



Neutral Citation Number:2023:DHC:4455-DB

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

Judgment reserved on: 23.05.2023

% **Judgment delivered on: 03.07.2023**

+ **LPA 28/2022 & CM APPLs. 1759/2022, 24663/2023**

SUMIT SOLANKI Appellant

Through: **Mr. Jatin Bhardwaj, Advocate**

versus

ENERGY EFFICIENCY SERVICES LIMITED Respondent

Through: **Mr. Samdarshi Sanjay, Mr. Ashish Kumar Sharma, Advocates for R-1
Mr. Kirtiman Singh, Mr. Waize Ali Noor, Mr. Madhav Bajaj, Ms.Durgesh Nandini, Mr. Yash Upadhyay, Ms.Shreya Mehra, Advocates for R-2**

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present Appeal is arising out of a judgment dated 01.01.2021 passed by the Learned Single Judge in W.P.(C.) No. 7797/2020 titled



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Mahendra Singh & Ors. Vs. Energy Efficiency Services Ltd & Anr., by which the writ petition preferred by the Petitioner claiming absorption in the services of Energy Efficiency Services Limited (herein after to be referred as 'EESL') has been denied.

2. The facts of the case reveal that the present Appellant along with other persons totalling to 64 who were appointed in 2016 and 2017 and were working as Junior and middle level executives and non-executives, came up before this Court claiming absorption. A prayer was also made for quashment of an advertisement dated 15.10.2019 issued for the purposes of direct recruitment on regular basis. The Appellant contended before the Learned Single Judge that an advertisement was issued on 07.03.2016 inviting applications for the post of Engineer Technical on fixed term basis. The Appellant along with other persons applied for the tenure post and a written examination took place on 29.05.2016.

3. The Appellant was informed vide E-mail on 06.07.2016 that they have been successful in the written examination and they were called for group discussion/ interview. The Appellants in the month of July 2016 appeared for interview/ group discussion and finally appointment orders were issued on 08.09.2016 as well as on other dates appointing the Appellants as a fixed tenure employee. The Appellant before this Court who was a fixed tenure employees appointed in the 2016-2017 started claiming regularization on the basis of recruitment policy framed by EESL on the subject.



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4. The facts of the case further reveal that the process of regularization was initiated by the Respondents and the Appellant was informed vide E-mail dated 20.06.2019 regarding the date of interview to be held on 25.06.2019 and 26.06.2019. Interviews were also conducted for 118 fixed tenure employees including the Appellant on 25.06.2019 and 26.06.2019.

5. The contention of the Appellant is that while the process of regularization were going on, the Vigilance Department submitted a note on 08.08.2019 in the matter of regularization of outsourced manpower/ fixed term employees and sought permission to investigate the matter further.

6. The EESL at that point of time after receiving inputs from the Vigilance Department immediately stopped the process of regularization and took a policy decision to issue a fresh advertisement for recruitment of 235 regular posts. The advertisement was issued on 15.10.2019. The date of examination was fixed on 13.03.2020.

7. The Appellants along with other preferred a Writ Petition being aggrieved by their non-absorption as well as being aggrieved by advertisement dated 15.10.2019 came up before this Court by filing a Writ Petition *i.e.*, W.P.(C.) No. 7797/2020 and the same was dismissed by the Learned Single Judge on 12.10.2020 on the ground of delay and laches.

8. An Appeal was preferred against the judgment dated 12.10.2020 and the same was registered as LPA 307/2020. The Division Bench *vide* order dated 08.01.2021 remanded the matter back to the Learned Single Judge to



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decide the issue on merits with reference to prayer 'b' after counter affidavit is filed in the matter.

9. The Respondent EESL filed a counter-affidavit, and rejoinder was also filed in W.P.(C.) No. 7797/2020, and Learned Single Judge after hearing the parties at length again dismissed the Writ Petition holding that the fixed tenure employees who were contractual employees and have put in 4.5 years of service, are not entitled for regularization and the verity of advertisement issued for direct recruitment has been upheld.

10. Learned Counsel for the Appellant/ Petitioner has vehemently argued before this Court that the Appellant though was appointed on fixed tenure basis, he is entitled for regularization keeping in view the recruitment policy of EESL. Once the process of absorption was started by the management, by no stretch of imagination, it could have been abandoned mid-way. He has vehemently argued before this Court that the fresh advertisement issued for appointing regular employees is bad in law as the right created in favour of the Appellants cannot be extinguished in the matter of regularization.

11. Learned Counsel for the Appellant has vehemently argued before this Court that the initial appointments of the Appellant as fixed tenure employee in the year 2016 was done based upon a regular selection process and by no stretch of imagination, it can be said that their appointment was illegal or irregular. He has vehemently argued that pursuant to an all India public advertisement dated 07.03.2016, applications were invited, competitive



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examination was held and appointment orders were issued for a period of 4.5 years. Therefore, the appointments were neither illegal nor irregular.

12. Learned counsel for the appellant has placed heavy reliance upon a judgment delivered in the case of *State of Karnataka v. Umadevi and Others*, (2006) 4 SCC 1. His contention is that in light of the judgment delivered in the case of *Umadevi* (supra), the Appellants cannot be denied relief as it is a case of regular appointment through a process of selection.

13. Learned Counsel for the Appellant has also placed heavy reliance upon a judgment delivered in the case of *State Bank of India Vs. Dharmendra Prasad Singh & Ors.* SCC OnLine Del 14621.

14. Learned Counsel for the Appellant has also vehemently argued before this Court that the recruitment policy provides for regularization of fixed term/ contractual employees, and, therefore, keeping in view Rule 9.1 of the recruitment policy, the process of regularization/ absorption was initiated on 03.06.2019, and the same should have been concluded. He has further submitted that the process of absorption was not at all arbitrary and it was unreasonably cancelled, thereby, violating the fundamental rights guaranteed to the appointments under Article 14 of the Constitution of India.

15. Learned Counsel for the Appellant has vehemently argued before this Court that the Appellants had a legitimate/ reasonable expectation of being absorbed as regular employees, and once the process was initiated, the same



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could not have been cancelled and, therefore, cancellation of the process is arbitrary and the Appellant is entitled for regularization.

16. Heavy reliance has also been placed upon a judgment delivered in the case of *State of Jharkhand Vs. Brahmputra Metallics Ltd.*, 2020 SCC OnLine SC 968 on the doctrine of substantive legitimate expectation.

17. Learned Counsel for the Appellant has further submitted that once the process of absorption was initiated, it was arbitrarily cancelled on 13.08.2019 based upon the vigilance note dated 08.08.2019, and the Vigilance Department was not the competent authority to advise cancellation of the process of absorption. He has further stated that the CVO raised certain doubts in respect of those employees who were appointed without any competitive examination, and, therefore, by no stretch of imagination, the process of absorption initiated could not have been cancelled in the manner that it has been done.

18. It has been further stated that the vigilance note never advised cancellation of the ongoing absorption process, and, therefore, as the Appellant has put in 4.5 years fixed tenure, he is entitled for absorption keeping in view the absorption policy issued by the Organization in question.

19. It has been further stated that the subsequent advertisement issued on 15.10.2019 for appointment on regular post has been subsequently cancelled on 18.05.2022 and no regular appointment has been made in the



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Organization. Therefore, the Respondents cannot abandon the process of absorption on the ground that they are recruiting fresh persons as direct recruitments on regular basis.

20. It has also been stated by Learned Counsel for the Appellant that the plea of the Organization in respect of financial crunch/ distress cannot help the Respondents in any manner as it is settled proposition of law that financial crunch/ distress of State cannot by itself sustain a State action if it is otherwise illegal and in violation of Article 14 of the Constitution of India. Heavy reliance has been placed upon a judgment delivered in the case of *Arjun Ahluwalia Vs. Air India Limited*, 2021 SCC OnLine Del 3035.

21. Reliance has also been placed upon a judgment delivered in the case *Mohinder Singh Gill Vs. Chief Election Commr.*, (1978) 1 SCC 405.

22. Learned Counsel for the Appellant has vehemently argued before this Court that once the process was initiated and the policy relating to recruitment also provides for absorption, the process of absorption which was initiated could not have been abandoned by the Organization and in all fairness, the Appellant Employees should have been regularized/ absorbed in view of the absorption policy.

23. He has prayed for absorption in the services of Respondent Organization and a prayer has been made to set aside the judgment passed by the Learned Single Judge.



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24. Learned Counsel appearing on behalf of the Respondents has vehemently argued before this Court that the Appellants were appointed as fixed tenure employees on contractual basis for 4.5 years, and in the appointment letter dated 13.10.2016 under Clause 8, it was categorically mentioned that the fixed tenure employees will not claim any right for regularization/ absorption in the regular roles of EESL.

25. The Respondents have admitted that the process of absorption was initiated for absorption of contractual employees, however, the recruitment policy is to enable the organization to meet the challenges, attract, motivate and retain talent from all sectors and create a continuous source of trained professionals for meeting the fast growing needs of the organization in a changing business scenario. It was further submitted that a consulting agency PWC was engaged to provide inputs on requirement of dynamic and common pool of resources and need of more employees and the PWC had submitted a report that the business growth of the organization as envisages different and new streams with short life span of projects and foray into both National and International market. On comprehensive manpower study, it was revealed that it is crucial for the Organization to empower regional offices and create common pool of resources which focus on multi-tasking and multi-skilling of employees in every dynamic work situation and in those circumstances, there is a need of open competitive examination, to have skilled manpower in pool.



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26. The Respondents have further stated that after issuance of fresh advertisement dated 15.10.2019, all the Appellants/ Petitioners have participated in the process of selection for regular appointment barring one Writ Petitioner who could not participate on account of being unwell and for internal candidates including outsourced employees, age relaxation was provided as under:

“(i) Age relaxations, subject to fulfillment of other eligibility criteria;

(ii) For technical position, equivalent engineering qualifications;

(iii) For Non-technical positions part time qualification/distance learning courses;”

27. Learned Counsel for the Respondents has vehemently argued before this Court that in the matter of public employment regularizing contractual employees or back-door entrants is, in fact, violating the constitutional rights guaranteed to other citizens under Article 14, 16 and 21 of the Constitution of India. The initial advertisement issued on the subject on the basis of which the Appellant were appointed as fixed tenure employees was for a tenure for 4.5 years, and, therefore, as it was a fixed tenure contractual appointment, other eligible candidates opted not to apply for the post as it was a contractual post. Had it been a case of regular appointment, all eligible candidate would have submitted their applications, and, therefore, by regularizing contractual employees, the Respondents cannot deprive a



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large section of society who are otherwise qualified in the matter of public employment.

28. It has been vehemently argued before this Court that keeping in view the terms and conditions of the appointment order specially as contained under Clause 8 of the appointment order, the Appellants do not have a right for regularization, and it was made clear to them that they are not entitled to claim regularization/ absorption in the regular roles of EESL.

29. The Respondents have prayed for dismissal of the Writ Petition.

30. This Court has carefully gone through the order passed by the Learned Single Judge, heard the Learned Counsel for the Parties and has also taken into account the written submissions submitted by the Learned Counsel for the Petitioner. The undisputed facts of the case makes it very clear that recruitment advertisement was issued inviting applications for various posts at EESL on 07.03.2016. The relevant extract of the advertisement is reproduced as under:

नस्यमेव जयते



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Energy Efficiency Services Limited
(A JV of PSUs of Ministry of Power, Govt. of India)
A-13, 4th Floor, IWAI Building, Sec-1, Noida-201301

Creating an Energy Efficient World

Advt Ref No. : EESL/ 0320/05

Dated 7th March, 2016**RECRUITMENT FOR VARIOUS POSITIONS AT EESL**

In order to develop a viable ESCO industry, Ministry of Power has set up Energy Efficiency Services Limited (EESL), a Joint Venture of NTPC Limited, PFC, REC and POWERGRID to facilitate implementation of energy efficiency projects. Within very few years of its existence, EESL has made rapid strides in the area of Demand Side Management. Besides, being a leader in the arena, the company is now becoming a household name through its energy efficiency initiatives. The company is now entering into a new phase of growth through diversification of its activities.

In order to add impetus on its growth path, Energy Efficiency Services Limited is looking for bright, committed and energetic individuals, at various executive and non-executive positions as detailed below:

REGULAR EXECUTIVE POSITIONS**NO. OF VACANCIES - 19**

Sl	Position, Grade and IDA Pay Scale (in Rs.)	Upper Age Limit on 01.03.2016	Min. Qual.	Post-Qualification Executive Experience in relevant area	No. of Posts/ Category
1	Deputy Manager (Fin) E3, 29100-54500	37 Years	CA/ ICWA	4 years	3 UR, 1 OBC
2	Assistant Manager (Fin) E2, 24900-50500	37 Years	CA/ ICWA	2 Years	1 UR
3	Assistant Manager (Tech) E2, 24900-50500	37 Years	Bachelor in Engineering /Technology (Full Time) preferably with MBA (Marketing/ Fin) and/or Certificate of Energy Auditor/ Energy Manager from BEE	2 Years	2 UR



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Sl	Position, Grade and Pay Scale (in Rs.)	Upper Age Limit on 01.03.2016	Min. Qual.	Post-Qualification Executive Experience in relevant area	No.of Posts/ Category
4	Assistant Manager (IT) E2, 24900-50500	37 Years	BE/B. Tech.in Engineering (Computer Science/IT)/ MCA (Full Time)	2 Years	1 UR
5	Assistant Manager (HR) E2, 24900-50500	37 Years	MBA/PG Diploma/ MSW (full time) with Specializion in HR	2 Years	1 UR
6	Assistant Manager (Contracts) E2, 24900-50500	37 Years	Bachelor in Engineering / Technology (full time) preferably with two years PG Diploma/ MBA in Materials Mgmt. From recognised University/ Institute	2 Years	3 UR
7	Officer (HR) E1, 20600-46500	37 Years	MBA/PG Diploma/ MSW (full time) with Specializion in HR	1 Year	1 UR
8	Engineer (IT) E1, 20600-46500	37 Years	BE/B. Tech.in Engineering (Computer Science/IT)/ MCA (Full Time)	1 Year	1 UR
9	Officer (Finance) E1, 20600-46500	37 Years	CA/ ICWA	1 Year	3 UR, 1 SC, 1 OBC
Total Nos.					19

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Signature Not Verified

Digitally Signed
By: BHUPINDER SINGH
ROHELLA
Signing Date: 04/07/2023
15:49:22

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REGULAR NON-EXECUTIVE POSITIONS**NO. OF VACANCIES - 5**

Sl	Position, Grade and Pay Scale (in Rs.)	Upper Age Limit on 01.03.2016	Min. Qual.	Post-Qualification Experience in relevant area	No.of Posts/ Category
1	Assistant (General) W3, 11500-26000	30 Years	Graduate preferably with MBA	4 Years	2 UR, 1 OBC
2	Assistant (Finance) W3, 11500-26000	30 Years	B.Com preferably with CA/ICWA/ MBA(Fin)	4 Years, Post Experience; Qualifaction can be relaxed in case of CA/ICWA qualified candidates	2 UR
Total Nos.					5

FIXED TENURE EXECUTIVE POSITIONS : FOR 4.5 YEARS**NO. OF VACANCIES - 57**

Sl	Position and Pay Package p.m.(in Rs.)	Upper Age Limit on 01.03.2016	Min. Qual.	Post-Qualification Executive Experience in relevant area	No.of Posts/ Category
1	Dy. Manager -Tech., (on Fixed Tenure basis for 4.5 years) Rs.70000 p.m.	37 years	Bachelor in Engineering/Technology (Full Time) preferably with MBA (Marketing /Fin) and/or Certificate of Energy Auditor/ Energy Manager from BEE	4 years of post-qualification experience	3 UR, 4 OBC, 1 SC, 1 ST
2	Dy. Manager -Fin., (on Fixed Tenure basis for 4.5 years) Rs.70000 p.m.	37 years	CA/ICWA	4 years	2, UR



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Sl	Position and Pay Package p.m.(in Rs.)	Upper Age Limit on 01.03.2016	Min. Qual.	Post-Qualification Executive Experience in relevant area	No.of Posts/ Category
3	Assistant Manager (Tech), (on Fixed Tenure basis for 4.5 years) Rs.60000 p.m.	37 Years	Bachelor in Engineering/Technology (Full Time) preferably with MBA (Marketing /Fin) add/or Certificate of Energy Auditor/ Energy Manager from BEE	2 Years	4 UR, 1 OBC, 1 ST
4	Assistant Manager (Finance Mgmt.) (on Fixed Tenure basis for 4.5 years) Rs.60000 p.m.	37 Years	CA/ICWA/ MBA(Finance)	2 Years	2 UR
5	Engineer (Tech) (on Fixed Tenure basis for 4.5 years) Rs.50000 p.m.	37 Years	Bachelor in Engineering/Technology (Full Time)	1 Year	13 UR, 10 OBC, 6 SC, 3 ST
6	Officer (Finance Mgmt) (on Fixed Tenure basis for 4.5 years) Rs.50000 p.m.	37 Years	CA/ICWA/ MBA(Finance)	1 Year	4 UR, 1 OBC
7	Officer (HR) (on Fixed Tenure basis for 4.5 years) Rs.50000 p.m.	37 Years	MBA/PG Diploma/ MSW (full time) with Specialization in HR	1 Year	1 UR
Total Nos.					57



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FIXED TENURE NON-EXECUTIVE POSITIONS : FOR 4.5 YEARS**NO. OF VACANCIES -15**

Sl	Position and Pay Package p.m.(in Rs.)	Upper Age Limit on 01.03.2016	Min. Qual.	Post-Qualification Executive Experience in relevant area	No.of Posts/ Category
1	Assistant (General) (on Fixed Tenure basis for 4.5 years) Rs.25000 p.m.	30 Years	Graduate preferably with MBA	4 Years	3 UR, 1 OBC
2	Assistant (Finance) (on Fixed Tenure basis for 4.5 years) Rs.25000 p.m.	30 Years	B.Com preferably with CA/ICWA	4 Years, Post Qualification Experience; can be relaxed in case of CA/ICWA qualified candidates	3 UR
3	Data Entry operators (on Fixed Tenure basis for 4.5 years) Rs.20000 p.m.	30 Years	12 th Pass, Preferably Graduate with working knowledge of MS Office	1 Year in relevant field	4 UR, 2 OBC, 1 SC, 1 ST
Total Nos.					15

TOTAL NO.OF VACANCIES: 96

The schedule of events shall be as under:

SCHEDULE OF EVENTS (TENTATIVE)

Start date for Online Registration of Applications	25 March 2016
Last date for Online Registration	16 April 2016 upto 23:59 hrs.
Start Downloading Admit cards (Tentative)	29 April 2016
Written Exam (Tentative)	29 May 2016



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31. The aforesaid advertisement makes it very clear that it was a combined advertisement inviting application for regular executive positions as well as fixed tenure positions. The tenure fixed in respect of fixed tenure positions was 4.5 years.

32. It is an undisputed fact that the Appellant applied against the open advertisement dated 07.03.2016, and an examination took place on 29.05.2016. The Appellant after the process of selection was issued an appointment order and one such sample of appointment order dated 08.09.2016 is reproduced as under:

“Ref. No.: EESI4/0320/4060

Date: 08/09/2016

*To,
Mr. Sumit Solanki
Village Jajmakhedi
Teh. Manwar
Madhya Pradesh Dhar 454446*

Sub: Offer of appointment for the post of Engineer (Technical) (OBC) on Fixed Tenure Basis.

With reference to the interviews held in July 2016, we are pleased to offer you engagement in Energy Efficiency Services Limited (EESL) at the post of Engineer (Technical) (OBC) as per the terms and conditions detailed below:

- 1. Your engagement at EESL is on fixed tenure basis for a period of 4 1/2 years commencing from the date of your assumption of duties at EESL.*
- 2. Your initial place of posting would be Chhattisgarh, however, based on management decision you can be posted anywhere in India.*



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3. *Your salary structure is as per enclosed Annexure-I. Accordingly you would be covered under Contributory Provident Fund & Medclaim policy through EESL effective from the date of joining.*
4. *No other pay, allowance or benefit, except those specified, will be admissible to you.*
5. *Your performance will be evaluated on yearly basis, and accordingly, may be continued or terminated by giving one month notice in writing on either side or payment in lieu thereof. However, in case of serious lapses in conduct / performance, the EESL management reserves the right to terminate your services without any notice.*
6. *The job may require travelling and/or deputation at Project Site(s) anywhere in India for which you would be eligible for TA/DA at El Level of EESL.*
7. *You will be granted total 02 (two) days of leave every month, which will be credited to you biannually. The leaves will be carried forward in the next calendar year. For part of the year, proportionate leave will be credited.*
8. *You may note that your engagement at EESL is on fixed tenure basis and you will not have any claim whatsoever for regularization / absorption in the regular roles of EESL.*
9. *If any information furnished by you is found incorrect at any point of time during your tenure, your engagement is liable to be terminated forthwith.*
10. *In addition to the above, you will be required to perform all such duties which will be assigned to you by the Competent Authority from time to time.*

It may please be noted that this offer of appointment is subject to your medical fitness. A proforma of Medical Fitness Certificate is enclosed. You are requested to get yourself medically examined and obtain a Medical Certificate in the enclosed format from a Registered Medical Practitioner not below the rank of MBBS and submit the same on your joining.



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You are required to report at Corporate Office, Noida on 30th September, 2016 for completion of joining formalities. In case of unavailability to join on 30th September,2016, you may join within 30 days from the receipt of Offer Letter. You shall bring photocopies of the certificates in support of your qualification and experience and submit the same at the time of joining duty. You are also required to submit a declaration and also details of two references in the enclosed format. After completion of joining formalities on 30/09/2016, you will be undergoing induction training from 03/10/2016 to 14/10/2016 at Noida whereafter you will have to report for duty at your place of posting.

Yours faithfully.

-sd-

(Renu Kargeti)

Assistant Manager (HR)”

33. The Appellant was required to sign an acceptance of offer in response to their appointment order and the acceptance of offer is reproduced as under:

“ACCEPTANCE OF OFFER

I acknowledge the receipt of the offer of engagement in EESL, bearing Ref. No. _____ dated - _____ for the post of _____.

I accept the terms and conditions of the proposed offer and confirm that I would report for duty in EESL on _____.

Signed by me on this _____ day of _____ month, 2016.

Signature:_____

Name:_____

Address:_____



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Phone (with STD code): _____

Mobile Number: _____

To

Sudeep Bhar, DGM, (HR),
Energy Efficiency Services Limited,
A-13, 4th Floor, IWAI Building,
Sec-1, Noida-201301.”

34. The Appellant before this Court, though he was appointed as fixed tenure employee, started claiming regularization/ absorption keeping in view the recruitment policy and procedure.

35. It is true that the recruitment policy does provide for absorption in respect of fixed tenure employees subject to certain terms and conditions. The Rule 9 of the recruitment policy is reproduced as under:

“9.0 Sources and Modes of Recruitment

9.1 For recruitment of professional personnel in Company’s executive cadre including executive trainees, selection will be made on an all-India basis and for this purpose, the posts to be filled will be duly notified through press advertisements and Company Notice Boards and/or through circulars issued to Government Departments and Public Sector Undertakings where suitable candidates of the required expertise are expected to be available. The selection of candidates for the senior positions of E4 and above would be on the basis of interviews of shortlisted candidates based on merit. In case of recruitment to the posts of E3 and below the criteria would be - In case the ratio of vacant position to the number of applications is more than 1:15 then a written exam shall be conducted, which shall be followed by Group



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Discussion/Interview. Group Discussion shall be conducted when the ratio of Posts to candidates is more than 1:9.

9.2 In respect of recruitment to non-executive posts of the levels of W6/S0 and below, all vacancies will be notified to the Employment Exchanges in terms of Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and also through press advertisements. For final selection, a written exam shall be conducted in case of Workmen cadre. However, in the case of the Supervisory cadre, written exam shall be conducted, in case the ratio of vacant position to the number of applications is more than 1:15, which shall be followed by Group Discussion/Interview. Group Discussion shall be conducted when the ratio of Posts to candidates is more than 1:9.

9.3 In addition to the above, induction of executive and specialist nonexecutive personnel may be made as deemed necessary and appropriate by the authority competent to create the posts from one or more of the following sources:

(a) Deputation from Central/ State Government/Electricity Boards and Public Sector Organisations where suitable personnel on terms offered by the Company may not be available at the right time from other sources and where the time and cost involved in processing recruitments through open advertisements may not be justified in view of the number or nature of posts to be filled.

(b) Campus interview and recruitment in the level of E1 grade or below and the post of Executive Trainees/Supervisor trainees from reputed Engineering/Management/Polytechnic institutions, may also be resorted to. Colleges should be selected on Region-wide basis on specific criteria advertised on open press advertisement. List of such colleges from which



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Campus recruitment is proposed, shall have to be approved by the Chairman with information to the Board of Directors.

(c) Through absorption of Fixed Tenure Employees in regular scales, when they have completed minimum one year of service in EESL, provided their performance has been satisfactory and their PMS score is not less than Excellent or equivalent. However, they shall have to meet the minimum eligibility criteria as described under Schedule II. They shall have to appear for interview before duly constituted committee and score more than 75% marks. In case the concerned Fixed Tenure Employees do not fulfill the post experience criteria, they can be fitted into appropriate lower Pay scale/Grade. All such absorptions shall made at the start of the scale. Such Fixed Tenure employees who fail to qualify to be absorbed may continue to be on the same position for the balance period of the tenure on the recommendation by the Appointing authority, after which his/her services will terminate.

In special cases, based on exigencies of work, the Fixed Tenure employees tenure may be extended further based on approval by Managing Director for not more than two years and with the approval of Chairman for not more than three years. Notwithstanding the above, Board of Directors shall be intimated of such absorptions. Such absorption should not be a rule and shall be done only in exceptional circumstances, subject to proper business justification.

(d) Through absorption of manpower, employed by Outsourcing agencies and deployed in EESL for more than two years, based on exigencies of work and requirement of skilled and experienced manpower. All



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such absorptions would be done at positions below Supervisory levels (S4 or below) on fixed tenure basis based on written examination and/or interview. Such positions shall be circulated internally and written exam, GD/interview shall be conducted. Only such candidates who meet the specified standards would be considered for absorption.

Notwithstanding the above, no such absorption of Outsourced Employees into Fixed Tenure Pay scales of the company, shall be done without the prior intimation to the Board of Directors. Such absorption should not be a rule and shall be done only in exceptional circumstances, subject to proper business justification.”

36. The process was also initiated for regularization and the absorption of fixed tenure employees including the Appellants, however, the Vigilance Department in its note dated 08.08.2019 gave its findings with regard to the absorption, and in those circumstances, the EESL took a decision to stop the process of absorption. The EESL based on expert committee report (PWC) decided to issue a fresh advertisement keeping in view the number of vacancies required to be filled-up, and, a fresh advertisement was issued on 15.10.2019.

37. The most important aspect of the case is that the Petitioners/ Appellants appeared in the process of selection.

38. The Appellant/ Petitioner being aggrieved by non-regularization came up before this Court by filing a Writ Petition with a prayer for quashment of the advertisement dated 15.10.2019 and also with a prayer to regularize/



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absorb them, and the same was registered as W.P.(C.) No. 7797/2020 titled ***Mahendra Singh & Ors. Vs. Energy Efficiency Services Ltd & Anr..***

39. The Learned Single Judge has dismissed the Writ Petition by an order dated 12.10.2020 on the ground of delay and laches and the order passed by the Learned Single Judge is produced as under:

“1. Short issue involved in the present petition is whether Energy Efficiency Services Ltd. (EESL)/ Respondent No.1 is entitled to issue fresh advertisement and conduct interviews for the regular posts against which the Petitioners have been appointed earlier and were awaiting absorption and regularization.

2. Present petition has been filed by 64 Junior and Middle Level Executive and Non-Executive Fixed Tenure employees of EESL, a joint venture of 4 Public Sector Undertakings i.e. NTPC Ltd., PFC, REC and Power Grid under the Ministry of Power, seeking quashing of the advertisement dated 15.10.2019.

3. Respondent No.1 from time to time has been notifying for conduct of interviews for regularization of fixed tenure employees. The Petitioners joined Respondent No.1 as fixed term employees on various dates between 2015 and 2018, the details of which have been elaborated in a tabular form in the writ petition. The interviews for regularization of the Petitioners, as averred in the petition, were scheduled between 24th to 26th June, 2019. The said regularization/absorption process, was in accordance with Clause 9.3 of the Recruitment Policy and Procedure. Para 9.3 reads as under :-

"9.3 In addition to the above, induction of executive and specialist non-executive personnel may be made as



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deemed necessary and appropriate by the authority competent to create the posts from one or more of the following sources:

(a) Deputation from Central / State Government / Electricity Boards and Public Sector Organisations where suitable personnel on terms offered by the Company may not be available at the right time from other sources and where the time and cost involved in processing recruitments through open advertisements may not be justified in view of the number or nature of posts to be filled.

(b) Campus interview and recruitment in the level of El grade or below and the post of Executive Trainees/Supervisor trainees from reputed Engineering/Management/Polytechnic institutions, may also be resorted to. Colleges should be selected on Region-wide basis on specific criteria advertised on open press advertisement. List of such colleges from which Campus recruitment is proposed, shall have to be approved by the Chairman with information to the Board of Directors.

(c) Through absorption of Fixed Tenure Employees in regular scales, when they have completed minimum one year of service in EESL, provided their performance has been satisfactory and their PMS score is not less than Excellent or equivalent. However, they shall have to meet the minimum eligibility criteria as described under Schedule II. They shall have to appear for interview before duly constituted committee and score more than 75% marks. In case the concerned



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Fixed Tenure Employees do not fulfil the post experience criteria, they can be fitted into appropriate lower Pay scale/Grade. All such absorptions shall be made at the start of the scale. Such Fixed Tenure employees who fail to qualify to be absorbed may continue to be on the same position for the balance period of the tenure on the recommendation by the Appointing authority, after which his/her services will terminate. In special cases, based on exigencies of work, the Fixed Tenure employees tenure may be extended further based on approval by Managing Director for not more than two years and with the approval of Chairman for not more than three years. Notwithstanding the above, Board of Directors shall be intimated of such absorptions. Such absorption should not be a rule and shall be done only in exceptional circumstances, subject to proper business justification.

(d) Through absorption of manpower, employed by Outsourcing agencies and deployed in EESL for more than two years, based on exigencies of work and requirement of skilled and experienced manpower. All such absorptions would be done at positions below Supervisory levels (S4 or below) on fixed tenure basis based on written examination and/or interview. Such positions shall be circulated internally and written exam, GD/interview shall be conducted. Only such candidates who meet the specified standards would be considered for absorption. Notwithstanding the above, no such absorption of Outsourced Employees into Fixed Tenure Pay scales of the company, shall be done without the prior



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intimation to the Board of Directors. Such absorption should not be a rule and shall be done only in exceptional circumstances, subject to proper business justification."

4. It is the case of the Petitioners that after the interviews they were informed that offer letters were ready for dispatch by Respondent No.1 but on account of some administrative reasons, the process of absorption was kept in abeyance. However, instead of issuing the absorption letters, Respondent No.1 issued an advertisement dated 15.10.2019 for filling up 235 regular vacancies which included the posts against which the Petitioners were seeking regularization. This led to the Petitioners filing RTI applications and making representations.

5. Respondent No.1 had notified 13.03.2020 as the date for written test pursuant to the said advertisement. However, the same was not conducted and was postponed. On account of the Pandemic Covid 19, no interviews were held for several months and it is only now that the Petitioners learnt that the written test has been scheduled for 23.10.2020.

6. Challenge in the writ petition is laid to the filling up of the vacancies in the posts against which the Petitioners were awaiting regularization on the ground that the Petitioners were eligible and successfully cleared the interviews and therefore they have a right to be absorbed against the said posts. The tenure of the Petitioners ends between December 2020 and March 2021 respectively and if the posts are filled through the impugned advertisement, grave prejudice shall be caused to them. Learned counsel for the Petitioners argues that the act of Respondent No.1 in not absorbing the Petitioners is malafide and the Petitioners are being illegally ousted despite being eligible for absorption.



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7. *A writ of certiorari is sought for quashing the Advertisement dated 15.10.2020 issued by Respondent No.1 as well as a Mandamus commanding the Respondents to absorb the Petitioners after declaring the result of the interviews held between 24.06.2019 and 26.06.2019 and also of the non-executive petitioners on the basis of their ACRs and performance.*

8. *Mr. Arun Bhardwaj learned counsel appearing on behalf of Respondent No.2 submits that the Ministry does not have any role in the controversy raised in the present petition.*

9. *Mr. Raman Kapur Learned Senior Counsel appearing on behalf of Respondent No.1 takes a preliminary objection to the maintainability of the present petition on account of delay and laches. He submits that the impugned advertisement was issued way back on 15.10.2019. Thereafter, the Petitioners had sought information under the RTI Act, which was furnished to them in November 2019. He further submits that all necessary steps have now been taken to carry out the selection process pursuant to the advertisement and the written examination is scheduled for 23.10.2020. All the arrangements have been made, centres have been allocated and intimations have been sent to the Applicants. Petitioners have approached the Court after a delay of one year and cannot be permitted to challenge the advertisement and / or stall the process at the last minute, which will adversely affect the interest of Respondent No.1 as well as those who have applied against the advertisement.*

10. *I have heard Learned Senior Counsel for Respondent No.1 and the counsel for the Petitioner.*

11. *From a bare perusal of the writ petition, it is apparent that the impugned Advertisement was issued on 15.10.2019 and exactly a period of one year has elapsed. Petitioners were well aware of the Advertisement when it was issued and even*



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subsequently relevant information was furnished to them in November 2019. No steps were taken by the Petitioners after the issue of the Advertisement and they have chosen to approach the Court belatedly. I also find force in the contention of Mr. Raman Kapur that having slept over their rights for one year the Petitioners cannot be permitted to stall the selection process when the examination is scheduled to take place on 23.10.2020. No reason / explanation has been offered in the writ petition to approach the Court belatedly, except for learned counsel for the Petitioner stating that from March 2020 onwards, on account of Pandemic COVID-19, Petitioners could not approach this Court.

12. In my view, even this argument cannot inure to the advantage of the Petitioners for the reason that between October 2019 to March 2020 there was no Pandemic COVID-19. If the petitioners were serious about challenging the advertisement, the same should have been done as soon as the advertisement was issued in October 2019 or at least in November 2019 when the RTI information was received by them. However, no steps were taken by the Petitioners at the relevant time. The petition is barred by delay and laches and cannot be entertained at this stage.

13. Petition alongwith the applications filed herewith is accordingly dismissed.”

40. The Appellant, thereafter, preferred an LPA i.e. LPA 307/2020 and the Division Bench of this Court by an order dated 08.01.2021 had remanded the matter back to the Learned Single Judge to decide the prayer ‘b’ after a counter-affidavit is filed in the matter. The order passed by the Division Bench dated 08.01.2021 is reproduced as under:

LPA 28/2022

Signature Not Verified

Digitally Signed
By: BHUPINDER SINGH
ROHELLA
Signing Date: 04.07.2023
15:49:22

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“1. The appeal impugns the order dated 12th October, 2020 of the Single Judge, of dismissal of W.P.(C) No.7797/2020 filed by the appellants along with several others, impugning the advertisement dated 15th October, 2019 issued by the respondent No.1 Energy Efficiency Services Ltd. (EESL) and seeking mandamus, directing the respondent No.1 EESL to absorb the appellants and other petitioners in regular positions, after declaring the result of the interviews held between 24th June and 26th June, 2019 and the nonexecutive petitioners, on the basis of Annual Confidential Reports.

2. The Single Judge, finding that the impugned advertisement was issued on 15th October, 2019 and the writ petition impugning the same had been filed on 28th September, 2020 i.e. after the recruitment process in pursuance to the impugned advertisement had begun and was at an advanced stage, vide the impugned order/judgment has dismissed the writ petition as barred by delay and laches.

3. It was inter alia the case of the appellants and the other petitioners in the writ petition, (i) that they were employed with the respondent EESL as fixed tenure employees; (ii) that they, at the time of filing of the writ petition, had been working with the respondent EESL for about 3 to 4 years and that there was a policy for regularising them, but they had not been regularised; (iii) that without regularising the appellants and the other petitioners, the respondent EESL had vide the impugned advertisement commenced the process of recruiting fresh employees and which the respondent EESL was not entitled to, without considering the appellants and other petitioners for recruitment; and, (iv) that additionally, as aforesaid, mandamus for regularisation of the appellants and the other petitioners was sought.

4. The appeal came up before this Court first on 16th October, 2020, when notice thereof was ordered to be issued and the



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examination in pursuance to the impugned advertisement was permitted to be held subject to the outcome of this appeal.

5. From a reading of the impugned order, it appears that the only relief claimed in the writ petition was of impugning the recruitment advertisement. We have thus asked the counsel for the appellants and other petitioners, the locus of the appellants and other petitioners to impugn the recruitment advertisement and process and further enquired, whether not the remedy of the appellants and the other petitioners was to seek the relief of regularisation.

6. The counsel for the appellants states that the appellants are not just impugning the advertisement but are also seeking the relief of regularisation of the appellants and the other petitioners and has drawn our attention to the second relief claimed in the writ petition.

7. We have next enquired from the counsel from the appellants, whether the appellants and other petitioners are 'workmen', inasmuch as, if they are covered by the Industrial Disputes Act, 1947, their remedy would be before the Labour Court / Central Government Industrial Tribunal (CGIT).

8. The counsel for the appellants states that neither the appellants nor the other petitioners fall in the definition of 'workmen'.

9. We have in the circumstances, enquired the stand of the respondent EESL.

10. The senior counsel for the respondent EESL has drawn our attention to the recruitment policy of the respondent EESL and on a reading whereof, it transpires that in the modes of recruitment provided therein, the mode of recruitment for fixed tenure does not exist. The senior counsel for the respondent EESL has however drawn our attention to the EESL Service



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Rules for Fixed Tenure Employees, which provides for recruitment for fixed tenure for four and a half years. Attention has also been invited to the Recruitment Policy of the respondent EESL where a provision is made for absorption of the fixed tenure employees.

11. We have next asked the senior counsel for the respondent EESL, why the mode of appointment admittedly contained in the recruitment policy, of absorption of fixed tenure employees, has not been undertaken and whether the appellants and the other petitioners have been considered for absorption.

12. The senior counsel for the respondent EESL states that the respondent EESL was in the process of such consideration but was instructed by the Chief Vigilance Officer, to conduct the recruitment on all-India basis and in pursuance where to the respondent EESL scheduled the examination, impugning which the writ petition was filed. He also states that save for one, all the other petitioners in the writ petition have participated in the recruitment process.

13. We may in this context notice that the petitioners, in the writ petition, though have also claimed the relief of regularisation but interestingly, not independently, but "after declaring the results of the interviews held between June, 24 and 26, 2019". We have enquired from the counsel for the appellants, whether the said interviews undertaken by the writ petitioners were pursuant to the impugned advertisement.

14. The counsel for the appellants states that the said interviews were not held as part of the recruitment under the impugned advertisement but in pursuance to the proposal for absorption of the fixed tenure employees, earlier undertaken by the respondent EESL vis-a-vis the writ petitioners.



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15. We also find that the Single Judge, in paragraph 3 of the judgment, has also referred to the interviews for regularisation but not dealt with the same. We are of the view that only the first relief claimed in the writ petition, of impugning the advertisement, could have been held to be barred by delay and laches and not the relief of regularisation, since the writ petitioners continued to be in the employment, though fixed tenure, of the respondent EESL and remained entitled to seek regularisation.

16. The said aspect having not been dealt with by the Single Judge, we have enquired from the counsels, whether they consent to our considering the said aspect for the first time in appeal.

17. While the counsel for the appellants and the other petitioners consents, the senior counsel for the respondent EESL, under instructions, states that since the writ petition was dismissed on the very first date, no counter affidavit was filed and opportunity to file counter affidavit be given and the matter be remanded to the Single Judge for consideration of the second relief.

18. The appeal, to that extent is accordingly allowed, without disturbing the judgment of the Single Judge to the extent dismissing the writ petition as barred by delay and laches qua the first relief of impugning the recruitment advertisement dated 15th October, 2019. The writ petition is remanded to the Single Judge, for adjudication in accordance with law, of the second relief claimed in the writ petition.

19. The appeal is disposed of.

20. The writ petition being W.P.(C) No.7797/2020 be listed before the Single Judge on 11th February, 2021.



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21. The respondent EESL to have the counter affidavit to the writ petition placed on record before that date.

22. It is clarified that the interim order dated 16th October, 2020 in this appeal also lapses on the decision of this appeal.”

41. Finally, the Learned Single Judge vide order dated 01.10.2021 has dismissed the Writ Petition. The operative paragraphs of the order passed by the Learned Single Judge in Paragraph Nos. 16 to 28 reads as under:

“16. Having heard the learned counsel for the parties, on the limited issue of prayer (b) as reproduced above, the petitioners are, in effect seeking that they may be absorbed in regular positions by declaring the result of the interviews held on June 24, 2019 and June 26, 2019. At the outset, I may state here that the petitioners were initially engaged as FTEs, on contractual basis and they have worked for four and a half years. There is a clear stipulation in their engagement by stating as under:-

“Clause 8: You may note that your engagement at EESL is on Fixed Tenure Basis and you will not have any claim whatsoever, for regularization / absorption in the Regular Roles of EESL.”

17. The submissions of Mr. Prashant Bhushan primarily are; (i) the petitioners’ engagement was in terms of the recruitment policy which permits absorption of FTEs in regular scales in exceptional circumstances, subject to proper business justification; (ii) the performance of the petitioners is satisfactory and their PMS is not less than excellent or equivalent; (iii) that the FTEs were absorbed in the years 2016 and 2017 and a similar benefit was sought to be given by the respondent No.1 by calling upon the petitioners to appear for the interview; (iv) unfortunately, for totally arbitrary reasons, result of the interviews has not been declared; (v) even the



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reliance placed on the note sheet by the respondent No.1 does not state that the process of absorption initiated by the respondent No.1 in 2019 need to be shelved.

*18. On the other hand, Mr. Kapur has highlighted the report submitted by PWC, a consulting agency for providing inputs on recruitment of dynamic and common pool of resource and need for more employees. Surely, the report submitted, does recommend need of open competitive examination to have skilled manpower and pool, which is in conformity with the law laid down by the Supreme Court in **Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (supra)**.*

*19. That apart, I find that some of the petitioners, who were engaged as FTEs, have been engaged either through written test and interview, or only interview, or no written test and interview and the employees sought to be absorbed without facing any written examination but by interview only. This process surely reflects that no homogenous process was evolved for appointing the petitioners as FTEs. That apart, the position of the FTEs being not regular rather temporary, many persons may not have applied for the said position in the past (when the petitioners were appointed). In this regard, I may refer to the judgment of the Supreme Court in the case of **Official Liquidator (supra)**, wherein in para 52, the Supreme Court has held as under:-*

“52. As mentioned above, while approving the reasons and conclusions recorded by the two High Courts and dismissing the appeals, this Court not only permitted the Government of India to frame a scheme modelled on the 1978 Scheme but also stayed implementation of the orders impugned in the appeal and the one passed by itself in the transferred writ petition. If the Court intended that all members of the company-paid staff working on the date of judgment i.e. 27-8-1999 [(1999) 8



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SCC 560 : 2000 SCC (L&S) 74] should be absorbed in the regular cadres against Group C and D posts, then a simple direction to that effect would have been sufficient and there was no occasion to stay the implementation of the orders of the High Courts for six months with liberty to the Government of India to frame a new scheme within the same period. The absence of such a direction shows that the Court was very much conscious of the fact that recruitment to the regular cadres is governed by the rules framed under Article 309 of the Constitution and it would be highly detrimental to public interest to issue direction for wholesale absorption/regularisation of the company-paid staff and thereby abrogate/stultify opportunity of competition to younger generation comprising more meritorious persons who may be waiting for a chance to apply for direct recruitment. Obviously, the Court did not want to sacrifice merit by showing undue sympathy with members of the company-paid staff who joined service with full knowledge about their status, terms and conditions of their employment and the fact that they were to be paid from the company fund and not Consolidated Fund of India. In this context, we may also mention that though the Official Liquidators appear to have issued advertisements for appointing the company-paid staff and made some sort of selection, more qualified and meritorious persons must have shunned from applying because they knew that the employment will be for a fixed term on fixed salary and their engagement will come to an end with the conclusion of liquidation proceedings. As a result of this, only mediocres must have responded to the advertisements and joined as company-paid staff. In this scenario, a direction for absorption of all the company-paid staff has to be treated as violative of the doctrine of equality



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enshrined in Articles 14 and 16 of the Constitution.
(Emphasis supplied)

20. Even the process of absorption initiated in the year 2019 was only through the interview process, which process cannot be countenanced. The Supreme Court in the case of **Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (supra)** has held that public employment has to be in terms of the constitutional scheme, which is as per the Recruitment Policy framed by the employer and has to be given wide publicity and considering every person, who applies for the post and fulfills the eligibility conditions. It is in conformity with the position of law laid down by the Supreme Court in **Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (supra)** that the respondents have justified issuance of recruitment notice dated October 15, 2019 by not declaring the result of the interviews, which were held on June 24, 2019 and June 26, 2019. I do not see any illegality in the said process. In fact, I find by initiating the process of absorption of the petitioners, the respondent No.1 has sought to overlook / deny consideration to the persons outside the organization for applying to the posts in question, which are admittedly public posts.

21. Further, the fact that all the petitioners except one have applied / participated in the examination pursuant to the recruitment notice dated October 15, 2019 wherein age relaxation was also given to the petitioners, subject to fulfillment of other eligibility criteria and also the fact only nine have qualified the written examination to be called for the interview, the petitioners cannot now seek regularization by way of this writ petition by seeking a direction for declaration of the result of the interviews. This I say so, in view of the judgment of the Supreme Court in the case of **Nagar Mahapalika, Kanpur v. Vibha Shukla (Smt)& Ors., (2007) 15 SCC 161** wherein the Supreme Court held that regularization is not a mode of appointment. Also they having participated in the



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*selection process are estopped from challenging the recruitment notice, (which prayer has been rejected by this court on October 12, 2020 and upheld by the Division Bench). In the case of **Madras Institute of Development Studies & Anr. v. K. Sivasubramaniyan & Ors., (2016) 1 SCC 454**, wherein the Supreme Court has held as under:-*

“15. In Dr. G. Sarana vs. University of Lucknow & Ors., (1976) 3 SCC 585, a similar question came for consideration before a three Judges Bench of this Court where the fact was that the petitioner had applied to the post of Professor of Athropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure to get appointed, the petitioner rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the Court held:-

“15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal’s case where in more or less similar circumstances, it was held that the failure of the appellant to take the



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identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:

“It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.” (Emphasis supplied)

22. Even the lone candidate, who could not appear in the examination on the grounds of being unwell, could have also applied against the recruitment notice. Having not done that, he also cannot seek any direction from this Court for declaring the results of the interview held on June 24, 2019 and June 26, 2019 as the very action of the respondent No.1 for absorption is contrary to the law in **Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (supra)** wherein the Supreme Court has in paragraphs 43 and 50 held as under:-

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment,



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the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The



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courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

xxxx xxxx xxxx

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in



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the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.”

23. Mr. Kapur is justified in relying upon the judgment in the case of **Official Liquidator (supra)** wherein the Supreme Court held that creation and abolition of posts, formation and structuring/ restructuring of cadres, prescribing the source and mode of recruitment, qualifications and criteria of selection etc., are matters which fall within the exclusive domain of the employer. The Court cannot sit in appeal over the executive decision of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by malafides.

24. Though reliance was also placed by Mr. Kapur on the same judgment that the FTEs cannot invoke the doctrine of legitimate expectation by referring to the conclusion of the Supreme Court since that no material has been placed before the Court to show that any promise was made or that any assurance was given by the respondent No.1 for their absorption in regular cadres but this Court is of the view that the doctrine of legitimate expectation would not come into play when the terms of appointment issued to the petitioners, includes Clause 8, as referred to above which is very clear that the petitioners cannot have any claim for regularization or absorption in the regular cadre of the respondent No.1 and also in view of the settled law by the Supreme Court in **Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (supra)** of which a reference has been made above that any recruitment has to be made in accordance with the Constitutional Provisions / Recruitment Rules by



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giving wide publicity and consideration to all persons, who apply, subject to meeting the eligibility conditions. Rather, I find, as stated above, the petitioners were given the benefit of age relaxation. The process evolved by the respondent No.1 is in conformity with Article 14 of the Constitution of India. If the prayer, as sought for by the petitioners is allowed, the same would be in violation of Article 14 of the Constitution of India, as persons who may not have worked in the respondent No.1 organization but meeting the provisions of the Recruitment Policy would be denied the right of consideration on the posts in the respondent No.1 organization as the said posts are public posts and every citizen of the Country meeting the eligibility criteria has a right to apply and consider.

25. The reliance placed by Mr. Bhushan on the judgment in the case of Shankarsan Dash (supra) is concerned, the said judgment would not be applicable to the facts of this case, more so when the issue in the present case is, whether the petitioners are entitled to regularization by declaring the result of the interviews.

26. Insofar as the judgment in the case of Asha Kaul (supra) is concerned, wherein the Supreme Court has held as under:-

“8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment State of Haryana v. Subhash Chandra Marwaha A.I.R. 1 973 S.C.2216; M.S, Jain v. State of Haryana A.I.R. 1977 S.C. 276 and State of Kerala v. A. Lakshmikutty A.I.R. 1987 S.C 331 but that is only one aspect of the matter. The other aspect is the obligation of the government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the commission to select a particular number of candidates for a particular category, in pursuance of which the commission issues a



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notification, holds a written test, conducts a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the government-the government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any government can adopt such a stand with any justification today.”

27. Suffice to state that, in the facts of this case, I have already held that the respondents are justified in not declaring the result of the interviews held on June 24, 2019 and June 26, 2019 and issuing the recruitment notice on October 15, 2019 against which the petitioners have also applied (except one) and have participated in the process.

28. In view of my discussion above, I do not see any merit with regard to prayer (b) in the petition. The petition is dismissed.

No costs.”

42. The undisputed facts of the case reveal that an advertisement was issued on 07.03.2016 inviting applications for the post of Engineer (Technical) on fixed terms basis and Appellant along with other persons did submit their applications for the tenure post and an examination took place on 29.05.2016. The period of employment was categorically mentioned in the advertisement and the same was 4.5 years. The Appellant participated in the process of selection and appointment order was issued on 08.09.2016. The appointment order has been reproduced in earlier paragraphs and the same reveals that Clause 8 of the appointment order categorically mentions that the appointment was on fixed tenure basis and the Appellant will not



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have no claim whatsoever for regularization/ participation in the regular rolls of EESL.

43. The Appellant was required to sign an acceptance of offer in response to their appointment order. The Appellant with full knowledge has signed the acceptance of offer.

44. The Appellant is raising all hue and cry in the matters of regularization/ absorption only on the ground that the recruitment policy of EESL provides for absorption and the process of absorption was certainly initiated by the Organization.

45. The recruitment policy does provide for absorption, but the fact remains that the Organization in question has engaged a consultancy agency *i.e.* PWC for providing inputs on recruitment of dynamic and common pool of resource and need for more employees. The Committee recommended need for open competitive examination to have skilled manpower in pool.

46. The Appellant was a fixed term employee and the advertisement, on the basis of which they have been employed, categorically mentioned that the tenure of the contractual employees will only be 4.5 years.

47. The Hon'ble Supreme Court in the case of *Umadevi* (supra) has categorically held that in the matter of public employment wide publicity has to be given and the public employment has to be in terms of constitutional schemes. The recruitment in the present case is to public post



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and by absorbing contractual employees like the Appellant, in case, the employer is permitted to do so, it will amount to denial of opportunity to the persons outside the Organization who are otherwise qualified and who did not apply earlier keeping in view the fact that the earlier advertisement was only in respect of tenure employments and the tenure was fixed in the advertisement which was 4.5 years.

48. The other important aspect of the case is that absorption of contractual employees is contrary to the law laid down by the Supreme Court in the case of *Umadevi* (supra).

49. The Hon'ble Supreme Court in the aforesaid case held that adherence to the rule of equality of public employment is a basic feature of a constitution, and since the rule of law is the core of constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the Article 14 read with Article 16 of the Constitution. It has been further held that in the matter of public employment all individuals who are otherwise qualified are entitled to participate in the process of selection and the services of a contractual employee comes to an end by efflux of time.

50. This Court is in agreement with the view expressed by the learned Single Judge, and is of the firm opinion that in light of the judgment delivered in the case of *Umadevi* (supra), the Organization in question was justified in issuing the fresh advertisement. Age relaxation was also granted



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to the contractual employees serving the Organization while issuing a fresh advertisement dated 15.10.2019. Not only this, the employees in question barring one did participate in the process of selection, and after participating the process of selection are raising all hue and cry. Therefore, in the considered opinion of this Court, the Learned Single Judge was justified in holding that the Appellants were estopped from challenging the recruitment notice once they have participated in the process of selection (see: *Nagar Mahapalika, Kanpur v. Vibha Shukla (Smt)& Ors.*, (2007) 15 SCC 161 and *Madras Institute of Development Studies & Anr. v. K. Sivasubramaniyan & Ors.*, (2016) 1 SCC 454).

51. Learned Counsel for the Appellant has vehemently argued before this Court that the Respondent Organization, once the process of participation was initiated, could not have cancelled the absorption abruptly and could not have issued a fresh advertisement for filling up the post by way of direct recruitment.

52. Learned Counsel has vehemently argued before this Court that the principles of promissory estoppels are applicable to the present case, and, therefore, the Respondent deserves a command to conclude the process of participation which was initiated by the Organization.

53. In the considered opinion of this Court, like the doctrine of legitimate expectation, promissory estoppel is simply a shield and not a sword.



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54. In the case of *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.*, (1979) 2 SCC 409, it was held that even if larger public interest is in favour of changed policy, it would not be enough for the Government to state that public interest would suffer if the Government would require to honour its obligation.

55. In the case of *Union of India v. Unicorn Industries*, (2019) 10 SCC 575, the Hon'ble Supreme Court was confronted with whether the Union of India should be estopped from withdrawing the exemption from payment of excise duty in respect of certain product, due to the principle of promissory estoppels. After referring to multiple judgments, and tracing the evolution of the principle of promissory estoppels, the Hon'ble Supreme Court observed that Courts must not bind the Government to policy decisions from all times to come, irrespective of how such policy decisions may affect public interest. The relevant Paragraphs i.e Paragraph NOs. 15, 18 and 23 are reproduced as under:

“15. It could thus be seen that, this Court has clearly held that the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to see all aspects including the objective to be achieved and the public good at large. It has been held that while considering the applicability of the doctrine, the courts have to do equity and the fundamental principle of equity must forever be present in the mind of the Court while considering the applicability of the doctrine. It has been held that the doctrine of promissory estoppel must yield when the equity so demands and when it can be shown having regard to the facts and circumstances of the case, that it would



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be inequitable to hold the Government or the public authority to its promise, assurance or representation. After considering the earlier judgments on the issue, which have been heavily relied upon by the assessee, this Court has observed thus: (Kasinka Trading case [Kasinka Trading v. Union of India, (1995) 1 SCC 274] , SCC pp. 287-88, para 21)

“21. The power to grant exemption from payment of duty, additional duty, etc. under the Act, as already noticed, flows from the provisions of Section 25(1) of the Act. The power to exempt includes the power to modify or withdraw the same. The liability to pay customs duty or additional duty under the Act arises when the taxable event occurs. They are then subject to the payment of duty as prevalent on the date of the entry of the goods. An exemption notification issued under Section 25 of the Act had the effect of suspending the collection of customs duty. It does not make items which are subject to levy of customs duty, etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in “public interest”. Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification in the “public interest” is an exercise of the statutory power of the State under the law itself as is obvious from the language of Section 25 of the Act. Under the General Clauses Act an authority which has the power to issue a notification has the



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undoubted power to rescind or modify the notification in a like manner.”(emphasis supplied)

Xxxx xxxx xxxx

18. It has been observed, that the withdrawal of exemption in public interest is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the public interest. It has been held that, where the Government acts in public interest and neither any fraud or lack of bona fides is alleged much less established, it would not be appropriate for this Court to interfere with the same. Ultimately, this Court came to the conclusion that the withdrawal of the exemption was in the public interest and, therefore, refused to interfere with the order of the Delhi High Court dismissing the petitions.

Xxxx xxxx xxxx

23. Another three-Judge Bench of this Court in Mahaveer Oil Industries [State of Rajasthan v. Mahaveer Oil Industries, (1999) 4 SCC 357] has taken a similar view. In Shree Sidhballi Steels Ltd. [Shree Sidhballi Steels Ltd. v. State of U.P., (2011) 3 SCC 193] , this Court was considering the question with regard to validity of the notification which withdrew 33.33% of the hill development rebate, on the total amount of electricity bill, granted under the earlier notification. This Court while considering the similar challenge observed thus: (Shree Sidhballi Steels Ltd. case [Shree Sidhballi Steels Ltd. v. State of U.P., (2011) 3 SCC 193] , SCC p. 207, para 33) “33. Normally, the doctrine of promissory estoppel is being applied against the Government and defence based on executive necessity would not be accepted by the court. However, if it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the



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Government to the promise made by it, the court would not raise an equity in favour of the promisee and enforce the promise against the Government. Where public interest warrants, the principles of promissory estoppel cannot be invoked. The Government can change the policy in public interest. However, it is well settled that taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law.”

56. In light of the aforesaid, no relief can be granted on the basis of plea of promissory estoppels as argued are viewed by Learned Single Judge.

57. This Court in the case of ***Harsh Ajay Singh Vs. Union Of India And Ors*** in W.P.(C.) No. 11011/2022 with other connected, while dealing with law regarding promissory estoppels in Paragraphs 76, 77 and 78 has held as under:

“76. The law regarding promissory estoppel has also been summarised in Kasinka Trading v. Union of India, (1995) 1 SCC 274, in the following manner:-

“12. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to



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hold the Government or the public authority to its promise, assurance or representation.

13. The ambit, scope and amplitude of the doctrine of promissory estoppel has been evolved in this country over the last quarter of a century through successive decisions of this Court starting with Union of India v. Indo-Afghan Agencies Ltd. [(1968) 2 SCR 366 :AIR 1968 SC 718] Reference in this connection may be made with advantage to Century Spg. & Mfg. Co. Ltd. v. Ulhasnagar Municipal Council [(1970) 1 SCC 582 : (1970) 3 SCR 854] ; Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] ; Jit Ram Shiv Kumar v. State of Haryana [(1981) 1 SCC 11 : (1980) 3 SCR 689] ; Union of India v. Godfrey Philips India Ltd. [(1985) 4 SCC 369 : 1986 SCC (Tax) 11] ; Indian Express Newspapers (Bom) (P) Ltd. v. Union of India [(1985) 1 SCC 641 : 1985 SCC (Tax) 121] ; Pournami Oil Mills v. State of Kerala [1986 Supp SCC 728 : 1987 SCC (Tax) 134] ; Shri Bakul Oil Industries v. State of Gujarat [(1987) 1 SCC 31 : 1987 SCC (Tax) 74 : (1987) 1 SCR 185] ; Asstt. CCT v. Dharmendra Trading Co. [(1988) 3 SCC 570 : 1988 SCC (Tax) 432] ; Amrit Banaspati Co. Ltd. v. State of Punjab [(1992) 2 SCC 411] and Union of India v. Hindustan Development Corpn. [(1993) 3 SCC 499 : JT (1993) 3 SC 15] In Godfrey Philips India Ltd. [(1985) 4 SCC 369 : 1986 SCC (Tax) 11] this Court opined: (SCC p. 388, para 13)

“We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires; if it can be shown by the Government or public authority that having regard to the facts as they have transpired,



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it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it.”

14. In *Excise Commissioner, U.P. v. Ram Kumar* [(1976) 3 SCC 540 : 1976 SCC (Tax) 360 : AIR 1976 SC 2237] four learned Judges of this Court observed: (SCC p. 545, para 19)

“The fact that sales of country liquor had been exempted from sales tax vide Notification No. ST1149/X-802 (33)-51 dated 6-4-1959 could not operate as an estoppel against the State Government and preclude it from subjecting the sales to tax if it felt impelled to do so in the interest of the revenues of the State which are required for execution of the plans designed to meet the ever-increasing pressing needs of the developing society. It is now well settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers.”



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23. *The appellants appear to be under the impression that even if, in the altered market conditions the continuance of the exemption may not have been justified, yet, Government was bound to continue it to give extra profit to them. That certainly was not the object with which the notification had been issued. The withdrawal of exemption “in public interest” is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the “public interest”. The courts, do not interfere with the fiscal policy where the Government acts in “public interest” and neither any fraud or lack of bona fides is alleged much less established. The Government has to be left free to determine the priorities in the matter of utilisation of finances and to act in the public interest while issuing or modifying or withdrawing an exemption notification under Section 25(1) of the Act.*

77. *Hence, it emerges that this Court cannot bind the Government to its policy decision, if the same is changed due to overarching concerns of public interest. Furthermore, Courts are less likely to interfere when such concerns of public interest intersect with matters concerning national security (Refer to: Centre for Public Interest Litigation v. Union of India, (2016) 6 SCC 408; Indian Rly. Construction Co. Ltd. v. Ajay Kumar, (2003) 4 SCC 579; Lt. Col. P.K. Choudhary v. Union of India and Others, 2020 SCC OnLine Del 915; Axiscades Aerospace and Technologies Pvt. Ltd. v. Union of India & Ors., 2018 SCC OnLine Del 9320; ESAB India Limited v. Special Director of Enforcement & Anr., 2011 SCC OnLine Del 1212).*



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78. *The Petitioners have claimed that they have let go of other opportunities while awaiting the recruitment process to resume. It is their contention that due to this, they suffered on account of the sudden change in policy initiated by the Government. Hence, they claim that the Government being bound by the principle of promissory estoppel will have to bring the recruitment process to its logical conclusion. This argument also does not find favour with this Court, firstly, as there was no vested right in claiming appointment even after a selected list has been declared, and secondly on account of the larger public interest weighing strongly in favour of the Agnipath Scheme. This Court has already analysed other aspects of the Impugned Scheme in detail in the first part of this judgment, and reached the unequivocal conclusion that the Impugned Scheme is not arbitrary, capricious or devoid of reason. On the contrary, it squarely falls within the ambit of „public interest“. As emerges from the various cases reproduced above, Courts have not evoked the principle of promissory estoppel when faced with a change of policy necessitated by public interest. The Government in this case cannot be held to be bound by the recruitment process initiated by it. Further, as dealt with already, the Petitioners, who are at various stages of the recruitment process, have no vested right to claim such recruitment.”*

58. In light of the aforesaid judgments it can be safely gathered that the Appellant is not entitled for any relief of whatsoever by raising the plea of promissory estoppels. On the contrary, they are estopped from claiming regularization keeping in view the terms and conditions of their appointment orders which categorically provided that their employment is for a period of 4.5 years and they will not be entitled to claim absorption/ regularization in



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the services of EESL. In the considered opinion of this Court, the Learned Single Judge was justified in dismissing the Writ Petition.

59. It is an undisputed fact that the Organization in question is facing financial crunch. Even the subsequent process of filling up the posts by way of direct recruitment *i.e.* advertisement dated 15.10.2019 has been scrapped. The present case is not a case where a regular employee is being denied the benefits accrued to him, on the contrary, the present is a case where the contractual employee, who has joined the Organization with full knowledge for a period of 4.5 years, is claiming regular employment. Therefore, the judgment relied upon *i.e. Arjun Ahluwalia (Supra)* does not help the Appellants in any manner.

60. This Court has gone through the judgment delivered in the case of ***Mohinder Singh Gill (Supra)***. Once again, in view of the terms and conditions of the appointment order which provided for a tenure appointment of 4.5 years, the question of relief has prayed for does not arise.

61. The Division Bench of this Court in judgment dated 17.02.2023 in the case of ***Shiwang Tripathi & Ors. & Union of India & Ors.*** in LPA 401/2022 was again dealing with the regularization of Accounts Apprentices in the services of National Insurance Company Ltd. and the Division Bench of this Court had dismissed the claim of regularization of actuarial apprentices placing reliance upon the judgment delivered in the case of ***Umadevi (Supra)***. In the aforesaid case, the appointment orders provided



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for discharge from service without assigning any reason. It was held that a person who is merely an apprentice cannot claim a right of getting employment or have employment or have any legitimate expectation of having employment.

62. In the present case, the Appellant has joined the Organization with full knowledge knowing fully well that the appointment is only for 4.5 years and the terms and conditions of the appointment order also reflected that he will not be entitled for absorption or relaxation. Hence, he has worked only for 4.5 years. By no stretch of imagination, the services could have been regularized and the Organization was justified in not regularizing his services keeping in view the judgment delivered in the case of *Umadevi (Supra)*.

63. This Court also does not find any reason to interfere in the matter and to grant relief as claimed by the Petitioners.

64. No case of interference is made out in the matter. The LPA stands dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)

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JUDGE

JULY 03, 2023

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Signature Not Verified

Digitally Signed
By: BHUPINDER SINGH
ROHELLA
Signing Date: 04.07.2023
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