
(2009) 05 RAJ CK 0072
In the Rajasthan High Court

Sarita and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 309, 320

Citation : (2010) 1 RLW 275 : (2009) 3 WLN 342

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Judgement

Prem Shanker Asopa, J.—Since common question of facts and law relating to the continuation of Vidyarthi Mitras till the candidates regularly selected by the Rajasthan Public Service Commission (RPSC)/persons regularly selected by the Departmental Promotion Committee are available and further declaring action of the respondents of invoking the contract clause of automatic end of the services of the petitioners as Vidyarthi Mitra on 15.04.2009 is under challenge in all these writ petitions, therefore, all the cases have been clubbed together, heard together and are being decided by this common order.

2. The necessary common facts of the case are that all the petitioners have been appointed as Vidyarthi Mitra after 02.06.2008 when a circular was issued by the State Government whereby sanction was granted to implement Vidhyarthi Mitra Scheme on account of possible delay in availability of the RPSC selected and further persons recommended by the DPC for promotion on 6,000 posts of Lecturers, 5,000 posts of Senior Teacher and 1200 posts of Teacher Grade-III and in order to run the teaching work in a proper manner. The Vidyarthi Mitra Scheme approved by the Finance Department vide its circular dt. 09.01.2007 was ordered to be implemented as stated above by appointing Vidyarthi Mitra on the fixed remuneration of Rs. 4,000/- for Lecturer, Rs. 3,000/- for Senior Teacher and Teacher Grade-III Rs. 2750/- per month, with the condition that the said recruitment will be made till the candidates regularly selected by the RPSC/D.P.C. are made available or till 29.02.2009, whichever is earlier.

3. In pursuance to the said circular, all the petitioners have been appointed as Vidhyarthi Mitra by the competent authorities after notifying the vacancies in the region and preparation of the merit list but the term of appointment is the same as referred in the circular dt. 02.06.2008. The said term was extended vide order dt. 04.12.2008 from 01.03.2009 to 15.04.2009 and when the term up to 15.04.2009 was about to expire or expired, all the petitioners have approached this Court and interim orders for continuing their services were passed considering the fact that the examinations were continuing. The cases were heard on 04.05.2009 and the submission of counsel for the parties along with citations submitted on that day were recorded which are as under:

Counsel for the petitioner's submits that all the petitioner's have been appointed as 'Vidhyarthi Mitra' in 'Vidhyarthi Mitra Scheme' and the said scheme has not been closed so far but their services are either terminated or are being terminated. During the continuation of the scheme, the termination/steps to terminate are arbitrary.

In support of their contention, the counsel for the petitioner's has placed reliance on para 25 of the judgment reported in State of Haryana and others Vs. Piara Singh and others etc. etc., titled as State of Haryana and Ors. etc. v. Piara Singh and Ors. etc.

Counsel for the petitioner's has further placed reliance on the judgment reported in (2007) 13 Scc 290 titled as State of Punjab and Ors. v. Supreet Rajpal and Anr. and (2007) 13 Scc 292 titled as Hargurpratap Singh v. State of Punjab and Ors.

Counsel for the respondent-State submits that the petitioner's appointments are contractual in nature and further they have invoked the clause of the contract, therefore, it cannot be said that their action to terminate or steps to terminate them are arbitrary.

In support of the said submission, the counsel for the respondent-State placed reliance on paras 19, 28, 30, 43, 45, 47, 49, 52 and 55 of the Constitution Bench judgment of Supreme Court reported in Secretary, State of Karnataka and Others Vs. Umadevi and Others, titled as Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors.

Counsel for the respondent-State further placed reliance on paras 68, 69, 70 and 116 of the judgment reported in Official Liquidator Vs. Dayanand and Others, titled as Official Liquidator v. Dayanand and Ors.

Counsel for the respondent-State also placed reliance on the judgment reported in (2008) 12 SCC 136 titled as State of U.P. v. Kaushal Kishore Shukla, and judgment of this Court passed in S.B. Civil Writ Petition No. 4276/2008 titled as Anil Kumar Kothari v. State and Ors., decided on 05.05.2008 and S.B. Civil Writ Petition No. 3136/2008 titled as Vikram Singh and Ors. v. State and Ors., decided on 16.07.2008.

On the strength of the aforesaid judgments, the counsel for the respondent-State

further argued that the contractual employee has no right to hold the post/continue in the employment even if the scheme is continuing and they are further free to make fresh appointments.

4. Subsequently, more cases were listed in between 04.05.2009 till today wherein some additional legal submissions have been made by the counsel for the State, with regard to the fact that all the petitioners are seeking mandamus which can only be issued when there is infringement of statutory right and in the present writ petitions, their appointments are de hors the Rajasthan Education Service Rules, 1970 (in short "the Rules of 1970") and Rajasthan Education Subordinate Service Rules, 1971 (in short "the Rules of 1971"), therefore, no mandamus can be issued.

5. As regards the scheme, it was submitted that the same was framed to provide education in remote villages for the academic session 2008-2009 as the persons duly selected by the RPSC/persons duly recommended by the DPC for promotion were not available.

6. In reply to the said additional submission of the counsel for the State, counsel for the petitioners have submitted that since the recruitment on contract basis was made by an executive order dt. 02.06.2008 issued by the State Government as persons duly selected by the RPSC/persons recommended for promotion by the DPC were not available, therefore, it is not open to the State Government to challenge their own orders; and as regards infringement of statutory right for issuing mandamus or any other appropriate writ, order or direction, infringement of right granted by executive orders and arbitrary action can be examined by the Court unless there is a statutory restriction.

7. Counsel for the petitioners further submitted that when the statutory rules are silent, then executive orders can be issued to implement a particular scheme so as to protect the rights of the students and even at the time of invoking the contract clause, the respondents are bound to consider the fact whether there is any substantial change in the circumstances or not so as to invoke the clause of automatic termination. In case there is no substantial change, then the respondents are bound to act in a reasonable manner keeping in view the interest of the students as well as to save the petitioners from unnecessary harassment-firstly on account of termination of their services and secondly again employing Vidyarthi Mitras afresh on contract basis for the reason that the duly selected candidates from the RPSC or persons recommended for promotion by the DPC are not likely to be made available till the start of the new academic session from 01.07.2009.

8. Lastly, it was submitted that in the schools where examinations are over, either result has been published or the process of checking of the answer sheets is going on and where the result has been declared, new academic session is about to start.

9. I have gone through record of the writ petitions and further considered the

aforesaid submissions of the counsel for the parties along with the citations.

10. Before proceeding further and to give my finding on the aforesaid issues, it would be relevant to quote order dt. 02.06.2008 (Anx.1) filed in SBCWP No. 4652/2009 and refer the relevant portion of the citations given by the counsel for the parties, which are as follows:

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11. I would like to first consider preliminary objections raised by Mr. Kumawat, Addl. AG.

12. As regards the objection of not issuing mandamus in contractual matter, I would like to observe only that the scheme was issued by the State Government itself to meet out exceptional contingency of non availability of the regularly selected persons from the RPSC/persons duly selected and recommended by the DPC for promotion is still continuing and further the scheme has not been limited to the year 2008-2009, as there is no mention of the same in order dt. 02.06.2008.

13. The rule that administrative orders confer no justiciable right is subject to exception as held by the Supreme Court in case where the executive order confers upon the respondent right to have his pays fixed in the manner specified in the order that forms part of conditions of service and can be enforced. The aforesaid proposition of law was laid down by the Supreme Court in Union of India (UOI) Vs. K.P. Joseph and Others, following the Constitution Bench judgment in Sant Ram Sharma Vs. State of Rajasthan and Another, and Sunder Lal Vs. Paramsukhdas, of Union of India v. K.P. Joseph and Ors. (supra) are as under:

9. Generally speaking, an administrative order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in Sant Ram Sharma v. State of Rajasthan and Anr., that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules, already framed and these instructions will govern

the conditions of service.

10. In *Union of India and Ors. v. M/s. Indo-Afghan Agencies Ltd.* This Court, in considering the nature of the Import Trade Policy said:

Granting that it is executive in character, this Court has held that Courts have the power in appropriate cases to compel performance of the obligations imposed by the schemes upon the departmental authorities.

To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties. It is because an administrative order can abridge or take away rights that we have imported the principle of natural justice or *audi alteram partem* into this area. A very perceptive writer has written:

Let us take one of Mr. Harrison's instances—a regulation from the British War Office that no recruit shall be enlisted who is not five feet six inches high. Suppose a recruiting officer musters in a man who is five feet five inches only in height, and pays him the King's shilling; afterwards the officer is sued by the Government for being short in his accounts; among other items he claims to be allowed the shilling paid to the undersized recruit. The Court has to consider and apply this regulation and, whatever its effect may be, that effect will be given to it by the Court exactly as effect will be given to a statute providing that murderers shall be hanged, or that last wills must have two witnesses. (John Cipman Gray on 'The Nature and Sources of the Law').

11. We should not be understood as laying down any general proposition on this question. But we think that the order in question conferred upon the first respondent the right to have his pay fixed in the manner specified in the order and that was part of the conditions of his service. We see no reason why the Court should not enforce that right.

14. In *Lalit Mohan Deb and Others Vs. Union of India (UOI) and Others*, while placing reliance on the Constitution Bench judgment in *Sant Ram Sharma v. State of Rajasthan* (supra), it was held that in absence of statutory rules regulating selections, there is no bar to the administration to give instructions regarding promotion to higher rank. Relevant portion of para 9 is as under:

9. It is true that there are no statutory rules regulating the selection of Assistants to the selection grade. But the absence of such rules is no bar to the Administration giving instruction regarding promotion to the higher grade as long as such instructions are not inconsistent with any rule on the subject. The point was considered by this Court in *Sant Ram Sharma v. State of Rajasthan*, and it was declared that in the absence of statutory rules regulating promotion to selection grade posts the Government is competent to issue administrative instructions as long as those instructions are not inconsistent with the rules already framed....

15. Similar is the position in *Nagpur Improvement Trust Vs. Yadaorao Jagannath*

Kumbhare and Others,

16. In the Rules of 1970 and the Rules of 1971 apart from regular recruitment, Rule 28 of the Rules of 1971 is for urgent temporary appointment but when the Government is faced with the situation that the expected RPSC selected/DPC candidates were not available and even the urgent temporary appointments were not possible to the large number of posts which have to be filled in a short span of one month, then the Government had implemented the Vidyarthi Mitra Scheme in the exceptional exigency. There is no restriction in the rules not to make appointment on contractual basis which is presently prevailing in almost all the Departments of the Government in the similar circumstances. Therefore, the order dt. 02.06.2008 will confer rights upon the petitioners to the extent of terms and conditions mentioned therein and the same are justiciable in writ jurisdiction.

17. The next objection of Mr. Kumawat that the recruitments were de hors the Rules was replied by the counsel for the petitioner that although it was open for the respondents to make ad hoc/temporary appointment but when the regular/ad hoc recruitment/promotions were not possible for the reason that time was too short and the academic session was about to start and thousands of posts were lying vacant in the schools where the admission process was going on. Thus, there is no illegality to implement the scheme more particularly when there is no restriction/bar in the rules not to make contractual appointment to meet such exceptional contingency. The Government, keeping in view the interest of the students, implemented the said Scheme which cannot be said to be de hors the Rules. Otherwise also, the order was issued by the Government, therefore, the same cannot be challenged by the Government as respondents in these writ petitions.

18. The third objection of Mr. Kumawat regarding extension of the contractual period particularly when the academic session is over, is also of no substance as the Teachers not only perform the job of teaching but they are involved in checking copies, preparation of the result as well as admitting students. Thus, the preliminary objections raised by Mr. Kumawat are of no substance and the same are rejected.

19. Having rejected the preliminary objections, now I proceed to consider the present cases on merit.

20. Three Judges Bench of the Supreme Court in State of Haryana and others Vs. Piara Singh and others etc. etc., has considered the issue of ad hoc temporary employees as well as scheme for their absorption. In paras 45 to 50 final directions have been issued in this regard. As regards the present cases are concerned, paras 45 and 46 are relevant and the same are as under:

45. The normal rule, 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 keep in abeyance for the sake of such an ad hoc/temporary employee.

46. 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.

21. Counsel for the petitioners have further placed reliance on the judgment of the Supreme Court in *State of Punjab and Ors. v. Supreet Rajpal and Anr.* (2007) 13 SCC 290 decided on 13.11.2007 relating to part time Lecturer wherein the case of *Hargurpratap Singh v. State of Punjab*, (2007) 13 SCC 292, disposed of on 07.11.2003 was considered and the course adopted by the High Court to displace one ad hoc arrangement by another ad hoc arrangement, was held to be not at all appropriate for those persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis, was set aside to that extent. Relevant para 5 of *State of Punjab v. Supreet Rajpal* (supra), is as under:

5. Learned Counsel for the appellants, during the course of hearing, had referred to an order passed by this Court in a group of several Civil Appeals, i.e. Civil Appeal No. 8745 of 2003 and other appeals, in the case of *Harguru Pratap Singh and Ors. v. State of Punjab and Ors.*, etc. disposed of on 07.11.2003. Particular stress was laid on the following observations:

We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the order made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We directed that they shall be continued in service till regular appointments are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly.

22. Counsel for the respondents has placed reliance on a judgment in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, in which the Constitution Bench while dealing with the judgment in *State of Haryana v. Piara Singh*

(supra), has held that directions issued in para 50 of the Piara Singh are contrary to the directions issued in para 45, therefore, the directions issued in para 50 for regularisation and absorption are impliedly over-ruled. The relevant paras 10 and 26 of the said judgment in State of Karnataka v. Uma Devi (3) (supra), is as follows:

10. When these matters came up before a Bench of two Judges, the learned Judges referred the cases to a Bench of three Judges. The order of reference is reported in Secy. State of Karnataka v. Umadevi (1). This Court noticed that in the matter of regularization of ad hoc employees, there were conflicting decisions by three Judges Bench of this Court and by two Judges Bench and hence the question required to be considered by a larger Bench. When the matters came up before a three Judges Bench, the Bench in turn felt that the matter required consideration by a Constitution Bench in view of the conflict and in the light of the arguments raised by the Additional Solicitor General. The order of reference is reported in Secy. State of Karnataka v. Umadevi (2). It appears to be proper to quote that order of reference at this stage. It reads: (SCC P.45, paras 1-5)

1. Apart from the conflicting opinions between the three Judges Bench decisions in Ashwani Kumar and Ors. v. State of Bihar, State of Haryana and Ors. v. Piara Singh and Dharwad Distt. P.W.D. Literate Daily Wage Employees Association v. State of Karnataka on the one hand and State of H.P. v. Suresh Kumar Verma, State of Punjab v. Surinder Kumar and B.N. Nagarajan v. State of Karnataka on the Other, which have been brought out in one of the judgments under appeal of Karnataka High Court in State of Karnataka v. H. Ganesh Rao, decided on 01.06.2000, learned Additional Solicitor General urged that the scheme for regularization is repugnant to Articles 16(4), 309, 320 and 335 of the Constitution of India and, therefore, these cases are required to be heard by a Bench of Five learned Judges (Constitution Bench).

2. On the other hand, Mr. M.C. Bhandare, learned senior counsel, appearing for the employees urged that such a scheme for regularization is consistent with the provision of Articles 14 and 21 of the Constitution.

3. Mr. V. Lakshmi Narayan, learned Counsel, appearing in CC Nos. 109-498 of 2003, has filed the G.O. dt. 19.07.2002 and submitted that orders have already been implemented.

4. After having found that there is conflict of opinion between three Judges Bench decisions of this Court, we are of the view that these cases are required to be heard by a Bench of five learned Judges.

5. Let these matters be placed before Hon'ble the Chief Justice for appropriate orders.

We are, therefore, called upon to resolve this issue here. We have to lay down the law. We have to approach the question as a constitutional Court should.

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 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. 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 recognized 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.

23. Subsequently, when the effect of *Uma Devi* (3) (supra) was diluted, another three Judges Bench delivered a land-mark judgment in *Official Liquidator v. Dayanand and Ors.* (supra), has held that the other judgment of lesser or equal number of Judges of High Court and the Supreme Court in strength has to realise commitment of constitutional ideals and has to maintain judicial discipline by not diluting the effect of *State of Karnataka v. Uma Devi* which is a judgment of the Constitution Bench and the issue in *Official Liquidator* was also regularisation/absorption. Supreme Court in *Official Liquidator v. Dayanand* (supra), further observed that the learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by co-ordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It was further held that the principle of judicial discipline is required to be observed with greater rigor by the members of the judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve the rights of the individuals and society as a whole. It has also been held that the discipline is sine qua non for effective and efficient functioning of the judicial system. The relevant paras 67, 72, 78, 90 and 91 are as follows:

67. In *State of Haryana v. Piara Singh* (supra), this 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 by almost all High Courts 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.

72. In para 26, the Constitution Bench specifically referred to the conclusions recorded in paras 45 to 50 of the judgment in State of Haryana v. Piara Singh and observed: Umadevi (3) case SCC P.29

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.

In para 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."

78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia v. Administrator General of W.B., this Court observed: AIR P. 941 Para 19

19. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division

Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all Courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court.

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by co-ordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the Courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed.

91. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

24. The present case is not of regularisation/absorption, therefore, the same are not applicable and para 46 of the State of Haryana v. Piara Singh which has been followed by other subsequent Benches will apply.

25. Mr. Kumawat, Addl. AG has further placed reliance on the judgment of the Supreme Court in State of U.P. and Anr. v. Ram Adhar (2008) 12 SCC 136 relating to a Stenographer who was employed for three months in Court and failed in the test but was continued by the Single Bench and the Division Bench of the High Court and ultimately, the said orders of the Single Bench and the

Division Bench were stayed by the Supreme Court wherein it has been held that temporary employee has no right to the post and he has no right to continue even for a day as of right, far from having a right to continue till a regular appointment. The aforesaid facts and circumstances of continuing incompetent person are not here in the present cases. Paras 3 to 8 of the aforesaid judgment in State of U.P. v. Ram Adhar are as follows:

3. The respondent herein was appointed on ad hoc basis on the post of Stenographer for a period of three months. The time was extended twice and ultimately, the respondent also appeared in the test but failed. The respondent preferred writ petition before the learned Single Judge. The same was disposed by the learned Single Judge allowing the respondent to continue till the regularly selected Stenographer joins the post. The same was confirmed by the Division Bench of the High Court.

4. While issuing notice on 15.10.2001 this Court stayed both the orders of the Division Bench and the learned Single Judge. In view of the interim order, the respondent is no more in service today. Even otherwise an ad hoc appointee appointed for a period of three months as Stenographer, whose term is further extended, should not be allowed to continue in the public interest when he failed in the test.

5. It may be mentioned that there is no principle of law that a person appointed in a temporary capacity has a right to continue till a regular selection rather, the legal position is just the reverse, that is, that a temporary employee has no right to the post vide State of U.P. v. Kaushal Kishore Shukla. Hence, he has no right to continue even for a day as of right, far from having a right to continue till a regular appointment.

6. On this sole ground we set aside both the orders of the learned Single Judge and the Division Bench of the High Court. This appeal is allowed. No costs.

7. Before parting with this case we would like to mention that very often selection and appointments are made on posts requiring special skills like that of a stenographer. On such posts the only criterion should be merit. However, very often such appointments are not made on merit but on some recommendations, and such appointees are very often incompetent.

8. If an incompetent stenographer is appointed for the Court the result will be that the correct order passed by the Judge will not be recorded, and this will create many problems. Much of the time of the Judge will be spent on making corrections. Hence great care must be taken by the selection committee for selecting persons to be appointed on posts requiring special skills like that of a stenographer purely on merit disregarding any recommendation made by anyone, howsoever high.

26. In the said judgment, substituting a contract employee by another contract employee was not considered.

27. Mr. Kumawat also placed reliance on a judgment of this Court Anil Kumar Kothari v. State and Ors. SBCWP No. 4276/2008 decided on 05.05.2008 relating to contractual appointment wherein the judgment of the Supreme Court in Commissioner, Kendriya Vidyalaya Sangathan and Ors. v. Anil Kumar Singh and Ors. : (2003) 10 SCC 284, relating to contractual employment which was relied by the counsel for the petitioner in that case, has been held to be of no assistance. A perusal of the said judgment of the Supreme Court would reveal that the same related to contractual employment and direction of the High Court of allowing the petitioner till the posts are filled by regular persons was found justified by the Supreme Court. The relevant portion of the judgment of this Court in Anil Kumar Kothari (supra) is as under:

In the instant case, the procedure provided under the Rules, 1971 even with regard to urgent temporary appointment as provided therein has not been followed by the department so far as scheme introduced vide order Ann.1 dt. 03.09.2007 is concerned it was a pure contractual appointment on the consolidated sum amongst those who are eligible to hold the post in question under the Students Friendly Scheme and it has been specifically mentioned that such contractual appointments shall be allowed to continue till regular selection or upto 29.02.2008 whichever is earlier but later on extended by the respondents upto March/April, 2008 as is evident from Annex.3 dt. 31.01.2008, the petitioner has been allowed to continue upto the contractual period as such no right has been conferred in favour of petitioner to allow till regular selections are made. Since his contractual appointment was in terms of scheme introduced by the respondents, which was not in consonance with the Scheme of Rules, 1971, thus, cannot be allowed to continue thereafter.

As regards submission made by counsel for the petitioner that regular selections have not been made, as such he has a right to continue, in opinion of this Court, is of no substance for the reason that as observed aforesaid these are not appointments made under the scheme of Rules, 1971 and are purely contractual appointments and the procedure provided under the Rules, 1971 has not been followed and once respondents have made it clear under its scheme to allow such applicants appointed on contractual basis to allow upto the period of March/April, 2008 merely because RPSC selected candidates are not available that will not confer any right in favour of petitioner seeking continuation of service. The judgment on which counsel placed reliance reported in : (2003) 10 SCC 284 is of no assistance in the facts of instant case.

Consequently, the writ petition fails and is hereby dismissed.

28. With due respect to the aforesaid judgment of the co-ordinate Bench of this Court, the facts and circumstances as well as the issues raised in these writ petitions were not raised in the writ petition of Anil Kumar Kothari, therefore, there was no decision by the co-ordinate Bench on the present issues which are as follows:

(i) There is no restriction in the rules and to meet out such exceptional exigency, the policy could be issued and implemented in the interest of school education which includes students and the appointment of Teachers on contract basis;

(ii) There was no challenge to the policy before the co-ordinate Bench; otherwise also, the respondents cannot be allowed to challenge their own policy;

(iii) The judgment of the Supreme Court in Commissioner, Kendriya Vidyalaya Sangathan v. Anil Kumar Singh (supra), has not been discussed in the aforesaid case by the co-ordinate Bench.

29. I am conscious of the view that another co-ordinate Bench in Anil Kumar Kothari (supra) held the contractual appointment de hors the rules but the issue of "exceptional exigency" was not considered to implement the scheme and further I have to answer the aforesaid three legal issues which are not of minor nature and the same have been debated and discussed in these cases, in the light of the judgments of the Supreme Court including that of the Constitution Bench in Uma Devi (3) wherein effect of Piara Singh (supra) has not been diluted of substituting ad hoc employee by another ad hoc employee, therefore on facts and law, the present cases are distinguishable.

30. In my view, paras 1 and 2 of the judgment in Commissioner, Kendriya Vidyalaya Sangathan and Ors. v. Anil Kumar Singh and Ors. (supra), will apply in the facts and circumstances of the present cases and they are as follows:

1. The employer Commissioner, Kendriya Vidyalaya Sangathan is in appeal against the judgment of the Madhya Pradesh High Court in Writ Petition No. 782 of 1995 which was upheld in appeal by the Division Bench. The respondents had been appointed on contractual basis and just before the expiry of the contractual period, they approached the High Court with the prayer that their services should not be terminated until the posts are filled up by a process of regular recruitment. The learned Single Judge by his order dt. 06.04.1995 disposed of the writ petition following an earlier judgment of said Court in S.P. Upadhyay case directing that the writ petitioners should be allowed to continue till the posts are filled up by process of regular recruitment, and those petitioners should be allowed to compete with other candidates if they apply for selection and if they are otherwise not disqualified. The High Court also took additional care by indicating that the writ petitioners cannot claim any additional advantage by virtue of their experience by working for the contractual period.

In the aforesaid premises, we do not find any infirmity with the said judgment of the High Court to be interfered with by this Court. The expression "if they are otherwise not disqualified" would obviously mean they must have the necessary qualifications, as required, under the relevant rules for being appointed as a teacher and then they have to compete along with others for adjudication of their merit for being appointed. The apprehension of the employer that the impugned judgment directs condonation of the age is wholly unfounded.

2. In the aforesaid premises, we do not find any justification for interference with the direction given by the High Court. Civil Appeals are accordingly dismissed.

31. As discussed above, the issue of substitution of ad hoc employee can be summed up that direction in Para 46 of *State of Haryana v. Piara Singh* (supra), (three Judges' Bench) was considered by the Supreme Court in *State of Karnataka v. Uma Devi* (3) (supra) (five Judges Bench) in paras 21, 27, 28, 29 but the effect that ad hoc employee cannot be substituted by another ad hoc employee has not been diluted. Only in para 26, para 50 of *Piara Singh* (supra) of framing scheme of regularisation/absorption has been held to be inconsistent with para 45.

32. In *Official Liquidator Vs. Dayanand and Others*, the judgment in *State of Haryana v. Piara Singh* (supra), was considered in paras 18, 43, 46 and 48 but in the said judgment, the issue was relating to the regularisation and absorption, therefore, no finding was given on the issue of replacing ad hoc employee by another ad hoc employee. The other findings have been referred in the aforesaid paras more particularly para 72 regarding inconsistency of *Piara Singh* (supra) of paras 45 and 50 but not para 46 and held that scheme of regularisation/absorption can only be in accordance with the said Constitution Bench judgment in *State of Karnataka v. Uma Devi* (3).

33. The main question arises for consideration on merit is only whether it was open to the respondents to stick on the first and last extension during the non availability of the candidates selected by the RPSC/persons recommended by the DPC for promotion and further availability of the examination/admission work and teaching work which is to be started from the new academic session and there is no hope of selected candidates being made available.

34. A perusal of the order dt. 02.06.2008 would reveal that the circular is not only for the year 2008-2009 but it has been implemented for the reason of non availability of the selected candidates from RPSC/persons selected and recommended by the DPC for promotion, and further specific dates i.e. 28.02.2009 and 15.04.2009 for continuation of their appointment were fixed with the stipulation "whichever is earlier" for the reason that by that time, the candidates selected by the RPSC might be available. There is no substantial change of circumstances as the condition of non-availability of RPSC selected candidates/persons selected by the DPC still exists and the academic session is about to start for which even urgent temporary appointments are also not possible within a short span of time now left to start the next academic session. Further argument of the counsel for the State is that the services of the petitioners came to an end automatically on 15.04.2009 and there is no reason to further extend the same is also not sustainable as where the examinations are over, checking of the answer sheets is going on and even if result is declared, then the admission process for the next academic session is about to start for which also the services of the Teachers is required, therefore, the scheme is in force, the work is available and simply invocation of the last extension is held to

be arbitrary and illegal.

35. Before parting with the judgment, I would like to observe that Education is a Vacation Department as per Rule 94A RSR. The regular employee/ad hoc temporary employee may be entitled for salary of the vacations but in my view, the contract employees are not entitled for the wages of the vacation.

36. Accordingly, the writ petitions are disposed of as under:

I. During continuation of the work, as detailed out hereinabove, the invocation of the last extension is arbitrary and illegal; and the consequential automatic termination orders of the petitioners are set aside.

II. The RPSC/DPC selected candidates/employees are still not available and next academic session is about to start; even urgent temporary appointments under Rule 28 of the Rules of 1971 are not possible due to short span of one month and a half left to start with the process of admission and academic session, therefore, as per the aims and objects of the Scheme, respondents are directed to consider the cases of the petitioners for continuation in service till regularly selected candidates from RPSC/persons selected and recommended by the DPC for promotion are made available in the light of the above observations;

III. Even in case of appropriate order of continuation in service till regularly selected candidates from RPSC/DPC selected persons are available, the petitioners are not entitled for wages of the vacations, in other words, when the schools are closed.

IV. In case the regularly selected candidates from RPSC/persons selected and recommended by the DPC for promotion are made available, then the respondents can terminate services of the petitioners after preparation of the seniority list on the State level as per their date of appointment and merit assigned to them, by following the principle of "last come first go" to the extent of availability of the selected candidates and while doing so, the respondents will keep the interest of the present students and prospective students in view.