



2024:DHC:2081



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

% **Reserved on : 18th December, 2023**

Pronounced on: 15th March, 2024

+ **W.P. (C) 1253/2018, CM APPL. Nos. 17777/2019, 35690/2019 & 51344/2019**

DR. HUMA BAQA & ORS

..... Petitioners

Through: Mr.____, Advocate

versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Through: Ms.Akanksha Kaul and Ms.Versha Singh, Advocates for University of Delhi

Ms.Preeti Gupta, Advocate for Respondent R-6, 7, 10, 15, 17, 22, 25, 27-29, 31, 33-35, 39, 40, 46, 48, 50, 51, 53-57, 60-64, 68, 69, 71, 72, 75, 77, 78, 84-92, 94, 95, 97, 99-100, 102-103, 106-107, 111, 113-118, 121, 123-126.

Mr.Rakesh Munjal, Senior Advocate with Mr.Rakesh Kumar, Advocate for R-19 and 22

Mr.Puneet Singh Bindra and Mr.Akshay Sharma, Advocates for R-3,4, 8, 9, 12,17,24,31,37,44,46,48,59,66,68, 71,75,81,101,112,113,122 & 128

+ **W.P. (C) 2376/2018, CM APPL. No. 9950/2018**

ANIL KUMAR VISHWAKARMA AND ORS. Petitioners

W.P. (C) 1253/2018 & other connected matters

Page 1 of 27



2024 : DHC : 2081



Through: Mr.Akshat Gupta, Advocate

versus

UNIVERSITY OF DELHI

..... Respondent

Through: Ms.Akanksha Kaul and Ms.Versha Singh, Advocates for University of Delhi
Ms.Preeti Gupta, Advocate for R-6, 5, 8, 9, 10, 11, 13-15, 16-18.
Mr.Rakesh Munjal, Senior Advocate with Mr.Rakesh Kumar, Advocate for R-19 and 22
Mr.Puneet Singh Bindra and Mr.Akshay Sharma, Advocates for R-2,3,4,8,24,32,36,43,45,47.65.67, 70,74,79,80,82,83, 101, 112, 121 & 127

+ W.P. (C) 2426/2018, CM APPL. No. 10088/2018
MS. DHARAM DESHNA

....Petitioner

Through: Mr.Chiranjiv Kumar, Advocate

versus

UNIVERSITY OF DELHI AND ANR

..... Respondents

Through: Ms.Akanksha Kaul and Ms.Versha Singh, Advocates for University of Delhi
Ms.Preeti Gupta, Advocate for Respondent R-6, 7, 10, 15, 17, 22, 25, 27, 28, 29, 31, 22, 24, 25, 39, 40, 46, 48, 50, 51, 53, 54, 55, 56, 57, 60, 61, 62, 63, 64, 68, 69, 71, 72, 75, 77, 78, 84, to 92, 94, 95,

W.P. (C) 1253/2018 & other connected matters

Page 2 of 27



2024:DHC:2081



97, 99, 100, 102, 103, 106, 107, 111, 113 to 118, 121 and 123 to 126.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

FACTUAL MATRIX

1. The petitioners in the present batch of matters are working as Assistant professors *ad hoc* in the respondent no. 3 ('respondent University' hereinafter) at respondent no. 4 ('respondent Faculty' hereinafter) and joined the services at various periods between the years 2009-2015.
2. In the year 2017, the respondent University invited applications for the post of Assistant professors in the pay band of Rs. 15,600/- -39,100/- *vide* advertisement no. Estab.IV/258/2017 dated 27th January, 2017 whereby 126 vacancies were advertised for respondent Faculty as well.
3. The petitioners also applied for the said posts and were called for the interviews. Pursuant to conclusion of the interviews, the respondent University complied with the process, i.e. convening the meeting of the Executive council.
4. During the period of finalising the list of selected candidates, the petitioners in the present batch of matters sent various representations to



the University seeking permanent position and complaining about the alleged illegality in the selection process.

5. Thereafter, the petitioners preferred the present batch of petitions before this Court seeking quashing of the entire selection process.

6. During the course of hearing in the present matters, the respondent University declared the result of the interviews and the petitioners were not selected. Thereafter, the selected candidates were also made *pro forma* party to the instant petitions and therefore, the learned counsel appearing on behalf of the said respondents made their submissions and filed the counter affidavits.

SUBMISSIONS

(on behalf of the petitioner)

7. The learned counsel appearing on behalf of the petitioners submitted that the respondent University did not follow the selection procedure as prescribed by the University Grants Commission ('UGC' hereinafter), therefore, the entire selection process should be declared illegal, unlawful, unjust and arbitrary.

8. It is submitted that the petitioners were serving in the respondent Faculty for a long time and were still ignored by the selection committee and the same hints towards adoption of malpractice on part of the respondent University.

9. It is submitted that the appointment to the permanent position in the respondent University is based on the academic qualification, teaching experience and research work, and the petitioners duly fulfill the said criteria.



10. It is submitted that the said alleged malpractice is not only evident to the applicants, but the permanent faculty of the respondent University is also in support of the petitioners leading to a large scale protest by them.

11. It is submitted that the petitioners have a reasonable expectation of being confirmed against the permanent vacancies for which already undergone the due process of selection, therefore, there is no legitimate reason to stall their appointment against the permanent vacancies.

12. It is also submitted that the petitioners are getting extensions on the prior appointed *ad hoc* position, however, are declared not competent for appointment as the permanent faculty in the respondent University.

13. It is further submitted that the selected candidates against the permanent vacancies were intimated about their selection prior to release of the final list, therefore, hinting towards adoption of malpractice by the respondent University.

14. The learned counsel for the petitioners also contended that the respondent University halted the process of selection for more than 4 months, and the said non-action is in clear violation of the UGC Regulations.

15. In light of the foregoing submissions, the learned counsel for the petitioners submitted that the instant petition be allowed, and the reliefs be granted as prayed.

(on behalf of the respondent)

16. *Per Contra*, the learned counsel appearing on behalf of the respondent University vehemently opposed the present petition,



submitting to the effect that the instant petition is nothing but gross abuse of process of law, and is liable to be dismissed.

17. It is submitted that the petitioners duly participated in the selection process and came out unsuccessful, therefore, they do not have any right to challenge the selection process as the same is an afterthought after getting rejected for the said positions.

18. It is submitted that the petitioners were appointed in the respondent University against the available *ad hoc* positions, and the said appointment does not confer any right to get regularization.

19. It is submitted that the selected candidates were earlier working as permanent faculties in various other Universities, and tendered their resignation post selection in the respondent University, therefore, allowing the instant petition would cause grave injustice to the candidates duly selected by the fair process adopted by the University.

20. It is also submitted that as per the UGC Regulations, the API score, as awarded to the candidates, is used merely for screening purpose and the same does not have any bearing on the expert assessment, therefore, the scores awarded to the petitioners were only relevant till their screening to the next round.

21. It is further submitted that a large number of candidates applied for the positions advertised by the respondent University, therefore, a delay of 4 months happened due to preparation of the final merit list.

22. After conclusion of submission by the learned counsel for the respondent University, learned senior counsel appearing for the *pro forma* parties, i.e. the selected candidates made the below stated submissions.



23. The learned counsel submitted that the petitioners have failed to accept the spirit of fair and comparative competitiveness in the sphere of public employment, and have been claiming the alleged irregularity only after failing in the selection process.

24. It is submitted that the prior association of the petitioners with the respondent University does not *ipso facto* confer any right to be regularized, therefore, the instant petition is liable to be dismissed.

25. It is also submitted that the petitioners herein have not challenged the advertisement and are thus estopped from making contrary and vexatious claims of legitimate expectations after duly participating in the selection process.

26. The learned counsel for the respondents therefore submitted that the entire selection process was fair and in light of the same, there is no material irregularity with the selection process and the present petition may be dismissed.

ANALYSIS AND FINDINGS

27. Heard the learned counsel for the parties and perused the material on record.

28. In the instant batch of petitions, the petitioners have approached this Court alleging irregularity in the selection process for permanent appointment of the Assistant Professors in various Departments of the respondent University. Apart from alleging the same, the petitioners have also contended that they were working as *ad hoc* Assistant Professors in the respondent University and had legitimate expectations to get appointed against the permanent vacancies arising in the University.



29. In the rival submissions, the learned senior counsel appearing for the respondent University rebutted the arguments of the learned counsel for the petitioners by stating that mere fact that the petitioners have been working/associated with the University prior to release of the advertisement does not confer any right to get regularized. Furthermore, it has also been contended that the respondent University duly followed the procedure for appointment against the permanent vacant posts.

30. Therefore, this Court deems it appropriate to determine whether the selection process can be deemed illegal and therefore be set aside or not.

31. The pleadings in the instant cases mention the fact that the petitioners joined the University at various points of time and have been presently working in the respondent University as Assistant Professors *ad hoc*.

32. It has been vehemently argued by the learned counsel for the petitioners that the prior association with the respondent University creates a legitimate expectation to get regularized and therefore, the petitioners also have the said expectations.

33. The issue of regularization of the contractual employees is no longer *res integra* and has been dealt with by the Hon'ble Supreme Court and this Court time and again. The position regarding regularization of the employees has evolved over a period of time during which the Hon'ble Court expounded and enunciated various principles/conditions to be met by the parties seeking regularization.



34. The landmark judgment in this regard is the one rendered by the Hon'ble Supreme Court in the case of *State of Karnataka v. Umadevi*¹, whereby, the issues revolving around the question of regularization of the employees illegally appointed in the Government instrumentalities, were addressed. The relevant parts of the said judgment are reproduced herein:

“42. While answering an objection to the locus standi of the writ petitioners in challenging the repeated issue of an ordinance by the Governor of Bihar, the exalted position of rule of law in the scheme of things was emphasised, Bhagwati, C.J., speaking on behalf of the Constitution Bench in D.C. Wadhwa (Dr.) v. State of Bihar [(1987) 1 SCC 378] stated : (SCC p. 384, para 3) —The rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State whether it be the legislature or the executive or any other authority should be within the constitutional limitations and if any practice is adopted by the executive which is in flagrant and systematic violation of its constitutional limitations, Petitioner 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice.

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

¹ 3 (2006) 4 SCC 1



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 employment¹ 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.

44. The concept of equal pay for equal work is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court



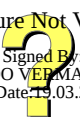
would not grant a relief which would amount to perpetuating an illegality

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.

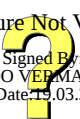
46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in Dharwad [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] , Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] , Jacob [Jacob M. Puthuparambil v. Kerala Water Authority, (1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] and Gujarat Agricultural University [Gujarat Agricultural University v. Rathod LabhuBechar, (2001) 3 SCC 574 : 2001 SCC (L&S) 613] and the like, have given rise to an expectation in them that their services would also be regularised. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. [See Lord Diplock in Council for Civil Services Union v. Minister of





Civil Service [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] , National Buildings Construction Corpn. v. S. Raghunathan [(1998) 7 SCC 66 : 1998 SCC (L&S) 1770] and Chanchal Goyal (Dr.) v. State of Rajasthan [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] .] There is no case that any assurance was given by the Government or the department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after Dharwad decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] . Though, there is a case that the State had made regularisations in the past of similarly situated employees, the fact remains that such regularisations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularised in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularisation of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

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. 48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14



and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

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.

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, 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 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.

51. The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the



backdoor. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

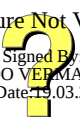
*52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College* [1962 Supp (2) SCR 144 : AIR 1962 SC 1210] . That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently*



absorbed or that the State has a legal duty to make them permanent.

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.”





35. The settled position of law was again reiterated by the Hon'ble Supreme Court in ***Union of India v. Ilmo Devi***², whereby, the Hon'ble Court emphasized certain aspects related to the regularization of employees and held as under:

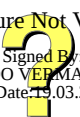
“14. Even the regularisation policy to regularise the services of the employees working on temporary status and/or casual labourers is a policy decision and in judicial review the Court cannot issue mandamus and/or issue mandatory directions to do so. In R.S. Bhonde [State of Maharashtra v. R.S. Bhonde, (2005) 6 SCC 751 : 2005 SCC (L&S) 907] , it is observed and held by this Court that the status of permanency cannot be granted when there is no post. It is further observed that mere continuance every year of seasonal work during the period when work was available does not constitute a permanent status unless there exists a post and regularisation is done. 15. In Daya Lal [State of Rajasthan v. Daya Lal, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340] in para 12, it is observed and held as under : (SCC pp. 435-36)

12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals: (i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go

² (2021) 20 SCC 290



to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised. (ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be —litigious employment. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right. (iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates. (iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees. (v) Part-time temporary employees in Government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute. [See *State of Karnataka v. Umadevi* (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , *M. Raja v. CEERI Educational Society Pilani* [M. Raja v. CEERI Educational Society Pilani, (2006) 12 SCC 636 : (2007) 2 SCC (L&S) 334] , *S.C. Chandra v. State of Jharkhand* [S.C. Chandra v.





State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943] , Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand [Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand, (2007) 15 SCC 680 : (2010) 1 SCC (L&S) 742] and Official Liquidator v. Dayanand [Official Liquidator v. Dayanand, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] .]

16. Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularisation as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part Time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.

36. Upon perusal of the aforesaid paragraphs, it is made out that the Hon'ble Court had expounded and deliberated upon the issues pertaining to regularization and laid down the parameters for regularization of services of the employees hired on contractual basis.

37. On the issue of creation of legitimate expectation regarding regularization, the Hon'ble Court held that the doctrine of legitimate expectation could be invoked if certain conditions are met, such as assurance from the decision-maker that benefits will not be withdrawn without rational grounds communicated to the individual.

38. Furthermore, the Hon'ble Court emphasized that the right to be treated equally does not extend to a claim for equal treatment with regularly employed candidates, and it cannot be relied upon to claim absorption in service without proper selection procedures.



39. Therefore, it is clear that the invocation of the said doctrine can only be done if there is any assurance provided on part of the employer, i.e., the respondent University in the instant case.

40. As per the material on record, the respondent University did not assure conversion of the *ad hoc* status to the permanent one, rather had only appointed the petitioners against the vacant temporary posts and had duly communicated the nature of said jobs prior to the appointments of the petitioners.

41. Therefore, the issue of legitimate expectation does not arise as there was no assurance given by the respondent University in this regard and the creation of a right to get regularized is not created as the doctrine of reasonable expectation cannot be invoked in the instant case.

42. During the course of proceedings, the learned counsel for the respondent University apprised this Court that the petitioners had participated in the selection process and appeared for the interviews as well, however, they could not make it to the final list.

43. The said contention has not been rebutted by the learned counsel for the petitioners, however, they alleged malpractice on part of the respondent University and raised various allegations. Before getting into the same, this Court deems it important to reiterate that the principle of estoppel is attracted which precludes the petitioners from questioning the selection process when they had duly participated in the same.



44. The judicial dicta related to the similar issue is amply clear. In the case of ***Om Prakash Shukla v. Akhilesh Kumar Shukla***,³ the Hon'ble Supreme Court has dealt with the issue in following manner:

“24. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the district of Kanpur also. They were not responsible for the conduct of the examination.”

45. In ***Madan Lal v. State of J&K***⁴, the Hon'ble Supreme Court discussed the issue of selection process challenged by the parties once they fail in getting selected for the vacant posts and held as follows:

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they

³ 1986 Supp SCC 285

⁴ (1995) 3 SCC 486



have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285: 1986 SCC (L&S) 644 : AIR 1986 SC 1043] it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

46. On perusal of the aforesaid cases, it is made out that the parties cannot impugn the notifications where they had already chosen to take fair chance by applying to the said vacant position notified in the advertisement. Therefore, it is crystal clear that the petitioners took a fair chance by applying for the position and approached this Court later on.

47. In light of the application of the settled principle of law as enunciated in the above discussed cases, it is apparent that the petitioners have not come to this Court with clean hands, rather only preferred the instant petitions post their non-selection.

48. Therefore, in light of the foregoing discussions, this Court deems it appropriate to hold that the prior association of the petitioners with the respondent University does not create any right of invocation of the doctrine of legitimate expectation as the respondent University did not make any assurance with regard to the said regularization.

49. Furthermore, the participation of the petitioners and non-challenge of the advertisement notified for permanent position restricts the



petitioners from challenging the same subsequent to their non-selection for the said posts.

50. At last, this Court also deems it imperative to discuss the allegations of malpractice as alleged against the respondent University. The learned counsel for the petitioners have vehemently contended that the respondent University failed to comply with the UGC Regulations and therefore, the entire selection process should be declared null and void.

51. The said allegations has been answered by the respondent University by submitting that the same is completely misplaced and incorrect as the University duly abided with the UGC regulations and the delay of 4 months was caused due to large number of applicants and lengthy process of preparation of merit list.

52. Furthermore, it is also on record that the sealed list of recommended candidates was put forth before the Executive Council meeting held on 30th December, 2018 and the same was notified in the public domain thereafter.

53. As per settled position of law, the Courts ideally should not interfere with the recommendations made by a high powered committee, until and unless the same is illegal.

54. Even though the petitioners suggest *mala fides* on part of the respondent University, the material on record does not prove the same. Therefore, this Court is of the view that the said selection process was done in accordance with the due procedure and as per the guidelines issued by the UGC.



CONCLUSION

55. The instant batch of petitions has been filed by the candidates aggrieved by their non-selection for the vacancies of permanent position of Assistant Professors in the respondent University.

56. Even though the petitioners are serving as *ad hoc* professors in the respondent University, the settled position of law is clear and the said fact does not create a right to get regularized if the same is not hinted/promised by the employer.

57. Furthermore, the petitioners have taken fair chances by applying for the vacant positions, however, approached this Court pursuant to their non-selection.

58. Therefore, this Court does not deem it appropriate to exercise its extraordinary writ jurisdiction to set aside the entire process of selection and appointment of Assistant Professors in the respondent University.

59. In light of the same, the present batch of petitions, being devoid of any merit, is dismissed.

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

61. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MARCH 15, 2024
SV/AV/RYP