

(2015) 02 RAJ CK 0201

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 204, 205, 206, 207, 208, 209, 210, 211 and 212 of 2013

Ganpat Lal Prajapat and Others

APPELLANT

Vs

I.T.I. Ltd. and Others

RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) LabIC 4323

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : Deelip Kawadia, Counsel, for the Appellant; Muktesh Maheshwari, Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Nirmaljit Kaur, J.—All the above nine writ petitions involve identical question of law and facts and therefore, they shall stand disposed of by this common order.

2. The above mentioned writ petitions have been filed seeking quashing of the Order dated 27.12.2012 vide which the services of the petitioners were terminated with a further prayer to regularize their services with effect from 1989 and to give them regular pay scale of Technician with effect from their initial date of appointment.

3. For convenience, the facts are being taken from S.B. Civil Writ Petition No. 204/2013.

4. The petitioner is having the National Trade Certificate in Radio and T.V. Mechanic trade from National Council for Vocational Training. He has done the apprenticeship training from Instrumentation Ltd., Kota in Electronics Mechanic. He is also having an experience of Radio Mechanic from the Rajasthan Communication Ltd., Jaipur and has passed the Higher Secondary Examination with Physics, Chemistry and Mathematics subjects. It is stated that the petitioner

is fully eligible for the post of Technician. It is further contended that the petitioner was selected through Employment Exchange, who sent the names of qualified persons. In pursuance to the interview letter, the petitioner appeared for the interview of the post of Technician on 15.04.1989 and was appointed after due selection on the said post for a period of one year only at the consolidated salary of Rs. 900/- per month for the installation work of Punjab, Rajasthan and Jammu Trunk Project. His services were extended vide Order dated 10.07.1990 upto the period of 03.12.1990. Thereafter, it was extended further from time to time. Suddenly, vide Letter dated 10.01.1997 the respondent No. 4 informed the petitioner that employment of the petitioner was purely on contractual basis for a specific period and therefore, he can neither be conferred any regular appointment nor absorption. However, his appointment was extended further by five years. The period of five years expired on 01.11.2001 and the petitioner continued to serve as temporary employee. The petitioner filed S.B. Civil Writ Petition No. 5002/2004 before this Court seeking regularization of his services. Vide Order dated 10.09.2008, the said writ petition was allowed with the following observations:-

"The entire scenario therefore only leads to the conclusion that right to regularization is accrued to the petitioners having been continuously in the service of the respondents since 1989 after initial appointment on the post of Technician and being thus continued by the respondents themselves and, thereafter, appointments being made of other persons also, therefore, the law laid down by the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 shall apply to the present case.

As a result of the aforesaid, all these writ petitions are allowed. The respondents are directed to consider the case of the petitioners in the light of the directions issued by the Supreme Court in the case of Secretary, State of Karnataka Vs. Uma Devi (supra) for regularization on the post of Technician, upon which they were initially appointed and allowed to work since 1989, and, accordingly grant regular pay scale of the post, within a period of three months."

5. The respondents challenged the above order in D.B. Civil Special Appeal No. 247/2009. Vide Order dated 09.12.2010, the said appeal was partly allowed as under:-

"19. As a consequence of the foregoing discussion, the appeal partly succeeds and is accordingly allowed. The impugned order is set aside to the extent that, the directions contained in last two sentences of the impugned order i.e. "and respondents are further directed to grant regular pay scale of the post to the petitioners" are set aside.

20. The appellants are accordingly directed to consider the case of writ petitioner

in terms of the directions of the writ court within a period of three months as an outer limit and communicate the decision taken by them to the respective writ petitioner."

6. Thereafter, the respondents decided the matter vide Letter dated 04.03.2011 rejecting the claim of the petitioner on the ground that the job of the petitioner was purely temporary in nature. He was employed on contract basis for fresh work of maintenance for which no sanctioned posts are available or exist and since the posts of such nature are not available, they are unable to regularize the services of the petitioner. Aggrieved, the petitioner filed S.B. Civil Writ Petition No. 6304/2011. During the pendency of said writ petition, the Chief Manager, H.R. terminated the services of the petitioner vide Order dated 27.12.2012 with immediate effect. Accordingly, the Writ Petition No. 6304/2011 was disposed of with liberty to the petitioner to challenge the order of termination. Hence, the present writ petition has been filed challenging impugned order of termination.

7. Vide an Order dated 08.01.2013, the coordinate bench of this Court after hearing the learned counsel for the parties stayed the operation of the Order dated 27.12.2012 but ordered that it will not create any equity in favour of the petitioner and same shall remain subject to the final decision of the writ petition. Subsequently, the said order was confirmed on 01.08.2013. Against the orders dated 08.01.2013 and 01.08.2013, the respondents preferred an appeal which was dismissed vide Order dated 21.11.2013 requesting the Single Bench to expedite the hearing of the case.

8. Learned counsel for the petitioners while praying for setting aside the termination order submitted that the findings of the learned Single Bench passed in S.B. Civil Writ Petition No. 5002/2004 and four other similar petitions allowed on 10.09.2008 still hold good and have not been set aside, which are to the effect that:-

"The aforesaid admitted facts clearly speak that the petitioner is still working under the control of respondent since 1989. The mode of appointment was changed as per availability of the work with the respondents but the fact remains that since last more than 15 years the petitioner is employee of the respondent establishment. So also, his work has throughout been found satisfactory, more so it is admitted that the petitioner is working in a project of the Army and certificates have been issued showing his satisfactory work performance; meaning thereby, it has to be adjudicated whether a person whose services have been found to be satisfactory for years together is entitled for regularization or not.

In this connection, first of all, the claim of the petitioner is to be examined in the light of the judgment of the Supreme Court rendered in the case of Umadevi."

9. Even, the Hon"ble Division Bench while partly allowing the appeals i.e. D.B. Civil Special Appeal No. 611/2010 and others had directed the respondents to consider the case of writ petitioner therein "in terms of the directions of the writ

court within a period of three months as an outer limit and communicate the decision taken by them to the respective writ petitioner." Thus, it was incumbent upon the respondents to regularize the services of the petitioner on the post, on which he is entitled. The order rejecting the claim for regularization of the petitioner was bad in view of the fact that he has working for more than 23 years. Although, he was an employee on contract basis but for all practical purposes, he was regular employee. The persons junior to him were still working, whereas, his services have been terminated only because he is demanding regular pay scale and regularization of his services. Moreover, he is continuing in service since 1990. His P.F. is being deducted and his service book is also maintained. He is also entitled for pension. Hence, the respondents cannot deny the benefits which are admissible to a regular employee.

10. It is further contended that his representation has wrongly been rejected on the ground that there are no sanctioned posts as the petitioner is continuing for more than 22 years and the respondents are continuously running short of manpower/employees including Technician and Drivers as various authorities of the respondents have written to the higher authorities seeking appointment of more employees. The Additional General Manager has also written a Letter dated 09.12.2010 to DR. (HR), Bangalore mentioning that there was shortage of the Engineers/Technicians and requested to arrange recruitment of fresh Engineers and Technicians to fill the shortage.

11. Reply has been filed. As per the reply, the Network System Unit (the then Installation and Maintenance Unit) is one of the unit of ITI Ltd. In the year 1986, the Trunkey Project, namely, Army Static Communication Network (ASCON) was awarded to the Network System Unit (one of the unit of the ITI Ltd.) by the Ministry of Defense. The Bikaner city was one of the project sites for the said project. In the Rajasthan, the Microwave Project for Army was completed and handed over to Army on 19.08.1995 by the then Prime Minister. It was further clarified that this complete work of communication in all four States i.e. Jammu Kashmir, Punjab, Haryana and Rajasthan right from Jammu to Jodhpur is a complete composite work. Therefore, when the project work at Bikaner was completed, the services of the casual employees were terminated as per required by them. The project was of temporary nature. Hence, no permanent posts were created. Further, on account of project being over, the services of the petitioner working against the contract based post have been terminated. It is further submitted that the company is running in losses. The company is also having a surplus of regular employees, so it is not possible for the company to continue with the contractual employees when the project for which these persons were employed has come to an end.

12. Learned counsel for the parties were heard at length.

13. After hearing, it has emerged that the petitioner was initially appointed on urgent temporary basis through the Employment Exchange. His services were continued from time to time till vide Letter dated 10.01.1997 whereby the

petitioner was informed that the project work for the installation and commissioning of Communication Network for the Army was over and simultaneously, an offer of post was made on temporary basis from 01.01.1997 up till the duration of annual maintenance contract i.e. up to 04.11.2001. It was further stipulated in the said letter that he was being presently posted at Jodhpur but can be engaged at any site within the project area for the effective maintenance of the system. It was further stipulated that the said engagement was purely a contract engagement for a specific period and it did not confer any right for regular appointment or absorption. The Letter dated 10.01.1997 reads as under:-

"You were engaged by us on Temporary basis for the project work under-taken by us during the installation and commissioning of Communication Network for the Army.

This Network has since been commissioned and as you are aware the Annual Maintenance Contract has been awarded to us for a period of 5 years from 5th November, 1996.

Your engagement which was for the Project Work has been completed. Now that we have the Annual Maintenance Contract, we would like to offer you the post of Technician B on Temporary basis from 01.01.1997 for the duration of the Maintenance Contract i.e., up to 04.11.2001. You will report to Shri H.C. Sharma, Manager, Jodhpur. During this period your services will be governed by the Standing Orders of the I.T.I. Limited, Bangalore Complex.

However, if your performance during this period is found to be not satisfactory, we will be constrained to discharge you from our service.

PF and ESI recoveries as applicable will be made. You will be paid Rs. 2800/- during the first year with an annual increase of Rs. 125/- subject to your performance, which will be critically evaluated every year.

While you are presently being posted at Jodhpur, your posting can be changed to any site within the Project area for the effective maintenance of the system. As you are engaged on a Maintenance Project your services may be required even beyond normal working hours depending upon the situation to ensure that the system works uninterrupted.

This is purely a contract engagement for a specific period and that it does not confer any right to regular appointment and/or absorption.

If the above terms are agreeable, you may sign the duplicate copy and return to us as a token of your acceptance of the Temporary appointment."

14. Now, the services of the petitioner have been terminated vide Order dated 27.12.2012 on the ground that the post against which he was engaged was temporary one and he was further inducted on contract basis w.e.f. 10.01.1997 for a fixed term against a project and as the project work was complete, there

was no sanctioned post to retain him.

15. The Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 observed that a mandamus can only be issued directing the employer, the State Government or their instrumentalities, to absorb them on permanent basis, if it can be shown that the statute imposes a legal duty on the authority and a legal right under the statute or rule to enforce it and clarified while directing the State and their instrumentalities to regularize the services of the employees who have continued to work for 10 years or more only against sanctioned posts as under:-

"In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed."

16. It is further evident that even as per the judgment rendered by the Apex Court in the case of Umadevi (supra), a direction could be issued by the Courts only if sanctioned posts were available. The respondents while considering the case of the petitioner in the terms of the judgment rendered by this Court in the case of petitioner and others i.e. S.B. Civil Writ Petition No. 5002/2004 and other similar set of writ petitions decided on 10.09.2008 as modified by the Division Bench vide its" Order dated 09.12.2010 passed in D.B. Civil Special Appeal No. 611/2010 to consider their cases for regularization in terms of judgment rendered in the case of Umadevi (supra), rejected their cases on this very ground that no duly sanctioned posts are available/exist. Thus, the writ petition deserves to be dismissed on this ground also.

17. Secondly, it is evident from the appointment letter as well as Letter dated 28.03.1991 extending the services of the petitioner that the appointment of the petitioner was purely on the project undertaken and allotted to the respondent-company, which reads:-

"You are aware that we had to establish civil works on the Western Border covering Rajasthan, Punjab and J&K areas for construction of towers and installation of Microwave System. The said project was to last for about 2 years only and on its completion the establishment was to be closed. However, as the activities have not been completed fully your services are extended up to 30.6.91 and after its expiry your services will stand terminated."

18. Subsequently, the petitioner was further engaged vide Letter dated 10.01.1997 towards "Annual Maintenance Contract" allotted to the respondents subject to his consent for being posted at any site within the project area for the

effective maintenance of the system. For the sake of repetition, it reads:-

"You were engaged by us on Temporary basis for the project work under-taken by us during the installation and commissioning of Communication Network for the Army.

This Network has since been commissioned and as you are aware the Annual Maintenance Contract has been awarded to us for a period of 5 years from 5th November, 1996.

..... XXXXX.....

This is purely a contract engagement for a specific period and that it does not confer any right to regular appointment and/or absorption.

If the above terms are agreeable, you may sign the duplicate copy and return to us as a token of your acceptance of the Temporary appointment."

19. In view of the above, this Court is of the view that the case of the petitioner is squarely covered by the ratio of the judgment rendered by the Apex Court in the case of Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others, (2009) 8 SCALE 615 : (2009) 6 SCC 611 : (2009) 2 SCC(L&S) 227 : (2009) 9 SCR 611 : (2010) 1 SLJ 125 : (2009) 7 SLR 212 wherein the appellants who were employed in a scheme under the Prevention of Infiltration of Foreigners Additional Scheme, although temporary but continued from time to time, claimed regularization. The Apex Court while rejecting their claim for regularization held in Para Nos. 13 to 15 of the said judgment that:-

"13. The fact that the appellants were employed under the PIF Additional Scheme is not disputed. The duration of the PIF Additional Scheme under which they are employed was initially two years, to be reviewed for continuation along with the original PIF Scheme. The said scheme is being extended from time to time and is being continued. If the temporary or ad-hoc engagement or appointment is in connection with a particular project or a specific scheme, the ad hoc or temporary service of the persons employed under the Project or Scheme would come to an end, on completion/closure/cessation of the Project or the Scheme.

14. The fact that the Scheme had been in operation for some decades or that the employee concerned has continued on ad hoc basis for one or two decades would not entitle the employee to seek permanency or regularization. Even if any posts are sanctioned with reference to the Scheme, such sanction is of ad hoc or temporary posts coterminous with the Scheme and not of permanent posts.

15. On completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such Project or Scheme cannot claim any right to continue in service, nor seek regularization in some other project or service. (See Bhagwan Dass and Others Vs. State of Haryana and Others, AIR 1987 SC 2049 : (1987) 3 JT 206 : (1987) LabIC 1662 : (1987)

2 SCALE 160 : (1987) 4 SCC 634 : (1987) 3 SCR 714 : (1987) 3 SLJ 93 , Delhi Development Horticulture Employees" Union Vs. Delhi Administration, Delhi and others, AIR 1992 SC 789 : (1992) 1 JT 394 : (1992) LabIC 847 : (1992) 2 LLJ 452 : (1992) 1 SCALE 294 : (1992) 4 SCC 99 : (1992) 1 SCR 565 : (1992) 1 SLJ 201 : (1992) 1 UJ 676 , Hindustan Steel Works Construction Ltd., etc. etc. Vs. Hindustan Steel Works Construction Ltd. Employees" Union, Hyderabad and another etc. etc., AIR 1995 SC 1163 : (1995) 70 FLR 946 : (1995) 2 JT 410 : (1995) LabIC 1590 : (1995) 1 SCALE 814 : (1995) 3 SCC 474 : (1995) 2 SCR 10 : (1995) 2 SLJ 93 , M.D., U.P. Land Dev. Corpn. and Another Vs. Amar Singh and Others, AIR 2003 SC 2357 : (2003) 97 FLR 642 : (2003) 3 JT 615 : (2003) 3 LLJ 220 : (2003) 3 SCALE 675 : (2003) 5 SCC 388 : (2003) SCC(L&S) 690 : (2003) 3 SCR 266 : (2003) 3 SLJ 310 : (2003) AIRSCW 2345 : (2003) 3 Supreme 174 , Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., AIR 1994 SC 1638 : (1994) LabIC 1197 : (1994) 2 LLJ 977 : (2005) 5 SCC 122 , Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 , Indian Council of Medical Research and Others Vs. K. Rajyalakshmi, (2007) 2 LLJ 228 : (2007) 2 SCALE 252 : (2007) 2 SCC 332 : (2007) 1 SCC(L&S) 627 : (2007) AIRSCW 6298 : (2007) AIRSCW 5941 : (2007) 6 Supreme 539 , and Lal Mohammad and Others Vs. Indian Railway Construction Co. Ltd. and Others, AIR 2007 SC 2230 : (2007) 112 FLR 847 : (2007) 2 JT 458 : (2007) 2 SCALE 138 : (2007) 2 SCC 513 : (2007) 1 SCC(L&S) 725 : (2007) 1 SCR 784 : (2007) AIRSCW 5910 : (2007) 6 Supreme 201). In view of this settled position, the appellants will not be entitled to regularization."

20. Similarly, the Hon"ble Division Bench of this Court in the case of ITI Limited through its Chairman and Managing Director, Bangalore and ors. Vs. Sultana Ram and anr. (D.B. Civil Special Appeal No. 57/2013) decided on 06.01.2015 after taking into consideration the judgments rendered by the Apex Court in the cases of Umadevi (supra) as well as Harinandan Prasad Vs. Employer I/R to Management of FCI reported in 2014(3) RLW 2425 (SC) allowed the appeals filed by the appellants against the respondents, who were working as Technician in the same organization i.e. I.T.I. Limited, which is an undertaking of the Union of India, by holding in Para Nos. 23 and 24 that:-

"23. In the case of Secretary, State of Karnataka vs. Uma Devi (supra), the Supreme Court has not favoured regularization, where the post or employment is not in existence.

24. The Supreme Court in Hari Nandan Prasad's case (supra) took notice of the judgment in B.S.N.L. Vs. Bhurumal, (2014) 2 ABR 235 : (2014) 1 AD 467 : AIR 2014 SC 1188 : (2014) 140 FLR 901 : (2013) 15 JT 611 : (2014) LabIC 1093 : (2014) 1 LLJ 260 : (2013) 15 SCALE 131 : (2014) 3 SCJ 195 : (2014) 3 SCT 49 : (2014) 1 SLJ 293 and which, in turn, had taken notice of the judgments in the cases of Incharge Officer and Another Vs. Shankar Shetty, (2010) 9 JT 262 :

(2010) 4 LLJ 617 : (2010) 9 SCC 126 : (2010) 10 SCR 773 : (2010) 6 SLR 530 ; Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, AIR 2009 SC 3004 : (2009) 122 FLR 665 : (2009) 9 JT 396 : (2009) 15 SCC 327 : (2010) 1 SCC(L&S) 545 : (2009) 10 SCR 908 : (2009) 5 SLR 606 : (2009) 8 UJ 3727 : (2009) AIRSCW 4824 : (2009) 5 Supreme 629 ; and Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, (2010) 3 LLJ 600 : (2010) 4 SCALE 333 : (2010) 6 SCC 773 , in which only two aspects viz; reinstatement and regularization were discussed. On the question of regularization, reconciling the judgment in Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmchari Sanghatana, (2009) 123 FLR 136 : (2009) 11 JT 609 : (2009) 4 LLJ 286 : (2009) 12 SCALE 25 : (2009) 8 SCC 556 : (2009) 13 SCR 937 : (2010) 3 SLR 588 : (2009) 9 UJ 4242 , in which it was held that Uma Devi's case (supra) will be binding on industrial and labour courts and in U.P. Power Corporation Ltd. and Another Vs. Bijli Mazdoor Sangh and Others, (2007) 113 FLR 821 : (2007) 5 JT 611 : (2007) 2 LLJ 832 : (2007) 5 SCALE 732 : (2007) 5 SCC 755 : (2007) 2 SCC(L&S) 258 : (2007) 6 SCR 256 in which it was held that Uma Devi's case (supra) has no application to the industrial adjudication, it was held that the Labour courts/ Industrial Tribunals are given wide powers not only to enforce the rights but even to create new rights, with the underlying objective to achieve social justice. At the same time, the powers conferred upon the labour courts/industrial tribunals are not unbridled and are circumscribed and conditioned by the subject matter with which it is dealing and also by the existing industrial law. It is not open to it, while dealing with a particular matter before it to overlook the industrial law, relating to the matter as laid down by the legislature or the courts. The fine balancing is required to be achieved, while adjudicating a particular dispute, keeping in mind that the industrial disputes are settled by industrial adjudication on principle of fair play and justice. Concluding the discussion, the Supreme Court in Hari Nandan Prasad's case (supra) held as follows:

"34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wagger etc. may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally

justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision."

21. This Court may notice here that while allowing the above Special Appeal No. 57/2013 filed by the I.T.I. Limited, the Hon"ble Division Bench distinguished the order and judgment dated 10.09.2008 passed in the cases of Ganpat Lal Prajapat and others i.e. present petitioners to say that petitioner therein was working on the post of Technician, which was still in existence and the term was extended from time to time up till 2001 and the post was still available. However, vide Order dated 09.12.2010 passed by the Division Bench in Special Appeal No. 611/2010, the direction of the learned Single Bench in Writ Petition No. 5002/2004 to grant regular pay scale of the post to the petitioners was set aside as being bad in law and ultimately, it was left to the appellants therein to decide the case of the writ petitioner therein in terms of the judgment rendered by the Apex Court in the case of Umadevi (supra). The respondents, ultimately, rejected the prayer and terminated the services of the petitioner on the ground as stated above that there was neither any sanctioned post nor was their any work available and the project too had come to an end. Thus, the petitioner cannot take the shelter of the distinction drawn by the Hon"ble Division Bench while allowing the D.B. Civil Special Appeal No. 57/2013 of the respondent-company.

22. The argument that the petitioner is continuing for last two decades and therefore, it is evident that there is enough work does not help. No doubt, the petitioner is continuing for the last two decades but a direction to regularize his services can be passed by the Court only on the availability of a sanctioned post and order to continue the services can be passed only in case of a project or scheme under which he was employed is still in existence. Moreover, it is settled proposition of law that the Court cannot direct for the creation of posts as the creation and sanction of posts is a prerogative of the executive or legislative authorities.

23. The Apex Court in the case of Divisional Manager, Aravali Golf Club and Another Vs. Chander Hass and Another, (2008) 2 CLT 620 : (2008) 3 JT 221 : (2008) 149 PLR 485 : (2007) 14 SCALE 1 : (2008) 1 SCC 683 : (2008) 1 SCC(L&S) 289 : (2007) 12 SCR 1084 : (2008) 1 UJ 17 while setting aside the direction of the High Court to accommodate the respondents therein on the posts of tractor drivers by creating the posts, held in Para Nos. 14 and 15 as under:-

"14. Since there is no sanctioned post of tractor driver against which the respondents could be regularized as tractor driver, the direction of the First Appellate Court and the learned Single Judge to create the post of tractor driver and regularizing the services of the respondents against the said newly created posts was in our opinion completely beyond their jurisdiction.

15. The Court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the Court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organization. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the Courts cannot take upon themselves the power of creation of a post. Therefore, the directions given by the High Court and First Appellate Court to create the posts of tractor driver and regularize the services of the respondents against the said posts cannot be sustained and are hereby set aside."

24. Coming back to the present case, admittedly, there are no sanctioned posts. The petitioner was appointed initially on urgent temporary basis. No doubt, he was allowed to continue but vide Letter dated 10.01.1997, it was specifically informed to him that he is being engaged in the Annual Maintenance Contract allotted to the respondent - ITI Limited, which is a Central Government undertaking, and now the same too being over, there was no work available to be assigned to him.

25. In view of the aforesaid discussion, the relief of regularization is not admissible to the petitioners. The services of the petitioners being totally contractual, no fault can be found with the order of termination as the work for which they were appointed has come to an end.

26. Accordingly, all the aforesaid writ petitions are dismissed.

27. However, learned counsel for the respondents had very fairly stated that certain similar project of network and maintenance was being offered by the Ministry of Defense to the company in other parts of the country, although, the work of communication in all four States i.e. Jammu Kashmir, Punjab, Haryana and Rajasthan for which the petitioners were initially engaged was over. In case it is so, the respondents shall offer appointments to the petitioners in the projects available and allotted to them or being allotted in other parts of the country and allow them to work on them subject to the willingness of the petitioners to work in other States. The said offer shall be made to the petitioners immediately within two weeks from the date of this order.