25.06.2021, they have applied and their results have been kept in a sealed cover.
- (B) Contention of the Petitioners that they are being replaced by another set of contractual employees, is factually incorrect and a misconception. University has invited applications from the public at large and every application will be considered on its own merit to select most suitable persons and there is no intent to oust the Petitioners, who will be given an equal chance to compete with other applicants. Article 14 of the Constitution

demands that there is an open advertisement giving equal chance to all those who apply and participate in a selection process and this would enable the University to get the best talent as Master Trainers.

- (C) There cannot be any debate on the proposition that one set of contractual employees cannot be replaced by another set of contractual employees, but this is not the situation in the present case as contracts of Petitioners have expired and in between, the University was incorporated in the year 2019. Insofar as reliance on the judgment in *Narender Singh Ahuja (supra)* is concerned, no doubt, the Special Leave Petition filed against the said judgment was dismissed on 26.03.2015, however, question of law was kept open. It is a settled law that wherein a *lis* the question of law is kept open by the Supreme Court, the underlying judgment loses its precedential value. The judgment in *Kamlesh Kumar Vyas (supra)* has been wrongly relied upon by the Petitioners as the said judgment was passed on a statement/concession by the counsel for the Respondent therein and cannot be considered as a binding judgment under Article 141 of the Constitution of India. Insofar as reliance on *Uma Devi (supra)* is concerned, the same is misplaced, since far from helping the case of the Petitioners, it is an authority for the proposition that when a person enters a temporary employment or gets engagement as a contractual or casual worker, he is aware of the consequences of the nature of appointment and cannot invoke the theory of legitimate expectation for confirmation in the post. It was further observed that in such a case, it cannot be held that State has held out any promise while engaging these persons, either to continue them

or make them permanent. None of the other judgments also help the Petitioners for the same reason.

(D) While the petition is drafted in a manner that it gives an impression that Petitioners are not seeking regularization but only renewal of the contracts, but the real motivation is to seek regularization and it is a settled law that law does not permit a person, to do indirectly something that cannot be done directly. The contractual appointments of the Petitioners have come to an end by efflux of time and any further direction to renew the contracts by the Court would be to enforce the contract of service, which cannot be done by a writ Court and/or would amount to granting regularization, which would be in the teeth of the several judgments of the Supreme Court, including the celebrated judgment of *Uma Devi (supra)*.

(E) Reliance is placed by the Petitioners on the judgment of the Supreme Court in *Piara Singh (supra)*, overlooking the fact that in the judgment itself, the Supreme Court has observed that each Government and Authority has to devise its own criteria or principle for regularization having regard to all relevant circumstances and no case can be the same. In *State of Jharkhand and Another v. Harihar Yadav and Others, (2014) 2 SCC 114*, the obiter observations of the Supreme Court are not dispositive of the questions of law arising in the present writ petition. The present case is a different case on facts as, here the contractual employees are not being replaced nor were the Petitioners appointed for a project, which is continuing as are the facts in the cases where the Courts have passed directions not to replace one contractual employee with the other.

(F) Reliance is placed on the judgment of this Court in *Shri Bhoop*

Singh & Ors. v. Chairman-cum-Managing Director North Eastern Electric Power Corporation Ltd. & Anr., W.P. (C) Nos. 6483/2014 and 4484/2014, decided on 19.05.2015, wherein this Court declined to grant relief to the Petitioners who were appointed as security guards by North Eastern Electric Power Corporation Limited, for taking them back into service and for quashing the orders of the Respondent declining to extend their contractual employments. Court declined relief on the ground that Petitioners were not employed against a project and they were employed under a fixed term, which contracts had come to an end by efflux of time. Court held that this was not the case where one set of contractual employees were being replaced by another set of employees and neither was it the case where it was an appointment for a project and the project was continuing. Judgment in the case of *Narender Singh Ahuja (supra)* is sought to be distinguished on the same argument.

(G) Reliance is also placed on the judgment of the Division Bench of this Court in *Union of India & Anr. v. Satish Joshi, 2013 SCC OnLine Del 3161*, for the proposition that no employee has a vested right to continue in employment, if the contract of employment has come to an end by efflux of time and cannot urge that his services are liable to be continued *de hors* the contract which he had voluntarily signed.

10. **CONTENTIONS ON BEHALF OF RESPONDENTS NO. 2 AND 3:-**

(A) Petitioners were engaged as Master Trainers by the answering Respondents on purely contractual basis at WCSC, Vivek Vihar and their contracts were renewed from time to time. After the 2019 Act came to be notified on 26.05.2020, the University was incorporated and vide a separate Notification, Respondent No. 2

published the approval for integration of the 6 WCSCs into the University for all academic and certification purposes. The contracts of engagement of the Petitioners clearly prescribed in clause 13 that *'the contract shall stand terminated automatically on expiry of the stipulated period if not extended prior to the stipulated date of expiry of the contract'* and the contracts have expired by efflux of time. Since the contracts had expired there was nothing that precluded the University from issuing the impugned Notification on 08.06.2021, prescribing General Instructions calling for applications for multiple positions as Master Trainers, on contractual basis.

- (B) The terms of the contracts of the Petitioners clearly provided that their engagement as Master Trainers will not entitle them to claim regularization either with DTTE or GNCTD on the basis of disengagement as these are not permanent posts. Clause 14 further provided that the contract could be terminated with immediate effect without assigning any reason by one month notice or payment of one month's consolidated remuneration in lieu thereof. Petitioners entered into the contracts with open eyes and knowing that these were not permanent appointments, but merely contractual and therefore cannot claim either regularization or even the right to renewal of contracts, in perpetuity. Reliance is placed on the following paras in *Uma Devi (supra)*:-

"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.

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47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging

these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

(C) Reliance is also placed on the judgment of the Supreme Court in

Vidyavardhaka Sangha and Another v. Y.D. Deshpande and Others, (2006) 12 SCC 482, wherein it was held as under:-

“4. It is now well-settled principle of law that the appointment made on probation/ad hoc basis for a specific period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post. In the instant case as noticed above, the respective respondents have accepted the appointment including the terms and conditions stipulated in the appointment orders and joined the posts in question and continued on the said posts for some years. The respondents having accepted the terms and conditions stipulated in the appointment order and allowed the period for which they were appointed to have been elapsed by efflux of time, they are not now permitted to turn their back and say that their appointments could not be terminated on the basis of their appointment letters nor they could be treated as temporary employees or on contract basis. The submission made by the learned counsel for the respondents to the said effect has no merit and is, therefore, liable to be rejected. It is also well-settled law by several other decisions of this Court that appointment on ad hoc basis/temporary basis comes to an end by efflux of time and persons holding such post have no right to continue on the post and ask for regularisation, etc.”

(D) Reliance placed by the Petitioners on the judgment of the Supreme Court in ***Piara Singh (supra)*** to the effect that contractual employee cannot be replaced by another contractual employee, is misplaced in the facts of the present case. The observations of the Supreme Court in the said case were in the specific context of prolonged continuation of employees on contractual basis against regular posts unlike the present case where the post of ‘Master Trainer’ is not a permanent or regular post and Petitioners have not been employed for long periods. Once the contracts of the Petitioners have expired by efflux of time, they cannot seek enforcement through this writ petition and the petition deserves to be dismissed.

11. I have heard learned counsels for the parties and examined their rival contentions.

12. It is an undisputed fact between the parties that the Petitioners were appointed as Master Trainers on contractual basis between 2015 to 2018 and their contracts were renewed from time to time, without any break. The appointments were on consolidated remuneration at the WCSCs. It is equally undisputed that 2019 Act came to be notified on 26.05.2020 and DTTE vide Notification dated 20.09.2021 published the approval granted by the GNCTD for integration of 6 WCSCs into the University for academic and certification purposes. Petitioners have also put forth that the said Notification categorically provided that 58 posts existing in the 6 WCSCs were *en-masse* shifted to the University and significantly this Notification was published by DTTE under the aegis of which the University functions, both administratively and financially. This fact is also fortified by the Notice dated 28.01.2021 issued by DTTE notifying the integration of WCSCs into the University including that of the movable assets as also the 58 sanctioned posts, on existing terms and conditions and at the initial stages, all members of WCSCs including the Petitioners were invited to a joint meeting. Relevant paras of the Notification dated 20.01.2021 and the Notice dated 28.01.2021 are as follows:-

“NOTIFICATION

20TH JANURARY 2021

F.1(235)/Inclusion of WCSC/DSEU/SB/DTTE/2020/104: In exercise of powers conferred under Clause (xix) of Section 6 of the Delhi Skill Entrepreneurship University Act, 2019 (Delhi Act 04 of 2020), the Government of NCT of Delhi vide Cabinet decision No. 2899 dated 13/11/2020 has approved the proposal for integration of six World Class Skill Centres as per list 1 and all upcoming World Class Skill Centers (excluding those which are being constructed on the campus of other Universities) as per list 2 into Delhi Skill and Entrepreneurship University for all academic and certification purposes. The Cabinet has also decided to transfer all moveable assets of the existing and the upcoming World Class Skill Centres to the DSEU on as is where is basis.

Further, with prior of Hon'ble Lt. Governor of Delhi, it has been decided to transfer 58 posts of existing 6 World Class Skill Centres to the Delhi Skill and Entrepreneurship University on the existing terms and conditions. The issue regarding transfer of land and building of World Class Skill Centres to DSEU will be finalized subsequently."

"File No. 1(20/DSEU/Misc./2021)

Date: 28.01.2021

NOTICE

The Delhi Skill and Entrepreneurship University (DSEU) came into existence on 15th August 2020 vide Notification dated 14.08.2020.

On 20th January, 2021, based on Cabinet Decision No. 2899 dated 13/11/2020 the Director (TTE) vide notification No. F.1(235) Inclusion of WCSC/DSEU/SB/DTTE/2020/104 notified the integration of six World Class Skill Centers and all upcoming World Class Skill Centres (excluding those which are being constructed on the campus of other Universities) into the Delhi Skill and Entrepreneurship University for all academic and certification purposes, including moveable assets and 58 sanctioned posts on existing terms and conditions.

The Hon'ble Vice Chancellor wishes to welcome all members and friends of the University for a Joint meeting at 11.30AM followed by a lunch on 02 February, 2021 at Integrated Institute of Technology Complex, Sector 9. Dwarka Delhi.

All members of World Class Skill Centres and Delhi Skill and Entrepreneurship University are requested to join the meeting as per the Schedule."

13. Order dated 08.02.2021 issued by WCSC, Dwarka shows that the stand of the Petitioners is also correct that all Master Trainers working at various WCSCs at that point of time were requested to report at Dwarka Centre for starting work on allocated work locations.

14. From a conjoint reading of the 2019 Act, Notification dated 20.01.2021 and the Notice dated 28.01.2021, it emerges that after a conscious decision was taken to integrate the 6 WCSCs into the University, not only the movable assets but all the 58 posts in the respective Centers were integrated into the University and the administrative and financial control is exercised by DTTE. The only question therefore that arises for consideration is whether after the

transfer of the posts from the WCSCs where the Petitioners were deployed, to the University *en-masse*, can the Petitioners lay the claim to renewal of their contracts based on the binding dictum of the Supreme Court that one set of contractual employees cannot be replaced by another set of contractual employees and the answer, in my considered view, is in the affirmative.

15. Indisputably, the impugned advertisement dated 08.06.2021 was published for inviting applications for contractual employments in various disciplines in the post of Master Trainers. It is not the case of the Respondents that the advertisement is for making regular appointments. Therefore, by virtue of this advertisement, the Respondents are seeking to fill the post of Master Trainers on 'contract' basis. The law on this issue is far too well-settled to even call for a discussion or debate. In *Piara Singh (supra)*, the Supreme Court held as follows:-

“45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

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50. The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that

category, class or service, as the case may be.”

(Emphasis Supplied)

16. In ***Hargurpratap Singh v. State of Punjab and Another, (2007)***

13 SCC 292, the Supreme Court held as follows:-

“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. In ***Mohd. Abdul Kadir and Another v. Director General of Police, Assam and Others, (2009) 6 SCC 611***, the Supreme Court held as follows:-

“17. When the ad hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad hoc appointments under schemes are normally coterminous with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularisation nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing the selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments.

18. We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and reappointment every year should be avoided and the appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, coterminous with the Scheme. The

Circular dated 17-3-1995 directing artificial breaks by annual terminations followed by fresh appointment, being contrary to the PIF Additional Scheme and contrary to the principles of service jurisprudence, is liable to be quashed.”

18. A similar issue came up before the Punjab and Haryana High Court in ***Malwinder Singh Mali v. Punjabi University, Patiala (through its Registrar), 1999 SCC OnLine P&H 1181***, where the Petitioner was appointed as a Public Relations Officer on ad-hoc basis for six months or till the filling up of the post on regular basis, whichever was earlier. Subsequently, an advertisement was issued for the post of Public Relations Officer along with other posts for filling up the post on regular basis. Petitioner also applied for the post and in the meantime, the terms of ad-hoc appointment of the Petitioner was extended by a period of six months. Petitioner had some grievance with the advertisement regarding the qualifications, which according to him, were tailormade to suit certain candidates. Petitioner also urged that his ad-hoc appointment should continue till regular appointment was made and the order by which his services were terminated be quashed. The High Court allowed the writ petition partly and the action of the University in curtailing the extension of the term was set aside with a direction to allow the Petitioner to continue on ad-hoc/temporary basis till the regular selection was made to the post of Public Relations Officer. Relevant part is as under:-

“6. The other prayer made in the writ petition is for quashing the order by which the services of the petitioner were terminated and the term of his extension curtailed till 31 December 1998. We find merit in this grievance of the petitioner. It has time and again been laid down by this Court that the services of an adhoc/temporary employee can be terminated only on account of unsatisfactory work or if the post is not available or when a regularly selected candidate becomes available for appointment. The services of an ad hoc employee cannot be terminated without any reason when the post continues to exist and the University itself has readvertised the same to fill it up on regular basis. An ad hoc employee cannot be allowed to be replaced by another ad hoc employee or by some one on officiating basis as that would smack of arbitrariness. Some

good reason has to be stated for terminating the services of an ad hoc temporary employee. The University being a statutory body is a "State" for purposes of Art. 12 of the Constitution and every action of it should be guided by public interest and if it is shown that the exercise of power is arbitrary, unjust or unfair, the same will have to be struck down. We see no reason why the service of the petitioner should have been terminated when the post was available and the University having granted extension to his tenure had to curtail the same when the Syndicate decided in the same very meeting that the post be filled up and it constituted a selection committee for the purpose. In the circumstances, the petitioner has a right to continue as a Public Relations Officer on ad hoc temporary basis till the University makes a regular selection. Since the services of the petitioner were terminated without assigning any valid reason the same is held to be illegal and arbitrary and is hereby quashed. The view that we have taken finds support from the judgments of this Court in the Rajni Bala case (vide supra), and Balwan Singh case (vide supra)."

19. In ***Pradeep Navinbhai Patel and Ors. v. State of Gujarat and Ors., 2014 SCC OnLine Guj 15846***, the High Court was seized of a controversy raised by the Petitioners that they were appointed for a period of 11 months on contractual/ad-hoc basis and therefore, till such time the regularly selected candidates are available, their services ought not to be terminated by other Assistant Professors/Lecturers on contractual/ad-hoc basis on the same terms and conditions. Challenge was also made to a fresh advertisement issued by the State for appointment of ad hoc Assistant Professors/Lecturers for a period of 11 months. It is also urged that Petitioners were holding requisite qualifications and there was no justification for the State Government to issue fresh advertisement for recruiting ad-hoc or contractual appointees against the posts occupied by the Petitioners. Relevant paras of the judgment are as follows:-

"33. This Court has carefully perused the judgments in the case of Secretary, State of Karnataka v. Umadevi (2) (Supra.) and Secretary, State of Karnataka v. Umadevi (3) (Supra.) as well as the judgment in Official Liquidator v. Dayanand (Supra.) and Maharashtra State Road Transport Corporation v. Casteribe Rajya Parivahan Karmchari Sanghatana (Supra.). In the case of Secretary, State of Karnataka v. Umadevi (2) (Supra.), a

reference was made to a Larger Bench of the Supreme Court regarding the issue whether employees appointed by the State or its instrumentalities on temporary or casual basis, or on daily wage, have a right to approach the High Court for issuance of a Writ of Mandamus directing that they may be made permanent or absorbed in the posts on which they are working. In paragraph 26 of *Secretary, State of Karnataka v. Umadevi (3) (Supra)*, the Constitution Bench of the Supreme Court did not approve of the principles of law laid down in paragraph 50 of *State of Haryana v. Piara Singh (Supra)*, to the extent that directions issued to the States to prepare a scheme for regularization of the temporary or casual or daily wage workers. The reference to the Constitution Bench was regarding regularization of such employees and to that extent the principles of law laid down in *State of Haryana v. Piara Singh (Supra)*, have been overruled by *Secretary, State of Karnataka v. Umadevi (3) (Supra)*, in paragraph 50 regarding touching upon the regularization of temporary/casual workers and daily wagers have been overruled. However, the principle of law enunciated in the judgment of *State of Haryana v. Piara Singh (Supra.)*, that adhoc employees should not be replaced by another adhoc employees has not been overruled. The judgment of *State of Haryana v. Piara Singh (Supra)*, as a whole, has not been overruled and the principles of law laid down to the effect that adhoc employees should not be replaced by other adhoc employees still holds good.

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36. The principles settled in the decision of *Secretary, State of Karnataka v. Umadevi (3) (Supra)*, are those pertaining to regularization of temporary/casual/daily wage workers. Having regard to the above, this Court is inclined to agree with the submissions advanced by learned Senior Counsel for the petitioners that the principle of law laid down in *State of Haryana v. Piara Singh (Supra)*, that adhoc employees ought not to be replaced by another set of adhoc employees, but only by regularly selected candidates, has not been diluted and still holds good.

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38. It appears from the submissions made on behalf of the GPSC that the requisition for filling up regular posts has come from the State Government on 07.08.2013. The procedure for regular recruitment is still underway and, as per the submissions made by Mr. D, G. Shukla, learned Advocate for the GPSC, it may take another 10 to 12 months to complete the same. It may be true that the petitioners do not have any permanent right to the posts that they are occupying on adhoc basis; however, it is difficult to understand what rational purpose would be served in terminating the services of the petitioners and engaging fresh adhoc persons for eleven months. Such action would be in contradiction to the principle of law laid down in the case of *State of Haryana v. Piara Singh (Supra.)* as quoted in the judgment of *Secretary, State of*

Karnataka v. Umadevi (3) (Supra.). Moreover, it would lead to multifarious litigation, as is already the case.

39. *As has been submitted on behalf of the petitioners, the challenge in the present petitions is limited only to the extent of the termination of the services of the petitioner to make way for another set of adhoc employees. It does not extend to those Assistant Professors/Lecturers, who may have been appointed in the Government Engineering Colleges and Government Polytechnics, pursuant to the advertisement dated 15.08.2013, or to any other vacant posts.*

40. *Accordingly, as a cumulative effect of the above discussion and for reasons stated hereinabove, and in view of the judgment of the Division Bench dated 07.09.2011 passed in Letters Patent Appeal No. 2986/2010 and connected matters, the petitions are partly allowed to the extent that the services of the petitioners as Assistant Professors/Lecturers on temporary/contractual basis in Government Engineering Colleges and Government Polytechnics shall not be terminated, till regularly selected candidates by the GPSC are available. It is clarified that this judgment shall not confer any right upon the petitioners to the posts on which they are working, after the regularly selected candidates through the GPSC are available.”*

20. To the same effect is the judgment of this Court in ***Abhinav Chaudhary & Ors. v. Delhi Technological University & Anr., 2015 SCC OnLine Del 6780***, wherein the writ petition was filed impugning the action of the Delhi Technological University, refusing to extend contractual appointments of the Petitioners and issuing a fresh advertisement for fresh appointment of contractual basis for the posts in question. As captured in the judgment, the only grievance of the Petitioners was that a contractual appointee cannot be replaced by another contractual appointee and reliance was placed on the judgment of the Supreme Court in ***Piara Singh (supra)*** as well as other judgments on the issue. The Court after hearing the parties held as follows:-

“5. In view of the above, the case of the petitioners clearly falls within the ratios of the judgments of the Supreme Court in the cases of Piara Singh, Umadevi and Mohd. Abdul Kadir (all Supra) and since one contractual employee cannot be replaced by other contractual employee, and which action will show gross arbitrariness on the part of the respondent no. 1, the present writ

petition is allowed and respondents are restrained from in any manner terminating the services of the petitioners from the contractual posts of Assistant Professors at which they are working with the respondent no. 1/employer. Of course, this will not disentitle the respondent no. 1 to appoint any additional Assistant Professors with the respondent no. 1 in accordance with its applicable rules or issue fresh advertisements having contractually substantially different terms than what the petitioners are presently working at.”

21. Counsel for the Petitioner has relied on several judgments, of this Court and the Central Administrative Tribunals, wherein reliefs have been granted to contractual employees, following the principle elucidated by the Supreme Court in **Piara Singh (supra)**, however, this Court does not find the necessity to refer to all of them and burden this judgment as the principle is well-settled in **Piara Singh (supra)**. Relevant would it be to refer to the judgment in **Harihar Yadav (supra)**, wherein the Supreme Court held that both States and Corporations have conveniently ostracized the concept of ‘model employer’ and that it would not be wrong to say that they have done so with pacific calmness, sans vision, shorn of responsibility and oblivious of their role in such a situation. Neither have the States nor the Corporations thought even for a moment of the livelihood of these employees. It is imperative for justice that a contractual employee be not replaced by another contractual employee leading the former in a despicable and abandoned state.

22. The crucial fact that needs to be highlighted in the present case is that at the time when the Petitioners came to be appointed, no regularly selected candidates were available and/or appointed to the post of Master Trainer and additionally, even today the advertisement impugned herein is not for appointment on regular basis and significantly, Respondents through the impugned advertisement seek appointment of Master Trainers only on contract basis. Therefore, it is not the case where Respondents have decided to replace the

Petitioners with regular set of employees and the advertisement clearly reflects that it is to replace Petitioners with another set of contractual employees on the same terms and conditions as the Petitioners and concerned posts have been transferred *en-masse* from the WCSCs to the University. While there cannot be a quarrel with the proposition that being contractual employees, Petitioners cannot claim a permanent right to the posts and as and when regular appointment process is initiated, at best, they would be entitled to a right to apply and consideration as per law, given that they are otherwise eligible. Petitioners have averred at several places in the writ petition that they are not seeking regularization but only seek to continue till they are replaced by regular appointees and this position was reiterated by counsel for the Petitioners during the course of hearing. The scope of the present writ petition is, therefore, in a narrow compass as noted above, as to whether their services can be replaced by another set of contract employees, which the Respondents seek to do through the impugned advertisement and the answer can only be an emphatic 'No'. In view of the binding dictum of the Supreme Court in *Piara Singh (supra)*, in my view, the action of the Respondents to replace the Petitioners is totally untenable and unsustainable in law.

23. Much was argued by counsel for the Respondents that the judgment in *Uma Devi (supra)* supports the case of the Respondents and rules against the contentions of the Petitioners. This contention, in my view, merits rejection. The principle settled in the decision of *Uma Devi (supra)* was primarily with respect to regularization of temporary/casual/daily wager employees and does not deal with the principle of law settled by the Supreme Court in *Piara Singh (supra)* i.e. contract/ad-hoc employees cannot be replaced by another set of contract/ad-hoc employees but only by regularly selected candidates

and this principle has not been diluted in *Uma Devi (supra)* or thus far by any other judgment of the Supreme Court or a Bench of equal or larger strength and still holds good. Counsel for the Respondents has tried to distinguish the judgment in the *Narender Singh Ahuja (supra)* of the Division Bench of this Court by urging that the judgment was carried in appeal to the Supreme Court and while the SLP was dismissed in *limine*, the question of law was left open and therefore, it is no longer open for the Petitioners to rely on the judgment which has lost its precedential value. The argument does not in any way inure to the advantage of the Respondents since the case of the Petitioners is based on the binding dictum of the Supreme Court in *Piara Singh (supra)* and therefore, even if the question of law is kept open, Respondents have been unable to show any judgment of the Supreme Court which lays the law contrary to the one propounded in *Piara Singh (supra)*. In *Vidyavardhaka Sangha (supra)*, the Supreme Court has held that appointments made for a specified period of time come to an end by efflux of time and persons holding the posts cannot have any right to continue. The question that arises in the present petition of replacement of a contract employee with another contract employee was not the issue arising for consideration in the said case and the judgment is thus distinguishable on the facts. The judgment in *Shri Bhoop Singh (supra)* was on a different conspectus of facts. In the said case, the Petitioners were sought to be replaced by outsourcing the work of security to an outside agency and the Court held that while there is no dispute to the proposition of law that one set of contract employees cannot be replaced by another set of contract employees, however, it is different where the employer changes the method of security by giving the responsibility to a security agency specialized in the field and where the terms of engagement of the new

employees are wholly different. A bare reading of the facts in *Satish Joshi (supra)* shows that the question for consideration before the Division Bench of this Court was whether the Respondent therein had a vested right in continuing with his employment once the contract came to an end by efflux of time and the issue that arises in the present case was not even remotely the question before the Division Bench i.e. replacement of a contract employee by another contract employee.

24. Accordingly, it is directed that the Petitioners shall be re-engaged by the Respondents by renewing their contracts and their services shall not be dispensed with till regularly selected candidates join the posts in question. It is made clear that this judgment does not confer any rights upon the Petitioners to continue after the regularly selected candidates are appointed and nor should the observations of the Court be construed to mean or connote that the Court has conferred the status of regular employees on the Petitioners.

25. Writ petition is allowed and disposed of along with pending applications, in the aforesaid terms.

JYOTI SINGH, J

MARCH 21, 2023/shivam