
(1992) 09 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil W.P. No. 3013 of 1989

Lecturers' Forum and Jag Mohan Mathodia and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-09-1992

Acts Referred:

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

Citation : (1994) 1 LLJ 974 : (1993) 1 WLC 654

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Rajendra Prasad, for the Appellant; C.K. Garg, A.A.G. and Ashok Parihar, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Both these writ petitions involve similar questions of law. Even the facts are by and large similar. For this reason, these writ petitions are being disposed of by a common order.

2. In order to decide the controversy between the Parties it is proper to set out some facts. The first writ petition was initially filed before the Supreme Court of India. By an order of the Supreme Court dated June 6, 1989 it was directed that the writ petition be treated to be one filed under Article 226 of the Constitution and be transferred to Rajasthan High Court. Thereafter this Court issued a notice to the respondents calling upon them to show cause as to why the writ petition be not admitted and disposed of. This writ petition has been filed on behalf of 21 temporary lecturers working in the Rajasthan School of Arts and Rajasthan Sangcct Sansthan. These lecturers have formed an association with the name of Lecturers' Forum and through this Forum they have presented the petition. In substance the grievance of these temporary lecturers is that the policy of the Government in making their appointments on temporary basis against the permanent and regular posts available in the colleges violates the provisions contained in Articles 14 and 16 of the Constitution of India.

3. The Rajasthan School of Arts was started by Maharaja Sawai Jai Singh of Jaipur in the year 1866. It was subsequently named as Jaipur School of Arts. Later on it was named as Maharaja School of Arts and Crafts and in the year 1980 present name (Rajasthan School of Arts.) came to be given as the School was brought under the control of the Art & Culture Department of the Government of Rajasthan. The case of the petitioner is that since 1980, 18 to 21 regular posts of lecturers are available in the Rajasthan School of Arts and Sangeet Sansthan. Against these posts only five regular appointments have been made. The remaining posts have been filled by making temporary appointments. These appointments last sometime for a few months while at other times during the whole academic year i.e., from July to May. With the commencement of new session temporary appointments are again made for a few months. With the rejoinder the petitioner has placed copies of orders dated July 25, 1989, October 5, 1989 and November 29, 1989 to show that from time to time temporary appointments have been given to the lecturers. The petitioner has stated that the methodology adopted by the respondents for making temporary appointments for few months or for the whole academic session and then repeating the same in the next session and in the subsequent session, is wholly arbitrary, unreasonable and discriminatory and therefore, the respondents be directed to give regular appointments to the members of the petitioner Forum against posts presently held by them temporarily and to give them benefits of summer vacation etc.

4. In the reply the respondents have stated that the College Education Department is a very big Department. There are 63 Government Colleges with about four thousand lecturers. Their strength is increasing day by day. It has then been stated that generally temporary vacancies, which are likely to continue indefinitely, are determined as per rules. Requisitions are sent to Rajasthan Public Service Commission for making regular selections. On the basis of the requisitions sent by the Department, posts are advertised and selections are made by the Rajasthan Public Service Commission. For short term vacancies Rule 29 of the Rajasthan Education Service (Collegiate Branch) Rules 1986 is resorted to. This rule is resorted to because a number of vacancies occur for reasons which are not predictable. They remain unfilled at the start of the session and it is not possible to fill these vacancies immediately after their occurrence. Hence Rule 29 of 1986 Rules is being taken help of to make urgent temporary appointments. Merit formulae has been devised by the Government for making temporary appointments. This method gives an opportunity to meritorious persons to compete for temporary appointment and the most meritorious persons are selected for such temporary appointments. Regarding Rajasthan School of Arts, it has been stated that there are 13 regular posts. Against them four candidates, selected by the Rajasthan Public Service Commission, are working. Against the remaining posts regular selections have not been made because rules for recruitment are under consideration of the State Government and till the finalisation of the rules, regular selections are not possible. Merit list

is prepared every year. However, such a list could not be prepared in the year 1987 on account of the stay order passed by the High Court. Writ Petitions filed were subsequently dismissed on August 2, 1988. The respondents have relied on the decision of this Court in Smt. Shashi Sharma v. State of Rajasthan, D.B. Civil Writ Petition No. 1247/1988, While reiterating that rules containing qualifications for recruitment to the post of lecturers in the Rajasthan School of Arts are still under finalisation, the respondents have asserted that short term appointments are being made in order to meet with the dire necessity of teachers.

5. A rejoinder has been filed by the petitioner in which it has stated that regular appointments have not been made against permanent and long term vacancies. The selection for temporary appointments are being made in a most arbitrary manner. The petitioner has also referred to D.B. Civil Writ Petition No. 2136/86 filed by the President of the Lecturers Forum which was decided by the High Court and some directions were given to the respondents. The petitioner has stated that the methodology of temporary appointments is being utilised for depriving the benefit of regular appointment to a large number of lecturers who are working between 10 to 4 years by now. The petitioner has reiterated that all the persons whose names have been set out at page 8 of the rejoinder are working against the permanent posts and regular vacancies and yet they are being denied benefit of regularisation. Instead they have been threatened with termination of their service.

6. In Writ Petition No. 3202/92, which has been filed jointly by Jagmohan Mathodia and seven others, it has been stated by the petitioners that they were appointed on temporary basis as lecturers in Rajasthan School of Arts and Rajasthan Sangeet Sansthan. For this purpose an advertisement (Annexure-1) was issued by the, Government in Art and Culture Department. All the petitioners have been selected on the basis of their merit. Petitioners No. 1 to 3 have been appointed as lecturers in the Rajasthan School of Arts by order dated August 14, 1991 and petitioners No. 4 to 8 have been appointed as lecturers in Rajasthan Sangeet Sansthan by order dated July 31, 1991. The petitioners have claimed that the conditions contained in the orders of their appointment show that their appointments are subject to availability of the candidates selected by the Rajasthan Public Service Commission or till the end of the session. The petitioners have disclosed their bio-datas in Schedules A to H to contend that each of the petitioners has outstanding academic record and each one of them has attained excellence in his/her subject. Services of all these petitioners have been terminated at the end of session. Orders have been passed for relieving them from service. The petitioners have alleged in para 15 of the petition that although the rules for recruitment of teaching staff of both the institutions are under preparation for a number of years and the same have not been finalised so far and the methodology of temporary appointments has been resorted to for the last number of years and every time the services of these lecturers are terminated at the end of the session even though candidates from Rajasthan Public Service Commission are not made available.

7. In their reply, respondents have raised certain preliminary objections about the maintainability of the writ petition and also that the writ petition has been filed after delay. On merits it has been stated by the respondents that appointments of the petitioners were co- terminus with the end of session. The petitioners had joined their service with open eyes and they are bound by the terms and conditions of their appointment. They are questioning legality of the conditions of their appointment. The petitioners are entitled to preferential treatment if the institutions require temporary hands for the posts of lecturer and in the second innings they will be given the benefit of Rule 97 read with Rule 24 of the Rajasthan Service Rules, 1951 for the purpose of salary during the period of vacation. In para 12 of the reply it has been stated that service Rules governing the cadre of teachers in these institutions, have been drafted and they have received the approval of the Department of Personnel and the Government is to take a decision. That is not going to take a long time. In the meantime it is very necessary that the institutions adopt an interim and stop-gap arrangement and to achieve this, temporary appointments are made. In para 15 it has been stated that the petitioners have never been appointed sub-stantively against any vacancy, permanent or temporary or otherwise. Their appointments are purely contractual. The petitioners are being continued in service on account of the stay orders passed by the High Court. An affidavit dated August 4, 1982 has been filed on behalf of the respondents. Along with this affidavit the respondents have enclosed copies of the advertisement issued on September 10, 1991 and advertisements for the years 1983-84, 1984-85, 1985-86, 1988-89 etc. In this affidavit the qualifications which were required to be possessed for the purpose of temporary appointments have been specified.

8. During the pendency of the writ petition an application dated May 15, 1992 was filed in the Court. Along with the application a letter dated May 13, 1992 written by the Deputy Secretary, Art and Culture Department and the Secretary, Rajasthan Public Service Commission, copies of note sheets and some orders dated May 13, 1992 have been filed to show as to how recruitments have been made to the post of lecturers.

Before I deal with the points raised in these writ petitions on merit, it will be appropriate to dispose of the two preliminary objections raised on behalf of the respondents. The first preliminary objection is that the joint writ petitions filed by the petitioners or by their unregistered association are not maintainable. Each of the petitioners has an individual grievance in relation to the termination of his/her service and each of them has his/her individual right in the matter of regularisation of service. Grievance raised by each of the petitioners is, therefore, independent and they cannot join together to seek vindication of their alleged rights from the Court. This preliminary objection is in my opinion wholly without substance. The facts which have come on record unmistakably disclose that the petitioners in the writ petition of Lecturers Forum are working as lecturers in Rajasthan School of Arts and Rajasthan Sangeet Sansthan for 10 to 4 years by now. Some of them were appointed in the year 1982, some have been

appointed in the year 1988 and others in between. All of them have felt aggrieved by the methodology adopted by the respondents for making temporary appointments of short duration or till the end of the academic session. Thus, the substance of grievance raised by all the petitioners is common. When the grievance raised by different petitioners is identical, there is every justification for them to approach this Court by filing a joint writ petition instead of filing separate writ petitions by each individual. Similarly in the second writ petition eight petitioners have a common grievance regarding the terms and conditions of their service. Each one of them is aggrieved by the action of the Government in making urgent temporary appointment afresh even though the petitioners have been appointed after selection on the basis of merit even for temporary appointment. When a group of persons or body of individuals having common grievance file a petition before the Court, it is in public interest that such petitions are entertained on merits instead of the same being thrown out on the hypertechnical ground that joint writpetition is not maintainable. When grievance raised by a large number of persons is common and is based on similar facts, filing of separate writ petitions deserves to be avoided instead of being encouraged. The enlargement of the scope of the power of judicial review of administrative actions and other actions, the changing patterns of the working of Courts do not warrant entertainment of such hypertechnical objections. In fact by filing a joint writ petition the petitioners have acted in public interest. The Courts cannot be totally oblivious of the enormous increase in the volume of litigation. This may be on account of population expansion; this may be on account of poor drafting of legislative instruments; this may be on account of insensitivity of administrative authorities towards the rights of the individuals; this may be on account of failure of the administration to remedy the grievances of public. But it has to be taken note of that increase in the volume of litigation in the Court has undoubted increased the burden on the Courts, on judicial as well as on administrative side. Registry of each of the High Courts in the country has been put to unbearable burden of dealing with large number of cases. That apart, more significant aspect is that each petition consumes substantial stationary (papers). Papers are produced by utilising forest woods. This adds to the ever increasing threat to the environment and ecology on account of destruction of forests for various purposes. Time has come when we can ill afford the luxury of destroying the forests for different purposes. The system of dispensation of justice must not be a silent spectator to the destruction of ecology. It can never become a party to it by entertaining objections against filing of joint writ petitions. In fact rules should be amended to encourage filing of joint writ petitions in respect of similar grievances. This all is sufficient for rejecting the first preliminary objection raised on behalf of the respondents against the filing of joint writ petitions.

9. The second preliminary objection raised on behalf of the respondents related to delay in filing of Writ Petition No. 3202/92. The writ petition was filed on April 24, 1992 when the : petitioners were threatened with being relieved at the end

of the session on the basis of the conditions stipulated in their appointment orders. Shri Garg, learned Additional Advocate General, has argued that the petitioners ought to have come immediately after getting the orders of appointment and they ought not have waited till the last few days of academic session. He urged that the delay on the part of the petitioners is sufficient to disentitle them to claim equitable relief from this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. I find no merit in this objection of Shri Garg. In the first place it has to be noted that no period of limitation has been prescribed in Article 226 of the Constitution for entertaining writ petitions under Articles 226 and 227. There is neither any upper limit of time nor lower limit of time for entertaining writ petitions by the High Court. No period can be indicated which may be regarded as the ultimate limit of filing writ petitions. In the absence of any such limitation, the question of delay/laches has to be examined in the facts of each case. Basically delay accompanied with negligence, which results in settling down of rights of other persons and if the issue of writ may unsettle such rights, afford some justification of refusing relief to the petitioner. However, where rights of third parties are not adversely affected on account of issue of writ, the technical ground of delay cannot be a ground for refusing a relief where the case is found to be meritorious. The discretion to entertain or to refuse to entertain a writ petition after some lapse of time has to be exercised judiciously. That is a parameter of deciding an objection regarding laches in filing of the writ petition. In the instant case I do not find any reason, whatsoever, for non-suiting the petitioners only on the ground that they have approached the Court just before termination of their service was to become effective. The petitioners are not persons well acquainted with law. Having just entered the service they could ill afford to annoy the departmental authorities by filing writ petitions. Moreover, it is not a case in which right of any other individual has intervened between the date of appointment of the petitioners and the last date of academic session of 1991-92. Thus, I am of the opinion that writ petition No. 3202/92 cannot be rejected on the ground of delay/laches.

10. Shri Rajendra Prasad, learned counsel for the petitioner, has argued that termination of services of the temporary lecturers at the end of session clearly violates their fundamental right to equality and equal protection of laws. Shri Rajendra Prasad argued that the Government's policy of making appointments for short periods or till the end of session is by itself arbitrary, unreasonable and unjustified. He submitted that once a person has been selected for temporary appointment, he has a right to continue in service till the availability of the post and there can be no justification for termination of service merely on the ground that the term of appointment has come to an end. Shri Rajendra Prasad argued that prescription of the term of appointment simpliciter can be no ground for bringing an end to the service of a temporary appointee. Shri C.K. Garg, learned Additional Advocate General, countered this submission by arguing that the temporary lecturers have been appointed for fixed periods and they do not have

any right to continue in service after the expiry of fixed period. Shri Garg strenuously argued that each one of the temporary lecturers had accepted the terms and conditions of employment. Each one of them had joined service fully knowing well that at the end of the term specified in the order of appointment his/her service will stand automatically terminated. Having accepted the terms and conditions enumerated in the order of appointment, it is not open to the temporary lecturers to claim continuance in service and intervention of this Court for that purpose. Shri Garg submitted that the claim of the petitioners has been negated by this Court in Shashi Sharma's (supra).

11. I have given my thoughtful consideration to the rival submissions. There is no manner of doubt that each of the lecturers involved in these two writ petitions had been appointed on temporary basis but it is equally true that each one of them has been so appointed after consideration of the competitive claims of all eligible persons. The competent authority evaluated the merit of each of the eligible persons and then selected the most meritorious. Therefore, appointment of these temporary lecturers cannot be treated as purely ad hoc. Whether on the basis of such appointment these lecturers acquired a substantive right to hold the post or not is a different question, but it can certainly be said that these appointments have been made consistently with the equality clause contained in Articles 14 and 16 of the Constitution i.e. after due consideration of the candidature of all eligible persons. All ad hoc appointment made without any consideration of merit or without due consideration of the candidature of other eligible persons, stands on a totally different footing as against an appointment made after due consideration of the claims of other eligible persons. Once the competent authority had adjudged merit/suitability of the lecturers so; appointed, there is little justification for subjecting them to fresh selection after the expiry of a particular period or at the commencement of the new session. The policy adopted by the Government in the matter of temporary lecturers is a clear negation of the concept of fairness which must inform every State action.

12. In *Mrs. Anita Kothari v. State of Rajasthan and Ors.* 1990 RLR 87 a Division Bench of this Court was called upon to consider a similar question with reference to temporary appointments made under the Rajasthan Educational Service (Collegiate Branch) Rules, 1986. On behalf of the respondents, reliance had been placed on the decision of this Court in *Smt. Shashi Sharma v. State of Rajasthan* (supra) and it was argued that the temporary lecturers have no right to continue in service after the expiry of the specified term. This Court placed reliance on the decisions of the Supreme Court in *Rattanlal and Ors. v. State of Haryana and others* 1986 I LLJ 28 *Rajbala v. State of Punjab* (Civil Original Jurisdiction Writ Petition No. 125/87) and *Rajbinder Singh v. State of Punjab and others* 1988 SCC 428 and held that service of temporary lecturers cannot be terminated till candidates selected by the RPSC are made available.

13. In *State of Rajasthan v. Rajendra Kumar* 1989 2 SCC 268 their Lordships of the Supreme Court held that even those candidates who appeared before the

Commission and had failed, should be adjusted against the remaining available vacancies. In *Nalin Kumar v. State of Rajasthan* (1992 2 WLC 32 I had an occasion to consider a more or less similar question. After making reference to the two Division Bench decisions of this Court and the Supreme Court decisions, I have held that persons appointed on temporary basis against particular set of vacancies available at a particular point of time, have a right to continue in service on temporary basis till regularly selected candidates become available for appointment. However, if regular selections are made and all vacancies are exhausted, the temporary appointees have to make room for the regularly selected persons and the temporary appointees cannot be continued in service unless of course all vacancies are not filled by regularly selected persons. I have examined some other contingencies also but they do not arise for consideration in this case. A more or less similar question again arose before me in *Ms, Arti Shah v. State of Rajasthan*, S.B. Civil Writ Petition No. 3368/92 decided on September 24, 1992. While allowing that writ petition, I have repelled the argument similar to the one advanced by the learned Additional Advocate General. In that case I have held that the Government cannot incorporate a condition of termination of service of a temporary appointee that his/her service will stand terminated by efflux of time and that the candidate is not estopped from challenging the validity of such conditions. I have held that once a temporary appointee is appointed after due consideration of the claims of other eligible persons, he/she can be displaced only by a regularly selected person and that service of such temporary appointee cannot be terminated merely in order to make fresh temporary appointment. In *State of Haryana and others Vs. Piara Singh and others etc. etc.*, their Lordships of the Supreme Court have also examined the right of a temporary appointee to continue in service and his right to claim regularisation and held as under (p.956):-

"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 adhoc 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 adhoc/temporary employee.

Secondly, an adhoc 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 necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an adhoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the

pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above process.

If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State."

Paragraph No. 2 of the above quoted principles clearly shows that a temporary appointee cannot be replaced by another adhoc or temporary appointee.

14. Last paragraph shows that if for any reason a temporary appointee is continued for a fairly long spell, the authorities are under an obligation to consider his case for regularisation subject to his being found eligible and qualified according to the rules and his service being satisfactory, and also subject to reservation policy,

15. In view of these decisions, it must be held that the policy of the Government of making temporary appointment for specified period or for one particular session and terminating the service of the temporary appointees and then resorting to fresh temporary appointment, is wholly arbitrary, unreasonable and is contrary to the provisions of Articles 14 and 16 of the Constitution. The Government should not incorporate such condition in the order of appointment of the temporary appointee. Such temporary appointee has a right to continue in that capacity till the availability of the post or till he/she is replaced by regularly selected persons or he/she is removed from service on account of unsatisfactory performance or as a measure of disciplinary action.

16. Coming to the argument of Shri Garg that the petitioners are estopped from questioning the conditions contained in the terms and conditions of employment as contained in the order of appointment, after they have accepted the same, I may straightway observe that a person who is appointed in a public employment cannot ordinarily choose the terms and conditions under which he is required to serve the employer. The employer is always in a dominant position and it is open to the employer to dictate the terms of employment. The employee, who is at the receiving end, can hardly complain of arbitrariness in the terms and conditions of employment. Any challenge by the employee to the terms and conditions of employment at that stage will cost his/her job itself. The bargaining power of the employer is so overwhelming that the employee is left with no option but to accept the conditions dictated by the employer. Therefore, the plea of estoppel cannot be accepted in such matters. In *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, where the respondent had

challenged termination of his service on the ground of violation of Articles 14 and 16, the employer pleaded that the respondent had voluntarily entered into a contract of service on the terms of employment offered to him. One of the terms of that contract, embodied in the letter of his appointment, was that his service was purely temporary and was liable to termination at the will and pleasure of the appointing authority without reason and without notice. Having willingly accepted the employment on the terms offered to him, the respondent was precluded from challenging the impugned action taken in accordance with those mutually agreed terms. While repelling this argument, their Lordships of the Supreme Court have observed:

The argument is wholly misconceived. It is borrowed from the archaic common law concept that employment was a matter between the master and servant only. In the first place, this rule in its original absolute form is not applicable to Government servants. Secondly, even with regard to private employment, much of it has passed into "the fossils of time." This rule held the field at the time when the master and servant were taken more literally than they are now and when, as in early Roman Law, the rights of the servant, like the rights of any other member of the house-hold, were not his own but those of his "pater familias." The overtones of this ancient doctrine are discernible in the Anglo-American jurisprudence of the 18th century and the first half of the 20th century, which rationalised the employer's absolute right to discharge the employee. "Such a philosophy" as pointed out by K.K. Mathew J. (vide his treatise : "Democracy, Equality and Freedom", page 326) "of the employer's dominion over his employees may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers." To bring it in tune with vastly changed and changing socio economic conditions and mores of the day, most of this old, antiquated and unjust doctrine has been eroded by judicial decisions and legislation, particularly in its application to persons in public employment to whom the constitutional protection of Arts. 14, 15, 16 and 311 is available. The argument is therefore overruled."

In *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, their Lordships of the Supreme Court held that a contract of employment, if it is arbitrary, unreasonable or unconscionable, can be declared as unconstitutional on the ground of violation of Article 14 and can also be declared ultra vires to Section 23 of the Contract Act if it is opposed to public policy.

17. In the light of this legal position, it must be held that temporary lecturers, who are petitioners in these writ petitions, are not estopped from questioning the legality of the termination of their services and the policy of the Government of giving fixed term appointments merely because they had accepted the terms and conditions contained in the orders of their appointment.

18. Second contention of Shri Rajendra Prasad, learned counsel for the

petitioners, is that the petitioners should be regularised because they have rendered long period of service. He submitted that all the petitioners fulfil the conditions of eligibility specified in the advertisement issued from time to time. Since they have been working for sufficiently long time, it will be wholly unreasonable and arbitrary to subject them to fresh selection through the agency of the RPSC. Shri Rajendra Prasad submitted that members of the Lecturers' Forum are working since 1981, 1982, 1983 and 1984. They have all been subjected to the procedure laid down for judging their suitability. They have been continuing in service with short term breaks. During last over 12 years no regular selection has been made. Even after expiry of four years of the directions given in Smt. Shashi Sharma's case, no regular selection has been made. Even the rules have not been framed so far. Shri Rajendra Prasad argued that consultation with the RPSC is only directory and not mandatory. Appointments of all the petitioners have been made against permanent vacancies and, therefore, the Court may issue a direction to the respondents to regularise their services. Shri Rajendra Prasad placed reliance on the decisions of the Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, *Narender Chadha and Others Vs. Union of India and Others*, *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, and other decisions in support of his argument. Shri Garg, learned Additional Advocate General, on the other hand, submitted that as far as the petitioners in *Jag Mohan Mathodia* and others are concerned, they have not rendered even two years service. Each one of them has been appointed on temporary basis during 1990-91 and they cannot be given a right of substantive appointment without regular selection. Shri Garg also argued that regular selection to the posts of lecturers can be made only through the agency of Public Service Commission and since these petitioners have not undergone selection through the agency of Public Service Commission, they cannot be regularised in service. He submitted that requisition has already been sent to the RPSC on May 13, 1992 as per the qualifications indicated by the Government and the petitioners will have a right to be considered for regular appointment after selection by the Public Service Commission. Shri Garg submitted that a number of petitioners lack the qualifications for appointment on the post of lecturers and, therefore, direction for regularisation in their favour would be unconstitutional and unjustified.

19. I find sufficient justification in the submission of Shri Garg that so far as the petitioners in Writ Petition No. 3202/92 are concerned, no direction be given by this Court for their being regularised in service. A look at the statement contained in para 4 of the writ petition shows that the eight petitioners have joined service only between August 3, 1991 to September 3, 1991. Thus, at the time of filing of the writ petition, they had rendered just eight months service. Therefore, even though their services cannot be terminated with the expiry of term specified in the orders of appointment and they can be replaced only by regularly selected persons or in other contingencies specified hereinabove. I find not justification for giving a direction to the respondents to regularise their

service.

20. So far as the other petitioners are concerned, it is apparent from the record that they have rendered four to ten years of service though with some breaks given in pursuance of the arbitrary and unconstitutional policy of the Government of giving fixed term appointments even against regular vacancies. It is an admitted position that rules have so far not breaks been made for the recruitment against the posts held by the petitioners. In *State of Haryana v. Pyara Singh* (supra), their Lordships of the Supreme Court have unreservedly observed that persons who have rendered service of long periods should be regularised subject to their fulfilling all conditions of eligibility. Similarly in *KSP College Stop-gap Lecturers "Association v. State of Karnataka* 1992 Lab IC 575 their Lordships of the Supreme Court directed that services of such temporary teachers who have worked as such for three years including the break shall not be terminated and they shall be absorbed as and when regular vacancies arise. Apart from these two decisions, there are number of judgments of the Supreme Court giving direction to the appointing authorities to frame scheme for regularisation of the service of temporary appointees.

21. I also find that in the various service rules framed under proviso to Article 309 of the Constitution of India the rule-making authority has by and large incorporated a screening clause for the purpose of giving substantive appointment to temporary/adhoc or officiating employees. Persons who have rendered service of one year to six months and in some cases of two years, as on a particular date, have been regularised in service by adjudging their suitability through the Screening Committee. Qualifications which they possess at the time of temporary appointment are treated as sufficient to make them eligible for regular appointment. That being the practice, even in the rules enacted under proviso to Article 309 of the Constitution, there is sufficient justification for giving a direction to the Government to devise a scheme for regularisation of the services of temporary lecturers who have rendered three years service with breaks by subjecting them to suitability through the medium of Screening Committee. Compelling these persons to face regular selection with fresh candidates would be wholly arbitrary and unreasonable. Persons who have rendered long period of service may in all probabilities not be able to compete with the freshers and will thus be eliminated in the process of selection. This will cause irreparable loss to them because they would be rendered jobless. At the same time the public would suffer because students of the institution will be deprived of learning and training from experienced hands.

22. Both these writ petitions are, therefore, allowed in the following terms:

(a) Termination of service of the temporary lecturers on the expiry of the term specified in the order of appointment is declared arbitrary and unconstitutional

(b) It is declared that temporary lecturers have a right to continue in service till they are replaced by regularly selected persons or their service is terminated on

account of un-suitability or as a disciplinary measure.

(c) The Government should within four months of the receipt of the certified copy of this order, formulate a scheme for regularisation of the services of temporary lecturers who have rendered three years service with breaks, if any. This may be done by framing rules or even by issuing administrative orders and those who are found suitable on the basis of screening, should be regularised in service and be given all consequential benefits.

23. Parties are left to bear their own costs.