



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

% **Date of order: 19th July, 2023**

+ W.P.(C) 4609/2016
RAJENDRA KUMAR SHARMA Petitioner

Through: Appearance not given

versus

UNIVERSITY OF DELHI & ANR Respondents

Through: Mr. Kausharga Aman and Mr. Daksh
Arora, Advocates for R-1
Mr. Ravinder Agarwal, Advocate for
R-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 7061/2020 (Early hearing)

1. The instant application under Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the petitioner/applicant seeking early hearing of the petition.
2. For the sufficient cause being shown in the application, the early hearing is allowed and the matter is taken up today.
3. Accordingly, the instant application stands disposed of.

W.P.(C) 4609/2016

1. The instant petition has been preferred by the petitioner under Article



226 of the Constitution of India seeking the following reliefs:

“(a) Call for the records pertaining to the present case

(b) issue appropriate writ/order/direction to respondents to give the petitioner the status of regular employee with all consequential benefits including pension and gratuity with effect from the date of his appointment.

(c) Pass any other order(s) that this Hon'ble Court may deem proper in the facts and circumstances of the present case.”

2. The background of the instant matter reveals that the petitioner had applied for the post of Junior Laboratory Assistant with the respondent no. 1, for the Course of M.Sc. for Agro-Chemicals & Pest Management which had been introduced by the respondent no. 1 in the year 1992. The petitioner was appointed on *ad hoc* basis *vide* letter dated 4th October 1993, on the pay scale of Rs. 975-1140/- with effect from 1st January 1993.

3. It is the case of the petitioner that as and when the then newly introduced Course started gaining recognition, several employees of the respondent no. 1 made representations to pursue the Dean, Pro-Vice Chancellor and the Vice-Chancellor to create more non-teaching posts to meet the growing requirement in the said Course. Representations were also made seeking regularisation of services of the existing staff, however, no action or decision was taken by the Authorities.

4. Thereafter, in the year 2008, the Course introduced in the year 1992 was replaced by another Course, namely, M. Tech in Chemicals Synthesis and Process Technologies, and the petitioner was transferred to the said



Course with continuation of his services. However, he was not absorbed.

5. The petitioner retired from his services on 30th April 2015 and was conveyed by the Section Officer, Establishment-III not to report to work thereafter.

6. The petitioner, being aggrieved by the inaction of the respondents in regularising his services, has approached this Court seeking the aforesaid reliefs for all the benefits, including pension and gratuity, as that of permanent employees.

7. The learned counsel appearing on behalf of the petitioner submitted that despite providing his services to the respondents for more than 22 years without any gap, his services were not regularised. It is submitted that efforts were made by the Course Coordinator, Head of the Department as well as by the petitioner to persuade the Authorities to regularise services of the petitioner. Consequent to such representations, an interview of petitioner was also taken in June 2005 for consideration of his absorption, however, the result for the same was never declared. Instead, the petitioner was made temporary from *ad hoc*.

8. It is submitted that several employees working with the respondent no. 1, by way of representations, also requested for creation of posts for the Course in question, pursuant to which the recommendations were made and considered by the respondent no. 2 for creation of fifty posts on regular basis *vide* Order No. F. No. 3-2/2007 (CU) dated 10th August 2009. However, the respondent no. 1 did not recommend/propose creation of the



allied non-teaching positions of Lab Assistant and Lab Attendant, despite several representations.

9. The learned counsel for the petitioner submitted that the respondents wrongfully, illegally and arbitrarily rejected the representations made by the petitioner. Therefore, it is prayed that the respondents be directed to release the consequential benefits in favour of the petitioner as per the status of a regular employee.

10. *Per Contra*, the learned counsels appearing on behalf of the respondents vehemently opposed the instant petition and submitted that the same is liable to be dismissed.

11. The learned counsel appearing on behalf of the respondent no. 1/University, at the very outset, submitted that the post on which the petitioner was employed, i.e. Junior Laboratory Assistant, was not a sanctioned post. The said posts were created temporarily for the limited purposes for the Course of M.Sc. for Agro-Chemicals & Pest Management and were not a part of the Department. It is submitted that there was no formal selection process which was followed before appointing the petitioner, as neither any admission test nor any interview was conducted while appointing the petitioner at the post of Junior Laboratory Assistant.

12. It is submitted on behalf of the respondent no. 1 that the prayer seeking regularisation of services cannot be allowed since the petitioner did not work on a permanent/sanctioned post and was not appointed by going through a formal selection process. The learned counsel placed reliance



upon the judgment passed in *Secy., State of Karnataka v. Umadevi*, (2006) 4 SCC 1, to support his arguments.

13. It is further submitted that the petitioner could not claim regularisation of services as a matter of right. Moreover, the appointment letter of the petitioner dated 8th September 2005 also categorically mentioned that the post of Junior Laboratory Assistant shall subsist only till the post of Laboratory Assistant continues.

14. It is submitted that since there is nothing that has been prayed on behalf of the petitioner that accrues to him and may be granted by this Court, the instant petition is liable to be dismissed.

15. Heard the learned counsel for the parties and perused the record.

16. The petitioner, by way of the instant petition, is seeking regularisation of his services as well as consequential benefits which may accrue thereto. The petitioner superannuated in the year 2015 and as such the limited consideration before this Court is for the consequential benefits which may accrue in favour of the petitioner if the decision is made in his favour to the extent of regularisation of his services.

17. The petitioner served at the respondent University, for the then newly introduced Course, from the year 1993 till 2015, i.e., till the day of his superannuation. *Vide* Office Order No. 30 dated 25th June 1992, the competent authority of the respondent no. 1 approved and created the posts, including that of the Junior Laboratory Assistant, for the limited purpose of



employment *qua* the Course in question. The relevant portion of the Office Order dated 25th June 1992 is reproduced herein:

“The following temporary posts have been created for the Agrochemical & Pest Management for a period of six months:-

		<i>scale of Pay</i>
1. Jr. Lab. Assistant	-One	Rs 975-1540
2. Lab Attendant	-One	Rs. 800-1150
3. P.T. Safai Karamchari	-One	@Rs.500/-P.N. (fixed)
4. Mali	-One	Rs. 750-940

The expenditure on this account will be met out of the provision made for “Salaries for temporary/Seasonal Staff” under Major Head of A/o 4-A- Faculty of Science Sub-Head- (V) M.Sc. Course in Agro Chemicals & Pest Management.”

18. The contents of the Office Order, at the very outset, make it unequivocally clear that the intent and purpose of creating the aforesaid posts was to accommodate the requirement of personnel/staff in the newly introduced Course. As per the Officer Order, the seven posts listed were ‘temporary posts’ created for a limited period of six months and limited purpose for the concerned Course. Even with respect to the expenditure to be disbursed in favour of the posts created, the Office Order clearly stipulated that the same was to be accommodated from the provision made for ‘Salaries for temporary/Seasonal Staff’, which signifies the intent to treat the persons to be appointed to the posts at par with temporary/seasonal



staff.

19. Further, the nature and extent of the employment and appointment of the petitioner can also be gathered from his letter of appointment dated 4th October 1993, the relevant contents whereof are reproduced hereunder:

“With reference to your letter dated 24.8.1993, 26.8.93 & 30.8.1993, I am to convey ex-post-facto approval to the following ad-hoc arrangements of the Laboratory Staff against the posts created vide Office Order No. 31 dated 22.7.1993:-

iii) Ad-hoc appointment of Shri Rajendra Kumar Sharma as Junior Laboratory Assistant on Rs. 975/- p.m. in the pay scale of Rs. 975-1540 w.e.f. 1.1.1993 to 30.6.1993.”

20. The aforesaid appointment letter also makes it clear that the appointment of the petitioner as the Junior Laboratory Assistant was made on an ‘ad hoc’ arrangement for a specific period, towards the posts specifically created for the Course of M.Sc. for Agro-Chemicals & Pest Management. At the first instance, there is nothing in the contents of the appointment letter that suggests that the post for which the petitioner was appointed was a permanent post or was a part of a regular Course or curriculum.

21. To this effect, the Hon’ble Supreme Court while passing the landmark judgment of *Umadevi (Supra)* has settled the position of law *qua* regularisation of services. The relevant paragraphs of the judgment are



reproduced hereunder for proper appreciation of the law laid down as well as for the proper adjudication of the case at hand.

“12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognised and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognised and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

13. What is sought to be pitted against this approach, is the so-called equity arising out of giving of temporary



employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab v. Jagdip Singh [(1964) 4 SCR 964: AIR 1964 SC 521]. It was held therein : (SCR pp. 971-72)

“In our opinion where a government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status.”

17. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the court, in appropriate



cases, would have only the right to regularise an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

19. One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counterproductive.

28. In Director, Institute of Management Development, U.P. v. Pushpa Srivastava [(1992) 4 SCC 33 : 1992 SCC (L&S) 767 : (1992) 21 ATC 377 : (1992) 3 SCR 712] this Court held that since the appointment was on



purely contractual and ad hoc basis on consolidated pay for a fixed period and terminable without notice, when the appointment came to an end by efflux of time, the appointee had no right to continue in the post and to claim regularisation in service in the absence of any rule providing for regularisation after the period of service. A limited relief of directing that the appointee be permitted on sympathetic consideration to be continued in service till the end of the calendar year concerned was issued. This Court noticed that when the appointment was purely on ad hoc and contractual basis for a limited period, on the expiry of the period, the right to remain in the post came to an end. This Court stated that the view they were taking was the only view possible and set aside the judgment of the High Court which had given relief to the appointee.

29. *In Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra [(2005) 5 SCC 122 : 2005 SCC (L&S) 628 : AIR 1994 SC 1638] a three-Judge Bench of this Court held that ad hoc appointees/temporary employees engaged on ad hoc basis and paid on piece-rate basis for certain clerical work and discontinued on completion of their task, were not entitled to reinstatement or regularisation of their services even if their working period ranged from one to two years. This decision indicates that if the engagement was made in a particular work or in connection with particular project, on completion of that work or of that project, those who were temporarily engaged or employed in that work or project could not claim any right to continue in service and the High Court cannot direct that they be continued or absorbed elsewhere.*



43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself



was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed



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



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

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.

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to



perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.”

22. Undisputedly, regularisation of services or permanence of employment may not be claimed as a matter of right, especially before Courts. In the absence of a rule or scheme providing for a right to be considered for regularisation or permanence, a right or entitlement does not arise in favour of a person appointed on contractual, temporary or *ad hoc* arrangement.

23. It is also not proper for the Court to direct absorption in services, considering the implications, including financial, a direction of this nature may have upon the instrumentality or department. Moreover, the considerations of equity and sympathy also have a limited role to play in such cases, since, a decision, order or direction based solely on sympathetic and sentimental grounds may result in perpetuating illegalities.

24. As discussed in the foregoing paragraphs, the petitioner was initially



appointed on *ad-hoc* basis for the temporary post created for a limited period of six months, and thereafter was made a temporary employee. Since, the post in question itself was not a permanent sanctioned post, in terms of the facts and circumstances of the case as well as the observations and directions of the Hon'ble Supreme Court, there was neither any vested right that existed in favour of the petitioner to have his services regularised nor was there any obligation or liability on the respondents to allow the regularisation of services on the grounds raised on behalf of the petitioner, or for the reason that the petitioner had served the respondent University for a considerable period of time. Moreover, upon the representations of the petitioner to the respondent no.1 for regularisation of services, the respondent no.1 took appropriate and adequate action, subsequent to which the petitioner was also made temporary from *ad hoc*.

25. Furthermore, the petitioner being a contractual/*ad hoc* employee may not claim regularisation of services as a matter of right, since, he had entered the employment being completely aware of the nature of his employment and as such continuation of services beyond the period of time stipulated in his initial contract shall also not affect the decision made by the respondent or by this Court.

26. Therefore, considering the entirety of the matter, the facts, circumstances, the submissions made on behalf of the parties as well as the law laid down, this Court is of the considered view that there is no right vested in the petitioner with regard to regularisation of services. Moreover,



the power of judicial review in such matters is also limited as discussed in the foregoing paragraphs.

27. Accordingly, in view of the above facts, circumstances, the instant petition stands dismissed for being devoid of merit.

28. Pending applications, if any, also stand dismissed.

29. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 19, 2023
gs/ms

Click here to check corrigendum, if any