

(2017) 07 AHC CK 0019
In the Allahabad High Court
Case No : 276 of 2017

Ram Naresh Singh Vs U.P State Social Welfare Advisory Board Thru?
Chairman & Ors

Date of Decision : 11-07-2017

Acts Referred:

Constitution of India, Article 14, Article 21, Article 309, Article 16, Article 23 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Amendment of the Schedule - Recruitment and conditions of service of persons serving the Union or a State - Dissolution of a District or a Regional Council - Prohibition of traffic in human beings and forced labour

Citation : (2017) 07 AHC CK 0019

Hon'ble Judges : Dr. Devendra Kumar Arora, Sheo Kumar Singh

Bench : Division Bench

Advocate : Ganga Singh, Lalit Mohan Joshi

Final Decision : Dismissed

Judgement

1. Both these special appeals have been filed against the judgment and order dated 25.05.2017 passed by learned Single Judge in Writ Petition Nos. 5293 (SS) of 2001 - Ram Naresh Singh v. U.P. State Social Welfare Advisory Board Lucknow and others and 5294 (SS) of 2001 - Govind Sharma v. U.P. State Social Welfare Advisory Board Lucknow and others.

2. Brief facts giving rise to filing of the aforesaid special appeals are that the appellants/petitioners were initially appointed on ad-hoc basis on a fixed monthly amount/honorarium of Rs.500/- per month and later on vide order dated 29.04.1993, it was again modified as Rs.1300/- per month. The appellants/petitioners were engaged in service for short term till continuity of approval from the Central Social Welfare Board and further on condition that in case such approval is not received, the appointment would itself come to an end.

3. The record reveals that a show cause notice was issued to the appellants/petitioners to show cause as to why their appointments should not be cancelled

and the reply was kept pending by the appellants/petitioners and vide order dated 22.08.2001, the appointment of the appellants/petitioners was cancelled and they were removed from service. Writ petitions i.e. Writ Petition No.5293 (SS) of 2001 - Ram Naresh Singh v. U.P. State Social Welfare Advisory Board Lucknow and others and 5294 (SS) of 2001 - Govind Sharma v. U.P. State Social Welfare Advisory Board Lucknow and others were filed before this Court and the learned Single Judge after hearing learned counsel for the parties dismissed the petitions, thus, the aforesaid special appeals.

4. A common question arises in both the special appeals is as to whether the appellants/petitioners were legally appointed on the post or as to whether they have a right to hold the post.

5. The version of the appellants/petitioners is that they were regularly discharging their duties and functions as per office rules but their services have been terminated without any rhyme and reason or without giving them any opportunity of hearing.

6. We have not been apprised of the specific terms and conditions subject to which the petitioners were employed or engaged but from the perusal of the records and from the tenor of the pleadings and other records and counter affidavit, it can be safely inferred that the appellants/petitioners were appointed/engaged on purely temporary contractual basis on a fixed honorarium and for a fixed term and there will be no claim or parity with other persons. The appellants/petitioners, who entered into this contractual agreement to serve the opposite parties and applied for the post, must have been aware of the fact that they were being engaged/employed on a fixed term and on honorarium basis. The appointment was not against the post sanctioned by the Government and thus they will have no right to claim either for absorption in the service or to be regularized in the service. They must have accepted the appointments of their engagement knowing fully well that they will have fixed tenure without any right to be continued in the service or on a fixed honorarium.

7. Admittedly, the appellants/petitioners were appointed on ad-hoc basis without following the procedure of appointment under the rules. It is settled proposition of law that any appointment against a public post paid from the State Exchequer, made without following the procedure, would be in violation of mandate of Articles 14 and 16 of the Constitution of India.

8. The power to prescribe the condition of service can be exercised either by making Rules under the proviso to Article 309 of the Constitution of India or any analogous provision and in the absence of such Rules, under the instructions issued in exercise of its executive power. The jurisdiction of the Court comes into the picture only to ensure observance of fundamental rights and statutory provisions, rules and other instructions, if any, governing the conditions of service. The main concern of the Court in such matters is to ensure the Rule of Law and to see that the executive acts fairly and gives a fair deal to its

employees consistent with the requirement of Article 14 and 16. For the purposes of regularization, various pre-requisite conditions are to be fulfilled, i.e., the temporary or adhoc appointment of the employee should be in consonance with the statutory rules and it should not be a back-door entry. The service record of the employee should be satisfactory. There must be a sanctioned post against which the employee seeks regularization and on the said sanctioned post, there must be a vacancy.

9. It is further to be noted that the regularization should not be in contravention of the State Policy regarding reservation in favour of socially and educationally backward classes for which State has enacted any Statute or framed rules or issued any Government Orders. The question of regularization does not arise by merely working for any particular number of days, and no such ad hoc employee can derive any benefit for working for particular number of days or even for years under the interim order of the Court. More so, his appointment should be directly in accordance with law:- (a) M.D. U.P. Land Development Corp. Vs. Amar Singh, AIR (2003) SC 2357.

(b) Pankaj Gupta Vs. State of J & K, (2004) SC 353.

(c) Dhampur Suger Mills Ltd. Vs. Bhola Singh, (2005) SC 470.

An appointment made in violation of the mandatory provisions of the statutes would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization.

10. The creation and abolition of posts, formation and structuring/ restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and lay down the qualification etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment 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.

11. In State of Haryana v. Navneet Verma: AIR2008SC417, a Division Bench of two-Judges referred to M. Ramanatha Pillai v. State of Kerala: (1973)IILLJ409SC , Kedar Nath Bahi v. State of Punjab: AIR1972SC873, State of Haryana v. Des Raj Sangar : (1976)ILLJ301SC, Dr. N.C. Singhal v. Union of India : [1980]3SCR44) and Avas Vikas Sanghathan v. Engineers Association: (2006)IILLJ516SC and culled out the following principles: (a) the power to create or abolish a post rests with the Government;

(b) whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity;

(c) creation and abolition of posts is a matter of government policy and every sovereign government has this power in the interest and necessity of internal administration;

(d) creation, continuance and abolition of posts are all decided by the Government in the interest of administration and general public;

(e) the court would be the least competent in the face of scanty material to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fides, legal or factual;

(f) as long as the decision to abolish the post is taken in good faith in the absence of material, interference by the court is not warranted.

12. In *Divisional Manager, Aravali Golf Club and Anr. v. Chander Hass and Anr.* : 2007(14)SCALE1 also, a two-Judges Bench considered the issue relating to creation of post and held: "15. The court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organisation. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the courts cannot take upon themselves the power of creation of a post. Therefore, the directions given by the High Court and the first appellate court to create the posts of tractor driver and regularise the services of the respondents against the said posts cannot be sustained and are hereby set aside."

13. In *A. Umarani Vs. Registrar, Co-operative Societies & Ors*, (2004) 7 SCC 112, a large number of employees of the Co-operative Societies in the State of Tamil Nadu had been appointed without notifying the vacancies through the Employment Exchange and without following the other mandatory provisions of the Act and the Rules framed thereunder relating to recruitment. With a view to condone the serious lapses on the part of the Co-operative Societies in making such appointment the State Government issued various orders from time to time for regularizing such appointments. The Supreme Court held that such orders could not have been passed with retrospective effect condoning the actions on the part of the Co-operative Societies which were in flagrant violation of the provisions of the Act and the Rules. While holding that the provisions of the Act and the Rules reflect the Legislative Recruitment Policy and the provisions were mandatory in nature, the Supreme Court after referring to a number of earlier decisions held that an appointment made in violation of the mandatory provisions of the statute would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization. While deciding the said case, reliance was placed on its earlier judgment in *State of H.P. Vs. Suresh Kumar Verma and another*, (1996) 7 SCC 562.

14. The Supreme Court in R.N. Nanjundappa Vs. T. Thimmaiah & Anr. (1992) 2 SCR 799 held as under:- " If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

15. In Jawaharlal Nehru Technological University Vs. T. Sumalatha (Smt.) & Ors., (2003) 10 SCC 405, the Supreme Court rejected a similar contention stating: "The learned counsel therefore contends that there is every justification for absorbing the concerned respondents on regular basis in recognition of their long satisfactory service. The learned counsel further contends that the adhoc arrangement to employ them on consolidated pay should not go on forever. The contention of the learned counsel cannot be sustained for more than one reason and we find no valid grounds to grant the relief of regularization. There is nothing on record to show that the concerned employees were appointed after following due procedure for selection. Apparently, they were picked and chosen by the University authorities to cater to the exigencies of work in the Nodal Centre"

16. In the State of Bihar & Ors. Vs. Project Uchcha Vidya Shikshak Sangh & Ors. (2006) 2 SCC 545, the Apex Court held that:- " that question of regularization of services does not arise if the appointment has been made at initial stage in violation of the provisions of Article 14 and 16 of the Constitution of India. " It has been further submitted by the respondent that if the appointment itself is in infraction of the Rules or if it is in violation of the provisions of the Constitution, the illegality cannot be regularized.

Ratification or regularization is possible of an act which is within the power and province of the authority, but there has been some non-compliance with the procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment.

To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.

17. While deciding the case of Secretary, State of Karnataka and Ors Vs. Umadevi and Ors reported in (2006) 4 SCC-1 it was held as under:- "There is another question as to why the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? The Court is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here can only

encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete."

18. In *Director, Institute of Management Development, U.P. Vs. Pushpa Srivastava* reported in (1993) ILLJ190 SC it was held as under:- "when the appointment was purely ad hoc and on a contractual basis for a limited period, therefore, by expiry of the period, the right to remain in the post comes to an end."

19. In *Madhyamik Shiksha Parishad, U.P. Vs. Anil Kumar Mishra and Ors* reported in (1994) II LLJ 977 Sci it was held as under:- "that an ad hoc appointees/temporary employees engaged on ad hoc basis and paid on piece rate basis for certain clerical work and discontinued on completion of their task, were not entitled to reinstatement or regularization of their services even if their working period ranged from year to years."

24. In *State of Himachal Pradesh Vs. Suresh Kumar Verma* (1996 (1) SCR 972), a three Judge Bench of this Court held that a person appointed on daily wage basis was not an appointee to a post according to Rules. On his termination, on the project employing him coming to an end, the Court could not issue a direction to re-engage him in any other work or appoint him against existing vacancies. This Court said

: "It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules."

20. In *State of Haryana Vs. Piara Singh and Others* [1992) 3 SCR 826., the court was considering the sustainability of certain directions issued by the High Court in the light of various orders passed by the State for the absorption of its ad hoc or temporary employees and daily wagers or casual labour. And concluded in paragraphs 45 to 50: "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 ad hoc/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 ad hoc/temporary employee.

Secondly, an ad hoc 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 ad hoc 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 processes.

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

21. In *State of Himachal Pradesh Vs. Suresh Kumar Verma* (1996 (1) SCR 972), a three Judge Bench of the Court held that a person appointed on daily wage basis was not an appointee to a post according to Rules. On his termination, on the project employing him coming to an end, the Court could not issue a direction to re-engage him in any other work or appoint him against existing vacancies. The Court said: "It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules."

Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, "the judicial process would become another mode of recruitment dehors the rules."

22. In *Ashwani Kumar and others Vs. State of Bihar and others* (1996 Supp. (10) SCR 120), the Court was considering the validity of confirmation of the irregularly employed. It was stated: "So far as the question of confirmation of these employees whose entry was illegal and void, is concerned, it is to be noted that question of confirmation or regularization of an irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorized and is not against any sanctioned vacancy, question of regularizing the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularization or confirmation is given it would be an exercise in

futility."

The Court further stated :

"In this connection it is pertinent to note that question of regularization in any service including any government service may arise in two contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad hoc basis or daily-wage basis by a competent authority and are continued from time to time and if it is found that the incumbents concerned have continued to be employed for a long period.

The Court noticed that in that case all constitutional requirements were thrown to the wind while making the appointments. It was stated:

"On the contrary all efforts were made to bypass the recruitment procedure known to law which resulted in clear violation of Articles 14 and 16(1) of the Constitution of India, both at the initial stage as well as at the stage of confirmation of these illegal entrants. The so called regularizations and confirmations could not be relied on as shields to cover up initial illegal and void actions or to perpetuate the corrupt methods by which these 6000 initial entrants were drafted in the scheme."

23. In Union Public Service Commission Vs. Girish Jayanti Lal Vaghela & Others [2006 (2) SCALE 115], the Court answered the question of ad hoc appointment and regularization and stated:- "Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words "employment" or "appointment" cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution (See B.S. Minhas Vs. Indian Statistical Institute and others AIR 1984 SC 363)."

24. When a person enters a temporary employment or gets engagement as a

contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

25. 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 petitioner 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.

26. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench in *Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College* [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. The Court held that in order that a mandamus may issue to compel the

authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

27. In the light of the fact it is within the domain of State-Government subject to limitation that the petitioner's case comes within the person duly qualified in duly sanctioned and vacated post and after following procedure of appointment and have continued to work but without intervention orders of the Court or Tribunal. The direction issued in Uma Devi case was one time measure for the employees coming under the purview of the provisions and should further to ensure that regular recruitments are undertaken to fill those vacant sanctioned post that requires to be fill up, in cases where temporary employees or daily wages employees are being now employed. The Uma Devi case is an authoritative pronouncement for the preposition that the Court should not issue directions for absorption for regularized or permanent continues of temporary, contractual, daily wages or ad hoc employees, unless the recruitment itself was made regularly in terms of the Constitutional Scheme.

28. On one hand when it is argued to appoint without following the procedure, it would lead to an indefinite conclusion that the authority can dismiss or terminate the services without holding any inquiry or following the principles of natural justice because as per Section 16 of the General Clauses Act 1897 power to appoint includes power to remove/suspend/ dismiss. But as no employee can be removed without following the procedure prescribed by law or in violation of the terms of his appointment, such a course would not be available to the Appointing Authority, therefore, the natural corollary of this is that the Appointing Authority cannot make any appointment in contravention of the statutory rules, it has to be in consonance with the scheme of our Constitution.

29. The principles to be adopted in the matter of public appointments have been formulated by the Court in M.P. State Coop. Bank Ltd., Bhopal v. Nanuram Yadav & Ors., (2007) 8 SCC 264 as under: "(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

(4) Those who come by back-door should go through that door. (5) No

regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) The court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside." A similar view has been reiterated by the Constitution Bench in *Secretary, State of Karnataka & Ors. v. Umadevi & Ors.*, AIR 2006 SC 1806, observing that any appointment made in violation of the Statutory Rules as also in violation of Articles 14 and 16 of the Constitution would be a nullity. "Adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment". The Court further rejected the prayer that ad hoc appointees working for long be considered for regularisation as such a course only encourages the State to flout its own rules and would confer undue benefits on some at the cost of many waiting to compete.

30. In *State of Orissa & Anr. v. Mamata Mohanty*, (2011) 3 SCC 436, the Court dealt with the constitutional principle of providing equality of opportunity to all which mandatorily requires that vacancy must be notified in advance meaning thereby that information of the recruitment must be disseminated in a reasonable manner in public domain ensuring maximum participation of all eligible candidates; thereby the right of equal opportunity is effectuated. The Court held as under:- "Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

31. Where any such appointments are made, they can be challenged in the court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or

liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the Judiciary a weapon to control the Executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it. (Vide: *The University of Mysore & Anr. v. C.D. Govinda Rao & Anr.*, AIR 1965 SC 491; *Shri Kumar Padma Prasad v. Union of India & Ors.*, AIR 1992 SC 1213; *B.R. Kapur v. State of Tamil Nadu & Anr.*, AIR 2001 SC 3435; *The Mor Modern Cooperative Transport Society Ltd. v. Financial Commissioner and Secretary to Govt., Haryana & Anr.*, AIR 2002 SC 2513; *Arun Singh v. State of Bihar & Ors.*, AIR 2006 SC 1413; *Hari Bansh Lal v. Sahodar Prasad Mahto & Ors.*, AIR 2010 SC 3515; and *Central Electricity Supply Utility of Odisha v. Dhobei Sahoo & Ors.*, (2014) 1 SCC 161).

32. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.

33. Thus, the aforesaid decisions are an authority on prescribing the limitations while making appointment against public posts in terms of Articles 14 and 16 of the Constitution. What has been deprecated by Court time and again is "backdoor appointments or appointment de hors the rules".

34. In *State of U.P. & Ors. v. U.P. State Law Officers Association & Ors.*, AIR 1994 SC 1654, the Court while dealing with the back-door entries in public appointment observed as under: "The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on the considerations other than merit. In the absence of guidelines, the appointment may be made purely on personal or

political consideration and be arbitrary. This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the back-door have to go by the same door. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them."

35. In *Som Raj & Ors. v. State of Haryana & Ors.*, AIR 1990 SC 1176, the Court held as under: "The absence of arbitrary power is the first postulate of rule of law upon which our whole constitutional edifice is based. In a system governed by Rule of Law, discretion when conferred upon an executive authority must be confined within clearly defined limits. The rules provide the guidance for exercise of the discretion in making appointment from out of selection lists which was prepared on the basis of the performance and position obtained at the selection. The appointing authority is to make appointment in the order of gradation, subject to any other relevant rules like, rotation or reservation, if any, or any other valid and binding rules or instructions having force of law. If the discretion is exercised without any principle or without any rule, it is a situation amounting to the antithesis of Rule of Law. Discretion means sound discretion guided by law or governed by known principles of rules, not by whim or fancy or caprice of the authority."

36. The similar question was raised before Hon'ble Supreme Court in Civil Appeal No. 36084 of 2016 (*State of Jammu & Kashmir Vs. District Bar Association Bandipur*) and was decided on 08.12.2016, reported in 2016 (12) scale, page 534. It was held as under :- "All recruitment in matters of public employment must be made in accordance with prevailing Rules and orders. Thirdly, the date on which the vacancies are likely to occur are foreseeable with a reasonable amount of clarity and precision. An exercise to fill up vacancies must be undertaken in advance so as to ensure that there is no occasion to appoint persons on an ad hoc basis. Fourthly, while the High Court is an autonomous constitutional authority whose status cannot be undermined, it is equally necessary for it to strictly comply with the Rules framed in making recruitments. The judgment the importance of the High Court complying with statutory Rules in matters of recruitment. The judgment also emphasises the need to abide by the principles of equality and equal opportunity in Articles 14 and 16.

Regularization is not a source of recruitment nor is it intended to confer permanency upon appointments which have been made without following the due process envisaged by Articles 14 and 16 of the Constitution. Essentially a scheme for regularization, in order to be held to be legally valid, must be one which is aimed at validating certain irregular appointments which may have come to be made in genuine and legitimate administrative exigencies. In all such cases it may be left open to Courts to lift the veil to enquire whether the scheme is aimed at achieving the above objective and is a genuine attempt at validating irregular appointments. The State and its instrumentalities cannot be permitted

to use this window to validate illegal appointments. The second rider which must necessarily be placed is that the principle as formulated above is not meant to create or invest in a temporary or ad hoc employee the right to seek a writ commanding the State to frame a scheme for regularization.

(iii) The High Court proceeded to issue directions for regularization without considering either the legal position enunciated in the judgments of the present Court and without considering the prevailing Rules and Regulations on the subject. It was thought appropriate and proper to set aside the order of the High Court which directs the regularization en masse of ad hoc employees.

37. The question which was raised before the Court are :- (i) The right of employees seeking regularization on the strength of long and continuous work.

(ii) The direction in nature of mandamus issued by the Courts for regularization of employees under Article 226 of the Constitution.

38. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by the Court subject to condition that the appointment was regularized from among the duly qualified persons in duly sanctioned vacant post but the services should be without the intervention of orders of the courts or of tribunals. This is subjected to condition further that State should ensure that regular recruitment are undertaken to fill the vacant sanctioned posts, in cases where temporary employees or daily wagers are being employed. There should be transparency in the public appointment and what has been deprecated by the Court since long time and time again is "backdoor appointments or appointments dehors the rules.

39. The second principle is that all recruitment in matters of public employment must be made in accordance with prevailing Rules and orders. In today's system, daily labourers and casual labourers have been conveniently introduced which are followed by attempts to regularise them at a subsequent stage. Therefore, most of the times the issue raised is about the procedure adopted for making appointments indicating an improper exercise of discretion even when the Rules specify a particular mode to be adopted. There can be no doubt that the employment whether of Class IV, Class III, Class II or any other class falls within the definition of "public employment". Such an employment, therefore, has to be made under Rules and under orders of the competent authority.

40. Thirdly, the date on which the vacancies are likely to occur are foreseeable with a reasonable amount of clarity and precision. An exercise to fill up vacancies must be undertaken in advance so as to ensure that there is no occasion to appoint persons on an ad hoc basis. In a democratic set-up like ours, which is governed by Rule of law, the supremacy of law is to be acknowledged and absence of arbitrariness has been consistently described as essence of Rule of law. Thus, the powers have to be canalized and not unbridled so as to breach the basic structure of the Constitution. Equality of opportunity in matters of employment being the constitutional mandate has always been observed. The

unquestionable authority is always subject to the authority of the Constitution. The higher the dignitary, the more objectivity is expected to be observed. We do not say that powers should be curtailed. What we want to say is that the power can be exercised only to the width of the constitutional and legal limits. The date of retirement of every employee is well known in advance and therefore, the number of vacancies likely to occur in near future in a particular cadre is always known to the employer. Therefore, the exercise to fill up the vacancies at the earliest must start in advance to ensure that the selected person may join immediately after availability of the post, and hence, there may be no occasion to appoint any person on ad hoc basis for the reason that the problem of inducting the daily labourers who are ensured of a regular appointment subsequently has to be avoided and a fair procedure must be adopted giving equal opportunity to everyone.

41. The reply to the question regarding right of employees seeking regularization and direction in the nature of mandamus for regularization has been raised in case of State of Jammu & Kashmir Vs. District Bar Association Bandipur referred above and replied in negative and held to be not proper to the court to direct for regularization as well as issue any of direction in the nature of mandamus for regularization of employees whose services are temporary or ad hoc nature. On the basis that there is no vested right to seek regularization, the State and its instrumentalities cannot be permitted to use this window to validate illegal appointments.

42. It is true that the petitioners had worked for a long time. It is also true that they had been paid wages but they did not hold any post. Only because the petitioners had worked for a time as narrated in the petition, the same by itself would not be a ground for directing regularization for services, in view of the decision of Uma Devi Case.

43. The questions whether in exercise of the power vested in it under Article 226 of the Constitution of India, the High Court can issue a mandamus and compel the State and its instrumentalities/agencies to regularize the services of temporary/ad-hoc/daily wagger/casual/contract employees and whether direction can be issued to the public employer to prescribe or give similar pay scales to employees appointed through different modes, with different condition of service and different sources of payment have become subject matter of debate and adjudication in several cases.

44. The judgments of 1980s and early 1990s - Dhirendra Chamoli vs. State of U.P. [1986 (1) SCC 637], Surinder Singh and Another vs. Engineer-in-Chief, CPWD and Others [1986 (1) SCC 639], Daily Rated Casual Labour vs. Union of India [1988 (1) SCC 122], Dharwad District P.W.D. Literate Daily Wage Employees' Association vs. State of Karnataka [1990 (2) SCC 396], Bhagwati Prasad vs. Delhi State Mineral Development Corporation (supra), State of Haryana vs. Piara Singh (supra) are representative of an era when the Apex Court enthusiastically endeavored to expand the meaning of equality clause

enshrined in the Constitution and ordained that employees appointed on temporary/ad hoc/daily wage basis should be treated at par with regular employees in the matter of payment of salaries and allowances and that their services be regularized. In several cases, the schemes framed by the governments and public employer for regularization of temporary/ad- hoc/daily wag/casual employees irrespective of the source and mode of their appointment/engagement were also approved. In some cases, the courts also directed the State and its instrumentalities/agencies to frame schemes for regularization of the services of such employees. In *State of Haryana vs. Piara Singh (supra)*, the Court while reiterating that appointment to the public posts should ordinarily be made by regular recruitment through the prescribed agency and that even where ad-hoc or temporary employment is necessitated on account of the exigencies of administration, the candidate should be drawn from the employment exchange and that if no candidate is available or sponsored with the employment exchange, some method consistent with the requirements of Article 14 of the Constitution should be followed by publishing notice in appropriate manner for calling for applications and all those who apply in response thereto should be considered fairly, proceeded to observe that if an ad-hoc or temporary employee is continued for a fairly long spell, the authorities are duty bound to consider his case for regularization subject to his fulfilling the conditions of eligibility and the requirement of satisfactory service. The propositions laid down in *Piara Singh*'s case were followed for directing the concerned State Governments and public authorities to regularize the services of ad- hoc/temporary/daily wage employees only on the ground that they have continued for a particular length of time. In some cases, the schemes framed for regularization of the services of the backdoor entrants were also approved.

45. The above noted judgments and orders encouraged the political set up and bureaucracy to violate the soul of Article 14 and 16 as also the provisions contained in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 with impunity and the spoil system which prevailed in the United States of America in sixteenth and seventeenth century got firm foothold in this country. Thousands of persons were employed/engaged throughout the length and breadth of the country by backdoor methods. Those who could pull strings in the power corridors at the higher and lower levels managed to get the cake of public employment by trampling over the rights of other eligible and more meritorious persons registered with the employment exchanges. A huge illegal employment market developed in different parts of the country and rampant corruption afflicted the whole system. This was recognized by the Court in *Delhi Development Horticulture Employees Union vs. Delhi Administration, Delhi and others* [1992 (4) SCC 99] in the following words: "23. Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is an Employment Exchange Act

which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularization knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularized. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such backdoor entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in government departments, public undertakings or agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularization has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days they have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts."

46. The menace of illegal and backdoor appointments compelled the Courts to have rethinking and in large number of subsequent judgments the Court declined to entertain the claims of ad-hoc and temporary employees for regularization of services and even reversed the orders passed by the High Courts and Administrative Tribunals - Director, Institute of Management Development, U.P. vs. Pushpa Srivastava [1992 (4) SCC 33], Dr. M.A. Haque and Others vs. Union of India and Others [1993 (2) SCC 213], J & K Public Service Commission vs. Dr. Narinder Mohan [1994 (2) SCC 630], Dr. Arundhati Ajit Pargaonkar vs. State of Maharashtra [1994 Suppl. (3) SCC 380], Union of India vs. Kishan Gopal Vyas [1996 (7) SCC 134], Union of India vs. Moti Lal [1996 (7) SCC 481], Hindustan Shipyard Ltd. vs. Dr. P. Sambasiva Rao [1996 (7) SCC 499], State of H.P. vs. Suresh Kumar Verma [1996 (7) SCC 562], Dr. Surinder Singh Jamwal vs. State of J&K [1996 (9) SCC 619], E. Ramakrishnan vs. State of Kerala [1996 (10) SCC 565], Union of India and Others vs. Bishambar Dutt [1996 (11) SCC 341], Union of India vs. Mahender Singh [1997 (1) SCC 247], P. Ravindran and Others vs. Union Territory of Pondicherry and Others [1997 (1) SCC 350], Ashwani Kumar and Others vs. State of Bihar and Others [1997 (2) SCC 1], Santosh Kumar Verma and Others vs. State of Bihar and Others [1997 (2) SCC 713], State of

U.P. and Others vs. Ajay [1997 (4) SCC 88], Patna University vs. Dr. Amita Tiwari [1997 (7) SCC 198] and Madhyamik Shiksha Parishad vs. Anil Kumar Mishra [2005 (5) SCC 122].

47. The shift in the Court's approach became more prominent in *A. Umarani vs. Registrar, Cooperative Societies* [2004 (7) SCC 112], decided by a three-Judges Bench, wherein it was held that the State cannot invoke Article 162 of the Constitution for regularization of the appointments made in violation of the mandatory statutory provisions. In *Secretary, State of Karnataka vs. Uma Devi* (supra), the Constitution Bench again considered the question whether the State can frame scheme for regularization of the services of ad-hoc/temporary/daily wager appointed in violation of the doctrine of equality or the one appointed with a clear stipulation that such appointment will not confer any right on the appointee to seek regularization or absorption in the regular cadre and whether the Court can issue mandamus for regularization or absorption of such appointee and answered the same in negative. The Court adverted to the theme of constitutionalism in a system established in rule of law, expanded meaning given to the doctrine of equality in general and equality in the matter of employment in particular, multi-facet problems including the one relating to unwarranted fiscal burden on the public exchequer created on account of the directions given by the Court for regularization of the services of persons appointed on purely temporary or ad hoc basis or engaged on daily wages or as casual labourers, referred to about three dozen judgments including *R.N. Nanjundappa vs. T. Thimmiah* [1972 (1) SCC 409], *Daily Rate Casual Labour vs. Union of India* [1988 (1) SCC 122], *Bhagwati Prasad vs. Delhi State Mineral Development Corporation* [1990 (1) SCC 361], *Dharwad District P.W.D. Literate Daily Wage Employees Association and others vs. State of Karnataka and others* [1990 (2) SCC 23 396], *State of Haryana vs. Piara Singh* [1992 (4) SCC 118] and *State of Punjab vs. Surinder Kumar* [1992 (1) SCC 489] and held: "47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the

State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced.

Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution."

48. In paragraph 25, the Constitution Bench specifically referred to the

conclusions recorded in paragraphs 45 to 50 of the judgment in *State of Haryana vs. Piara Singh* (supra) and observed: "26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent--the distinction between regularisation and making permanent, was not emphasized here--can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of *Piara Singh* is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognised in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent."

49. In paragraph 54, the Constitution Bench clarified that the earlier decisions which run counter to the principles settled by it will stand denuded of their status as precedents.

50. In *Jawaharlal Nehru Technological University vs. T. Sumalatha (Smt.) and others* [2003 (10) SCC 405], it was held:- "7. Can it be said that by virtue of this provision, the State Government assumes the responsibility of absorbing the staff employed in the organizations or establishments with which it has no administrative or financial nexus, merely because an instrumentality of the State is involved in managing it, that too, in a limited sense? The answer could only be in the negative. When the State Government or its instrumentalities have not created the posts on their own and do not bear any part of the financial burden, the question of getting the clearance from the Finance and Planning Department of the Government for the purpose of regularization or absorption does not arise. Viewed from any angle, GO No. 212 would be wholly out of place for those working in the nodal centre which is created and nurtured by the Central Government. It is not within the domain of the State Government or even the University to regulate the staff pattern or the monetary benefits of the staff working therein, without the approval of the Central Government. Therefore, no directions should have been issued to the State Government or to the University to regularize the services of Respondents 1 to 5, if necessary, by creating additional posts."

51. By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in *Secretary, State of Karnataka vs. Uma Devi* (supra) is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed for declining to entertain the claim of regularization of service made by ad hoc/temporary/ daily wage/

casual employees or for reversing the orders of the High Court granting relief to such employees - Indian Drugs and Pharmaceuticals Ltd. vs. Workmen [2007 (1) SCC 408], Gangadhar Pillai vs. Siemens Ltd. [2007 (1) SCC 533], Kendriya Vidyalaya Sangathan vs. L.V. Subramanyeswara [2007 (5) SCC 326], Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh [2007 (6) SCC 207].

52. Learned counsel for the petitioners has submitted that the impugned order is violative of legitimate expectation of the petitioners and in violation of right to life, right to livelihood and right to dignity of life which is protected by Article 21 of the Constitution of India.

53. We have considered the question whether the petitioners can invoke the doctrine of legitimate expectation for supporting their claim. This part of the petitioners' claim is founded on their assertion that notwithstanding the contrary stipulation contained in the orders of appointment and condition of service, they had expected that in view of the Scheme the Government may absorb them on some future date or at least give benefit of the principle of equal pay for equal work. The above version or expectation of the petitioners is not tenable and cannot be accepted. The pleading of the parties on record do not show that any competent authority of the Government of India or State had ever given any assurance much less made a promise to the petitioners that they will be either absorbed or be given other financial benefits or the hike of salary at any interval of time. As a matter of fact, the petitioners joined the service as contractual employees on a fixed honorarium and they knew that their employment will come to an end on expiry of the tenure specified in the letter, order of appointment or cessation of the mission/programme.

54. The doctrine of legitimate expectation is a nascent addition to the rules of natural justice. A formal statement on the doctrine of legitimate expectation can be found in the judgment of House of Lords in Council of Civil Services Union v. Minister of the Civil Service 1985 AC 374 (HL). In that case the Government tried to forbid trade unionism among civil service. For this, Civil Service Order-in-1982 Council was issued. The Court of appeal declared that the Minister had acted unlawfully in abridging the fundamental right of a citizen to become a member of the trade union. The House of Lords approved the judgment of the Court of appeal and held that such a right could not be taken away without consulting the concerned civil servant.

55. In India, the Courts have gradually recognized that while administering the affairs of the State, the Government and its departments are expected to honour the policy statements and treat the citizens without any discrimination. The theory of legitimate expectation first found its mention in Navjyoti Coop. Group Housing Society v. Union of India : AIR1993SC155 . In that case the right of a housing society for right to priority in the matter of registration was recognized in the following words: ... In the aforesaid facts, the Group Housing Societies were entitled to "legitimate expectation" of following consistent past practice in the matter of allotment, even though they may not have any legal right in

private law to receive such treatment. The existence of "legitimate expectation" may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the "legitimate expectation" without some overriding reason of public policy to justify its doing so. In a case of "legitimate expectation" if the authority proposes to defeat a person's "legitimate expectation" it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on "legitimate expectation" at page 151 of Volume 1(1) of Halsbury's Laws of England -- Fourth Edition (re-issue). We may also refer to a decision of the House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service*. It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

It may be indicated here that the doctrine of "legitimate expectation" imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such "legitimate expectation". Within the conspectus of fair dealing in case of "legitimate expectation", the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in Registration by introducing a new guideline.

56. In *Food Corporation of India v. Kamdhenu Cattle Feed Industries* : AIR1993SC1601, the Court considered whether rejection of the tender of the respondent was vitiated by arbitrariness. The claim of the respondents was negated in the following words: "In the contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non- arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is "fairplay in action". Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. The rule of law does not completely

eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise of by judicial review.

The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of nonarbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non- arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this context."

57. In *Union of India and Ors. v. Hindustan Development Corporation and Ors.* AIR1994SC988 the Court considered the doctrine of legitimate expectation and held: "For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."

58. In *Punjab Communications Ltd. v. Union of India* : [1999]2SCR1033 , the Court observed as under: "The principle of "legitimate expectation" is still at a stage of evolution. The principle is at the root of the rule of law and requires regularity, predictability and certainty in the Government's dealings with the public. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made....

However, the more important aspect is whether the decision-maker can sustain the change in policy by resort to Wednesbury principles of rationality or whether the court can go into the question whether the decision-maker has properly balanced the legitimate expectation as against the need for a change....

In sum, this means that the judgment whether public interest overrides the substantive legitimate expectation of individuals will be for the decision-maker who has made the change in the policy. The choice of the policy is for the decision-maker and not for the court. The legitimate substantive expectation merely permits the court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made."

59. In *J.P. Bansal v. State of Rajasthan* : [2003]2SCR933 , the Court refused to invoke the doctrine of legitimate expectation in favour of the appellant who claimed compensation of pre- mature termination of the contractual appointment as Judicial Member of the Rajasthan Taxation Appellate Tribunal.

60. In *Dr. Chanchal Goyal (Mrs.) v. State of Rajasthan*: [2003]2SCR112, the appellants claim for absorption in the regular cadre/regularization of service was rejected by the High Court. While approving the orders of the Single and Division Benches of the High Court, the Appellate Court observed: "23. On the facts of the case delineated above, the principle of legitimate expectation has no application. It has not been shown as to how any act was done by the authorities which created an impression that the conditions attached in the original appointment order were waived. Mere continuance does not imply such waiver. No legitimate expectation can be founded on such unfounded impressions. It was not even indicated as to who, if any, and with what authority created such impression. No waiver which would be against requisite compliances can be countenanced. Whether an expectation exists is, self-evidently, a question of fact. Clear statutory words override any expectation, however founded."

61. In *Secretary, State of Karnataka v. Uma Devi (supra)*, the Constitution Bench referred to the claim of the employees based on the doctrine of legitimate expectation and observed as under: "The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either

(i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or

(ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn."

62. In *Kuldeep Singh v. Govt. of NCT of Delhi* AIR2006SC2652 , the Court refused to invoke the doctrine of legitimate expectation to nullify the revised policy decision taken by the Government not to grant fresh liquor licenses.

63. In *Ram Pravesh Singh v. State of Bihar* (2007)ILLJ202SC , a two-Judges Bench considered the question whether the employees of Futwah Phulwarisharif

Gramya Vidyut Sahakari Samiti Ltd., which was a cooperative society, could claim absorption in the services of Bihar State Electricity Board by invoking the doctrine of legitimate expectation. The facts of that case show that the society was brought into existence by the State Government, the Electricity Board and the Rural Electrification Corporation for effective implementation of Rural Electrification Scheme meant for better distribution of electricity to rural areas, but the license of the society was revoked in the year 1995 and the Board refused to absorb the employees of the society. The learned Single Judge and Division Bench of the High Court declined to interfere with the decision of the Board. This Court dismissed the appeal of the employees and observed: "What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may only entitle an expectant: (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation". The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognised legal relationship with the authority."

64. After noticing judicial precedents on the subject, we are of the view that the appellants/petitioners can not invoke the theory of legitimate expectation against the public post paid from the State Exchequer.

65. Learned counsel for the appellants has also argued that necessary budgetary provision or contribution for payment of honorarium to the appellants was not

paid or sanctioned by the Central Government and learned Single Judge has not considered this point of view and decided the case by dismissing the petitions in an arbitrary manner.

66. We are of the view that it is not the function of the Court to examine as to whether necessary budgetary provision by the Central Government has been made or not. The Court is concerned only with the validity of the appointment and as to whether any right has been accrued in favour of the appellants/petitioners which can be invoked by way of issuing mandamus in favour of the appellants and we are of the considered view that learned Single Judge has discussed the relevant provisions relating to appointment rules and found that no right has been accrued in favour of the appellants/petitioners which can be enforced by way of powers as contained in Article 226 of the Constitution of India.

67. Learned counsel for the appellants/petitioners has relied upon Civil Appeal No.8662 of 2015 arising out SLP - No.8450 of 2012 - Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others decided on 15.10.2015. The challenge in the above civil appeal was the post which was advertised and published in the daily newspaper Hindustan and a Selection Committee was constituted for the appointment on the post under challenge. The aforesaid post was filled up by way of recommendation of the Screening Committee and that too by way of advertisement in the newspapers. In the present case, there is nothing like a sanctioned post or publication of advertisement of the post or constitution of the Selection Committee or selection on the basis of recommendation of the Screening Committee. There is another point of difference that in the cited case an action was taken against the delinquent on the basis of disciplinary proceedings. Learned counsel for the appellants/petitioners has also relied upon (1998) 8 SCC 194 - Basudeo Tiwari v. Sido Kanhu University and others and argued that the appellants/petitioners were not given opportunity of hearing and their services were terminated in violation of settled provisions of service rules.

68. We have gone through the records and found that if the appointment in itself is in violation of rules or against the provisions of Articles 14 and 16 of the Constitution of India then the requirement of natural justice is not mandatory. Further the record reveals that the appellants were given an opportunity of hearing and notices were issued to explain as to why their services may not be terminated and the appellants failed to reply with ulterior motive and delayed the proceedings to compel the disciplinary authority to pass the order in accordance with law.

69. Since the appointments made without following the appropriate procedure under the rules/Government circulars and without advertising or inviting the applications from the open market and without screening the merit or without observation of reservation rules, would amount to breach of Articles 14 and 16 of the Constitution of India. In the case of M.P. State Coop. Bank Ltd., Bhopal v. Nanuram Yadav & Ors.(supra) Apex Court held that if the mischief played is so

widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the engagement/selection/appointment as a whole.

70. Considering the above legal provisions, it is crystal clear that the interim order passed by the Court or non-compliance of the show cause Notice issued by the competent authority is not a source of recruitment nor it is intended to confer permanency upon appointments which have been made without following the due process in violation of Articles 14 and 16 of the Constitution of India. We have also considered the legal provisions of the U.P. Regularization of Daily Wages Appointment of Group "C" Posts (outside the purview of U.P.P.S. Commission) Rules, 1998 and found that the order passed by the competent authority is well within the jurisdiction and was in accordance with Rule 8 of Regularization Rules and learned Single Judge has correctly appreciated the law and facts vide his order dated 25.05.2017 and there is no illegality or irregularity or anything contrary to the provisions of law. Learned Single Judge while passing the judgment and order has fully discussed the facts of the case relating to connected writ petition and applied the facts in accordance with settled provisions of law and correctly dismissed the writ petitions.

71. After considering the rival contentions of the learned counsel for the parties, we are of the view that special appeals i.e. Special Appeal Nos.276 of 2017 and 275 of 2017 lack merit and deserve to be dismissed and are hereby dismissed. No order as to costs.