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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 18th September, 2024*

+ W.P.(C) 11044/2009

M.P. KANTH

.....Petitioner

Through: Mr. Manish Kumar and Ms. Aparajit
Jha, Advocates.

versus

INDIAN COUNCIL OF HISTORICAL RESEARCH
& ORS.

.....Respondents

Through: Mr. C.P. Tyagi, Advocate for
Respondents No.1 and 2.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Articles 226/227 of the Constitution of India assailing the impugned order dated 16.02.2009 passed by Respondent No. 1/Indian Council of Historical Research ('ICHR') whereby representation of the Petitioner for grant of 2nd financial upgradation under Assured Career Progression ('ACP') Scheme as well as for grant of pensionary benefits with continuity of service from the date of appointment has been rejected.

2. Factual matrix to the extent necessary and relevant and as per the averment in the writ petition is that Petitioner was appointed as an Assistant Compiler with the Ministry of Home Affairs, Government of India on 01.04.1971 and worked therein till 20.03.1976. Thereafter, Petitioner applied for the post of Assistant Compiler in ICHR through proper channel



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and on being selected by a High Power Selection Committee, was offered appointment vide letter 08.04.1976 and on acceptance by 19.04.1976 was required to report for duty by 26.04.1976. The appointment was temporary and for a project “*TOWARDS FREEDOM – 1937-47*”. On joining ICHR, after his technical resignation with the erstwhile employer, Petitioner’s service record was transferred to ICHR.

3. Petitioner avers that after rendering 30 years service in ICHR and earlier 5 years in Government of India, he was declared quasi-permanent in the post of Assistant Compiler on 27.05.1985 w.e.f. 21.04.1979. Petitioner was promoted as a Compiler w.e.f. 10.06.1985 vide order dated 30.05.1985. ICHR introduced a pension scheme and employees were given an option to opt either for GPF or the existing CPF facility vide order dated 25.07.1986. Petitioner vide letter dated 04.08.1986 opted for GPF and the option was accepted, however, the facility was withdrawn after 5 years whereas similar benefits granted to other non-academic employees of the same project were never withdrawn. Petitioner made a representation on 27.10.1995 for regularisation of his services and grant of pensionary benefits but there was no response.

4. It is stated in the petition that pursuant to recommendation of a DPC convened on 03.06.1999, Petitioner was promoted to the post of Assistant Director (Research) w.e.f. 04.06.1999 and again made a representation on 17.07.2001 seeking regularisation and 2nd financial upgradation under the ACP Scheme. Aggrieved by the inaction of ICHR, Petitioner filed W.P. (C) No. 6624/2001 and during the pendency of the writ petition, 2nd ACP was granted to the Petitioner *albeit* corrigendums were issued thereafter correcting the pay scales granted on financial upgradation. Petitioner avers



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that although orders were issued for grant of 2nd ACP, actual benefits were never granted even till his superannuation on 31.03.2006. The writ petition was disposed of on 22.07.2008 directing the Petitioner to make representation ventilating his grievances, with a further direction to ICHR to consider the representation and pass a speaking order. Petitioner made a representation on 08.08.2008, which was rejected by the impugned order dated 16.02.2009 on the ground that being a temporary/*ad-hoc* employee working in different projects, Petitioner was not entitled to GPF-cum-pension or the financial upgradation under ACP Scheme, Clause 3 whereof makes it clear that certain categories of employees such as casual/temporary/*ad-hoc*/contract shall not qualify for benefits under the Scheme.

5. Learned counsel for the Petitioner submits that Petitioner was appointed by ICHR through a due process of selection and pursuant to recommendation of High Power Selection Committee. His technical resignation was accepted by the erstwhile employer, Government of India and when he was appointed by ICHR, he had a lien on his earlier service. Petitioner rendered 35 years of continuous service without any break and superannuated on the prescribed age of retirement. Petitioner was posted on assignments tenable by regular employees and was given promotions from time to time. All these features reflect that the appointment was in fact in the nature of a 'regular appointment' *albeit* the nomenclature given at the time of issuing the offer of appointment was 'temporary'. In fact, later ICHR itself declared the status of Petitioner's appointment as one of quasi-permanent employee and also permitted him to opt for GPF-cum-pension Scheme. In support of his plea that Petitioner's appointment was a regular



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appointment, learned counsel places heavy reliance on the judgment of the Supreme Court in ***Rajkaran Singh and Others v. Union of India and Others, 2024 SCC OnLine SC 2138***, wherein the Supreme Court observed that the mode of appointment of the appellants therein as well as receipt of increments and promotions comparable to other Government employees, pattern of career progression, provisions of leave and other benefits including grant of ACP reinforced the fact that despite their appointment being formally classified as temporary, the employment had substantial hallmarks of regular Government service and appellants were held entitled to pensionary benefits as well as other reliefs such as pay revision under 6th CPC's recommendations.

6. *Per contra*, learned counsel for ICHR takes a categorical stand that Petitioner was neither appointed as a regular employee nor his services were regularised till the date he superannuated and even in this writ petition, no declaration is sought for regularising the services of the Petitioner. Petitioner was engaged on a temporary post of Assistant Compiler in the project of ICHR namely, "Towards Freedom Project" w.e.f. 21.04.1976. Service of the Petitioner was co-terminus with the project and this fact was duly mentioned in his appointment letter dated 08.04.1976. Later, vide order dated 30.05.1985, Petitioner along with some other Assistant Compilers was appointed as Compiler on temporary/*ad-hoc* basis in the same project. With the termination of the project in the year 1992, services of all employees including the Petitioner were terminated vide order dated 31.03.1992. Only two persons, including the Petitioner were engaged afresh for a new project called "Documentation and Economic History of British Rule in India" purely on *ad-hoc* basis and initially for a period of six months as Junior



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Research Officer without continuity of earlier engagement and later engagement was extended from time to time. Petitioner was finally relieved from his duties as Research Officer (*ad-hoc*) on 31.03.2006 and accordingly, CPF amount of Rs.20,19,581/- and Gratuity of Rs.3,02,205/- along with Leave Encashment to the tune of Rs.1,92,008/- were released to the Petitioner.

7. It is argued that Petitioner was only a temporary/*ad-hoc* employee appointed for respective projects and his appointment was co-terminus with the projects in question. At no stage, Petitioner's services were regularised. Therefore, he is neither entitled to the benefit of GPF-cum-pension Scheme or financial upgradation under the ACP Scheme. It is conceded that some orders were issued relating to grant of ACP benefits to the Petitioner but being erroneous and contrary to the Scheme itself, they were never implemented and benefits were not disbursed to the Petitioner. It is urged that the ACP Scheme itself excludes certain categories of employees such as casual, temporary, *ad-hoc* and contractual from the benefits of the Scheme and basis this, the Administrative Committee of ICHR in its 47th meeting took a decision to reject the representation of the Petitioner.

8. Heard learned counsels for the parties and examined their submissions.

9. Learned counsel for the Petitioner has primarily canvassed that Petitioner is a regular employee of ICHR and thus entitled to financial upgradation under the ACP Scheme as well as benefits under the GPF-cum-pension Scheme. ACP Scheme was introduced vide DoPT O.M. dated 09.08.1999 pursuant to recommendations of 5th CPC as a 'safety net' to deal with problems of genuine stagnation and hardship faced by employees due



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to lack of adequate promotional avenues. The Scheme envisages two financial upgradations after 12 years and 24 years of regular service respectively subject to fulfilment of prescribed conditions in the Scheme.

Relevant paragraphs of the Scheme are as follows:-

“3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group ‘C’ and ‘D’ employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group ‘B’, ‘C’ and ‘D’ employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group ‘A’, ‘B’, ‘C’ and ‘D’ categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-I.

3.2 ‘Regular Service’ for the purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/Service Rules.

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5. Vacancy based regular promotions, as distinct from financial upgradation under the ACP Scheme, shall continue to be granted after due screening by a regular Departmental Promotion Committee as per relevant rules/guidelines.

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6.1 A departmental Screening Committee shall be constituted for the purpose of processing the cases for grant of benefits under the ACP Scheme.”

10. Annexure-1 to the ACP Scheme provides that first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and second upgradation will be after 12 years of regular



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service from the date of the first financial upgradation and the two financial upgradations in the entire service career of an employee shall be counted against regular promotions including in-situ and fast track promotions availed through limited departmental competitive examination. Financial upgradation is given in the next higher grade in accordance with the existing hierarchy in a cadre/category of posts and is subject to fulfilment of normal promotion norms. Relevant paragraphs are as follows:-

“4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential effect on the second upgradation which would also get deferred accordingly;

5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;

5.2 Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit;

6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group ‘D’ employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges



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related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme;”

11. From a conjoint reading of the aforesaid provisions of ACP Scheme, it is palpably clear that first financial upgradation under ACP Scheme is on completion of 12 years of regular service and the second on completion of 12 years of regular service from the date of first financial upgradation. It is therefore abundantly clear that the service that reckons towards residency period for grant of financial upgradations is ‘regular service’ in the relevant period. The expression ‘regular service’ has been defined in paragraph 3.2 of the ACP Scheme and reads that ‘*regular service*’ for the purpose of ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/service rules.’ Added to this is clause 3.1 which specifically excludes certain categories of employees such as casual employees including those with temporary status, *ad-hoc* and contract employees from the benefits under the Scheme. Therefore, broadly understood, financial upgradation under the ACP Scheme requires fulfilment of certain conditions which are: (a) regular service in a particular grade for a minimum period as mentioned in paragraph 4 of Annexure-1; and (b) fulfilment of promotion norms including eligibility criteria for promotion to the next post in the hierarchy. In the absence of an employee meeting both the criteria, financial upgradation cannot be granted under the Scheme, which was enacted with a welfare objective of a financial upgradation as employees were stagnating due to lack of vacancies and/or other reasons.

12. Plain reading of the Scheme shows that there is no ambiguity that only employees with regular service to their credit are entitled for consideration for financial upgradations. The expression ‘regular service’



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having been defined within the Scheme, there is no scope for giving any other interpretation to the expression as per the golden rule of interpretation that words in any statute or policy must be given their plain grammatical meaning unless they are ambiguous or capable of two interpretations so as to give effect to a liberal interpretation which may legitimately further the object of any statute or policy. Significantly, there is no challenge to the ACP Scheme. Petitioner calls upon this Court to hold that he is entitled to the financial upgradation under the ACP Scheme basis the quasi-permanent status conferred on him by ICHR. Accepting this argument would amount to adding words to the ACP Scheme and declaring that other than regular employees even those employees who are quasi-permanent would be entitled to financial upgradations, a path this Court cannot tread on. The ACP Scheme clearly excludes employees other than those with regular service by carving out a specific exception in paragraph 3.1 and can only be enforced in the manner it exists, particularly, in the absence of any challenge to the Scheme. This view was taken by a Division Bench of this Court in ***Sudesh Kumari Sareen v. Union of India & Ors., 2011 SCC OnLine Del 575***, where the question was whether the Petitioner who was initially appointed as a Staff Nurse purely on *ad-hoc* basis but regularised subsequently could assert that her *ad-hoc* service prior to regularisation should reckon towards counting of the residual service required for grant of financial upgradations under the ACP Scheme and declining the relief, the Division Bench observed as follows:-

“10. We have heard the learned counsel for the parties. This cannot be disputed by the learned counsel for the petitioner that under the ACP Scheme especially para 2, employees such as casual employees (including those with temporary status), substitutes, ad-hoc and contract employees



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are categorically excluded for qualifying for benefits under the aforesaid scheme. This also cannot be disputed that the appointment of the petitioner on 1st July, 1985 was an adhoc employment in the grade of 425-640/-. Even if she was appointed in place of Mrs. Mohinder Kaur who had been transferred to Lucknow on 8th June, 1985, the appointment of the petitioner shall be ad-hoc and cannot be termed as a substitute appointment. In any case this appointment was given to the petitioner pursuant to order dated 28th June, 1985 and if the petitioner was of the opinion that her appointment is not as an ad-hoc employee but as a substitute employee according to rules of the respondent, the petitioner ought to have challenged the same at that time. The petitioner cannot be permitted to contend that she was not appointed as an ad-hoc employee but she was a substitute employee almost after 24 years of her appointment.

11. This also cannot be disputed by the petitioner that she has not challenged para 2 of the ACP Scheme excluding grant of benefit under the scheme to the ad-hoc employees. Though challenge to the relevant para of the scheme has not been claimed by the petitioner, yet excluding the ad-hoc employees will not be applicable to her. The petitioner cannot claim that despite the scheme which is not challenged by her, she would be entitled for benefit under the scheme which categorically excludes the period during which she was employed as an adhoc employee.

12. Reliance has also been placed on Chandigarh Administration v. Jagjit Singh, (JT) 1995 (1) 445 holding that merely because the respondent authority has passed an irregular order in case of one person, the same will not be a ground to direct the same authority to issue similar order in case of another person contrary to rules. The ground of discrimination can be raised by the petitioner only if the order passed in favour of a person is legal and in accordance with rules which is not valid in her case. Thus the petitioner is not entitled for any direction from this Court to issue a Mandamus contrary to rules and to direct the respondent to violate the tenor of the relevant terms of the scheme.

13. The note relied on by the petitioner also cannot change the terms and conditions in the ACP Scheme. In any case the relevant paras of the ACP Scheme has not been challenged by the petitioner and in the circumstances the note which is detailed hereinabove cannot come to her rescue. In the circumstances the petitioner has failed to make out a case for reckoning her period of service as ad-hoc employee for grant of benefit under the ACP Scheme.

14. Considering the totality of facts and circumstances the petitioner has failed to make out any illegality or perversity in the order dated 12th March, 2010 of the Tribunal declining to reckon her service as an adhoc employee towards grant of ACP Scheme. In the circumstances,



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there are no grounds to interfere with the order of Tribunal and the writ petition is, therefore, dismissed. The parties are, however, left to bear their own costs."

13. I am also fortified in my view by a judgment of the Division Bench of Calcutta High Court in ***Babu Yohanan v. The Union of India & others, 2015 SCC OnLine Cal 2009***, deciding three writ petitions involving common questions of law and facts, arising from common order passed by Central Administrative Tribunal, wherein the writ Petitioners had sought financial upgradation under the ACP Scheme by counting their *ad-hoc* service prior to regular appointments for determination of their eligibility. Examining the provisions of the ACP Scheme, more particularly, the requirement of regular service and the exclusion of certain categories from the benefit of the Scheme, the Calcutta High Court observed as under:-

"The Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit. Subsequently, 6th Central Pay Commission who submitted a report concerning the promotion policy and the ACP Scheme. In Clause 6.1.15 of said report, issue of grant of ACP was dealt with and considered. It was recommended that the existing scheme of ACP may be continued in future with two financial upgradation with certain modifications.

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On bare reading of both ACP and MACP Scheme, it is abundantly clear that the countable service period as residency period for grant of financial upgradation under the aforesaid scheme is dependant upon an employee being in working on regular basis for said period. Under Clause 3.1 of the ACP Scheme it is stipulated that casual employees (including those who are of temporary status), ad hoc and contract employees shall not qualify for benefit under the ACP Scheme. It is also stipulated that grant of financial upgradation is subject to condition mentioned in Annexure I thereof.

The financial upgradation under the ACP scheme, in our view, requires fulfillment of two conditions namely, i) regular service in particular cadre for certain period prescribed and ii) eligibility criteria to the next promotional berth from the concerned feeder post as held by the employee.



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The said ACP Scheme has social welfare object of financial upgradation so that due to stagnation in a grade without getting promotion, they are not depressed as depression may result in dis-satisfaction which would adversely affect their functioning at the work place.

The idea of grant of said benefit under aforesaid contingency is outcome of view of Apex Court applying Article 21 of the Constitution of India holding that there should be promotional berth in every discipline of service, a remedial measure to check depression of the employee due to stagnancy in a particular post/grade for long period.

The ACP Scheme is an outcome of the application of Article 14 and 21 of the Constitution of India to provide impetus to service career to avoid stagnation in a particular grade or in a particular post which satisfy the concept of social justice and human rights concept.

In the instant case the applicants have not challenged the vires of ACP Scheme fixing terms and conditions of fulfilment of regular service for certain period namely, 12 years for 1st financial upgradation and 24 years for 2nd financial upgradation and also the debarring clause in the Scheme for not counting the temporary, casual and ad hoc service within the residency period of 12 and 24 years respectively with reference to grant of 1st and 2nd financial upgradation respectively.

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The language used in clause 3.2 of the said Scheme with regard to the eligibility for counting of services for the purpose of getting ACP benefits is clear. Accepting the submission of the writ petitioners would mean that the Court would be required to legislate and enact provisions creating substantial rights contrary to the object of the scheme. The language imported in paragraph 3.2 of the said Scheme dated 9th August, 1999 is clear and unambiguous when it prescribes completion of regular service for grant of financial upgradation. Thus, the service rendered prior to regular appointment, in any manner, whether ad hoc or otherwise is clearly excluded from the purview of the said scheme for getting such benefit.

ACP Scheme as discussed above stipulated that the service on ad hoc basis is not countable to determine the residency period of stagnancy of 12 years or 24 years for 1st and 2nd financial upgradations respectively. Hence, the relief for consideration of the ad hoc service for calculating the residency period eligibility for grant of financial upgradation benefit is not permissible under ACP Scheme. It is a settled legal position that when somebody intends to have benefit of the scheme he has to strictly satisfy all the terms and conditions as stipulated in the scheme. The said principle of strict compliance rule was applied in Union of India V. Shashank Goswami reported in (2012) 11 SCC 307. The respondents in that case



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prayed for appointment on compassionate ground due to death of sole earning member of the family and while adjudicating the issue, the Apex Court held that the condition stipulated in the scheme or administrative instruction should be followed strictly and strict compliance is must for grant of any relief.”

14. Learned counsel emphasises that *de hors* the nomenclature in Petitioner’s appointment letter, the trajectory of his career path in ICHR reflects that his appointment was that of a regular employee and therefore, his service be treated as regular service for ACP Scheme and GPF-cum-pension benefits. Learned counsel for ICHR, on the other hand, has laboured to demonstrate that the appointment of the Petitioner was on temporary basis to the post of Assistant Compiler specific to a project and this was clearly mentioned in the offer of appointment. Petitioner’s services were continued as co-terminus with the project and when the first project ‘*TOWARDS FREEDOM – 1937-47*’ ended, Petitioner along with another employee was freshly engaged for a new project called “Documentation and Economic History of British Rule in India”. The temporary engagement was extended from time to time till the Petitioner was relieved on 31.03.2006. No material has been placed on record by the Petitioner to show that his service was regularised before he was relieved on 31.03.2006. Significantly, in the present petition, Petitioner has not sought regularisation or even a relief of declaration that his temporary service be treated as regular service. As noted above, merely grant of quasi-permanent status will not amount to granting regularisation and in the wake of the judgments referred to above where despite regularisation, Courts declined to reckon *ad-hoc* service towards the residuary service required for ACP benefits, Petitioner’s temporary service cannot be counted either for financial upgradation under the ACP Scheme or



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for pensionary benefits under the GPF Scheme. Petitioner was entitled and was paid benefits arising out of the existing CPF Scheme, gratuity and leave encashment. The judgment of the Supreme Court in *Rajkaran Singh (supra)*, cannot aid the Petitioner as the facts of the case are different. Unlike in the said case, Petitioner's initial appointment on 08.04.1976 was temporary against a project and till its completion. On 27.05.1985, no doubt an office memo was issued appointing the Petitioner in a quasi-permanent capacity but that only goes to show that the appointment was not permanent and regular. On 30.05.1985, Petitioner was again appointed as a Compiler on the same project but on *ad-hoc* basis. After the completion of the project, the co-terminus appointment came to an end and Petitioner was subsequently engaged in a fresh project and therefore it is clear that he continued on co-terminus basis on the strength of temporary projects. Representations were made from time to time by the Petitioner seeking regularisation, conscious of the fact that he was not a regular employee. The representations were never decided in favour of the Petitioner but he took no steps to seek regularisation in a Court of law at any stage and accepted his temporary/*ad-hoc* appointment throughout his service till he was finally relieved. In light of these facts and the settled law, Petitioner cannot be granted either of the two reliefs claimed on the strength of his temporary and co-terminus appointment.

15. Writ petition is accordingly dismissed being devoid of merit.

JYOTI SINGH, J

SEPTEMBER 18, 2024

B.S. Rohella/shivam