

**(2021) 10 DEL CK 0016**

**In the Delhi High Court**

**Case No : Civil Writ Petition No. 7797 Of 2020**

Mahendra Singh & Ors

APPELLANT

Vs

Energy Efficiency Services Ltd & Anr

RESPONDENT

**Date of Decision : 01-10-2021**

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 16, 21, 23, 226, 309

**Citation : (2021) 10 DEL CK 0016**

**Hon'ble Judges : V. Kameswar Rao, J**

**Bench : Single Bench**

**Advocate : Prashant Bhushan, Alice Raj, Raman Kapur, Samdarshi Sanjay, Varun Kapur, Amit Mahajan, Ananya Khanna**

**Final Decision : Dismissed**

## Judgement

V. Kameswar Rao, J

1. The present petition has been filed by the petitioners with the following prayers:-

a. Pass an order issuing a writ of certiorari quashing advertisement no.EESL/0320/17 dated 15-10-2019 by the Respondent no. 1 i.e. EESL with all its consequences.

b. Issue a writ of mandamus commanding the Respondent No. 1 i.e. EESL to absorb the petitioners in regular positions after declaring the results of the interviews held between June 24 and June 26, 2019 and also non executive petitioners on the basis of ACR.

c. Pass such order or further orders as may deemed fit by this Hon'ble Court in the facts and circumstances of case."

2. At the outset, I may state that this petition was dismissed by this Court vide order dated October 12, 2020. The said order was challenged by the petitioners through an Intra-Court appeal being LPA 307/2020. The Division Bench has

decided the LPA by remanding the matter with regard to prayer 'b' of the petition. The relevant portion of the order of the Division Bench reads as under:

"13. We may in this context notice that the petitioners, in the writ petition, though have also claimed the relief of regularisation but interestingly, not independently, but "after declaring the results of the interviews held between June, 24 and 26, 2019". We have enquired from the counsel for the appellants, whether the said interviews undertaken by the writ petitioners were pursuant to the impugned advertisement.

14. The counsel for the appellants states that the said interviews were not held as part of the recruitment under the impugned advertisement but in pursuance to the proposal for absorption of the fixed tenure employees, earlier undertaken by the respondent EESL vis-a-vis the writ petitioners.

15. We also find that the Single Judge, in paragraph 3 of the judgment, has also referred to the interviews for regularisation but not dealt with the same. We are of the view that only the first relief claimed in the writ petition, of impugning the advertisement, could have been held to be barred by delay and laches and not the relief of regularisation, since the writ petitioners continued to be in the employment, though fixed tenure, of the respondent EESL and remained entitled to seek regularisation.

16. The said aspect having not been dealt with by the Single Judge, we have enquired from the counsels, whether they consent to our considering the said aspect for the first time in appeal.

17. While the counsel for the appellants and the other petitioners consents, the senior counsel for the respondent EESL, under instructions, states that since the writ petition was dismissed on the very first date, no counter affidavit was filed and opportunity to file counter affidavit be given and the matter be remanded to the Single Judge for consideration of the second relief.

18. The appeal, to that extent is accordingly allowed, without disturbing the judgment of the Single Judge to the extent dismissing the writ petition as barred by delay and laches qua the first relief of impugning the recruitment advertisement dated 15th October, 2019. The writ petition is remanded to the Single Judge, for adjudication in accordance with law, of the second relief claimed in the writ petition."

Accordingly, I proceed to decide the prayer 'b' of the writ petition.

3. It is the case of the petitioners and so contended by Mr. Prashant Bhushan, learned counsel appearing for the petitioners herein that they are Fixed Tenure Employees ('FTEs', for short), who have been appointed against sanctioned posts and in accordance with the statutory procedure contemplated under the Recruitment Policy and they have completed three to four years of service with the respondent No.1.

4. According to Mr. Prashant Bhushan, the Recruitment Policy of respondent No.1 permits absorption of FTEs in regular scales in exceptional circumstances, subject to proper business justification. In this regard, he has drawn my attention to Annexure P-1 of the writ petition to contend, an FTE seeking absorption in regular scale has to complete one year of service in the respondent No.1. The performance of such an employee should be satisfactory and their Performance Measuring Scores ('PMS', for short) should be not less than excellent or equivalent. They are required to appear for an interview before a duly constituted Committee and have to score more than 75 %. This provision of absorption of FTEs in regular scale is in consonance with the preamble of the Recruitment Policy, which is as follows:-

"d. Most of the existing manpower are on fixed tenure basis or are outsourced, who leave the organization on termination of contract or tenure or on finding a more stable job once they have gained experience. Thus, the efforts of the company in training such manpower and making them aware of the business model of the company squandered. This source needs to be tapped so that the company does not lose the trained manpower, which is scarce in this industry."

5. He stated, it was the decision of the Board of the respondent No.1 that the recruitment of Officers will be done through an open process and 60% percent of the vacancies will be filled through FTEs. Thereafter, once the business of the respondent was showing rapid growth, the Board decided that FTEs may be absorbed at regular scale after they complete one year of satisfactory service and have a PMS score of 90 and above. In order to implement the decision of the Board, the functional Management of the respondent No.1 initiated the exercise of absorbing FTEs and consequently in the year 2016 and 2017, more than 115 FTEs were absorbed after the interview. As has been done in 2016 and 2017, petitioners herein too participated in the duly authorized and advertised absorption process as per the policy aforementioned for which petitioners were called for interview held on June 24, 2019 and June 26, 2019 based on the policy, practice, and the decision of the Board. However, the respondent No.1 without declaring the result of the interview came out with a fresh advertisement dated October 15, 2019 for 235 regular posts.

6. He stated that the action of the respondent No.1 to issue a fresh advertisement is untenable as the respondent No.1 was under an obligation to advertise the result of the interviews conducted on June 24, 2019 and June 26, 2019 for the absorption of the FTEs in regular scale and issue appointment letters to them, if selected. Mr. Bhushan also stated that it is not the case of the respondent No.1 that the petitioners were appointed in violation of the Rules, as envisaged in the policy; or that the petitioners were appointed arbitrarily / or haphazardly / or clandestinely; or that the appointment of petitioners was illegal, irregular, or through the backdoor.

7. According to Mr. Bhushan, it is the legitimate expectation of the petitioners not on the basis of their initial employment as FTE but on the basis of the policy and

practice of the respondent No.1 that they shall be absorbed once they complete one year of service in respondent No.1 with satisfactory performance and the fact that they appeared in the interview on June 24, 2019 and June 26, 2019 in terms of the Recruitment Policy, the respondent No.1 is required to declare the result. In fact, according to Mr. Bhushan, it is with that intention that the petitioners joined and stayed in the organization as they would be getting an opportunity of regular absorption. He also referred to Rule 9.3(c) of the Policy to contend that the petitioners have maintained their PMS score as excellent for being appointed on a regular scale by absorption and with this view, they have also not participated in the selection process elsewhere. Mr. Bhushan has also stated that the reason given by the respondent for not declaring the result of the interview conducted on June 24, 2019 and June 26, 2019 and to go for open recruitment was on the basis of the note sheet dated August 08, 2019 of the Chief Vigilance Officer. The respondent No.1 in paragraph b(ix) marked at Page 15 of counter affidavit has submitted that an inquiry was conducted by the Vigilance Officer on the basis of a complaint and in the note sheet dated August 08, 2019, the Vigilance Officer advised against the absorption of FTEs in regular posts and advised for an open recruitment. However, as per the note sheet, it has been stated by Office of Chief Vigilance Officer that they have received a complaint in terms of 3.1 of CVC manual, 2017 and in pursuance thereof, input was sought regarding procedure of absorption of FTEs in regular scale and internal recruitment for FTEs positions through outsourced manpower from human resources department. Though, after analyzing the procedure, it was found that recruiting an employee in the same cadre / category is not in line with the Recruitment Policy where employees have been found to be recruited without written test (i.e., only on basis of interview) and subsequently internal employee is absorbed from the fixed term category again without taking any written examination.

8. According to Mr. Bhushan, the above is an incorrect reading of the said note sheet. The respondent No.1 could not have assumed by any stretch of imagination that the Chief Vigilance Officer advised to cancel the recruitment process already underway. The note sheet only proposed that they may be allowed to investigate the matter, so that full factual situation may be submitted before the Management in order to facilitate quick decision in that regard. But instead of taking a decision on the investigation, the same was refused by the Managing Director and the decision to cancel the absorption process is manifestly arbitrary. Mr. Bhushan has relied upon the judgment of the Supreme Court in *Shankarsan Dash v. Union of India*, (1991) 3 SCC 47 in support of his submission that the respondent could not have acted arbitrarily and the decision to cancel the process of absorption after interview needs to be taken as rooted in malafides for appropriate reasons. He also relied upon the judgment of the Supreme Court in the case of *Asha Kaul (MRS) & Anr. v. State of J&K & Ors.*, (1993) 2 SCC 573. He prays that the results of the interview be declared.

9. On the other hand, Mr. Raman Kapur, learned Sr. Counsel appearing for the

respondent No.1 would submit that the petitioners were appointed as FTEs, who were employed in respondent No.1 Company on contractual basis for four and a half years. The relevant clause in their appointment letter dated October 13, 2016 of petitioner No.1 reads as under:-

"Clause 8: You may note that your engagement at EESL is on Fixed Tenure Basis and you will not have any claim whatsoever, for regularization / absorption in the Regular Roles of EESL."

10. In terms of the Recruitment Policy of respondent No.1, the FTEs were decided to be absorbed through absorption process as provided in the Recruitment Policy. The Recruitment Policy envisages source and modes of recruitment. The petitioners were called for interview on June 24, 2019 and June 26, 2019 under the absorption process.

11. Mr. Kapur stated, the basic grievance of the petitioners is that once the process of absorption for selection on regular posts has been completed by respondent No.1, the petitioners are to be mandatorily absorbed as per Rules. A sudden stoppage of entire process of absorption smacks of lack of bonafides, arbitrariness in exercising the discretion, violation of Article 14 of the Constitution. In this regard, he stated that the law is well settled inasmuch as the FTEs or contractual employees cannot claim absorption or regularization as a matter of right. No doubt, the Recruitment Policy for FTEs itself provides for regularization through absorption process but it is not a rule but an exception, that too under business exigencies. Hence, the contention of Mr. Bhushan that they have a right to seek regularization under absorption process, which is being infringed, is contrary to the Recruitment Policy. He stated that based on various complaints made to the Chief Vigilance Officer, wherein, the process of regularization through absorption was challenged, inquiry was conducted by the Vigilance Department and report was submitted to the Board that the said process is against the principles of fair play and equal opportunity to all.

12. According to Mr. Kapur, the object of the Recruitment Policy is to enable the Organization to meet the challenges, attract, motivate and retain talent from all sectors and create a continuous source of trained professionals for meeting the fast growing needs of the organization in a changing business scenario. He stated that in the above background, the PWC, a consulting agency was engaged to provide inputs on requirement of dynamic and common pool of resources and need of more employees. PWC has opined that the business growth of the respondent No.1 envisages different and new streams, with short life span of projects and foray into both National and International markets. On a comprehensive manpower study, it was revealed that it is crucial for respondent No.1 to empower regional offices and create common pool of resources which focuses on multi-tasking and multi-skilling of employees in the ever dynamic work situation. Hence, the need of open competitive examination is to have skilled manpower and pool, which is also the mandate of law as settled by Supreme in the case of Secretary, State of Karnataka & Ors. v. Umadevi (3) &

Ors., (2006) 4 SCC 1 has been discussed.

13. Mr. Kapur stated even on equity, no discrimination has been made against the FTEs by declaring them ineligible to participate in the examination held on October 23, 2020. As a matter of fact, the Notification dated October 15, 2019 helped the existing work force, as all the petitioners have participated in the said examination with the exception of one petitioner, who could not participate on account of being unwell. He also stated that in terms of the said Notification, preference was given to the candidates having experience in Public Sector Undertakings. For Internal candidates including outsourced employees, following relaxation will be considered:-

"(i) Age relaxations, subject to fulfillment of other eligibility criteria;

(ii) For technical position, equivalent engineering qualifications;

(iii) For Non-technical positions part time qualification/distance learning courses;"

14. Mr. Kapur contested the submission of Mr. Bhushan that the petitioners were not informed about the stoppage of recruitment through Absorption Policy by stating that the respondent No.1 vide its response dated November 22, 2019 to a consolidated application, has categorically informed that 'due to administrative reasons, Management decided to go for open recruitment'. Mr. Kapur relied upon the following judgments in support of his submissions:-

i. Official Liquidator v. Dayanand & Ors. (2008) 10 SCC 1;

ii. Dr. Chanchal Goyal (Mrs.) v. State of Rajasthan, (2003) 3 SCC 485;

iii. Principal, Mehar Chand Polytechnic & Anr. v. Anu Lamba & Ors., (2006) 7 SCC 161;

iv. Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (supra);

v. Anil Lamba & Ors. v. Govt. of NCT & Ors., (2017) 238 DLT 760.

15. On the judgments relied upon by Mr. Bhushan, Mr. Kapur would submit that those judgments are not applicable in the facts of the present case by stating that in the matter of public employment, government entities are bound by the dictum of the judgment of the Supreme Court in the case of Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (supra) and the constitutional provisions, which mandate equal opportunity to all and there can be no discrimination amongst equals and appointments should be carried out through open recruitment. Moreover, it is a settled position of law that a wrong or an irregularity cannot be perpetuated. He seeks the dismissal of the writ petition.

16. Having heard the learned counsel for the parties, on the limited issue of prayer (b) as reproduced above, the petitioners are, in effect seeking that they may be absorbed in regular positions by declaring the result of the interviews held on June 24, 2019 and June 26, 2019. At the outset, I may state here that the petitioners were initially engaged as FTEs, on contractual basis and they have

worked for four and a half years. There is a clear stipulation in their engagement by stating as under:-

"Clause 8: You may note that your engagement at EESL is on Fixed Tenure Basis and you will not have any claim whatsoever, for regularization / absorption in the Regular Roles of EESL."

17. The submissions of Mr. Prashant Bhushan primarily are; (i) the petitioners' engagement was in terms of the recruitment policy which permits absorption of FTEs in regular scales in exceptional circumstances, subject to proper business justification; (ii) the performance of the petitioners is satisfactory and their PMS is not less than excellent or equivalent; (iii) that the FTEs were absorbed in the years 2016 and 2017 and a similar benefit was sought to be given by the respondent No.1 by calling upon the petitioners to appear for the interview; (iv) unfortunately, for totally arbitrary reasons, result of the interviews has not been declared; (v) even the reliance placed on the note sheet by the respondent No.1 does not state that the process of absorption initiated by the respondent No.1 in 2019 need to be shelved.

18. On the other hand, Mr. Kapur has highlighted the report submitted by PWC, a consulting agency for providing inputs on recruitment of dynamic and common pool of resource and need for more employees. Surely, the report submitted, does recommend need of open competitive examination to have skilled manpower and pool, which is in conformity with the law laid down by the Supreme Court in *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.* (supra).

19. That apart, I find that some of the petitioners, who were engaged as FTEs, have been engaged either through written test and interview, or only interview, or no written test and interview and the employees sought to be absorbed without facing any written examination but by interview only. This process surely reflects that no homogenous process was evolved for appointing the petitioners as FTEs. That apart, the position of the FTEs being not regular rather temporary, many persons may not have applied for the said position in the past (when the petitioners were appointed). In this regard, I may refer to the judgment of the Supreme Court in the case of *Official Liquidator* (supra), wherein in para 52, the Supreme Court has held as under:-

"52. As mentioned above, while approving the reasons and conclusions recorded by the two High Courts and dismissing the appeals, this Court not only permitted the Government of India to frame a scheme modelled on the 1978 Scheme but also stayed implementation of the orders impugned in the appeal and the one passed by itself in the transferred writ petition. If the Court intended that all members of the company-paid staff working on the date of judgment i.e. 27-8-1999 [(1999) 8 SCC 560 : 2000 SCC (L&S) 74] should be absorbed in the regular cadres against Group C and D posts, then a simple direction to that effect would have been sufficient and there was no occasion to stay the implementation

of the orders of the High Courts for six months with liberty to the Government of India to frame a new scheme within the same period. The absence of such a direction shows that the Court was very much conscious of the fact that recruitment to the regular cadres is governed by the rules framed under Article 309 of the Constitution and it would be highly detrimental to public interest to issue direction for wholesale absorption/regularisation of the company-paid staff and thereby abrogate/stultify opportunity of competition to younger generation comprising more meritorious persons who may be waiting for a chance to apply for direct recruitment. Obviously, the Court did not want to sacrifice merit by showing undue sympathy with members of the company-paid staff who joined service with full knowledge about their status, terms and conditions of their employment and the fact that they were to be paid from the company fund and not Consolidated Fund of India. In this context, we may also mention that though the Official Liquidators appear to have issued advertisements for appointing the company-paid staff and made some sort of selection, more qualified and meritorious persons must have shunned from applying because they knew that the employment will be for a fixed term on fixed salary and their engagement will come to an end with the conclusion of liquidation proceedings. As a result of this, only mediocres must have responded to the advertisements and joined as company-paid staff. In this scenario, a direction for absorption of all the company-paid staff has to be treated as violative of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.

(Emphasis supplied)

20. Even the process of absorption initiated in the year 2019 was only through the interview process, which process cannot be countenanced. The Supreme Court in the case of *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.* (supra) has held that public employment has to be in terms of the constitutional scheme, which is as per the Recruitment Policy framed by the employer and has to be given wide publicity and considering every person, who applies for the post and fulfills the eligibility conditions. It is in conformity with the position of law laid down by the Supreme Court in *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.* (supra) that the respondents have justified issuance of recruitment notice dated October 15, 2019 by not declaring the result of the interviews, which were held on June 24, 2019 and June 26, 2019. I do not see any illegality in the said process. In fact, I find by initiating the process of absorption of the petitioners, the respondent No.1 has sought to overlook / deny consideration to the persons outside the organization for applying to the posts in question, which are admittedly public posts.

21. Further, the fact that all the petitioners except one have applied / participated in the examination pursuant to the recruitment notice dated October 15, 2019 wherein age relaxation was also given to the petitioners, subject to fulfillment of other eligibility criteria and also the fact only nine have qualified the written examination to be called for the interview, the petitioners cannot now



seek regularization by way of this writ petition by seeking a direction for declaration of the result of the interviews. This I say so, in view of the judgment of the Supreme Court in the case of Nagar Mahapalika, Kanpur v. Vibha Shukla (Smt)& Ors., (2007) 15 SCC 161 wherein the Supreme Court held that regularization is not a mode of appointment. Also they having participated in the selection process are estopped from challenging the recruitment notice, (which prayer has been rejected by this court on October 12, 2020 and upheld by the Division Bench). In the case of Madras Institute of Development Studies & Anr. v. K. Sivasubramaniyan & Ors., (2016) 1 SCC 454, wherein the Supreme Court has held as under:-

"15. In Dr. G. Sarana vs. University of Lucknow & Ors., (1976) 3 SCC 585, a similar question came for consideration before a three Judges Bench of this Court where the fact was that the petitioner had applied to the post of Professor of Athropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure to get appointed, the petitioner rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the Court held:-

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

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

(Emphasis supplied)

22. Even the lone candidate, who could not appear in the examination on the grounds of being unwell, could have also applied against the recruitment notice. Having not done that, he also cannot seek any direction from this Court for declaring the results of the interview held on June 24, 2019 and June 26, 2019 as the very action of the respondent No.1 for absorption is contrary to the law in Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (supra) wherein the Supreme Court has in paragraphs 43 and 50 held as under:-

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

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50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is

in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality."

23. Mr. Kapur is justified in relying upon the judgment in the case of Official Liquidator (*supra*) wherein the Supreme Court held that creation and abolition of posts, formation and structuring/ restructuring of cadres, prescribing the source and mode of recruitment, qualifications and criteria of selection etc., are matters which fall within the exclusive domain of the employer. The Court cannot sit in appeal over the executive decision of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by malafides.

24. Though reliance was also placed by Mr. Kapur on the same judgment that the FTEs cannot invoke the doctrine of legitimate expectation by referring to the conclusion of the Supreme Court since that no material has been placed before the Court to show that any promise was made or that any assurance was given by the respondent No.1 for their absorption in regular cadres but this Court is of the view that the doctrine of legitimate expectation would not come into play when the terms of appointment issued to the petitioners, includes Clause 8, as referred to above which is very clear that the petitioners cannot have any claim for regularization or absorption in the regular cadre of the respondent No.1 and also in view of the settled law by the Supreme Court in *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.* (*supra*) of which a reference has been made above that any recruitment has to be made in accordance with the Constitutional Provisions / Recruitment Rules by giving wide publicity and consideration to all persons, who apply, subject to meeting the eligibility conditions. Rather, I find, as stated above, the petitioners were given the benefit of age relaxation. The process evolved by the respondent No.1 is in conformity with Article 14 of the Constitution of India. If the prayer, as sought for by the

petitioners is allowed, the same would be in violation of Article 14 of the Constitution of India, as persons who may not have worked in the respondent No.1 organization but meeting the provisions of the Recruitment Policy would be denied the right of consideration on the posts in the respondent No.1 organization as the said posts are public posts and every citizen of the Country meeting the eligibility criteria has a right to apply and consider.

25. The reliance placed by Mr. Bhushan on the judgment in the case of Shankarsan Dash (supra) is concerned, the said judgment would not be applicable to the facts of this case, more so when the issue in the present case is, whether the petitioners are entitled to regularization by declaring the result of the interviews.

26. Insofar as the judgment in the case of Asha Kaul (supra) is concerned, wherein the Supreme Court has held as under:-

"8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment State of Haryana v. Subhash Chandra Marwaha A.I.R. 1 973 S.C.2216; M.S, Jain v. State of Haryana A.I.R. 1977 S.C. 276 and State of Kerala v. A. Lakshmikutty A.I.R. 1987 S.C 331 but that is only one aspect of the matter. The other aspect is the obligation of the government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the commission to select a particular number of candidates for a particular category, in pursuance of which the commission issues a notification, holds a written test, conducts a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the government-the government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any government can adopt such a stand with any justification today. ...."

27. Suffice to state that, in the facts of this case, I have already held that the respondents are justified in not declaring the result of the interviews held on June 24, 2019 and June 26, 2019 and issuing the recruitment notice on October 15, 2019 against which the petitioners have also applied (except one) and have participated in the process.

28. In view of my discussion above, I do not see any merit with regard to prayer (b) in the petition. The petition is dismissed.

No costs.