



2024:DHC:8340



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

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Date of Decision: 26th September, 2024

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+ W.P.(C) 10664/2018, CM APPLs. 41568/2018, 20258/2020,
29704/2020 and 29732/2020

APOORVI SOOD

.....Petitioner

Through: Mr. Avinash Sharma and Ms.
Akansha Kapoor, Advocates

versus

NETAJI SUBHAS INSTITUTE OF TECHNOLOGY
AND ORS.

.....Respondents

Through: Mrs. Avnish Ahlawat Standing
Counsel with Mr. Nitesh Kumar Singh, Ms.
Laavanya Kaushik, Ms. Aliza Alam and Mr.
Mohnish Sehrawat, Advocates

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+ W.P.(C) 10668/2018, CM APPLs. 41577/2018 and 19443/2020

DR PRITI BANSAL

.....Petitioner

Through: Mr. Tushar Singh, Ms. Akshra Arshi
and Ms. Khyati Jain, Advocates.

versus

NETAJI SUBHAS INSTITUTE OF TECHNOLOGY
AND ORS.

.....Respondents

Through: Mrs. Avnish Ahlawat Standing
Counsel with Mr. Nitesh Kumar Singh, Ms.
Laavanya Kaushik, Ms. Aliza Alam and Mr.
Mohnish Sehrawat, Advocates



CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

JYOTI SINGH, J. (ORAL)

1. These writ petitions have been filed by the Petitioners for a direction to the Respondents to treat/declare their services as Assistant Professor (IT) in the Division of IT, Netaji Subhas Institute of Technology ('NSIT') as permanent/regular with consequential benefits from the date of their respective appointments. Since common question of law arises in these writ petitions, they were heard together and are being decided by this common judgment.
2. Factual matrix to the extent necessary and emerging from the writ petitions is that NSIT published an advertisement in the Employment News dated 20-26.10.2012 for Faculty positions inviting applications for appointment to the post of Assistant Professors in various departments of NSIT, which is an Autonomous Body under the Government of NCT of Delhi and is affiliated to the University of Delhi. Last date of the applications was 12.11.2012 and Petitioners applied and were shortlisted for the interview scheduled on 13.06.2014. On the basis of their credentials and performance in the interview, Petitioners were recommended for appointments and received offer letters dated 28.07.2014 to the post of Assistant Professor *albeit* on contract basis in PB-III of Grade Pay of Rs.6,000/- with DA, HRA and TA as per the applicable rules.
3. It is averred that at that stage, Petitioners were in need of the job to support their respective families and accepted the appointments on contract basis though the advertisement did not mention that the applications were



invited for contractual appointments. Petitioners were assured that their appointments will be on contract for initial period and will be considered as regular in due course. Over a period of time, realising that Petitioners were being treated on contract basis, they started representing for regularization of their appointments, however, finding no positive response, Petitioners preferred writ petitions being W.P. (C) No.4996/2018, titled ***Apoorvi Sood v. Netaji Subhas Institute of Technology and Ors.*** and W.P. (C) No.4957/2018, titled ***Dr. Priti Bansal v. Netaji Subhas Institute of Technology and Ors.,*** before this Court on 08.05.2018, which were disposed of on 09.05.2018 with liberty to the Petitioners to make a representation and direction to the Respondents to pass a speaking order. Despite representations made by the Petitioners, NSIT vide order dated 08.08.2018 rejected the request of the Petitioners to treat them as regular/permanent leading to filing of the present writ petitions.

4. Learned counsels for the Petitioners argue that Petitioners have been continuously working as Assistant Professors since 2014 on contract basis despite the fact that the advertisement and the consequent recruitment process by NSIT was meant for regular appointments and admittedly, there was no mention in the advertisement that applications were invited for appointment on contractual basis and thus it was not open to NSIT to appoint the Petitioners on contract. Drawing the attention of the Court to Minutes of the Selection Committee meeting held on 01.07.2014 and 02.07.2014, it is pointed out that it was the Selection Committee which on its own made selections internally in two categories i.e. general category and on contract basis and placed the names of the Petitioners under the category of contract appointees, which was not justified or within the powers of the



Committee to do. It is also not indicated in the minutes as to which objective criteria/marks the Selection Committee divided the recommended candidates into the categories of regular and contractual appointees, when they were all identically placed, violating Article 14 of the Constitution of India.

5. Learned counsels for the Petitioners places reliance on the judgment of the Supreme Court in *Somesh Thapliyal and Another v. Vice Chancellor, H.N.B. Garhwal University and Another*, (2021) 10 SCC 116, wherein the Supreme Court was dealing with the case where posts in the Teaching Faculty were created and advertised by the University and the Appellants were appointed through a selection process *albeit* on contract basis, which they accepted initially due to an unequal bargaining position but later protested and sought regular appointments. The Supreme Court held that once the Appellants had gone through the process of selection provided under the applicable statutory scheme, regardless of the fact whether the post was temporary or permanent, the appointments were substantive in character and ought to be made permanent as and when the posts were permanently sanctioned. Supreme Court negated the contention of the Respondents therein that the Appellants had accepted the terms and conditions mentioned in the letters of appointments on the ground that it is not open for a person appointed in public employment to ordinarily choose the terms and conditions as employer is always in a dominating position and employee is at the receiving end. The Supreme Court took judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that would cost him or her the job itself. Reliance is also placed on a judgment of this Court in *Amrish Chanana & Ors v. Govt. of NCT of Delhi & Anr*, 2013 SCC OnLine Del 1770, where the Co-



ordinate Bench of this Court observed that once there are sanctioned posts and appointments are made through regular recruitment process by open advertisement of duly qualified persons, these cannot be treated as contractual appointments.

6. Learned counsel for NSIT argues that pursuant to the advertisement inviting application for appointment to 63 vacancies of Assistant Professors, Petitioners had applied and were interviewed on 01.07.2014 and 02.07.2014 by a duly constituted Selection Committee. On the basis of the qualification and assessment of the performance in the interviews, the Committee recommended candidates for appointments to the post of Assistant Professor, both on regular and contract basis and the recommendations of the Committee were approved by the Chairman, Board of Governors, NSIT. This segregation into two categories was done in the order of merit finding that some candidates were suitable only for short term contract appointments.

7. It is further argued that it was clearly stated in the appointment letters that the appointments of the Petitioners were contractual in nature and the offers were accepted by the Petitioners without any protest or demur and it is thus not open for the Petitioners at this stage to question the nature of appointments. It is also urged that in the limited scope and ambit of judicial review, this Court cannot and ought not to interfere in the findings of the Selection Committee, which comprised of Experts in the field and moreso when the Committee's findings were approved. There are no allegations of any bias against the members of the Selection Committee, warranting any interference in the appointments of the Petitioners.



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

9. The genesis of these writ petitions lies in an advertisement published by NSIT for appointment to Faculty positions for the posts of Assistant Professors in different departments of NSIT. There is no dispute that Petitioners were successful in the selection process, which was through the process of interview by a duly constituted Selection Committee. Significantly, the advertisement did not mention that applications were being invited for contractual appointments and as rightly contended by the Petitioners, they had never anticipated that on being selected, they would be appointed on contract basis. It is a matter of common knowledge and the requirement of law, that if an employer wishes to make appointments on contract/temporary/*ad hoc* basis, the advertisement must specifically stipulate so. It is equally undisputed that after rigorous process of selection when the Petitioners received offers of appointments, it was mentioned that their appointments were on contract basis and Petitioners initially accepted the offers and were appointed, but it is equally undisputed that soon thereafter they started protesting once it was realized that the assurances given to them to treat their appointments as regular as per the advertisement, were false and meaningless. Petitioners also approached this Court seeking a direction for regularization which writ petition was disposed of with liberty to make representations.

10. Therefore, NSIT cannot adopt a position, which it has chosen to adopt that Petitioners willingly accepted the appointments. Be that as it may, even assuming for the sake of arguments that Petitioners willingly accepted the offers at the initial stage, NSIT cannot take a stand that this would create an



estoppel against them to protest against contractual appointments in light of the advertisement which did not stipulate that the appointments will be contractual and considering that they were not in a position to bargain as that may have cost them their jobs itself. In this context, Petitioners have correctly relied on the judgment of the Supreme Court in **Somesh Thapliyal** (*supra*), where in a similar situation, Appellants had accepted contractual appointments despite having undergone a regular selection process and Respondents amongst other objections had taken an objection that Appellants had accepted the terms and conditions in the letter of appointment and could not question the same. The Supreme Court negated this contention and held as follows:-

“42. The submissions of the learned counsel for the respondents that the appellants have accepted the terms and conditions contained in the letter of appointment deserves rejection for the reason that it is not open for a person appointed in public employment to ordinarily choose the terms and conditions of which he is required to serve. It goes without saying that employer is always in a dominating position and it is open to the employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. This Court can take judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that would cost his/her job itself.

43. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved.

44. In the instant case, they lodged the protest petition and brought their grievance to the notice of the respondents but were unable to question except to pray to the Almighty to consider their grievance sympathetically.

45. The term “substantive appointment” is not so defined in the legal dictionary but has been referred in the service jurisprudence by the recruiting authority while framing Rules under Article 309 of the



Constitution and what is being termed as “substantive appointment” can be gathered from the U.P. Sales Tax Officers (Grade II) Service Rules, 1983. The relevant extract is as under:

*“**“substantive appointment”** means an appointment, not being an ad hoc appointment, on a post in the cadre of the service made after selection in accordance with the rules and, if there are no rules in accordance with the procedure prescribed for the time being by executive instructions, issued by the Government.”*

46. *The definition of “substantive appointment” can further be noticed under Rajasthan Administrative Service Rules, 1954 as under:*

*“**4. (n) “substantive appointment”** means an appointment made under the provisions of these Rules to a substantive vacancy after due selection by any of the methods of recruitment prescribed under these Rules and includes an appointment on probation or as a probationer followed by confirmation on the completion of the probationary period.”*

47. *Almost similar nature of rule is available in the services where the recruiting authority has defined what is held as “substantive appointment” under the Recruitment Rules framed under Article 309 of the Constitution and this clearly defines that an appointment made in accordance with the scheme of Rules are held to be substantive appointment.*

48. *Adverting to the facts of the case, undisputedly, the appellants were appointed pursuant to an advertisement dated 4-2-2004 and 19-5-2006 held for regular selection and after going through the process of selection as being provided under Chapter VI of the 1973 Act and on the recommendations been made by the statutory Selection Committee, constituted under Sections 31(1) and (4) of the Act and approved by the Executive Council, which is a statutory authority, appointments were made in the year 2004 and 2007 respectively.*

49. *In our considered view, once the appellants have gone through the process of selection provided under the scheme of the 1973 Act regardless of the fact whether the post is temporary or permanent in nature, at least their appointment is substantive in character and could be made permanent as and when the post is permanently sanctioned by the competent authority.*

50. *In the instant case, after the teaching posts in the Department of Pharmaceutical Sciences have been duly sanctioned and approved by the University Grants Commission of which a detailed reference has been made, supported by the letter sent to the University Grants Commission*



dated 14-8-2020 indicating the fact that the present appellants are working against the teaching posts of Associate Professor/Assistant Professor sanctioned in compliance of the norms of the AICTE/PCI and are appointed as per the requirements, qualifications and selection procedure in accordance with the 1973 Act and proposed by the University, such incumbents shall be treated to be appointed against the sanctioned posts for all practical purposes.

51. Thus, it can safely be held that the appellants became entitled to claim their appointment to be in substantive capacity against the permanent sanctioned post and become a member of the teaching faculty of the Central University under the 2009 Act.

52. Consequently, the appeals succeed and are accordingly allowed. The judgment of the Division Bench of the High Court dated 19-8-2013 [Somesh Thapliyal v. HNB Garhwal University, 2013 SCC OnLine Utt 2815] is hereby quashed and set aside. The appellants shall be treated to be substantively appointed teachers (Associate Professor/Assistant Professor) and members of service of the Central University, namely, HNB Garhwal University for all practical purposes, entitled for a pay scale and notional consequential benefits admissible to a regularly appointed teacher in the service of the Central University under the 2009 Act. No costs."

11. Therefore, in view of the binding dictum of the Supreme Court, this Court finds no merit in the preliminary objection raised by NSIT that having accepted the contractual appointments, Petitioners cannot turn around and question them.

12. Coming to the merits of the case, it is demonstrably clear from the advertisement in question that there was no stipulation therein that the appointments will be contractual in nature. Petitioners were invited for interviews along with other candidates and successfully cleared the selection process. It is an admitted position that it was the Selection Committee which on its own accord entered into an exercise of segregating the selected candidates into two categories i.e. regular and contract. It is not understood how and why the Selection Committee entered into this exercise when it was



not tasked to make appointments on contract basis and needless to state was under a mandate to proceed as per the public advertisement, which was an advertisement for making regular selections, in the absence of any stipulation to the contrary. Interestingly, while it is noted that this exercise was in the order of merit, it is not even brought forth in the minutes as to what criteria was followed for drawing up the merit list and there is no material even today on record which explains how the segregation was justified. To this Court, it is clear that this was completely an arbitrary exercise and beyond the ambit and jurisdiction of the Selection Committee.

13. Even otherwise, the Petitioners were entitled to regular appointment in law in terms of the observations of this Court in *Amrish Chanana (supra)*. The said case was filed by 16 Petitioners appointed on Faculty positions in the Respondent's Institute seeking regular appointments. The Court held that since the appointments were against sanctioned posts through public advertisement and Petitioners were duly qualified in terms of the Recruitment Rules in question, even if they were initially appointed on contract basis, that fact cannot be held against them and allowed the writ petition holding that Petitioners will be treated to be appointed on regular basis subject to their successfully completing their probation periods.

Relevant paragraphs of the judgment are as follows:-

"1. This writ petition is filed by 16 petitioners. One petitioner, namely, the petitioner No. 5-Dr. Subhash Sahu has resigned and, therefore, the writ petition has to be decided qua the remaining 15 petitioners. Petitioners have been appointed as either Readers or Lecturers or Professors in the respondent No. 2-institute. The petitioners are seeking appropriate writs, orders or directions for quashing of the impugned newspaper advertisement dated 02.02.2013 by which the respondent No. 2-institute/employer/Chaudhary Brahm Prakash Ayurvedic Charak



Sansthan is seeking to call and appoint persons as Readers, Lecturers and Professors to the posts to which the petitioners stand appointed.

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11. The second aspect is of existence of vacancies in the sanctioned posts and as to whether all the petitioners were duly qualified for the posts. On the aspect of vacancies existing in the posts are concerned, it is not disputed on behalf of respondent No. 2 that it is because that the vacancies were existing, advertisements were issued in the newspapers for filling up the vacancies, and the only contention of respondent No. 2 is that the appointments of the petitioners were contractual appointments and therefore not regular appointments. I thus conclude that in view of the advertisements issued for the posts in question to which the petitioners were appointed it could not be open for the respondent No. 2 to contend that there did not exist vacancies in the posts.

So far as the qualifications of the petitioners are concerned, it is not an issue that the petitioners met the required qualifications as specified in the advertisements issued, as also otherwise specified by respondent no. 2 for the posts of Readers, Lecturers or Professors. The learned counsel for the petitioners has filed a copy of the Gazette Notification with respect to the posts of Lecturers in various disciplines in Ayurveda and another schedule (V), both of Government of NCT of Delhi prescribing qualifications for the appointments to the posts of Lecturers in Ayurveda, Associate Professor in Ayurveda and Professors of Ayurveda. Thus the second requirement of Umadevi's case (supra) stands satisfied.

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14. In my opinion, the ratio of a judgment has to be read in the context of the facts of the case. In this regard one can refer to the Constitutional Bench judgment of the Hon'ble Supreme Court in the case Padma Sundara Rao v. State of Tamil Nadu, (2002) 3 SCC 533 wherein the Constitution Bench of the Hon'ble Supreme Court held that the ratio of a case is dependent on the facts of each individual case, and difference of even a single fact can make difference to the ratio of two cases. The Supreme Court cautioned against reading of language of judgment as if it was the language of a statute.

The judgment in the case of Mitraon Uthan Samiti (supra) shows that really what was in question in the said judgment was the post as stated in para 1 of the said judgment viz of Project Director of the respondent No. 2 and not those posts to which the petitioners have been appointed. Observations in the said judgment therefore have to be read really with reference to recruitment rules when the post of Project Director was required to be filled up. I do not think that the ratio of the said judgment



can be read to mean that there did not at all exist any recruitment rules for the posts of Readers, Lecturers or Professors of the respondent No. 2. The judgment in Mitraon Uthan Samiti (supra) surely did not have bearing to the applicable recruitment rules of Government of NCT of Delhi so far as the Readers, Lecturers and Professors are concerned because the circular dated 05.06.2006 of the Government of NCT of Delhi does not find mention in the said judgment and which obviously would be because the said circular dated 05.06.2006 would not have been pointed out by the respondent No. 2 herein to the Division Bench at the time of passing of judgment dated 03.10.2012. Assuming for the sake of arguments that the posts of Readers, Lecturers or Professors were in issue in the case of Mitraon Uthan Samiti (supra). Therefore, the judgment in Mitraon Uthan Samiti (supra) has no application so far as the facts of the present case are concerned. Most importantly and finally I must state that even if the judgment in the case of Mitraon Uthan Samiti (supra) did direct framing of rules it would be as regards rules framed by respondent No. 2 for itself for the first time and that would not be a reflection on the aspect that till then there existed and were applicable the relevant rules of Govt, of NCT of Delhi for various posts in respondent No. 2.

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16. *Finally I would like to observe that what Umadevi's (supra) case only required was existence of sanctioned posts and the qualifications required for such posts. Creation of sanctioned posts with qualifications can no doubt be prescribed by recruitment rules, but creation of sanctioned posts with required qualifications can also be done independently of framing of recruitment rules. Thus the argument of respondent No. 2 that sanctioned posts with specific qualification can only exist under recruitment rules is a wholly misconceived argument once a competent authority otherwise creates sanctioned posts.*

17. *The upshot of the above discussion is that duly qualified petitioners were appointed on open competition between candidates called through advertisements in newspapers. Petitioners cleared the written tests, and the petitioners also cleared the interview conducted by the Selection Committee. Appointments of the petitioners were also against the sanctioned posts created by means of Government of NCT of Delhi's circular dated 05.06.2006. The petitioners' appointments were as per the extant recruitment rules, being the recruitment rules of Government of NCT of Delhi. The petitioners' appointments are in accordance with the ratio of Umadevi's (supra) case and hence are regular appointments and not illegal appointments. Neither the letter nor the spirit of the ratio of Umadevi's (supra) case is violated by the appointments of the petitioners. After all what Umadevi's case (supra) prohibited was back door illegal appointments without following an open recruitment process*



and which illegal backdoor appointments used to be got regularized subsequently.

18. Before going to the next aspect, I may at this stage put on record the objection which was raised on behalf of respondent No. 2 for not considering the additional documents filed by the petitioner along with an additional affidavit dated 01.05.2013. However, since the documents have been filed supported by an affidavit, I do not find any reason not to refer to them and taken with the fact that the very nature of the documents of the same being affidavits of petitioners counter signed by the Principal of respondent No. 2/institute, minutes of the meeting of the Selection Committee of respondent No. 2 and Assessment Visitation Report prepared by the Central Council of Indian Medicine with respect to the respondent No. 2 for the year 2011-12 etc etc show that the documents are indubitably genuine documents.

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22. In my opinion, there is clearly a difference between the expressions “temporary basis” and “contractual appointment”. If the appointment was contractual appointment then the appointment would be for a particular period i.e. from a particular date to a particular date. In the present case, since the appointment letter is not from a particular date to another particular date on which the period expires, merely because it is mentioned that the initial appointment is for two years and the probation period will be of one year cannot mean that the appointments to the post is on contractual basis. In my opinion the very fact that appointment is on probation negates the argument of contractual appointment. The appointment letter nowhere stated that appointments are ‘contractual appointments’. The fact that probation is of one year and only in which first year period employment can be terminated by a month's notice (i.e. not after one year and till the end of second year) is another clear pointer of the employment being not a contractual employment. The period specified of two years is really for the purpose that the maximum period of probation would be of two years. Clause 11 using the expression ‘from time to time’ again shows the employment to be regular employment and not merely a contractual employment.

23. I may note at this stage that when the petitioners were appointed, candidates were called through advertisements which did not mention that appointments of the petitioners are specifically to be temporary/contractual because no recruitment rules of the respondent No. 2 have been finalized as yet. The advertisement did not use the expression “appointments on contractual basis”. Therefore, taking the advertisements along with the appointment letters into account, in my opinion, the expression “temporary basis” is to be taken along with the



aspect that appointments at the initial stage is on probation basis. It is only on a successful completion of probation that the petitioners would be taken as regular appointees. Whatever doubt remains on this aspect is quite clearly removed on the Principal of respondent No. 2 counter signing the affidavits submitted to Central Council of Indian Medicine, and in which affidavits the nature of appointments of the petitioners is specifically stated to be "regular" so far as most of the petitioners are concerned; Affidavits came to be submitted to the Central Council for Indian Medicine stating the appointments of petitioners on regular basis because in the Assessment Visitation Report by the Indian Council of Medicine for the year 2011-12 conducted for the respondent No. 2, it was observed/doubted that the teaching staff of the respondent no. 2 is appointed on contractual basis and they should be appointed on regular basis. To deny this observation of the inspection committee affidavits were taken from the petitioners counter signed by the Principal of respondent No. 2 for filing with Indian Council of Medicine to show that most of the petitioners have been appointed as regular appointments. So far as some of the petitioners are concerned, no doubt expression in some affidavits may be "temporary appointments", however, the same could not mean that expression should be taken as "contractual appointments" because I have already referred to the appointment letters and on reading of the appointment letters as a whole the expression "temporary basis" only means that the petitioners were appointed on probation for a period of one year and to be confirmed/regularized thereafter.

24. In my opinion, whatever doubt which remains in the nature of appointments of the petitioners as to they being allegedly only contractual appointees, is removed by reference to the circular of Government of NCT OF Delhi dated 05.06.2006 which specifically created sanctioned posts and hence regular posts for regular appointments of Readers, Lecturers and Professors. Once there are sanctioned posts and the appointments were through the regular recruitment process of duly qualified persons against the vacancies in the sanctioned posts, I would definitely not like to read the appointment letters when it uses the expression "temporary basis" to mean as if appointments are only on contractual basis. To buttress this point I would like to emphasize that there is nothing mentioned in the Circular of the Government of NCT of Delhi dated 05.06.2006 that the respondent No. 2 will appoint persons on contractual basis. Appointments in terms of the Circular dated 05.06.2006 was against sanctioned posts and once appointment is to sanctioned posts through regular recruitment by clearing of examination and clearing of interview conducted by the Selection Committee, the appointments would in my opinion be regular appointments; and definitely not contractual appointments."



2024:DHC:8340



14. Applying the aforesaid judgment to the present case, there is no trace of doubt that Petitioners were appointed against sanctioned posts through an open advertisement and underwent the regular process of selection along with those candidates, whom the Selection Committee recommended for appointment on regular basis. In the absence of any stipulation in the advertisement that applications were being invited for contractual appointments and there being no objection by NSIT that Petitioners do not fulfill any qualification/other criteria of appointment, this Court holds that the appointments of the Petitioners will have to be treated as regular and permanent.

15. Accordingly, these writ petitions are allowed directing NSIT to treat the appointments of the Petitioners as regular and permanent and grant them all consequential benefits as they have been working continuously and without a break on account of an assurance given to the Court on 10.10.2018 by the learned counsel for NSIT, on instructions, that services of the Petitioners would not be terminated and the interim order has continued. Pending applications also stand disposed of.

JYOTI SINGH, J

SEPTEMBER 26, 2024/ya