

(2022) 03 JH CK 0047

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3497, 4433 Of 2020

Dr. Priyanka Kumari And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 24-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2022) 03 JH CK 0047

Hon'ble Judges : Dr. S. N. Pathak, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Abhishek Sinha, Raunak Sahay, Dr. Ashok Kumar Singh, Shivam Singh, Madhu Priya, Priyanka Bobby, Shilpi, Deepak Kumar, Sanjay Kumar Pandey

Final Decision : Disposed Of

Judgement

Dr. S.N. Pathak, J

1. The issues involved in both the writ petitions are same, similar and identical and as such they have been tagged and heard together on various dates and are being disposed of by this common order.

PRAYER

2. The writ petitioners in both these writ petitions have knocked the door of this Court for a direction upon the respondents to regularize their services to the post of Tutor under the respondents – RIMS and allow them to work to the said post.

FACTS OF THE CASE

3. As per factual matrix, an advertisement no. 910, dated 19.02.2016 and advertisement no. 2250, dated 28.03.2017 were floated for appointment of Tutors in various Department of RIMS. Being eligible, petitioners applied for the same and after following the due procedures, they were appointed upon found fit vide appointment letters dated 06.12.2017 to the tenure post of Tutor in the Pay

Scale of Rs.9,300 – 34,800 + Grade Pay of Rs.5,400 for a period of three years. Petitioners fulfill all the requisite educational and other qualifications and since the date of their appointments, they are discharging their duties to the said teaching post of Tutor in different Departments (Dental Institute) under the respondent – RIMS.

4. It is case of the petitioners that in Clause 19(ii) of the Notification dated 22.09.2014, issued in the Jharkhand Gazette, it has been mentioned that persons shall be appointed for a fixed tenure of three years. As per Clause (iv) of the said Clause-19, it is evident that the persons working on temporary basis or on adhoc basis, defined in Clause (iii) and (iv) of the Clause-19, shall not claim for regularization in the Institute. From the appointment letters issued by the respondents, it is evident that at Sl. No. 1, the post on which petitioners have been appointed, is a Tenure post and is for a period of three years. From the said appointment letter, it is clear that petitioners are not working on temporary basis or on adhoc basis.

5. It is further case of the petitioners that a resolution dated 11.05.2015 was issued by the respondents – State in which at column-1, it has been clearly stated that the post of Tutor comes under the category of teaching post and the same is a sanctioned post. Petitioners are concerned with the post of Tutor, which is reflected at Sl. No. 5 of the said Resolution.

6. Petitioners apprehended that they may be terminated from the service upon completion of three years of tenure from the date of their appointment and as such they made representation before the respondents for redressal of their grievances but no decision has been taken and hence this writ petition.

ARGUMENTS ADVANCED ON BEHALF OF THE PETITIONERS

7. Mr. Anil Kumar Sinha, learned Sr. Counsel appearing on behalf of the petitioners assisted by Mr. Abhishek Sinha and Mr. Raunk Sahay submitted that admittedly the post of Tutor comes under the Teaching Post. As per Resolution dated 11.05.2015, there are two categories of posts – One Teaching and another Non-Teaching and all the posts are permanent in nature, as would be evident from the advertisements dated 19.02.2016 and 28.03.2017 itself. It is in the year 2016 and 2017, the advertisements had been issued and petitioners had no options but to accept terms and conditions of the advertisement. Learned Sr. counsel further argued that the posts are sanctioned posts and petitioners have been continuously working after being selected and there is no complaint from any corner and as such their cases may be considered for regularisation.

8. Learned Sr. Counsel further argued that the post of Tutor is an inductive post in RIMS. Petitioners are qualified Dentists and have also completed their Post Graduate in different Branches of Dentistry and as such their services will be governed by the Rules framed by the Dental Council of India and not by Medical Council of India and/or any Senior Residency Scheme. Learned Sr. Counsel further argued that the Dental Council of India has clearly differentiated between

the post of Tutor and Sr. Residents as they are having different nature of duties. The Dental Council of India Rules clearly states that the post of Tutor is a teaching post and for appointment to the post of Professor, Reader and Lecturer, which are also teaching post, the minimum qualification is BDS with one year experience. Rule 2014 of the RIMS Rule is not applicable in case of the petitioners and this is a fit case for their regularisation. RIMS is an autonomous body and under the RIMS Act and Rules, 2002, there is no provision for tenure post and since petitioners are working against the sanctioned posts, their services may be regularised. The RIMS cannot be allowed to adopt pick and choose method in the matter of retention and/or termination of service of Tutors in different wings as in Nursing College of RIMS, the post of Tutor is permanent and regular whereas in the case of Dental College, the petitioners have been denied regularisation. In the other States also, the post of Tutor is regular in Dental Colleges. The Rules framed by Dental Council of India has been given complete go-bye in the State of Jharkhand and for that petitioners cannot be made to suffer. Learned Sr. Counsel submitted that 'Beggars cannot be choosers and have no bargaining powers when it comes for their livelihood' and further submitted that at the time of appointments, petitioners had no options but to accept the terms of appointment.

9. To buttress his arguments, learned Sr. Counsel for the petitioners heavily relied upon the following Judgments:

(i) Central Inland Water transport Corpn. Ltd. Vs. Brojo Nath Ganguli reported in AIR 1996 SC – Vol. II, Page – 1571 (Relevant para-90, 92 and 113);

(ii) State of Jharkhand Vs. Binay Kumar reported in 2015 92) JBCJ 215 (relevant para-6, 7 and 9]

(iii) Pani Ram Vs. Union of India and others passed in Civil Appeal No. 2275 of 2019

ARGUMENTS ADVANCED ON BEHALF OF THE RESPONDENTS – RIMS

10. Dr. Ashok Kumar Singh, learned counsel appearing on behalf of the RIMS vehemently opposes the contention of learned Sr. Counsel appearing on behalf of the petitioners and submitted that petitioners in the instant case were fully aware of the terms and conditions and rules envisaged in the advertisement and it cannot be said that they were prejudiced. The advertisements and selection were made against the sanctioned tenure teaching post and at this stage, upon completion of their tenure, it is not open for the petitioners to turnaround and challenge the advertisement which they have accepted earlier in toto, the same is not tenable in the eyes of law. In the instant case, it is crystal clear that advertisement and selection was made only against the tenure post, which after expiry of term, cannot be extended and as such, writ petitions deserve to be dismissed. Petitioners have failed to point out any illegality or any infirmity in the entire process. Petitioner have tried to make out a case for their regularization, which is not at all tenable in view of the fact that it will stop the chances of new

incumbent to get a chance of training etc.

11. Harping upon the RIMS Regulations, 2014, learned counsel submitted that the post of Tutor is a tenure post for three years only and the same cannot be blocked for future as the new incumbents have to come and go. The petitioners cannot deny that in their appointment letters itself it was clearly mentioned that the post is a tenure post for a period of three years and any claim for promotion or extension of tutorship on any ground will not be entertained. It is petitioners who have willingly accepted the terms and conditions incorporated in the appointment letters and now at this stage they cannot bargain with the management. The new Tutors/ Residents/ Senior Residents/ Registrars are to be recruited through a fresh selection process every year and replacing the old one who demit the posts upon completion of fixed tenure of three years. The outgoing Tutors/ Residents/ Registrars/ Senior Residents can apply afresh for appointment against the sanctioned vacant entry level posts of teaching cadre i.e. Assistant Professor through a selection process based on open advertisement. The post of Tutor is not the feeder post of an Assistant Professor. There is no promotional avenue or hierarchy of promotion and/or chances of regularization of Tutors. There is no scheme of promotion from the post of Tutor to any higher grade/ rank and the Tutors must move out at the expiry of fixed tenure of three years and be available to be appointed as an Assistant Professor through open competition, not through promotion. There is regular replacement system of Tutors/ Residents which ensures that the new batch of Post Graduate students get an opportunities to be trained as a Tutors and be available to be appointed as an Assistant Professor. If the existing Tutors/ Residents like the petitioners do not move out upon completion of three years, there will be no opportunity for training of the new batches of Post Graduate Students as Tutors/ Senior Residents and then will create a serious problems as it would block the opportunities for the new incumbents. Once such Tutors/ Senior Residents are relieved from RIMS after training of three years, the next batch of fresh Post Graduate Students can get opportunity to be trained as Specialists to the post of Tutors/ Senior Residents and this cycle must be kept going uninterrupted. In this process a sufficient number of trained specialists can be produced to cater the health needs of the Society. These systems have been adopted in order to meet the need for a Premier Post Graduate Medical Institute of the State. RIMS has to produce sufficient numbers of trained medical human resources to cater needs of the State through on the job training. They could then be given an opportunity to work in different districts and newly created medical institutions. The main goal behind these tenure posts is to create trained medical personnel to cater the health needs of the people of Jharkhand. Once the tutors are allowed to continue till their age of retirement, then the seats will be blocked and the others would not be able to get an opportunity of getting trained as a specialists after their post graduation whereas if the system of three years duration is continued, within a period of thirty years, the Institute would be able to generate at least 600 specialist Tutors/ Senior Residents if the strength of 20 tutors is taken into

account, which will be in a larger public interest.

12. Learned counsel further argued that claim of the petitioners for continuation in service beyond the period of three years is against the relevant statutory provisions and terms and conditions incorporated in the advertisement and letters of appointment. Learned counsel further argued that a fresh batch of Tutors are waiting for their turn as the selection process had already been started and interview is over but the results could not be published because of status quo granted by this Court and as such, this writ petition may be dismissed with a direction to complete the process of selection at the earliest for which interview has already been completed, so that future of aspirants may not be affected and best facilities could be provided to the people of Jharkhand.

13. Learned counsel further argued that the writ petitions are not maintainable in view of the fact that petitioners had participated in the selection process and after being appointed against the tenure post of three years, they are asking for regularization which is not sustainable in the eyes of law. A tenure teaching post cannot be made permanent as there is no hierarchy for any further promotion against the said tenure post of Tutor. Learned Counsel has relied upon the Judgments as under:

(i) S.C. Singh Vs. State of Uttarakhand and others reported in (2019) 2 SCC 364 [Para-10 and 14];

(ii) Raj Balam Prasad and others Vs. State of Bihar and others reported in (2018) 12 SCC 50 [Para-18 to 23];

(iii) Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and others reported in (2014) 1 SCC 161 [para-49];

(iv) State of Maharashtra and others Vs. Anita and others reported in (2016) 8 SCC 293 [Para-2, 14, 15 and 16]

(v) Pragati Mahila Samaj and another Vs. Arun, son of Laxman Zurmure and others reported in (2016) 9 SCC 255 [Para-19 to 26];

(vi) R. Venugopal Vs. Union of India reported in (2008) 5 SCC [Para-32];

(vii) Secretary, State of Karnataka Vs. Uma Devi reported in (2006) 4 SCC 1 [Para-43 and 47];

ARGUMENTS ADVANCED ON BEHALF OF STATE

14. Ms. Priyanka Bobby, AC to learned GA-I and Ms. Shilpi, AC to learned SC (Mines)-II, learned counsel appearing on behalf of State - respondents adopts the arguments advanced on behalf of RIMS. Learned counsel further argued that prescription of qualification etc. for a post is a matter of recruitment policy. The employer is authorised to prescribe the qualification etc. as a condition of eligibility. It is not the role of the constitutional court to expand the ambit while exercising power of judicial review. Petitioners have failed to show any malafide

on part of the respondents in not allowing them to work after completion of their tenure. The RIMS is governed by the Medical Council as also under the AIIMS Regulations and not by the Dental Council. The grounds raised by the petitioners are not sustainable in the eyes of law and writ petition deserves dismissal.

15. Referring to various paragraphs of the counter affidavit, learned counsel submitted that the RIMS, Ranchi is an autonomous body and is governed by the RIMS Act, 2002, RIMS Rules, 2002 and the RIMS Regulation, 2014 framed thereunder. Dental College works under the RIMS and has been established in terms of the Act, Rules and Regulations. Learned counsel further argued that in terms of S. No. 10 in Schedule-III of RIMS Regulation, 2014, the post of Tutor/Senior Resident is a Tenure post for three years which is also evident from the appointment letters issued to the petitioners.

16. Learned counsel further argued that the terms and conditions of Residency Scheme (brought on record vide Annexure-A Series to Counter Affidavit filed by respondent no. 2, dated 08.01.2021) of the Government of India, Ministry of Health and Family Welfare Department, which has been introduced in replacement of the system of House Surgeons, Post Graduate Students and Registrars in Central Institutions and Hospitals vide Letter No. 11014/ 27/ 74 – ME (PG), Dated 22.04.1974, it has been clarified that the tenure of Senior Resident will be three years. The Senior Residents serving in the institutions/hospitals under the direct control of government will be treated as temporary government servant.

17. Learned counsel further argued that as per guidelines of Medical Council of India, the post of Tutor/ Demonstrator/ Resident/ Registrar are the equivalent posts. The Post Graduate students of non-clinical departments are called Tutor and the students of clinical departments are called Senior Residents. Petitioners cannot take the benefits of Resolution issued by the State Government dated 11.05.2015 which states that the post of Tutor comes under the category of teaching post and is a sanctioned post. In the case of RIMS, the post of Tutor is completely a tenure post and it provides opportunity to the fresh batches of students to serve the society in a better way. The process of getting trained cannot be stopped by blocking the post of Tutors by regularising the petitioners. The tenure appointee cannot claim permanence or continuance of his/her tenure or regularisation of his/ her services. Had the appointments would have disclosed to have been made on regular or permanent basis, there is every possibility that others would have also participated who did not actually want to join the post for a limited tenure of three years and as such, if claim of the petitioners would be allowed, it would violate the provisions of Articles 14 and 16 of the Constitution of India.

18. Learned counsel further argued that RIMS, Ranchi is an autonomous body at par with AIIMS, New Delhi. In the AIIMS also, the post of Senior Residents is a tenure post for three years only as per the residency scheme of the Government of India. Learned counsel argued that in terms of RIMS Regulation, 2014, the

service of Tutor/ Senior Resident of Dental College could not be regularised and as such these writ petitions are fit to be dismissed.

ARGUMENTS ADVANCED ON BEHALF OF INTERVENORS

19. Mr. Deepak Kumar, learned counsel appearing on behalf of the Interveners adopting the arguments advanced on behalf of learned counsel appearing on behalf of RIMS as also on behalf of State submitted that the post of Tutor is a Tenure post for a period of three years only. The interveners are the candidates who appeared in walk-in-interview conducted pursuant to the subsequent advertisement and because of continuance of writ petitioners on the said post, they have been deprived from getting as trained specialists upon their appointment to the post of Tutors. Learned counsel further argued that as per RIMS Regulations, 2014, it has clearly been mentioned that in the Department of Medicine and Dentistry, the appointment of Senior Residents and Tutors will be made twice in a year and post of Senior Residents and Tutors will be a Tenure Post for a period of three years only. Petitioners cannot be allowed to block the posts which otherwise will adversely affect the society at large as it will create scarcity of trained tutors. Learned counsel further argued that the Tutors/ Senior Residents are appointed in order to provide opportunity to the Post Graduate Students to be trained as a Tutors and be available for appointment as an Assistant Professor, which is entry level post of Teaching Cadre and if the existing tutors are allowed to hold the post even after expiry of three years, there will be no opportunity for training of the new batches of the Post Graduate students as Tutors/ Senior Residents. Once a person is appointed to the tenure post, his/her appointment to the said post begins when he joins the post and destined to end on completion of tenure. It is settled principle of law that appointment made on 'Tenure' basis for a specific period of time comes to an end by efflux of time and persons holding the said post can have no right to continue on the said post.

Learned counsel further argued that interveners and others had appeared in the examination conducted by the RIMS but the results have not yet been published in view of status quo granted by this Court. The continuance of petitioners on the post has adversely affected the interveners and others and it is detrimental to the interest of medical fraternity. This writ petition may be dismissed and the respondent – RIMS may be directed to proceed with the process of selecting fresh batch of Tutors for which Interview has already been conducted.

FINDINGS OF THE COURT

20. Before going into merits of the case, it would be proper to examine the advertisement as also the appointment letters issued to the petitioners. The very first line of the Advertisement No. 2250, Dated 28.03.2017, which has been brought on record vide Annexure-1/1 reads as under:

"This Advertisement is in continuation of Advt. No. 910, dated 19.02.2016 of RIMS Ranchi. Applications with complete bio-data are invited for filling up the under mentioned posts on Tenure basis for 03 years in different Departments of

Dental Institute under Rajendra Institute of Medical Sciences, Ranchi, An Autonomous Institute under the Government of Jharkhand.”

After the selection, the appointment letters were issued to the petitioners which has been brought on record vide Annexure-2 Series. From Clause-1 of the said appointment letter, it is clearly evident that the post is a tenure post for a period of three years. Said Clause-1 and 2 of the appointment letter reads as under:

“1. This post is a tenure post for a period of three yrs (3 Yrs.).

2. Any claim for promotion or extension of Tutorship on any ground will not be entertained.”

Further, from perusal of Jharkhand Gazette (Extraordinary), dated 22nd September, 2014, it is evidently clear that the post of Tutor/ Senior Resident is a Tenure Post for a period of three years only.

21. After going through arguments advanced by learned counsel for the parties across the bar and from perusal of documents brought on records, it appears that no case is made out for any interference in these writ petitions for the following facts and reasons:

a. Petitioners have accepted the terms and conditions of the advertisement as well as the appointment letters. It is settled principles of law that once appointments are made and process of appointment is complete by way of joining the said post, the petitioners who have duly participated in the process of appointment accepting the terms and conditions of advertisement, cannot challenge the same. Once petitioners have submitted themselves to the jurisdiction of the respondents, they are precluded from challenging the same.

b. The Hon’ble Apex Court in the case of ‘Raj Balam Prasad and others Vs. State of Bihar and others’ reported in (2018) 12 SCC 50, it has been held at para-18 as under:

“18. In our opinion also, when the appointment of the appellants (writ petitioners) was made for a fixed period in exercise of the powers under Rule 57-A and the said appointment period having come to an end in the year 1991 after granting some extension, we fail to appreciate as to how the appellants could claim to remain in service after 1991.

19. One cannot dispute that the State has the power to appoint persons for a temporary period under the Act and the Rules framed thereunder and once such power was exercised by the State, the status of such appointee continued to be that of temporary employee notwithstanding grant of some extensions to them for some more period.

20. In other words, the grant of extension to work for some more period to the writ petitioners could never result in conferring on them the status of a permanent employee or/and nor could enable them to seek regularisation in the services unless some Rule had recognised any such right in their favour.

21. That apart, when the period fixed in the appointment orders expired in the year 1991 then there was no scope for the appellants to have claimed continuity in service for want of any extension order in that behalf.

22. We have perused the Circular dated 16-4-2008 (Annexure P-7) issued by the State. This circular only says that if any temporary persons are appointed for a particular project and if they are found to be of some utility, their services can be regularised as per Rules.

23. As mentioned above, so far as the cases of these appellants are concerned, their representations were examined by the State but were rejected finding no merit therein. One of the reasons for rejection of the representation was that the services of the appellants had already come to an end in 1991 and, therefore, no orders to regularise their services could now be passed after such a long lapse of time.

c. Admittedly regularization is not right of an employee who has been appointed on a post of which tenure is fixed. In a tenure post, appointment comes to an end at the end of said tenure and the same cannot be extended. The Constitutional Bench of the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Uma Devi reported in (2006) 4 SCC 1, has held that it is not open to the Court to prevent regular appointment at the instance of an employee whose period of employment has come to an end. 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. In the instant case, the said post is a tenure post and made for Training purposes and there are no promotional hierarchy. The service will come to an end after fixed period of time.

d. Petitioners cannot claim equality and in the instant cases, there is no violation of provisions of Articles 14 or 16 of the Constitution of India as there cannot be equality in illegality.

The Hon'ble Apex Court in the case of Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. Vs. Sipahi Singh reported in (1977) 4 SCC 145, has observed as under:

"... .. A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the

statute to enforce its performance.”

Therefore, it can comfortably be said that no legal right has accrued in favour of the petitioners and the State has no obligation to regularize the petitioners on the said post which admittedly is a tenure post. This Court in the case of Randhir Kumar Vs. State of Jharkhand and others passed in W.P.(S) No. 3368 of 2012 and affirmed in L.P.A. No. 467 of 2012 has held that the post of Senior Resident is not permanent and they cannot be promoted as Assistant Professor nor can they continue to same as Senior Resident after expiry of tenure period.

e. The Hon’ble Apex Court in the case of G. Sarana (Dr.) v. University of Lucknow & Ors. Reported in (1976) 3 SCC 585 has held that the candidate who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected. Para-15 of the said Judgment is reproduced herein below:

“15. ... 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 now not open to him to turn round and question the constitution of the committee.”

It is settled principle of law that once terms and conditions of the advertisement have been accepted by the petitioners, it cannot be challenged after appearing in the examination and when the results have been declared.

f. The Hon’ble Apex Court in the case of Post Doctoral Research Associates of S.V. University, Dr. K. Krishna Reddy and others Vs. Union of India and others reported in (2002) 5 SCC 24 has held in para-8 as under:

“8. In V.P. Chaturvedi (Dr.) v. Union of India [(1991) 4 SCC 171] this Court followed the decision rendered in V.I. Chandra Case [(1990) 3 SCC 38] and similar directions were given in that case also. This Court in Dr. Ajay Kumar Jain case [(2000) 4 SCC 186] examined the Scheme of appointment as Pool Officer and under Scientists’ Pool Scheme or as Scientist Fellow under the Scheme of Quick Recruitment of Scientists (Fellows) for major projects on contract basis for a limited period and held that it did not entitle them to regularization of their services or absorption in CSIR and distinguished the decision in Prathibha Misra case [(1997) 35 ATC 501] which we have adverted to earlier.”

g. The Hon’ble Apex Court in the case of Union of India and others Vs. N. Murugesan and others reported in (2022) 2 SCC 25 has held in para-37 and 38 as under:

“37. We have already dealt with the principles of law that may have a bearing on this case. There is no element of an unequal bargaining power involved. Nobody has forced the respondent to enter into a contract. He indeed was an employee of the Society for 23 years. We do not wish to go into the question as to whether it is a case of re-employment or not, as the fact remains that the respondent

wanted the job, which is why there was an unexplained and studied reluctance to raise the issue of him being a permanent/regular employee, but only at the fag end of his tenure.

38. The first of the representations was made on 30-12-2014, followed by others. The conduct speaks for itself. Hence, on the principle governing delay, laches, and acquiescence, followed by approbation and reprobation, Respondent 1 ought not to have been granted any relief by invoking Article 226 of the Constitution of India. On the interpretation of the Rules, we have already discussed that there is no prohibition in law for a tenure appointment. We are dealing with a post that stands at the top realm of the administration. There is an intended object and rationale attached to the post. It is the incumbent of the post who has to carry forward the object and vision in the field of research. As noted earlier, there is certainly an overwhelming public interest involved. The employer has a load of discretion available. In the absence of any arbitrariness, one cannot question its wisdom. After all, a decision has been taken at the highest level. We cannot infer that materials have not been placed before taking the decision. The Division Bench [N. Murugesan v. Union of India, 2019 SCC OnLine Kar 514] was not right in holding that the highest constitutional authority on the executive side was misled by the lower officials. We find no place for such an inference. A conscious decision has been made to go for a tenure appointment in the interest of the Society. Similarly, a conscious decision was also made to go for a fresh recruitment."

h. The arguments advanced by learned Sr. Counsel appearing for the petitioners that since the post of Tutor is a permanent sanctioned post, therefore, it cannot be said to be a tenure post, is not acceptable to this Court. The post is always permanent in nature and adversely the said post, which is also sanctioned, is only for three years and after that those who are appointed, have to make rooms for others for Training and get Specialisation and move further.

i. The earlier post of House Surgeon have now been replaced by the Tutors/ Residents/ Sr. Residents whose selections are made every year and after completion of their tenure, they have to demit the posts for others. The RIMS is admittedly guided by its own Rules and Regulations and also of the Medical Council of India. Since petitioners are working under RIMS, they are bound to follow the Rules and Regulations of RIMS as well as Medical Council of India. Their appointments have been made following the Rules of RIMS and that of the Medical Council of India. Now at this juncture they cannot take a 'U Turn' that they are guided by Dental Council of India and not by the Medical Council of India since they have already accepted the same at the very inception i.e. at the time of their initial appointment.

j. If the petitioners are allowed to continue on the said post, the entire purpose of appointment on the said post of Tutor shall be frustrated as others who are waiting to be appointed, are being deprived of the opportunities to be trained as specialist upon their appointment on the post of Tutor, due to status quo and non-

publication of result, which is against larger public interest.

k. The reliance of learned Sr. Counsel in the case of Pani Ram Vs. Union of India and others passed in Civil Appeal No. 2275 of 2019, does not come to their rescue as the case in hand is different from the ratio laid down in those cases. It has clearly been held that this principle, however, will not apply where the bargaining power of the contracting parties are equal or almost equal. It is not a case where the petitioners were in need of a job and were not in a bargaining position. Petitioners were fully aware that the post of Tutor is a post of Training which comes to an end after a period of three years and as such being fully conscious of facts, they accepted the offer of appointment and at this stage they cannot challenge the same and disturb the new lot of Trainees who are waiting for their turn. Similarly situated persons have never been considered for regularization after their appointment on a tenure posts.

l. Learned Sr. Counsel appearing on behalf of petitioners has also placed heavy reliance in the case of State of Jharkhand and others Vs. Vinay Kumar reported in 2015 SCC OnLine Jhar 398 : (2015) 2 JBCJ 212 (HC). The ratio decided in the said case is also not attracted and is of no help to the petitioners in the instant cases. In the said case the case of similarly situated persons were considered for appointment and it was only petitioner's case which was turned down and distinguished as earlier he had accepted the appointment letter. Here the case is entirely different and not a single person has been considered for regularization and as such case of the petitioners is hereby distinguished.

22. As a cumulative effect of the aforesaid rules, guidelines, judicial pronouncement, I do not find any interference is warranted in the instant writ petitions. Consequently, the writ petitions merits dismissal and are hereby dismissed. Interim orders dated 25.11.2020 and 09.03.2021 respectively stand vacated.

23. As a sequel thereof, all pending Interlocutory Applications also stand disposed of.