
(1994) 04 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 2922 of 1990, 5286, 5385, 5451, 5568, 5654 of 1991 and 30 of 1992

Dilip Bhatanagar and Others

APPELLANT

Vs

Rajasthan Agriculture University

RESPONDENT

Date of Decision : 04-04-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 32, 41

Industrial Disputes Act, 1947 — Section 2, 40

LIFE INSURANCE CORPORATION ACT, 1956 — Section 2, 25F, 25G, 25H, 48

Citation : (1994) 3 WLC 42 : (1994) 1 WLN 468

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Judgement

Rajesh Balia, J.—As in these batch of petitions common questions have arisen for determination, they are being disposed of by a common order.

2. Broadly speaking, before I notice facts in these cases, it may be stated that petitioners in all these petitions were appointed as Lower Division Clerks (for short "the LDC hereinafter), by the respondent University on adhoc/temporary basis on fixed pay basis without holding a regular selection. After holding regular selections, the services of those who could not appear in the regular selection or could not be selected, their services were terminated, complying with the provisions of Section 25F of the Industrial Disputes Act (for short "the Act" hereinafter"). Petitioners are all such employees whose services have been terminated.

3. Their contention in these petitions are that the retrenchment has been effected in violation of Section 25G of the Act inasmuch as no seniority list was prepared and published in accordance with the requirement of the Rules framed under the Act which provision has been held to be mandatory and while junior persons have been kept in service, services of the seniors have been retrenched. It is also the case of the petitioners that in the case of fresh employment such

employees whose service have been validly retrenched have a preferential claim to be reappointed u/s 25H of the Act.

4. The respondents have employed other persons after retrenchment without offering the petitioners such appointment in the first instance. In the aforesaid circumstances, the petitioners have claimed that the orders terminating their services may be set aside and they may be reappointed in service.

5. Second contention of the petitioners in this case is that as all the petitioners are serving with the University for more than two years, though not regularly selected, have acquired a right of regularisation, therefore, respondent may be directed to regularise their Services.

Brief Facts of each case:

(1). S.B. CIVIL WRIT PET. No. 2922/1990 Dilip Bhatnagar and Ors. v. Raj. Agricultural University, Bikaner.,

6. This petition has been filed by five persons. Petitioner No. 1 Dilip Bhatnagar was appointed on a consolidated salary of Rs. 380/- P.M. as LDC on May 9, 1986. Petitioner No. 2 Vinod Kumar Joshi was appointed as LDC on April 29, 1987. Petitioner No. 3 Vijay Prakash Bhatnagar was appointed as LDC on November 4, 1987 at the consolidated salary of Rs. 481.55 P.M. Petitioner No. 4 Rajendra Tolani was appointed as casual clerk on consolidated salary of Rs. 481.55 P.M. on February 24, 1988 and petitioner No. 5 Ashok Kumar was appointed as LDC on daily wages basis vide Order dated May 4, 1988.

7. The persons who were appointed prior to coming into existence of Rajasthan Agriculture University, Bikaner, they were appointed by Mohan Lal Sukliadia University. But on the coming into existence of the Rajasthan Agriculture University, Bikaner, Agricultural Faculty of Mohan Lal Sukhadia University, Udaipur was taken over by the Rajasthan Agriculture University on its creation in the year 1988 and those employees serving in the Agriculture Faculties became the employees of the Rajasthan Agriculture University Bikaner. With effect from July 1, 1988, the petitioners salary was fixed as Rs. 880/- P.M. which was increased to Rs. 950/- P.M. w.e.f. April 1, 1990.

8. The Rajasthan Agriculture University, Bikaner decided to conduct the job test for adhoc appointees. The petitioners appeared in the test but failed to clear. However, petitioners were allowed to continue in service. In 198,9, the University invited eligible candidates for the purpose of regular appointment on the post of LDCs vide advertisement No. 8/1988 and the petitioners appeared in the written test and qualified the examination but did not clear the job test which was required for regularisation of their services. When the University advertised 39 vacancies to be filled in by direct recruitment, the petitioners did not apply for direct recruitment. They alleged that they are entitled for regularisation under the order dated December 15, 1989. The petitioner prayed that they are not required to be subjected to job test for regularisation but they, should be

regularised on the basis of, their continuous service on their completion of two years, with all consequential, benefits.

9. The substance of reply submitted by the respondent is that the petitioners were given chance to regularise their services by taken job test by the respondent, yet they failed to avail the opportunity nor they appeared in the regular selection for direct recruitment. Therefore, they are not entitled for regularisation of their services. This Court vide its interim order dated July 27, 1990 stayed the operation of Annexure/3 dated July 3, 1990 by which the respondent has notified that a job test for casual LDCs is being held on July 26, 1990, thereafter no further opportunity will be given. The respondent in view of the aforesaid circumstance of postponing the job test have not terminated the services of the petitioners and they are continuing in service.

(2). SB. CIVIL WRIT PET. No. 5286 of 1990 Anil Prakash Mathur v. Rajasthan Agriculture University, Bikaner.

10. The petitioner in this case was appointed as LDC on a consolidated salary of Rs. 880/- P.M: for a period of six months w.e.f. August 2, 1989. His services were extended after the expiry of six months vide order dated April 17, 1990 and May 8, 1990. The petitioner could not take the job test for regularisation because he has not completed one years service in July 1990. This Was the pre-requisite condition for taking the job test for regularisation. After completion of one years service, the petitioner moved an application that a job test may be taken for regularisation of his services. By the order dated September 21, 1991, the services of the petitioner have been terminated. In these circumstances, the petitioner has challenged the termination of his services being illegal as the same are violative of provisions of Act and has also claimed regularisation of his services. Vide interim order dated October 10, 1991, the operation of the order terminating the services of the petitioner was stayed and he was allowed to continue on the post.

(3) S.B. CIVIL WRIT PET. No. 5385, OF 1991 Ravi Kumar v. Rajasthan Agriculture University, Bikaner.

11. In this case, the petitioner was appointed by respondent No. I on the post of LDC w.e.f. July 10, 1990 by the order dated August 30, 1990. The services of the petitioner were extended from time to time by the orders dated September 11, 1990, October 22, 1990 and December 17, 1990. The petitioner continued to serve the respondents. However, he was no allowed to take job test held for regularisation of service for the in service candidates who were not regularly appointed because he has not completed one year's service on the date when job test was held. Therefore, vide order dated September 21, 1991, the services of the petitioner were terminated.

12. Aggrieved with the order of termination the petitioner has filed this writ petition challenging his retrenchment being violative of provisions of Act and has also claimed relief for regularisation, the termination of the services of the

petitioners were stayed by the orders of this Court on October 22, 1991 and the petitioner is continuing in service.

(4). S.B. CIVIL WRIT PET. No. 5451 OF 1991 Bheru Ratan and Ors. v. Rajasthan Agriculture University, Bikaner.

13. This petition is on behalf of four persons viz. Bheru Ratan, Miss Kalpana, Dinesh Kumar and Satya Narain Singh.

14. Bheru Ratan was first appointed as LDC on January 18, 1988. After giving a break in August 1988 without any order, he was reappointed on October 13, 1988. Thereafter one break in service was given on April 24, 1989. He was again appointed on May 24, 1989 and again terminated on January 4, 1990. He was again, appointed on January 9/11, 1990. The petitioner-was continuing in service until his services were terminated vide Order dated September 21, 1991, as there is no mention of the petitioner in the list of 30 candidates who have been regularly appointed.

15. Likewise Miss Kalpana (Petitioner No. 2), was appointed on August 16, 1988. She was thereafter reappointed on April 3/5, 1989. After a break from October 20, 1989 to December 30, 1989, she was reappointed vide order date January 9/11, 1990. Since then she is in service until his services were terminated vide order dated September 21, 1991.

16. Dinesh Kumar (Petitioner No. 3), was appointed w.e.f. September 1, 1988 by the order dated September 26, 1988. One days break was effected in "service by terminating his services w.e.f. April 24, 1989 and he was reappointed vide Order dated April 25, 1989. His services were again terminated vide order dated January 4, 1990 and he was again appointed vide order dated January 9/11, 1990 and thereafter he continued until his services were terminated vide order dated September 21, 1991.

17. Petitioner No. 4 Satya Narain Singh was appointed on October 17, 1988. He was given a break from July 20, 1989 to July 25, 1989. He was reappointed on July 1989 and since then he continued in service until termination of his services by the Order dated September 21, 1991.

18. The common termination order has been challenged on the ground of violation of the provisions of the Act and the Scheme for regularisation. It is claimed that they are entitled to be regularised for having contiguous two years services, though they have failed to clear the job test. They have claimed benefit of circular dated December 15, 1989. The termination order of the petitioners services have been slaved by this Court on October 23, 1991 and they were allowed to continue on the post they have last held.

(5). S.B. CIVIL WRIT PET. No. 5568 OF 1991 Virendra Kumar v. Rajasthan Agriculture University, Bikaner

19. The petitioner was initially appointed on the post of LDC vide Order dated

September 22, 1988 for a period of three months. After expiry of three months no formal order extending the petitioner's term was given but he was allowed to continue vide order dated January 12/13, 1989, the petitioner was transferred from Bikaner to Udaipur. By the Order dated May 19, 1990, the services of the petitioner were terminated but by another order dated May 21, 1989, the order dated May 19, 1990 was suspended and petitioner was allowed to draw fixed salary of Rs. 880/- P.M. Thereafter, the services of the petitioner have been terminated." For the like reasons as in the cases stated above, the petitioner, has challenged the order terminating his services and claimed for regularisation. Though no interim order has been passed staying the impugned order, yet the learned Counsel for the respondent has stated that keeping in view the orders passed in other cases, the petitioner has been allowed to continue in service to keep parity. He is, therefore, still continuing in service.

(6). S.B. CIVIL WRIT PET: No. 5654 OF 1991 Rameshwar Prasad v. Rajasthan Agriculture University, Bikaner.

20. The petitioner in this case was appointed on the post of LDC vide order dated January 4, 1988 on daily wages basis. Though, he was initially appointed for a period of three months, he has been discharging his duties since then. As such services were continued upto July 31, 1988. Thereafter, he was not paid salary but after the break of one month he was again continued to be paid salary from September 1, 1988. By verbal order, his services were terminated in the month of April 1989 but he was again appointed vide order dated May 24, 1989 and under the new appointment, he was paid salary w.e.f. May X, 1989. Likewise on July 28, 1989, his services were terminated but was reappointed on July 26, 1989. Again by the order dated January 4, 1990, the services of the petitioners were terminated but he was reappointed on January 9/11, 1990. Though the last appointment order dated January 9/11, 1990 was slated for a period of one month, yet he was allowed to continue in service after the expiry of period of one month and his services were terminated on May 18, 1990, which order was kept in abeyance vide order dated May 21, 1991. By another order dated September 21, 1991, the services of the petitioner have been terminated.

21. Regarding regularisation of the services of the petitioner alleges that he appeared in the first job test in April 1989 and the second job test in July 1990 but failed to clear the same and the third job test for which applications were invited by advertisement No. 3/90, he did not appear considering himself eligible for regularisation. The petitioner was prayed for setting aside the termination of his services being violative of Section 25F of the Act as according to him the compensation attached with the termination order was less than the required amount and also on the ground of violation of Section 25G of the Act. Apart from claiming regularisation of his services on the ground that he has continuous service of more than two years, that he is entitled of regularisation in terms of Circular of the respondent dated December 15, 1989.

22. It was contested by the respondent that Section 25F of the Act is not

Applicable to the case and the termination of the services of the petitioner which come within the provisions of Section 2(oo)(bb) of the Act as it was a fixed term employment.

(7). S.B. CIVIL WRIT PET. No. 30 OF 1992 Ramesh Kumar v. The Rajasthan Agriculture University, Bikaner.

23. The petitioner was appointed as LDC in Mohan Lal Sukhadia University, Udaipur on June 11, 1984 under which he continued to serve until December 28, 1984. Thereafter, the petitioner was again appointed on July 4, 1987 as LDC. Its appointment was extended by the Order dated October 13, 1987. After December 31, 1987, the petitioner was continued in service with the following break:

19 days January 1988 19 days April 1988 5 days May 1988 12 days June 1988
19 days July 1988

24. Before every reappointment afresh every time a fresh application was submitted by the petitioner that he may be given appointment and it would be open for the University to terminate his services at any time. By the order dated September 27, 1988, the petitioner was appointed on adhoc basis. The petitioner was allowed to continue even after expiry of three months. Thereafter, formal sanctions for making payment to the petitioner were issued subsequently on January 9, 1989, February 8, 1989 and April 19, 1989 respectively. Again payment of salary was not made from June 1, 1989 to June 15, 1989 and by the order dated June 16, 1989 a sanction was accorded upto July 31, 1989 by mentioning that upto June 15, 1989 there will be service break. By the order dated August 9, 1989, the petitioner was paid salary at a rate of Rs. 830/- P.M. w.e.f. July 31, 1989 by mentioning that period from July 24, 1989 to July 31, 1989 will be treated as break. By the order dated April 26/29, 1991, the petitioner's term was further extended upto April 30, 1991. After April 30, 1991, the petitioner was allowed to continue in service though the formal extension was issued on May 29/30, 1991. After June 30, 1991, the petitioner was allowed to continue in service extending the service of the petitioner upto September 30, 1991. Thereafter, vide order dated September 21, 1991, the services of the petitioner have been terminated. Along with the termination order, the petitioner was offered one month's salary and compensation of four years services. The petitioner appeared for regularisation job test held for regularisation in which he was not successful, before his services were terminated.

25. It is in these circumstances, the petitioner has challenged the order terminating his services and claimed regularisation.

26. From the above, it will be clear that services of the petitioner were terminated by common order in the same back ground that the petitioners who were appointed on casual/adhoc or temporary basis having failed to get selected through job test, their services were terminated while giving regular appointments to the persons who were successful. The petitioner has challenged

the termination order on identical ground and relief to regularisation of his services is also based on identical grounds.

27. Reply has been filed in each case alleging that the services of the petitioners were on a fixed term employment and as their services were terminated on expiry of contract of service, they were governed by the provisions of Section 2(oo)(bb) of the Act and such termination does not fall within the definition of retrenchment, therefore Chapter V B of the Act does not apply to it. It was also claimed that as the petitioners have failed to avail the opportunity of regularisation offered to them and they have also failed to avail the opportunity to a regular selection which was held during this period, the petitioners are not entitled to relief of regularisation.

28. At the outset it may be stated that so far as the question relating to termination of the petitioners service being illegal for want of non-compliance of the provisions of the Act relating to retrenchment is concerned, it need not be examined in the case in view of the fact that all the petitioners in all the writ petitions referred to above, are continuing in service either under the orders of the Court or as a result of not giving such effect by the respondent in difference to similar order passed in other cases where no order was passed in a particular case. The counsel for the respondent has candidly stated before the Court that their services will not be terminated until regular selection for the post takes place which are expected in about four months time and all the petitioners will have opportunity for regular selection in such examination. If necessary, relaxation for permitting them to take such examination shall be given to them. In that view of the matter, termination orders not actually having taken effect, the question about the invalidity of the orders under challenge on the anvil of the violation of provisions of the Act does not arise in the present case.

29. This question will become germane after regular selection takes place if the services of the petitioners are terminated thereafter if they fail to succeed. However, it may be observed that so far as the contention of the respondent University that the provisions of Section 2(oo)(bb) of the Act is applicable to the cases of the petitioners is; not well founded in view of the decision of this Court passed in D.B. Civil Writ Petition No. 555 of 1992 decided on August 6, 1993 referred in the case of Bikaner Agriculture University itself.

30. The case is also governed by the Single Bench decision of this Court in Virendra Kumar Pareek v. Modern Food Industries Ltd. 1991 (1) RLR 201.

31. It is obvious from the narration of facts that while the work existed and vacancy existed, the successive fixed term job was offered to the petitioner by giving break only for the purpose of avoiding the operation of the provisions of the Act and that too, in many a cases, the reappointment have been given with retrospective effect. This clearly goes to show that appointment when renewed or reappointment was given, it was not a fixed term appointment but was made fixed term appointment after sometime. This practice has been deprecated in the

aforesaid two cases. In yet another case *Yogesh Chandra v. The State of Rajasthan* RLW 1992 (1) Raj 58, this Court observed:

Camouflaging the State's action in a manner only to keep its activities outside the precincts of beneficial legislation made for weaker section in order to defeat the same, when, in fact, conditions for keeping such action free from the rigours of such law does not exist; is clear abuse of the process of law and per se arbitrary and unreasonable. There is no magic in the use of words of naming any employment as "fixed term employment" merely for the purpose of keeping it out of the purview of definition of "retrenchment" whereas, in fact, the post exists, work exist and requirement to continue the incumbent on the post exists but still the orders are pretended to be issued for fixed- term employment from time to time. In such cases, it is appropriate to. lift the veil to look to the real intent and soul of the order.

32. The Supreme Court in *Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others*, wherein the Government had issued order to reappoint teachers temporarily for three months after first appointment with the break of one day, deprecating the methodology stated that "if the intention behind the Government's order to reappoint with one day's break was to differentiate between appointments for more than three months and others it was a futile exercise...if the purpose was to avoid any possible claim for regularisation by the temporary teachers then it was acting more like a private business house of narrow outlook than government of a welfare State. Such provisions cannot withstand the test of arbitrariness".

33. Thus the contention of the respondent that the provision of retrenchment contained in the Act would not apply because of the applicability of Section 2(oo) (bb) of the Act, cannot be accepted. The decision relied on by the learned Counsel in *JJ. Shrimali v. District Development Officer, Mehsana and Ors.* 1990 (1) L.L.N. 982, is of little assistance to respondent. That was a case relating to workers employed at the Supervising Scarcity Relief Works, were on its winding up retrenched, it was held that termination of their services on winding up scarcity relief work is not retrenchment, therefore, provisions of the Industrial Disputes Act will not be attracted.

34. That case is more akin to the decision of this Court in *J.J. Shrimali's* case (3), wherein the workers employed at Famine Relief Work were not held to be governed by the same provisions. Therefore, the case is clearly distinguishable. Apart from the fact that in view of the Division bench decision of this Court which is binding on me, the view expressed in *JJ. Shrimali's* case cannot be preferred.

35. Another case in this context relied on by the learned Counsel for the respondent is *Dharmveer Nain v. The State of Rajasthan and Ors.* W.L.R. 1993 Raj. 14. That was also a case where the persons were employed as LDC for temporary need in the Department as stop-gap measure to take the volume of work in the General Provident Fund and State Insurance Department and as a

matter of fact against 180 post which were sanctioned temporarily 100 persons recruited by the Rajasthan Public Service Commission were made available for appointment and such persons have, in fact, been given appointment. Therefore, it was a case where temporary appointed persons were replaced by regularly selected candidates. The original appointment was therefore, held to be a fixed term appointment.

36. Mr. Kochar also relied on *M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh* and another. This case does not assist the respondent. It was a case in which services of employees was brought to an end by not confirming him in terms of Regulation 14 of L.I.C. Regulations which fixed a target for performance during probation, failure to achieve. Consequently his services were terminated for unsatisfactory work during the probation without notice. The Court held that stipulation in regulation 14 was a term of employment in relation to termination of service. In terms of Section 40(2)(oo) of the L.I.C. (Amendment) Act, 1981 the Regulation framed u/s 49 of the Act are deemed to be Rules framed under the Act. Section 48(2c) gives overriding effect to the Provisions of L.I.C. Act and Rules framed thereunder over the provisions of Industrial Disputes Act. Thus it was a case in which service of employee was terminated for non-satisfactory performance during probation in terms of Regulation 14 which has overriding effect over provisions of Industrial Disputes Act. That is to say the act of termination was not subject to rigour of Industrial Disputes Act at all. It will be relevant to reproduce the following observations from the report:

In view of the introduction of clause(cc) in Section 48(2) and Sub-section 2(A) in Section 48 of the Corporation Act, it shall be deemed that Regulation 14, which had been originally framed u/s 49 of the Corporation Act, will be a rule framed under Clause (cc) of Sub-section (2) and shall have overriding effect because of Sub-section (2-C) over the provisions of the Industrial Disputes Act in respect of terms and conditions of an employee of the Corporation, who is covered by the definition of "workman" under the Industrial Disputes Act. It may be pointed out that by the same Amending Act Clause (bb) of Sub-section (2) of Section 49, which authorised the corporation with the previous approval of the Central Government to make regulations in respect of the terms and conditions of the services of the employees and agents of the Corporation, was deleted. By a statutory fiction, the regulations relating to the terms and conditions of the employees and agents of the Corporation framed u/s 49(2)(bb), shall be deemed to be now the rules framed u/s 48(2)(cc) of the Corporation Act, and such rules shall have overriding effect over the provisions contained in the Industrial Disputes Act, so far the terms and conditions of the employment of such employees, who also confirm to the requirement of the definition of "workman" under the Industrial Disputes Act, are concerned.

37. Likewise it may be observed here that prima facie I am of the opinion that where a person's service is terminated on the ground of his not being selected

either through regular selection or through the test held for regularisation, the plea of violation of Section 25G of the Act or the principles of retaining a person junior in service while dispensing with services of seniors, being discriminatory and arbitrary will not be attracted vis-a-vis the persons retained in service who have been selected through such selection. However, as noticed above, in view of the submission made by the counsel for the respondent that services of the petitioners are not being terminated unless regular selected candidates are available, I may not examine this issue any further.

38. This takes me to the next question which arises in the present case.

39. The main thrust of the petitioners argument is that, though it is open to any employer to appoint any person otherwise than regular appointment on adhoc/ temporary or emergent basis, call by whatever name, which does not confer any immediate right to permanent post, but once such appointments are continued for long, the rule of fairness demands that their services are regularised. Employees who have been working for quite some time and who hold requisite qualification for the job for which they were appointed as obtaining on the date of their employment must be allowed to continue on their jobs and their services regularised. It would be unfair to remove them and unsettle their family after generating* hope and security and then washing away the precious period of life devoted to the service of establishment, rendering them age barred for getting any other job. This will be affront to rule of fairness and reasonableness embodied in principle of equality under Article 14 and concept of right to work under Article 41 of the Constitution. It is further contended that as the precedents lead the light, continuance in service for more than 2 years, in some case continuous service of even one year, is the period which entitles the incumbent to regularisation.

40. Reliance has been placed; in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, wherein the Apex Court directed to regularise services of those persons appointed between 1983 to 1986 in a Writ Petition filed in 1988 under Article 32, even if the incumbents lacked minimum qualification, by treating experience as an adequate substitute for eligibility qualification at the time of entry in service.

41. In Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, wherein the Court directed to regularise the services of incumbents appointed between 1984 to 1986 with immediate effect, and the court directed to regularise services of other employees appointed after August 4, 1984 who have put in continuous service of not less than one year, ignoring artificial breaks.

42. In Ram Kishan and Others Vs. Union of India (UOI) and Others, the Supreme Court directed regularisation of daily wages employer Asst. Engineers and Junior Engineers working for 3/4 years for Ghaziabad Development Authority.

43. In Sri Rabinarayan Mohaparra Vs. State of Orissa and others, , the Court directed that while Orissa Aided Educational Institution (Appointment of Teachers

Validates) Act, 1984 validated the appointments upto December 31, 1984, the State Government will do well to consider all cases of all those who have completed one year or more as adhoc teachers after December 31, 1984 and came out with a Scheme or any other appropriate measure to regularise their services.

44. In Karnataka State Private College Stop-Gap Lecturers Association's case (2), the Court directed to regularise the services of temporary teachers who have been working for three years with breaks.

45. In State of Haryana and Ors. v. Piara Singh and Ors. 1992 (2) SCC 118, the Court directed to consider the case of adhoc or temporary employees continuing for a fairly long spell for regularisation.

46. In Dr A.K. Jain and Others Vs. Union of India (UOI) and Others, wherein the Apex Court directed to regularise services of those Assistant Medical Officers and Assistant Divisional Medical Officers appointed on adhoc basis upto October 1, 1984, even if they have failed in regular selection.

47. In Sunny Alias v. Municipal Board, Sirohi and Anr. WLR 1991 RAJ. 214, a Division Bench of this Court directed regularisation of service of the petitioner who had served the employer for two years satisfactorily.

48. In Purshottam Lal Sharma v. Assistant Director State Insurance and General Provident Fund Department WLR 1991 RAJ. 214, this Court deprecated the action of dispensing with the services of young incumbents who had served for two years and replacing them with retired hands.

49. In Lecturers' Forum and Jag Mohan Mathodia and Others Vs. State of Rajasthan and Others, the Court directed that temporary employees have right to continue in service until they are replaced by regularly selected candidates and further directed the State to formulate a Scheme for regularisation of temporary lecturers who have rendered service for three years, by ignoring breaks.

50. Strong reliance has been placed on the following observations in Jacob M. Puthuparambil v. Kerala Water Authority and Ors. (7):

The rule was not intended to fill a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with the rules. But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualifications as was done by Sub-rule (c). Such an approach alone would be consistent with the constitutional philosophy adverted to earlier. Even otherwise, the rule must be so interpreted, if the language of the rule permits, as will advance this philosophy of the Constitution. If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue on their jobs and their

services should be regularised it is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the emoluments received by the bread winner will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered "age barred" for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution. Therefore, if we interpret Rule 9(a)(1) consistently with the spirit and philosophy of the Constitution, which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job should not be thrown out but their services should be regularised as far as possible. Since workers belonging to this batch have worked on their posts for reasonably long spells they are entitled to regularisation in service.

51. Having carefully considered the contention and decisions referred to above, in my opinion, the petitioners in the present cases are not entitled to such direction of regularisation without going through the process of selection/regularisation devised by the respondent. All the aforesaid cases are of the nature where adhoc/temporary appointments have continued for long. No regular selection was made nor the incumbents were offered and opportunity to get themselves regularised, but failed to make good of the opportunity.

52. The very distinguishing feature apparent from the undisputed facts is that respondent University itself has made efforts to regularise services of such irregularly appointed LDCs who are continuing for long. They issued Circular dated December 15, 1989 holding type test/job test for finding about satisfactory working. The petitioners have all stated that either they did not satisfactorily clear the job test or did not avail the opportunity. In such circumstances it cannot be said that respondent has acted in violation of constitutional scheme spelt out from Article 14 read with Article 41 as enunciated by Supreme Court in aforesaid cases. The principle which can be deduced from a close reading of aforesaid decisions is that where the incumbent on a post have continued for fairly long spell and were eligible when they were appointed, or where such long spell of service can be said to be such as to provide adequate experience to be treated as good substitute for qualifications, and there is no Scheme for regularisation of such incumbents by the employer himself, the Court has directed to regularise the services of such long servicing employees by framing appropriate Scheme or by taking other such measures as may be devised to meet the situation. However, where the employer himself has adopted such scheme, the matter has been left to be dealt with as per Scheme devised by the employer. It will be of

relevance to notice the principle enunciated by their Lordships of Supreme Court in *Piara Singh's case* (10), relied on by the petitioners themselves:

This is not a case, we must reiterate, where the Governments have failed to take any steps for regularisation of their ad hoc employees working over the years. Every few years they have been issuing orders providing for regularisation. In such a case, there is no occasion for the court to issue any directions for regularising such employees more particularly when none of the conditions prescribed in the said orders can be said to be either unreasonable, arbitrary or discriminatory. The court cannot obviously help those who cannot get regularised under these orders for their failure to satisfy the conditions prescribed therein. Issuing general declaration of indulgence is no part of our jurisdiction. In case of such persons we can only observe that it is for the respective Governments to consider the feasibility of giving them appropriate relief, particularly in cases where persons have been continuing over a long number of years, and were eligible and qualified on the date of their ad hoc appointment and further whose record of service is satisfactory".

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

53. In *Karnataka State Private College Stop Gap lecturers Association's case* (2), also while deprecating the tendency of not making regular selection utmost within six months of occurrence of vacancy while making the final directions, the court observed:

Services of such temporary teachers who have worked as such for three years, including the break till today shall not be terminated. They shall be absorbed as and when regular vacancies arise.

54. This was also the principle that was adhered to in *Lecturers Forum's case*.

55. In this connection strong reliance was placed in *A.K. Jain's case* (11), that even in a case where persons were not selected in regular selection, the regularisation was directed for persons who were continuing long in service.

56. Having carefully gone through the judgments, I am of the opinion that no such ratio can be discern from that case. The final order only contains directions issued by the Supreme Court which the Court thought fit to pass in the peculiar facts and circumstances of the case. Even in those directions it is to be noticed that the services of the persons which were directed to be regularised was to be

on the basis of confidential reports to be screened by the UPSC, the agency for regular selection and the Railway was left with no option but to terminate the services of those who could not succeed after the scrutiny of the UPSC.

57. This postulates that regularisation in all such cases is not a matter of course but finally depends upon the finding of suitability of such irregularly recruited persons to be retained in job depending upon their satisfactory performance.

58. As noticed above, in each case, the petitioner has failed to satisfactorily clear the job test meant for regularisation of their services, it is also clear from the averment made in the petitions that the respondent University had offered regular opportunities of regularisation of their services by inviting application for LDC job test and holding such tests for the purpose. In this connection, it may also be noticed that in Writ Petition No. 63 of 1988 R.S.R. v. Rajasthan Agriculture University, Bikaner decided on January 22, 1991, the prayer for regularisation made by the petitioner was rejected because the petitioner has not applied for his selection inspite of directions given in his appointment order and when he appeared in pursuance of subsequent development he failed to get selected. It was clearly observed that in case the petitioner does not want to be appointed regularly by passing interview than the services of the petitioner and other persons who are appointed on adhoc basis, may be dispensed with.

59. In my opinion, the conclusion is irresistible that where the employer himself has taken steps to regularise the services of persons who have been appointed on adhoc/temporary basis, but who has continued for sufficiently long period to give a legitimate expectation of security of job, and such method of regularisation cannot be said to be arbitrary, the courts will not interfere with such method of regularisation by issuing directions in that regard. Since in the present case the University has issued direction for giving permanent appointment to the persons irregularly appointed and working temporarily on various posts of LDC by Circular dated December 15, 1989 and has also held job test for finding their satisfactory working but the petitioners failed to avail the same either by not appearing or by appearing but having not been successful in the job test, blanket relief of regularisation cannot be granted.

60. One ancillary question raised in this regard was that in view of endorsement of Circular dated December 15, 1989 for the purpose of regularisation, no written test or job test is envisaged, therefore, for the purpose of regularisation, the petitioner cannot be subjected to any job test. The Circular dated December 15, 1989 is reproduced below:

RAJASTHAN AGRICULTURE UNIVERSITY, BIKANER

No. F.(92) RAJAU/ESTT/Gr.III/89/22014-32

December 15, 1989

ORDER

The question of temporary staff being made permanent has been engaging the attention of the University. It has been felt that the employee with satisfactory service for a specific period may be considered and be made permanent if there is a clear vacancy. Non-issue of such orders leads to dissatisfaction amongst the employees.

It has been decided after due consideration that the temporary members of the staff of a cadre may be made permanent if they have rendered satisfactory service and there are no adverse remarks reported against the employee and if he has completed a period of two years on the post. Action in this matter may be initiated immediately in all such cases.

sd/- REGISTRAR.

61. On the aforesaid basis, the petitioners contended that if they had rendered satisfactory services and there is no adverse remarks, then they are entitled to be regularised as permanent employee" without taking any test. It may be noticed that the basic requirement is that the incumbent must have "rendered satisfactory service" and there is no adverse remarks, then they are entitled to be regularised as permanent employee. It may be noticed that the basic requirement is that the incumbent must have rendered satisfactory service. To adjudge whether the services of the petitioners are satisfactory if the University has adopted the objective mode of assessing the satisfactory working of such temporary employees by subjecting them to job test, it cannot be said that the method adopted by the University was arbitrary or contrary to the Circular apart from the fact that the Circular did not cover the regularisation to be made in future.

62. It may be noticed that even in Dr A.K. Jain's case (11), where the Court directed to regularise all the in service candidates who had failed to get through regular selection, regularisation was subject to scrutiny by UPSC and not on the basis of mere existence of subjective circumstances. Thus on the undisputed facts of the present cases, the prayer for regularisation cannot be accepted.

63. However from the directions issued in Dr A.K. Jain's case (11) and Piara Singh's case (10), it is apparent that adhoc employees can only be replaced by regularly selected candidates and not by another set of adhoc employees. In this connection, the following observations of their Lordships in Piara Singh's case is unequivocal:

....an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessarily to avoid arbitrary action on the part of the appointing authority.

64. Therefore, it must be held that the services of petitioners cannot be brought to an end to make room for another set of ad hoc or temporary employees, who have not been regularly recruited.

65. This brings me to the last part of the controversy.

66. In all the seven cases, the petitioners are not being paid salary in the regular pay scales and other emoluments but are being paid a fixed salary. The petitioners have claimed that they are entitled to be paid emoluments in the regular pay scales along with all allowances attached to the pay. of LDCs.

67. To this prayer, in my opinion, the petitioners are entitled to. It is not in dispute that all the petitioners are appointed against the regular vacancies for discharging regular functions of the LDCs in a situation when immediate regular selected candidates were not available to the University. But that does not detract from the fact that they were to discharge regular functions of the LDCs in various departments of the University which they are regularly discharging since their appointment. In that view of the matter, on the well settled principle of equal pay for equal work", the petitioners are entitled to be paid emoluments in the regular pay scales to the employees in the respondent University.

68. Accordingly, the petitions are disposed off with the following directions:

1. That the petitioners in all the writ petitions who are working on adhoc/temporary/casual basis since their appointment shall continue to remain in service until regularly selected candidates are appointed against the vacancies.

2. The incumbents on the posts shall not be replaced by the appointment of other persons on adhoc basis or by re-appointment of retired persons.

3. In the next regular selection for the post, the petitioners shall be permitted to compete for getting themselves regularly selected by granting them necessary relaxation in age etc.

4. It shall not preclude the respondent from holding separate job test for regularisation of the services of such temporary employees by giving them one more opportunity by holding a separate job test, as has been done in the past for regularisation of such employees.

5. The petitioners shall be fixed in the regular pay scale applicable to LDC of the respondent University w.e.f. July 21, 1990, when the first of the aforesaid writ petition was filed in this Court and arrears, if any, as a result of such fixation shall be paid within two months from today.

6. In case any of the petitioners failed to get himself selected in the regular selection or clear the job test, if any, held in pursuance of the aforesaid directions, his services are liable to be terminated in accordance with law.

There will be no order as to costs.