

(2006) 09 AHC CK 0163

In the Allahabad High Court

Case No : Writ Petition No.3495 (S/S) of 1998 (with writ petition Nos.1544 (S/S) of 1999, 5637 (S/S) of 2002 and 2158 (S/S) of 2005)

Onkar Nath and Others

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:

Citation : (2006) 09 AHC CK 0163

Hon'ble Judges : Shailendra Saksena, J

Final Decision : Dismissed

Judgement

Shailendra Saksena, J.—In all these writ petition common questions of law and facts are involved, controversy and reliefs claimed are similar/common, hence all these writ petitions were heard together and are being decided by a common order. W.P. No.3495 (SS) 1998 was made the leading case, hence judgment is being pronounced in this writ petition. Same order will govern the other writs. A copy of it would be placed on record of other petitions.

2. In all these writ petitions, the petitioners had worked as part time casual/daily wage employees with different branches of respondentsbank for short time and were not being considered for permanent/regular employment/appointment. The petitioners have the grievance that in spite of the fact that they have been selected and empanelled in the select list for being employed as regular employee for the years 1989, 1991, 1992, their names find mention in the list of these years. In spite of it, petitioners are not being considered for appointment, although work and posts for which the petitioners are eligible to be appointed, are available, and still they are not being absorbed in the services of the respondentbank, the respondentbank cannot be allowed to act in an arbitrary manner and appoint the persons, on pick and choose basis, without following the employment and placement of the petitioners who are on the select list. The respondentbank should not be allowed to ignore the claims of the petitioners, on the pretext that the select list was valid only up to the year 1996, and now the

petitioners have no claim; to claim the benefits of this select list.

3. Brief facts, so far they are relevant for the purposes of deciding these writ petitions, are that petitioners were engaged by different branches of the State Bank of India, Lucknow Zone, on temporary/casual, part time basis and after their disengagement, certificates by them, have been obtained for the total period they have worked as such.

4. The claim for regular appointment of these such employees, and similarly placed employees, may not be jeopardized and there may be a uniform policy of engagement/employment, a bipartite settlement was entered into in between the respondent bank and All India Bhartiya State Bank Staff Federation, a recognized Union, of the employees, which represented them, on 17.11.1987. In this above said agreement, a policy was formulated, for the appointment of "workers", in the subordinate grade, from amongst the temporary workers of the bank, against the future vacancies occurring during the years 1988 to 1991.

5. This agreement was entered into in between the parties under Section 2(p) and Section 18(1) of the Industrial Disputes Act, 1947, read with Rule 58 of the Industrial Disputes (Central) Rules, 1957.

6. Another, further and fresh settlement dated 27.10.1988, was also entered, into in between the Bank and the Federation of the employees and workers, who had been engaged on casual basis, to work in leave/casual vacancies, were also included for giving a chance, to be considered, for permanent appointment, in the banks' services, against vacancies, likely to arise from the year 1988 to year 1992.

7. On 9.1.1991, another settlement was again entered into, in between the bank and the Federation of employees and in it, certain modifications, in the settlement dated 17.11.1987, as modified by settlement dated 16.7.1988 and 27.10.1988, was made.

8. There is no dispute in between the parties that as per the new modifications and in pursuance of the previous settlement, panels of temporary employees was required to be prepared for being used, for filling the existing vacancies and/or those, which might arise up to December, 1994. Thereafter, these panels were to stand lapsed and the remaining candidates would have no claim whatsoever, for being considered for permanent appointment in the bank.

9. Thereafter, subsequently in the conciliation proceedings, before Regional Labour Commissioner (Central), at Hyderabad, in partial modification of the earlier settlements, it was agreed between the bank and the Federation of employees, that the panels of employees temporary or daily wage/casual would be kept alive up to March, 1997, and it is not disputed that after March, 1997, these panels would stand lapsed and in pursuance of this agreement no further appointment after this date, could have been made or claimed.

10. The first grievance of the petitioners is that respondent bank has not

published the panel/select list for the years 1989, 1991 and 1992; number of vacancies too were also not notified. Petitioners had appeared in the selections held in the respective years; one of the conditions of settlement, mentioned, was that candidates, who were not selected for appointment, will be informed accordingly and since no rejection has been communicated to the petitioners, at any point of time, the petitioners believe that they have been selected. It has been said that in making selection, a most arbitrary procedure has been adopted, without following the principles of merit, yearwise select list had been prepared and was adopted, a policy of pick and choose, in appointing persons, on extraneous considerations has been adopted and followed.

11. It has very vehemently been argued that petitioners although shown in the select list, are not being considered for being appointed, on wrong pretext, that the select list has (already) expired, on the other hand select list is being given effect to and appointments are still being made regularly, from the said select list, against vacancies arising in the bank. The bank, as the facts show, itself is keeping the select list alive, hence petitioners are also entitled for being considered and appointed.

12. Besides the merits of the case of the petitioners, many fold objections on the maintainability of these petitions, under Article 226 of the Constitution of India, have been raised by the learned counsel of the respondents.

13. Taking the first, initial objection regarding maintainability of these writ petitions, under Article 226 of the Constitution of India, it was argued by learned counsel of the respondents that after the expiry of period of select list, the claim of the petitioners stood lapsed; the alleged agreement/settlements do not confer any vested right, in favour of the candidates to claim appointment, on the basis that his name was in the select list. It was argued that keeping a candidate in the select/waiting list, does not confer any vested right in favour of the candidate, much less an indefeasible right, the petitioners have got equally efficacious and adequate alternative remedy, which they do not want to avail and instead of it have invoked the extraordinary jurisdiction of the High Court, under Article 226 of the Constitution of India; the petitioners it was argued, have placed no material facts and particulars, on basis of which they can invoke the extraordinary jurisdiction of the High Court, under Article 226 of the Constitution of India, the agreements/settlements were entered into, in between the All India State Bank of India Staff Federation, which was an employees Association/Union, registered under the Indian Trade Union Act, representing the workman Staff, of the bank and the bank, under Section 2(p) and Section 18(1) of the Industrial Disputes Act 1947, read with Rule 58 of the Industrial Disputes (Central) Rules 1957. It was argued that petitioners want to enforce the terms and conditions of this agreement/settlement and allege its breach; they should have availed the remedy and forum provided in the Industrial Disputes Act, 1947 itself; which provides speedy and efficacious remedy, petitions under Article 226 of the Constitution of India, in these circumstances, would not be maintainable the

employees Union with whom this settlement had been entered into, would also be a necessary party; perhaps the Union only could have prayed for enforcement of contractual obligations, individual writs/actions in this manner, would not be permissible and maintainable. It was argued that where a Statute provide a complete machinery for obtaining relief against the orders passed by authorities, petitioner can not be permitted to abandon that machinery and invoke extra ordinary jurisdiction of the High Court under Article 226 of the Constitution of India.

14. Rebutting the above said contentions, learned counsel appearing on behalf of the petitioners, placed reliance on the principles of law laid down by Hon"ble the Apex Court in the case of *Purushotum v. Chairman MSEB and Another*, reported in (1999) 6 SCC 49, wherein it was laid down by the Apex Court, that a duly selected candidate cannot be denied appointment, on the pretext, that panels term had expired and post has been filled up by someone else; if usurpation of the post by somebody else is not on account of any defect on part of candidate but on erroneous decision of the employer.

15. Besides the above, reliance has been placed on the principles of law laid down in the case of *Durga Enterprises Pvt. Ltd. and another v. Principal Secretary of U.P. and Others*, wherein it was laid down that if writ is entertained, pleadings were complete, it ought to have been decided on merits instead of relegating the parties to Civil suit.

16. In the case of *ExMajor D.P. Kakreti v. Union of India and Others*, reported in (1996) 4 UPLBEC 246 a Division Bench of this Court, had laid down that if a petition has been admitted and listed for final hearing, taking into consideration of the facts that petition was pending for a considerable long time, it shall not be dismissed on the ground of alternative remedy. In the present case the petitions are pending since the year 1998/1999. Same was the view of another Hon"ble Bench, in the case of *Sujane Ram v. Authority under Payment of Wages Act and another*, reported in 1995 (13) LCD 776, *A.K. Saxena v. Director of Education Lucknow and Others*, (1999) (17) LCD 904 and in the case of *V.B Singh v. D.J. Faizabad*, reported in 2000(18) LCD 21.

17. Although the petitioners have brought on record and have relied on the principles of law laid down in the case of *Shankarsan Dash v. Union of India*, reported in 1999 (3) SCC 47, wherein it was laid down "that candidate included in the merit list, has no indefensible right to be appointed even if a vacancy exists, in filling vacancies, but the authority has to act bonafide and not arbitrarily???. Even if certain appointments had been made in other services subsequently, that would not be arbitrary act, if decision to make such appointments had already been taken prior to the closure of final selection process." I fail to understand how reliance on it has been placed, when squarely principles laid down in this case help the respondents and it has also been relied upon by them; Similarly reliance was also placed on the case of *Chandrama Singh v. H.D. U.P. Cooperative Union, Lucknow and another* reported in 1991

AWC 2005, wherein a Full Bench of this Court had laid down that the hurdle of alternative remedy cannot be allowed to be skipped over lightly, on casual and bald statement in the petition, that there is no equally efficacious or adequate remedy, for them than to invoke the extraordinary jurisdiction of the High Court, under Article 226 of the Constitution of India. The petitioners should furnish material facts and particulars to sustain such a plea. In the case before that bench, the petitioners had complained violation of provisions of Section 25F of the Industrial Disputes Act, 1947 and for redressal of grievance as adequate and efficacious remedy, it was held that a remedy of reference under provisions of Section 10 of the Act, itself, existed in the Act. In the present case also the petitioners have neither pleaded nor proved the said remedy to be inadequate or in efficacious. They have also not demonstrated the existence of any exceptional or extraordinary circumstances to permit them to press the alternative remedy available to them under the Industrial Disputes Act. In these circumstances in the above said case it was held that petition under Article 226 of the Constitution of India would not be maintainable. In the present case also, it was argued that relief provided under the provisions of Industrial Disputes Act, was an adequate and efficacious remedy, hence these petitions under Article 226 of the Constitution of India would not be maintainable. It was argued by the petitioners that the remedy under Industrial Disputes Act is not adequate as the Hon"ble the Apex Court in the case of M/s Avon Services Production Agencies (P) Ltd. v. Industrial Tribunal Haryana and Others, 1979 (1) SCC 1, had laid down, that powers of Government under Section 10(1) of the Industrial Disputes Act are discretionary and are administrative functions of the State. It was argued that in view of this pronouncement of Hon"ble the Apex Court and the position of law, relief under the provisions of Industrial Relief Act, would not have been an adequate and efficacious remedy, so extraordinary jurisdiction of this Court, under Article 226 of the Constitution of India, could and should have been invoked.

18. Looking into the facts and circumstances of the present case, and the law propounded by the Hon"ble Apex Court, and settled position of law, I find no merits in the contention of learned counsel of the petitioners. The petitioners in the present case, have come out with a case that there was an agreement/settlement, dated 17.11.1987 in between the employees association/Union, representing the "workman" staff of the bank and the bank, that temporary employees under subordinate category/cadre, would be given a chance for being considered for permanent appointment in bank, against vacancies, likely to arise in between 1987 to 1991, this settlement was modified on 27.10.88 and again on 9.1.1991, and vacancies existing or arising upto December 1994 were also required to be filled by this settlement, names of employees in different categories were to be made in panels and appointment in existing vacancies would be made from these panels its life was to expire in 1996, thereafter it was agreed that these panels would stand lapsed, and remaining candidates would have no claim, whatsoever, for being considered, for permanent appointment, in

the bank, for daily wagers, vacancies required to be filled up, which might arise in 1995 and upto December 1995, thereafter, these panels would stand lapsed, remaining candidates wait listed, would have no claim whatsoever, being considered for appointment, in the bank. This agreement/settlement admittedly was entered, under Section 2(p) read with Section 18(1) of Industrial Disputes Act 1947, read with Rule 58, of the Industrial Disputes Act (Central) Rules, 1957. The settlement was for "workman" staff of the bank, the "workman" staff only could have claimed advantage, if any, from this settlement. It was for their benefits and for and on behalf of the them, it was signed by the Union representing them, so if the petitioners admit that they are "workmen", only then, they can claim advantage of these settlements and not otherwise, the benefits of the settlements could have been claimed only by the workman, under the provisions of Industrial Disputes Act, and from the forum provided in the Act and in accordance with procedures and provisions given in the Act, itself; extraordinary jurisdiction under the provisions of Article 226 of the Constitution of India, cannot be invoked, if petitioners have got alternate and efficacious remedy, hurdle of alternative remedy cannot be allowed to be skipped over, unless material facts and particulars, to sustain such plea, are pleaded and provided, exceptional and extraordinary circumstances, to permit by passing of the alternate remedy, available under Industrial Disputes Act should have been pleaded. (See Chandrama Singh (supra) and U.P. Jal Nigam and another v. Nareshwar Sahai Mathur and another). In the absence of any such pleadings, no indulgence to the petitioners should be granted.

19. The respondents have relied, on principles of law laid down, in another case, reported in State of Bihar and Others v. Jain Plastics and Chemicals Ltd., (2002) (1) SCC 216, wherein it was laid down that seriously disputed questions or rival claims, arising out of breach of contract, are required to be investigated and determined, on basis of evidence, led in Civil suit; same principles was laid down in the case of New Okhala Industrial Development Authority v. Kendriya Karmchari Sahkar Grih Nirman Samiti, (2006) (2) ESC 235 (SC).

20. The respondents have come out with the case that in accordance with the settlements and modifications done in the settlements, selection process was made and selections were conducted in the year 1991, 1992 prior to it, names of suitable candidates were required to be wait listed in order of their respective cadres/categories viz. A, B & C, names were to be given in descending order, according to the length of temporary services, put in by them and in accordance therewith selections and appointments in existing vacancies were made.

21. Both the panels of temporary employees and daily wagers/casual employees, was to be kept alive, up to March 1997, and vacancies upto this period have been filled, by following the procedure, in accordance with the settlements.

22. The case of respondents is that as per the vacancies in the messengerial, nonmessengerial, guards and Sweeper, positions, the names of the candidates, were released from 1989 panel, in accordance with their seniority, and keeping in

view the reservation of Schedules Castes, Scheduled Tribes and Orthopaedically handicapped. The panel of Scheduled Castes/Schedules Tribes/Orthopaedically handicapped candidates, who were ClassVIII passed (Massengerial positions) was totally exhausted. The panel of Scheduled Tribe/Schedules Tribes/Orthopaedically handicapped candidates, who were ClassVIII passed (NonMassengerial positions) was also totally exhausted. Regarding the panel of General candidates, who were ClassVIII passed (messengerial positions) the same was not exhausted, completely as the names of the candidates up to Sl. No.120 of the Seniority List were released, for being offered appointment, in messengerial positions. The remaining general wait list candidates, from Sl. No.121 to 230, could not be offered appointment, as there were no vacancies of General category messengerial positions left so far as to release their names. The list of General candidates who were ClassVIII failed (nonmessengerial positions) was completely exhausted).

23. It was argued that in the 199192 select list, for messengerial positions, the names of only seven candidates of Scheduled Casts, Schedule Tribes were released as the 1989 panel of Scheduled Caste, Scheduled Tribe candidates for messengerial positions was completely exhausted. No general candidates for Messengerial positions was released from 199192 select list as neither there was vacancy of general category nor the 1989 select list of general category for messengerial positions was exhausted. In the 199192 select panel of temporary employees (scalewage) for Nonmessengerial positions, the names of general candidates were released in accordance with the seniority. The reserved category candidates belonging to Scheduled Caste and Scheduled Tribe categories were also released under the panel of temporary nonmessengerial positions. With respect to the daily wage nonmessengerial positions in the 199192 panel, the names of six Scheduled Casts, Scheduled Tribe candidates were released in accordance with the seniority, as per demand. With respect to the petitioners 1 to 65, of this writ as the roll numbers of the petitioners No.35, 41, 44, 45, 47 and 60 had not been specifically provided in the writ petition, their fate in the selection process and the position in the lists could not be ascertained from the voluminous records of selection. Except the petitioner No.17 and 18, who had been considered for the nonmessengerial position (Menial), the other petitioners had been considered, for the messengerial positions. The petitioner No.48 was found suitable for Menial position, but his name was not released, for offering him appointment, on the post of Menial, as the requirement was for reserved category candidate and he was Junior in General Category. The petitioner No.8, 13, 17, 19, 38 and 55 were not found suitable by the Selection Committee. The petitioner No.28 being Class V passed, was found suitable for the Nonmessengerial position (Menial). The name of Sri Ram Varan was not released for appointment, on the post of Nonmessengerial position as the requirement was for reserved category candidate. Regarding the petitioners 1 to 7, they were found suitable for messengerial positions, in the panel list of 1989, but as they were quite below in the seniority list, of General candidates, for messengerial

positions, they were not offered appointment. Apart from the above mentioned petitioners, the remaining petitioners belonging to general category of 1991/92 panel list, although they were found suitable, for the messengerial positions, but as the 1989 panel list of the general candidates for messengerial positions was not yet exhausted, the said petitioners could not be offered appointment, on messengerial positions. Regarding the remaining reserved category petitioners found suitable in the year 1991/92 select list for messengerial positions, they being lower in the seniority list they were not offered appointment on the messengerial positions. Typed copy of the chart containing the positions of the petitioners with appropriate remarks has been annexed as Annexure C7 to the counter affidavit.

24. Regarding other candidates Sri Ravi Shanker Mishre (Sl. No.104), Satya Prakash Shukla (Sl. No.106), Sri Sushil Kumar Agarwal (Sl. No.118), Sri Ashok Kumar (Sl. No.117) and Sri Ram (Sl. No.111) it was said that they were found suitable by the Selection Committee, for messengerial positions, in the year 1989 select list, and all of them have been senior to the petitioners, in the 1989 select list of general candidates for messengerial positions. Sri Ram Kumar Pathak (Sl. No.68) and Sri Ram Sajeevan (Sl. No.62) were found suitable for nonmessengerial positions by the Selection Committee in 1989 panel and their names were released as per the seniority list.

25. Regarding Sri Ram Gopal Jaiswal (Roll No.162, Sl. No.14) Sri Hari Shankar (Roll No.40, Sl. No.60) Sri Daya Ram Pal (Roll No.515, Sl. No.17) belonging to general category, it was argued that they were found suitable by the Selection Committee, in the 1991 panel list, for the nonmessengerial positions and their names were accordingly released, as per seniority list.

26. Regarding Sri Ram Charan (Roll No.280, Sl. No.1) a scheduled caste candidate, it has been pleaded that he was found suitable for the messengerial position, by the Selection Committee, in 1991 panel list. The name of Sri Ram Charan was released for messengerial position from 1991 select list as the 1989 select list of reserved category had already been exhausted. It has been argued and pleaded that the name of Sri Satya Prakash Shukla was released on 22.3.1997, whereas the name of Sri Ram Charan, Sri Sushil Kumar Agarwal, Sri Ram Gopal Jaiswal, Sri Hari Shankar, Sri Ashok Kumar, Sri Ram, Sri Daya Ram Pal, Sri Ram Kumar Pathak and Sri Ram Sajeevan were released on 31.3.1997, after receiving the requirement of the respective vacancies. The names were released on 31.3.1997, it has been pleaded that subsequently it took some time in issuing letters of appointment, to the said candidate, due to objections raised by the federation, hence appointment letter to them had been delayed. After the lapse of period prescribed for making appointments strict instructions have been issued to all the controlling authorities, branches and offices of the Bank to the effect that no contract labour be engaged by them. True copies of the said instructions dated 17.3.1996 and 25.7.1997 issued to officials have been annexed as Annexure No.C8 and C9 respectively, to the counter affidavit, in view

of it and assertions made in counter affidavit there seems to be no reason why these assertions for present purposes should not be accepted.

27. It was contended that the select lists having expired in the year 1997, no right vests in the petitioners, to be now considered for appointment. Further, it has been contended that a mere selection, for wait list/empanelment, as per bipartite agreements, does not confer indefeasible right of appointment, to the petitioners. The relief sought by the petitioners cannot be granted, as the period of the select list has already expired on 31.3.1997 and after the expiry of the select wait lists/panels, the rights, if any, to the persons, included in the wait lists, do not subsist. It was argued that the petitioners who claim their right, for appointment, on the basis of select/wait lists, did not have the subsisting right, on the date they have approached this Court, as the life of the select/wait lists had already expired on 31.3.1997, as per bipartite agreement referred hereinabove. Looking into the settled position of law this argument being advanced by learned counsel of respondents carries much weight.

28. It was categorically denied by the respondents that the bank has acted in an arbitrary manner by adopting the policy of pick and choose, in the appointment of the persons. It was stated that the appointment of the candidates, from the waiting lists/panels were made, in accordance with revised placement, in the select wait list of candidates and not deviating from their respective positions, in the descending order, in the said select/wait list. Since this select list it has been asserted had expired on 31.3.1997, it has not been given effect to thereafter. It has been admitted that although the names of certain candidates, were released on or prior to 31.3.1997, but delay had occasioned in offering the appointments to them due to certain objections, which were raised by the federation. In view of the averments made there seems to be no reason why it should not be accepted since The select list had already been expired in the year 1997, no right vests in the petitioners, to be now considered for appointment, as per bipartite agreement referred hereinabove.

29. It has further been argued by the respondents that even if there are vacancies after the expiry of the select wait list on 31.3.1997, as per bipartite agreements dated 30.7.1996, no right vests in the petitioners to claim appointment.

30. The respondents in the counter affidavit, supplementary counter affidavit and short counter affidavit, have specifically stated that after life of select list/waiting list had expired on 31.3.1997, no fresh or further appointments from said select list/waiting list have been made and have asserted that the wait listed candidates have got no right to claim appointment, on the said select/waiting list, in detail in these affidavits they have explained the circumstances in which appointment of some candidates, mentioned by petitioners had been made, it has been pleaded that names had been released, as per vacancies, prior to expiry of the list, and it has been explained by pleading in the affidavit so in these circumstances no inferences that selection list was revived subsequent to 31.3.1997 can be drawn.

It was argued that what is being said is factually incorrect, prima facie in view of assertions in affidavit what is being argued, appears to be correct. This Court should not adjudicate on this controversy in this manner, as it involves disputed question which can and should be decided only after affording opportunity, to parties, after they have adduced evidence.

31. Some of the employees of the bank had also challenged the selection process and appointments, ignoring the claims of these employees, in the Orissa High Court, Cuttak, in UJC No.2787/97, a copy of that judgment has been filed on behalf of respondents. A perusal of this judgment will also go to show, that the Hon"ble Court had refused to interfere in the matter, under Article 226 and 227 of the Constitution of India, and was of the view that the disputes can be questioned before appropriate forum/authority. The petition was dismissed. This very agreement/settlement and question of appointment on the basis of select lists was also involved in that petition, facts, circumstances of the present petitions are very similar and there since to be no reason why a different view should be taken, when on merits, as is clear from the facts, petitioners have no right/claim.

32. The list which was prepared by the respondents for the Kanpur Zone, for the year 1991 of those candidates, who had been declared successful and were not given appointment, was challenged, by some such candidates. This Court, vide orders dated 3.3.2003, their writ petition had observed that the petitioners had no legal right, for getting the appointment, when the wait list had already expired. The said judgment has also been filed, and would be made part of record.

33. The Apex Court in the case of M.P. Electric City Board and another v. V.K. Sharma, (2002) 9 SCc 650, had laid down that after the expiry of prescribed life of panel, the candidates, whose appointment could not be made, do not get any right, wait list candidates are not entitled to be appointed against vacancies, and even for those vacancies which remained unfilled, due to candidates not turning up, to join the post. Same was also reiterated in State of U.P. v. Bibhakar Diwvedi and another, reported in (2003) 12 SCC 62, Bihar Electric City Board v. Suresh Prasad and Others, (2004) 2 SCC 681.

34. In the case of Satvendra Diwvedi and another v. Administration Nagar Mahapalika, Allahabad and Others, it was laid that mere selection does not give vested right of appointment; denial of appointment can not be declared illegal or arbitrary even if vacancies exists. It is the discretion of the authority concerned, to decide how many appointments should be made. Respondents cannot be compelled do declare the result and issue appointment letters after Selection Committee had become nonexistant or absolute. No direction can be given for its reconstitution. In the case of Harish Chandra and other reported in (1996) 9 SCC 309, the Hon"ble Apex Court had laid down that if after the expiry of period of select list, appointments were made by appointing authority from a select list, after the expiry of its term. Such action of the appointing authority even if illegal

does not confer a right on an applicant which may be enforced by a Court under Article 226 of the Constitution of India. Same was reiterated in the case of State of Bihar and Others v. Mohd. Kallimuddin and Others, reported in (1996) 2 SCC 7, K. Jagmohan v. State of Kerala and another, reported in (1997) 15 SCC 170, Vice Chancellor University of Allahabad and Others v. Dr. A.P. Misra and Others reported in (1997) 10 SCC 264, Government of Orissa v. Har Prasad Das and another, reported in (1998) 1 SCC 487. In the case of Secretary State of Karnataka and Others v. Uma Devi (3) and Others, reported in (2006) 4 SCC 1, the Apex Court, after taking into consideration the different situations and the prevailing law and legal position regarding public employment appointment/recruitment of temporary contractual casual daily wagers or ad hoc employees dehors the constitution scheme of public employment and rights of such employees had that unless the appointment is in terms of relevant rules and after proper competition amongst qualified person, the same should not confer any right on the appointee, contractual appointment comes to an end on expiry of its term, when regular vacancies in posts are to be filled up, regular process of recruitment or appointment has to be resorted to, as per rules, such and can not be done in a haphazard manner, based on patronage or other considerations.

35. In view of the above discussions it is clear that petitioners of the above petitions should not be allowed to invoke the extra ordinary jurisdiction of this Court, under Article 226 or 227 of the Constitution of India. The petitioners have got equally alternate and efficacious remedy and can avail that remedy, if still available. The provisions of the Industrial Disputes Act under the provisions of that petitioners could also have claimed relief also provides a complete procedure and machinery for obtaining relief the petitioners could have ventilated their grievances, if any, in the forum provided in that Act or under the common law. In the circumstances of the present petition the petitioners should not be permitted to abandon that machinery and invoke the extra ordinary jurisdiction of the High Court under Article 226 of the Constitution of India. Besides it this fact cannot be lost sight of that disputed questions of fact should not be gone into by High Court, in writ petition under Article 226 of the Constitution of India. Besides the above in similar controversy, not only the Bench of Hon'ble Orissa High Court, but a Bench of this Court also came to the conclusion that such type of controversies should be decided by appropriate forum/authority, hence also the petitioners are not entitled to get any relief in this petition.

36. The petitioners have no legal right for getting appointment when the period of wait list/select list laid expired. Mere selection does not given any vested right of claiming appointment; denial of appointment in these circumstances cannot be declared illegal or arbitrary. No mandamus can be issued either to refrain from enforcing the alw or to act contrary to law. As the lite of selected list had expired, the Court cannot give any such direction to continue the select list/wait list.

37. The petitioners in view of the above facts are not entitled to get/claim any relief.

38. All the petitions have no merits and are fit to be dismissed and are accordingly dismissed.

39. Let copy of this order be placed on record of connected writ petitions.

40. No order as to costs.

(Petition dismissed)