

(2013) 07 RAJ CK 0297

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6799 of 2013, 6912 of 2013, 6915-16 of 2013, 7079 of 2013, 7603-04 of 2013 and 8558 of 2013

Balvinder Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2013) 4 WLN 239

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : Ramandeep Singh Kharlia and Ms. Pintoo Pareek, for the Appellant; G.R. Punia, A.A.G., Assisted by Mr. Mahendra Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J.—Lis involved in all these writ petitions is common and all are founded on identical facts, therefore, they are disposed of by a common order. The facts, in brief, giving rise to all these petitions are that the petitioners are working on contract basis as Gram Rojgar Sahayak/Data Operators in MNREGA under various panchayat samities of the State. As per version of the petitioners, most of them are working on contract basis since 2008 and their contract of employment was extended upto 31st August 2013. Assailing the impugned advertisement dt. 14th February 2013, issued by the Department of Rural Development and Panchayati Raj, Government of Rajasthan, for making direct recruitment to the post of Lower Division Clerk, petitioners have averred in the writ petitions that criteria for selection is full of anomalies and the same has deprived many aspirants for the job from their right of consideration in an absolutely arbitrary manner. Apart from quashing of the advertisement aforementioned, the petitioners have also prayed for relief that they may not be removed from the services without following due process of law and affording an opportunity of bearing heard. In S.B. Civil Writ Petition No. 6799/2013 (Balvinder Singh & Ors. vs. State of Rajasthan & Ors.), an additional affidavit is submitted

and alongwith the additional affidavit, order dt. 7th of February 2013 is enclosed, which indicates that the term of contract of employment has been extended upto 31st of August 2013. Alongwith Additional Affidavit, one more document, a communication dt. 5th of July 2013, issued by the department is also enclosed.

2. On behalf of the respondents, reply to the writ petition has been submitted. In the return, the respondents have raised the preliminary objection that joint writ petition is not maintainable. Switching on to the prayer of the petitioners for quashing the select list, the respondents have specifically pleaded that the select list is yet to be prepared and therefore the writ petition is premature and on that count alone merits dismissal. Defending the process of selection initiated by the department, the respondents have submitted in the writ that the entire selection is being carried out in strict adherence of the rules governing the said province and in the process of selection no illegality whatsoever has been committed by them. In the return, the respondents have also stated that the incumbents, who have applied pursuant to the advertisement dt. 14th February 2013 and offered their candidature for selection, have been allowed to participate in the selection process and no eligible candidate has been deprived of his right of consideration. As per the reply of the respondents, almost all the petitioners have participated in the selection process without any demur. With these pleadings in the reply, the respondents have sought dismissal of the writ petition.

3. Learned counsel for the petitioners Mr. RDS Kharlia and Ms. Pinto Pareek have strenuously urged that before issuance of the advertisement dt. 14th February 2013 the requisite number of vacancies were not determined by the respondents and therefore the entire selection process is bad in law. Attacking the selection process, learned counsel for the petitioners have urged that the selection process has not been carried out in a transparent manner and the methodology of the selection process is absolutely arbitrary which has resulted in deprivation of many eligible candidates who are eligible to compete for the selection. The learned counsel for the petitioners would urge that the petitioners have participated in the selection process but during selection process the criteria for selection was not uniformly pressed into service and the same has resulted in exclusion of their names from the select list in an absolutely arbitrary and unfair manner. The sum and substance of the contention of the learned counsel for the petitioners is that the entire selection is a farce and it is essentially aimed to deprive the petitioners from their job which they are carrying out on contract basis under various schemes of MNREGA since last so many years.

4. Per contra, learned Addl. Advocate General, Mr. G.R. Punia assisted by Mr. Mahendra Choudhary has urged that while issuing the advertisement for direct recruitment to the post of LDC, the department has clarified the requisite eligibility and the criteria for selection. Mr. Punia has invited attention of this Court towards Clause 11 of the Advertisement under caption "Chayan ka Aadhar" and has submitted that it was postulated with clarity and precision in the advertisement that marks secured by an individual in Senior Secondary

Examination shall be given 70% weightage and the remaining 30% marks shall be added for adjudging merit of an individual on the basis of bonus marks earned by him keeping in view his experience for the job. Mr. Punia has vehemently argued that there was a proper segregation of marks on the basis of experience of an individual and the same is incorporated in the advertisement. Submission of learned Additional Advocate General is that when criteria for selection was known to the petitioners and they have participated in the selection process without demur, now it is not open for them to assail the advertisement or the process of selection. Emphasizing on the fact that the petitioners have participated in the selection process without any protest, learned Additional Advocate General would urge that after participation the petitioners have exercised and have waived their right to question the advertisement as well as the selection process.

5. The learned Additional Advocate General has also argued that the selection process is carried out by the respondents in a very fair and transparent manner and the requisite bonus marks are allowed to the petitioners in terms of the advertisement.

6. Defending the selection process, the learned Additional Advocate General has urged that the allegations of the petitioners, that there are serious anomalies in the selection process, are absolutely vague and cryptic and there is no material on record to substantiate all these allegations. Buttressing his arguments with emphasis, the learned Additional Advocate General has strenuously urged that the selection process, which is carried out by the respondents in a fair and transparent manner in strict adherence of the rules, cannot be made subject matter of judicial scrutiny on the strength of bald and mellow allegations in the petition.

7. Highlighting the fact that the petitioners are working on contract basis, the learned Additional Advocate General Mr. Punia would urge that petitioners have no right to continue with their job as per the terms of the contract in the event of availability of selected candidates. Inviting attention of the Court towards the order dt. 7th of February 2013, Mr. Punia has argued that there is a clear unambiguous recital contained in the order that term of contract is upto 31st of August 2013 or till regularly selected candidate is available, whichever is earlier. Mr. Punia has submitted with full vehemence that an adhoc employee, or an employee who is working contract basis is liable to be replaced by a selected incumbent to make room for him. In the rejoinder, learned counsel for the petitioners has argued that plea of waiver is not sustainable inasmuch as the petitioners have immediately approached this Court for redressal of their grievances.

8. In rejoinder, Mr. Kharlia, learned counsel for the petitioners, has also argued that the petitioners are working under different schemes and the direct recruitment for the post of Lower Division Clerk is not replacing the incumbents who are working under various schemes. Substantiating his submission, Mr.

Kharlia has also contended that the schemes are still continuing and as such the petitioners are well within their rights to stake their claim to continue in the employment. Last but not the least, submission of the learned counsel for the petitioners is that the petitioners may be permitted to ventilate their grievances before the respondents.

9. I have heard the learned counsel for the parties and perused the materials on record.

10. A glance at the advertisement dt. 14th of February 2013 clearly and unequivocally reveals that the terms of eligibility for direct recruitment on the post of Lower Division Clerk, criteria for selection and the basis for adjudging the merit of an individual, are mentioned in the advertisement with clarity and precision. The petitioners, having knowledge about all these norms for selection participated in the selection without any demur, are raising all their afflictions solely on the basis of unfavourable outcome of the selection process. When the petitioners have offered their candidature for the selection and have participated in the selection without any demur, now it is not open for them to question the advertisement or the process of selection. In this view of the matter, there is no room of doubt in applying the doctrine of waiver vis-?-vis the petitioners. The factum of participation of the petitioners in the selection process without protest is sufficient to non-suit the petitioners on the anvil of acquiescence.

11. In *G. Sarana Vs. University of Lucknow and Others*, the Hon'ble Apex Court held that an unsuccessful candidate after participation in the selection process cannot turn around and challenge the process of selection by raising a plea of bias and he is stopped from doing so. This view of the Apex Court is further reiterated in subsequent decisions. The Apex Court made following observations in Para 15 of the judgment:

15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that, the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee. This view gains strength from a decision of this Court in *Manak Lal's case* (Supra) where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:-

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

12. The Apex Court in its recent pronouncement in case of Justice P.D. Dinakaran Vs. Hon''ble Judges Inquiry Committee and Others, while considering the import of maxim "Nemo debet esse judex in propria causa" i.e. bias against one of the member of the Committee, which was raised by the incumbent at a later stage, has held that plea of bias after knowledgeable silence in this regard is sufficient to infer that he has waived his right to object to the appointment of such a Member. In the instant case, as regards the procedure and the criteria for selection, there is no specific averment in the writ petitions and therefore, the doctrine of waiver can be pressed into service very conveniently against the petitioners in their pursuit to challenge the advertisement as well as the selection. The Apex Court in P.D. Dinakar's case ultimately relying on its earlier verdict in Manak Lal Vs. Dr. Prem Chand, observed in Para 83 as under:

83. In Manak Lal vs. Dr. Prem Chand Singhvi, this Court held that the constitution of the Tribunal was vitiated due to bias because the Chairman of the Tribunal had appeared against the appellant in a case but declined to nullify the action taken against him on the recommendations of the Tribunal on the ground that he will be deemed to have waived the right to raise objection of bias. Some of the observations made in that case are extracted below:

8...The alleged bias in a member of the Tribunal does not render the proceedings invalid if it is shown that the objection against the presence of the member in question had not been taken by the party even though the party knew about the circumstances giving rise to the allegations about the alleged bias and was aware of his right to challenge the presence of the member in the Tribunal. It is true that waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question. As Sir John Romilly, M.R., has observed in Vyvyan vs. Vyvyan:

...Waiver or acquiescence, like election, presupposes that the person to be bound is fully cognizant of his rights, and, that being so, he neglects to enforce them, or chooses one benefit instead of another, either, but not both, of which he might claim.

13. If, in the present case, it appears that the appellant knew all the facts about the alleged disability of Shri Chhangani and was also aware that he could effectively request the learned Chief Justice to nominate some other member instead of Shri Chhangani and yet did not adopt that course, it may well be that he deliberately took a chance to obtain a report in his favour from the Tribunal and when he came to know that the report had gone against him he thought better of his rights and raised this point before the High Court for the first time. In other words, though the point of law raised by Shri Daphtary against the competence of the Tribunal be sound, it is still necessary for us to consider whether the appellant was precluded from raising this point before the High Court by waiver or acquiescence.

9. From the record it is clear that the appellant never raised this point before the Tribunal and the manner in which this point was raised by him even before the High Court is somewhat significant. The first ground of objection filed by the appellant against the Tribunal's report was that Shri Chhangani had pecuniary and personal interest in the complainant Dr Prem Chand. The learned Judges of the High Court have found that the allegations about the pecuniary interest of Shri Chhangani in the present proceedings are wholly unfounded and this finding has not been challenged before us by Shri Daphtary. The learned Judges of the High Court have also found that the objection was raised by the appellant before them only to obtain an order for a fresh enquiry and thus gain time. It may be conceded in favour of Shri Daphtary that the judgment of the High Court does not in terms find against the appellant on the ground of waiver though that no doubt appears to be the substance of their conclusion. We have, however, heard Shri Daphtary's case on the question of waiver and we have no hesitation in reaching the conclusion that the appellant waived his objection deliberately and cannot now be allowed to raise it.

(emphasis supplied)

14. Now taking up the issue relating to continuance of the petitioners on contract basis or their regularization, it is worthwhile to consider the nature of employment and the legal foothold for such continuance. The law on this issue is trite that no incumbent can claim continuance on a post if he is not having any right on the post. An incumbent working on adhoc basis or on contract basis has no right to a post or to a rank. The Apex Court in case of Parshotam Lal Dhingra Vs. Union of India (UOI), in its Constitution Bench judgment per majority has held as under in Para 26:

26. The foregoing conclusion, however, does not solve the entire problem, for it has yet to be ascertained as to when an order for the termination of service is inflicted as and by way of punishment and when it is not. It has already been said that where a person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Art. 311(2). Termination of service of such a servant so appointed must per-se be a punishment, for it operates as a forfeiture of the servant's rights and brings about a premature end of his employment. Again where a person is appointed to a temporary post for a fixed term of say five years his service cannot, in the absence of a contract or a service rule permitting its premature termination be terminated before the expiry of that period unless he has been guilty of some misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the rules read with Art. 311(2). The premature termination of the service

of a servant so appointed will prima facie be a dismissal or removal from service by way of punishment and so within the purview of Art. 311(2). Further, take the case of a person who having been appointed temporarily to a post has been in continuous service for more than three years or has been certified by the appointing authority as fit for employment in a quasi permanent capacity, such person, under Rule 3 of the 1949 Temporary Service Rules, is to be deemed to be in quasi-permanent service which, under r. 6 of those Rules, can be terminated (i) in the circumstances and in the manner in which the employment of a Government servant in a permanent service can be terminated or (ii) when the appointing authority certifies that a reduction has occurred in the number of posts available for Government servants not in permanent service. Thus when the service of a Government servant holding a post temporarily ripens into a quasi-permanent service as defined in the 1949 Temporary Service Rules, he acquires a right to the post although his appointment was initially temporary and, therefore, the termination of his employment otherwise than in accordance with r. 6 of those Rules will deprive him of his right to that post which he acquired under the rules and will prima facie be a punishment and regarded as a dismissal or removal from service so as to, attract the application of Art. 311. Except in the three cases just mentioned a Government servant has no right to his post and the termination of service of a Government servant does not, except in those cases, amount to a dismissal or removal by way of punishment. Thus where a person is appointed to a permanent post in a Government service on probation, the termination of his service during or at the end of the period of probation will not ordinarily and by itself be a punishment, for the Government servant, so appointed, has no right to continue to hold such a post any more than the servant employed on probation by a private employer is entitled to do. Such a termination does not operate as a forfeiture of any right of the servant to hold the post, for he has no such right and obviously cannot be a dismissal, removal or reduction in rank by way of punishment. This aspect of the matter is recognised in the Explanation to r. 49 of the 1930 Classification Rules which correspond to the Note to r. 1702 of the Indian Railway Code and r. 3 of the 1955 Rules and r. 13 of the 1957 Rules, for all those rules expressly say that the termination of such an appointment does not amount to the punishment of dismissal or removal within the meaning of those rules. Likewise if the servant is appointed to officiate in a permanent post or to hold a temporary post other than one for a fixed term, whether substantively or on probation or on an officiating basis, under the general law, the implied term of his employment is that his service may be terminated on reasonable notice and the termination of the service of such a servant will not per se amount to dismissal or removal from service. This principle also has been recognised by the Explanations to r. 49 of the 1930 Classification Rules corresponding to the Note to r. 1702 of the Indian Railway Code and r. 5 of the 1949 Rules and r. 3 of the 1955 Rules and r. 13 of the 1957 Rules. Shortly put, the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the

termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto. But if the servant has no right to the post as where he is appointed to a post, permanent or temporary either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment. One test for determining whether the termination of the service of a Government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post as in the three cases hereinbefore mentioned, the termination of his service will by itself be a punishment and he will be entitled to the protection of Art. 311. In other words and broadly speaking, Art. 311(2), will apply to those cases where the Government servant, had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank. To put it in another way, if the Government has, by contract, express or implied, or, under the rules, the right to terminate the employment at any time, then such termination in the manner provided by the contract or the rules is, prima facie and per se, not a punishment and does not attract the provisions of Art. 311.

15. Elaborating on the right of individual to a post, the Apex Court further proceeded to hold as infra in Para 28 of the verdict:

28. The position may, therefore, be summed up as follows: Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in *Satish Chander Anand (Z) vs. The Union of India* (supra). Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Art. 311(2), as has also been held by this Court in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, In either of the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under r. 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive, operating on the mind of the Government is, as Chagla C.J. has said in *Shrinivas Ganesh vs. Union of India (N)* (supra), wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Art. 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the

employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Art. 311 must be complied with. As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Art. 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or, the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the Court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Art. 311, which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant.

16. The Apex Court in a recent authoritative pronouncement in case of Secretary,

State of Karnataka and Others Vs. Umadevi and Others, held in clear and unequivocal terms that public employments are required to be made in strict adherence of Article 14 & 16 of the Constitution of India and in incumbent appointed on temporary, contractual, daily wage, or on adhoc basis, cannot seek absorption, regularization or permanent continuance in the job. Constitution Bench of the Apex Court, while deprecating such a practice, has made strong observations in this behalf in Para 43 of the verdict:

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of the Court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing

of the constitutional and statutory mandates.

17. The Court has further proceeded to hold that the Constitution Scheme cannot be jettisoned on sympathetic consideration of regularizing such employments in Para 45 of the verdict as *infra*:

45. While directing that appointments, temporary or casual, be regularized or made permanent. Courts are swayed by the fact that the concerned person 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 arms 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 succor 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 of India.

18. Considering the doctrine of legitimate expectation vis a vis temporary employees, contractual or casual workers, the Apex Court in Para 47 has observed that theory of legitimate expectation is not applicable in such cases.

The Apex Court ruled in this behalf in Para 47 as under:

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 recognized 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.

19. There cannot be two opinion that any temporary/contractual or adhoc employee is having no right to the post and in the event of availability of selected incumbent, he is obliged to make room for him. In the instant case, the terms of the contract of employment of all the petitioners are clear and explicit containing said clause. Therefore, viewed from any angle, applying the ratio decidendi in *Purshottam Lal Dhingra* and *Uma Devi's* cases (*supra*), the claim of the petitioners for continuance in employment or regularization of their services is not at all sustainable. The petitioners are bound by the terms of the contractual employment and as per the terms of the employment, on availability of a selected incumbent, contract automatically comes to an end for facilitating appointment of the selected candidate. As the matter in issue in all the petitioners is examined on merits by this Court, nothing survives for consideration of the competent authority in the matter, and therefore, I feel dissuaded to grant any liberty to the petitioner to ventilate their grievances before the competent authority. In view of above, I find no merit in all these petitions and consequently, all these petitions are dismissed summarily.

No order as to costs.