
(2015) 12 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : CWP Nos. 575 and 580 of 2015

Vijay Sood and Others

APPELLANT

Vs

Central University of HP, Dharamshala

RESPONDENT

Date of Decision : 23-12-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16, 162, 309

Citation : (2016) LabIC 610

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Sanjeev Bhushan, Sr. Advocate and Rajesh Kumar, Advocate, for the Appellant; Ashok Sharma, Assistant Solicitor General of India and Angrez Kapoor, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

1. These two writ petitions involve common questions of law and fact, hence taken up together for disposal by this common judgment.

2. The writ petitioners, by the medium of these writ petitions, have invoked the jurisdiction of this Court for the grant of a writ of mandamus commanding the respondents to regularize their services, on the grounds taken in the memo of the writ petitions.

3. Precisely, the case, as projected by the writ petitioners, is that the respondent-University came to be established in the year 2010 in the State of H.P. On the establishment of the University, it was in the dire need of the staff for running its affairs. It is stated that the respondent-University invited applications for filling-up the various posts, such as Data Entry Operator, driver and office attendant/peon. The petitioners were interviewed along with other persons and as such were offered appointment on the terms and conditions as contained in their appointment orders on short term arrangement basis. It is contended that the

Executive Council of the respondent-University in 2013 revised the salaries of such type of employees and thereafter petitioners are being given some higher salary. It is further averred in the writ petitions that respondent-University has now appointed some persons on outsourcing and they are getting higher pay than the petitioners but the services of the petitioners have not been regularized till date despite the fact that they have put their efforts and lost their prime youth while serving the respondent-University. They are stated to have made several requests to the respondent-University for their regularization, but in vain. Hence the writ petitions in hand.

4. The respondent has filed the replies in both the petitions and has contested the writ petitions on the ground that the writ petitioners came to be appointed without following due process of law and their services came to be extended from time to time on their requests. Some of the persons, who came to be appointed after them, have been appointed on regular posts because they have participated in the selection process and they made the grade. It is stated that the petitioners have also participated in the selection process but they have failed to make a grade. It is apt to reproduce para 7 of the reply filed in CWP No. 575 of 2015 herein.

"7. That the University vide advertisement No. 002/2011 dated 17.4.2011 (Annexure R-9) advertised various Non-Teaching positions on regular basis wherein the last date of receipt of applications was 15th May, 2011. The petitioner while working with the above mentioned project applied for the post of Lower Division Clerk against the same advertisement. The petitioner was not short listed for the post of Lower Division Clerk due to "overage". Copy of screening Committee proceedings are placed at Annexure R-10. This very fact has deliberately not been brought to the notice of the Hon"ble Court by the petitioner due to the reasons best known to her."

5. It is also profitable to reproduce paras 9 and 10 of the reply filed in CWP No. 580 of 2015 herein.

"9. That University vide advertisement No. 002/2011 dated 17.4.2011 advertised various Non-Teaching positions on regular basis and the petitioner No. 1 applied for the post of Lower Division Clerk against the same advertisement. The petitioner was not short listed for the post of Lower Division Clerk due to "less scores" in 10+2. Cop of Screening Committee proceedings are placed at Annexure R-13. The very fact has not been brought to the notice of the Hon"ble Court by the petitioner due to the reasons best known to him."

10. That the petitioner No. 2 and 3 have also applied for the posts of Driver and Office Attendant respectively in response to advertisement No. 002/2011 dated 17.4.2011 but the Selection Committee for these positions have not been convened. This very fact has not been brought the notice of the Hon"ble Court by the petitioners due to the reasons best known to them."

6. The petitioners have filed common rejoinder to both the writ petitions and

have tried to carve out a case that other similarly situated persons have been appointed on regular basis.

7. The point germane for consideration in these writ petitions is whether a person/employee who came to be appointed for a fixed period and thereafter extension in service was granted from time to time can claim regularization, without following due process of law? The answer is in negative for the following reasons.

8. While issuing the appointment letters, it was made clear that they shall not be entitled for any other allowances or service benefits admissible to regular employees and this short term arrangement shall not entitle them for appointment on regular basis. The appointment was initially for a period of three months and thereafter the respondents kept on extending such appointment from time to time. Writ petitioners have participated in the selection process but failed to make grade and other similarly situated persons made the grade thus they cannot claim regularization.

9. In case, Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, , the apex Court has held as under.

"22. In dealing with this, Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, , the Court observed

"If any person who does not possess the requisite qualifications is appointed under the said clause, he will be liable to be replaced by a qualified person. Clause (iii) of Rule 9 states that a person appointed under clause (i) shall, as soon as possible, be replaced by a member of the service or an approved candidate qualified to hold the post. Clause (e) of Rule 9, however, provided for regularisation of service of any person appointed under clause (1) of sub-rule (a) if he had completed continuous service of two years on December 22, 1973, notwithstanding anything contained in the rules. This is a clear indication that in the past the Government also considered it Just and fair to regularise the services of those who had been in continuous service for two years" period to the cut-off date. The spirit underlying this treatment clearly shows that the Government did not consider it just, fair or reasonable to terminate the services of those who were in employment for a period of two or more years" period to the cut-off date. "This approach is quite consistent with the spirit of the rule which was intended to be invoked to serve emergent situations which could not brook delay. Such appointments were intended to be stop-gap temporary appointments to serve the stated purpose and not long term ones. The rule was not intended to fill a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with the rules. But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualifications as was done by sub-rule (e). Such an approach alone would be consistent with the constitutional philosophy adverted to earlier. Even otherwise, the rule must be so

interpreted, if the language of the rule permits, as will advance this philosophy of the Constitution. If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment, must be allowed to continue on their jobs and their services should be regularised."

10. It is apt to reproduce paras 50 to 69 of the judgment delivered by the apex Court in case State of U.P. versus Neeraj Awasthi & Ors. reported in 2006 AIR SCW 123.

"50. An attempt to induct an employee without following the procedure would be a backdoor appointment. Such backdoor appointments have been deprecated by this court times without number. [see for example Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, .

51. Even in State of Haryana and others Vs. Piara Singh and others etc. etc., , whereupon the learned counsel for the parties relied upon, it is stated: "ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, 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 requirements of articles 14 and 16 .

52. A 3 Judge Bench of this Court upon taking into consideration a large number of decision in A. Umarani Vs. Registrar, Cooperative Societies and Others, held that illegal appointments cannot be regularised. It was further held: "no regularisation is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules. "

53. The power to frame regulations is expressly conferred on the Board in terms of section 26 of the Act. Such regulations are to be made with the previous approval of the State government. Indisputably, the State Government by its letter dated 17.3.1999 refused to accord permission in relation thereto.

54. If no appointment could be made by the State in exercise of its power under Article 162 of the Constitution of India as the same would be in contravention of the statutory rules, there cannot be any doubt whatsoever that the board or for that matter the Market Committees cannot make an appointment in violation of the Act and the Regulations framed thereunder.

55. In *Executive Engineer ZP Engg. Divn. and Another Vs. Digambara Rao etc. etc.*, it was held: "it may not be out of place to mention that completion of 240 days of continuous service in a year may not by itself be a ground for directing an order of regularisation. It is also not the case of the respondents that they were appointed in accordance with the extant rules. No direction for regularisation of their services, therefore, could be issued. (See *A. Umarani v. Registrar, Coop. Societies and Pankaj Gupta v. State of J and k*) submission of Mr. Maruthi Rao to the effect that keeping in view the fact that the respondents are diploma-holders and they have crossed the age of 40 by now, this Court should not interfere with the impugned judgment is stated to be rejected. "[see also *Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc.*,]

56. In *Mahendra L. Jain and Others Vs. Indore Development Authority and Others*, it was categorically held: "the question, therefore, which arises for consideration is as to whether they could lay a valid claim for regularisation of their services. The answer thereto must be rendered in the negative. Regularisation cannot be claimed as a matter of right. An illegal appointment cannot be legalised by taking recourse to regularisation. What can be regularised is an irregularity and not an illegality. The constitutional scheme which the country has adopted does not contemplate any back-door appointment. A state before offering public service to a person must comply with the constitutional requirements of Articles 14 and 16 of the Constitution. All actions of the State must conform to the constitutional requirements. A daily-wager in the absence of a statutory provision in this behalf would not be entitled to regularisation. (See *State of U. P. v. Ajay kumar and Jawaharlal Nehru Krishi vishwa Vidya/aya v. Bal Kishan Soni.*) "

57. In *Manager, R.B.I., Bangalore Vs. S. Mani and Others*, *Umarani (supra)* was followed holding that in law 240 days of continuous service by itself give rise to permanence which reason has weight with the opinion of learned single Judge of the High Court.

58. It is, therefore, not correct to contend that only because in the correspondences between the State and the Board the appointments of such persons have been described to be irregular, the same would not mean that they are not illegal.

59. In any event, no temporary or permanent status can be granted to an employee by way of regularisation. [see *Union of India v. Gagan Kumar* (2005) 5 SCC 70 and *State of Maharashtra and Another v. R.S. Bhonde and Others* (2005) 5 SCC 751].

60. Mr. Chaudhary has relied upon a large number of decisions to contend that this Court has directed framing of such schemes.

61. In *Surya Narain Yadav and Others Vs. Bihar State Electricity Board and Others*, the writ petitioners were appointed as trainee engineers pursuant to an advertisement issued therein. Representations have been made to them that

after their training was completed, they would be absorbed in regular employment of the Board. Some employees who were getting age-banned for government employment and had left the Board were told to come back under the temptation of getting permanently employed under the board. When the Board was reeling under a strike of its employees, these trainee engineers stood by the Board to keep up the generation and distribution of electricity and had been assured of absorption. The Board had decided to absorb them on permanent basis but initially on a probation of two years without conducting any further examination. It was in aforementioned situation, this Court applied the principles of promissory estoppel and observed that the Board should have regularized the services of the trainee engineers. The Court did not lay down any law that regularization would be directed despite the fact appointments had been made in violation of the rules,

62. In *Piara Singh (supra)*, this Court was beset with the scheme framed by the State to regularize the services of its employees. The bench did not go into the question of validity or otherwise of such a scheme. We have, however, noticed hereinbefore that even such a scheme would be impermissible in law.

63. In *Madan Singh and Others etc. Vs. State of Haryana and Others*, , this Court was dealing with a matter where the State Government had come forward with orders from time to time for absorption of work charged employees. The Court was of the opinion that the benefits conferred thereunder were available to them.

64. In *Raj Narain Prasad and Others Vs. State of U.P. and Others*, yet again no law has been laid down. No decision other than *Piara Singh (supra)* has been referred to. Before this Court, a scheme was submitted in terms whereof the scheme had undertaken to regularize work-charged employees employed prior to 19.9.1985. This Court besides the proposals made therein issued certain other directions.

65. Strong reliance has been placed by Mr. Chaudhary on *R.N. Nanjundappa Vs. T. Thimmiah and Another*, for the proposition that irregular employees can be regularized. Therein it was held : "the contention on behalf of the State that a rule under Article 309 for regularisation of the appointment of a person would be a form of recruitment read with reference to power under Article 162 is unsound and unacceptable. The executive has the power to appoint. That power may have its source in Article 162 . In the present case the rule which regularised the appointment of the respondent with effect from February 15, 1958, notwithstanding any rules cannot be said to be in exercise of power under article 162 . First, Article 162 does not speak of rules whereas Article 309 speaks of rules. Therefore, the present case touches the power of the State to make rules under Article 309 of the nature impeached here. Secondly when the government acted under Article 309 the government cannot be said to have acted also under Article 162 in the same breath. The two articles operate in different areas. Regularisation cannot be said to be a form of appointment. Counsel on behalf of

the respondent contended that regularisation would mean conferring the quality of permanence on the appointment whereas counsel on behalf of the State contended that regularisation did not mean permanence but that it was a case of regularisation of the rules under Article 309 . Both the contentions are fallacious. 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 regularised. Ratification or regularisation 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. Regularisation 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. "

66. The said decision has been noticed in various judgments referred to hereinbefore. It instead of helping the Respondents goes directly against them.

67. In All Manipur Regular Posts Vacancies Substitute Teachers" Association Vs. State of Manipur, , this Court was confronted with various interim orders passed by the High Court from time to time in several writ petitions. It was observed that if the direct recruitment takes place on one hand and substituted teachers are also directed to be regularized subsequently, it would create an enormous problem for the department to accommodate both the categories of persons and in the aforementioned situation, in exercise of its power under Article 142 of the Constitution of India, this Court with a view to avoid further litigation and also to avoid seemingly conflicting interim orders issued by the High Court gave certain directions. Such directions having evidently been issued by this court in exercise of its power under Article 142 of the Constitution of India do not constitute a binding precedent. Even therein, the scope and ambit of this Court's jurisdiction under Article 142 vis-?-vis existence of the statute and statutory rules and the constitutional mandate contained in Articles 14 and 16 of the Constitution of India had not been taken into consideration.

68. On the other hand, in a series of decisions, which we have noticed hereinbefore, this Court has now firmly laid down the law that regularization cannot be a mode of appointment.

69. Mr. Chaudhari has placed strong reliance upon the provisions of the U.P. Regularisation of Ad hoc Appointments (on Posts outside the Purview of the Public Service commission) Rules, 1979 purported to have been framed by the State in pursuance of the provisions of clause (3) of Article 348 of the Constitution of India. Rule 4 of the said Rules reads, thus : "4. Regularisation of ad hoc appointments- (1) Any person who (i) was directly appointed on ad hoc basis on or before June 30, 1998 and is continuing in service as such on the date of commencement of the Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts outside the Purview of the Public service Commission) (Third amendment) Rules, 2001. (ii) possessed requisite qualifications prescribed for regular appointment as the time of such ad hoc appointment; and (iii) has

completed or, as the case may be, after he has completed three years service shall be considered for regular appointments in permanent or temporary vacancy, as may be available, on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant rules or orders. (2) In making regular appointments under these rules reservations for the candidates belonging to the Scheduled castes, Scheduled Tribes, Backward classes and other categories shall be made in accordance with the orders of the Government in force at the time of recruitment. (3) For the purpose of sub-rule (1) the appointing authority shall constitute a selection Committee. (4) The appointing authority shall prepare an eligibility list of the candidates, arranged in order of seniority, as determined from the date of order of appointment and if two or more persons are appointed together from the order in which their names are arranged in the said appointment order, the list shall be placed before the Selection Committee along with the character rolls and such other records of the candidates as may be considered necessary to assess their suitability. (5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4). (6) The Selection Committee shall prepare a list of the selected candidates, the names in the list being arranged in order of seniority and forward it to the appointing authority. "

11. The apex court in Nagendra Chandra etc. etc v. State of Jharkhand and Ors., reported in 2007 AIR SCW 7666 has laid down the same principles of law. It is apt to reproduce para 9 of the said judgment herein.

"9. In view of the foregoing discussion, we have no option but to hold that if an appointment is made in infraction of the recruitment rules, the same would be violative of Articles 14 and 16 of the Constitution and being nullity would be liable to be cancelled. In the present case, as the vacancies were not advertised in the newspapers, the appointments made were not only in infraction of Rule 663(d) of the Bihar Police Manual but also violative of Articles 14 and 16 of the Constitution, which rendered the appointments of the appellants as illegal; as such the competent authority was quite justified in terminating their services and the High Court, by the impugned order, was quite justified in upholding the same."

12. It is also apposite to reproduce para 9 of the judgment delivered by the apex Court in State of Jharkhand & others versus Manshu Kumbhkar, reported in 2008 AIR SCW 488.

"9. In Ashwani Kumar and Others Vs. State of Bihar and Others, , it was noted in paras 13 and 14 as follows:

"13. So far as the question of confirmation of these employees whose entry itself was illegal and void, is concerned, it is to be noted that question of confirmation or regularisation 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 unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given it would be an exercise in futility. It would amount to decorating a still-born baby. Under these circumstances there was no occasion to regularise them or to give them valid confirmation. The so-called exercise of confirming these employees, therefore, remained a nullity."

13. The apex Court has laid down the similar principles of law in case *Mg. Dir., Bangalore Metropolitan Tpt. Corpn. Versus Sarojamma & Anr.* reported in 2008 AIR SCW 5480.

"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 Uttar Pradesh and Another Vs. 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."

14. It is apt to reproduce para 24 of the judgment delivered by the apex Court in *State of Haryana & Ors. v. Shakuntla Devi* reported in 2008 AIR SCW 8180.

"24. The very fact that a regularization scheme was framed by the State is a clear pointer to show that the concerned employees were not regularly employed. They had sought for regularization of their service and at least in one case, as noticed hereinbefore, for one reason or the other, the said request was turned down. The validity thereof was not questioned. It attained finality.

In the case of *Rama Devi*, a contention was raised in the writ petition that the offer of appointment in law was not for a period of six months but for an indefinite period. Such a contention cannot be upheld. If the initial appointment was for a fixed period and the appointment could be terminated without any notice and without assigning any reason, such appointment cannot be said to be an appointment on a permanent post or a temporary sanctioned post. Unless and until the post itself is a permanent or a temporary one, the same would not answer the description of a substantive and permanent employment. In this case, it had been shown that the services of *Karan Singh* was being renewed for a period of six months on the expiry of the original or extended tenure."

15. Similar principles of law have been laid down by the apex Court in *State of Orissa & Anr. V. Mamata Mohanti* reported in 2011 AIR SCW 1332. It is apposite to reproduce paras 19 and 20 of the said judgment herein.

"19. 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 Notice Board 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 of 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.

ORDER BAD IN INCEPTION:

20. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (vide: *Upen Chandra Gogoi v. State of Assam & Ors.*, 1998 AIR(SC) 1289; *Mangal Prasad Tamoli (Dead) by L.Rs. v. Narvadeshwar Mishra (Dead) by L.Rs. & Ors.*, 2005 AIR(SC) 1964; and *Ritesh Tiwari & Anr. v. State of U.P. & Ors.*, 2010 AIR(SC) 3823). The concept of adverse possession of lien on post or holding over are not applicable in service jurisprudence. Therefore, continuation of a person wrongly appointed on post does not create any right in his favour. (Vide *Dr. M.S. Patil v. Gulbarga University & Ors.*, 2010 AIR(SC) 3783)."

16. In another judgment, the apex Court in case *Bhupendra Nath Hazarika and Anr. v. State of Assam and Ors.*, reported in 2013 AIR SCW 401, has laid down the similar principles.

17. In a latest judgment delivered by the apex Court in *State of Bihar and others v. Chandreshwar Pathak* reported in 2014 AIR SCW 5182, following principles of law have been laid down. It is apt to reproduce paras 13 to 16 of the said judgment herein.

"13. It is clear from the above order that the appointment has been given only on the asking of the Inspector General of Police. There is nothing to show that any advertisement was issued giving opportunity to all eligible candidates to compete or any selection process was undertaken before appointment of the respondent.

14. In *State of Orissa and Another Vs. Mamata Mohanty*, , it was observed as under:

"APPOINTMENT/EMPLOYMENT WITHOUT ADVERTISEMENT:

35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that 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. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution.

(Vide: Delhi Development Horticulture Employees Union v. Delhi Admn., State of Haryana v. Piara Singh, Excise Supdt. v. K.B.N. Visweshwara Rao, Arun Tewari. v. Zila Mansavi Shikshak Sangh, Binod Kumar Gupta v. Ram Ashray Mahoto, National Fertilizers Ltd. v. Somvir Singh, Telecom District Manager v. Keshab Deb, State of Bihar v. Upendra Narayan Singh and State of M.P. v. Mohd. Ibrahim).

36. 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 notice board 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."

15. No contrary view of this Court has been cited on behalf of the respondent. Moreover, another Division Bench of the same High Court has upheld termination in similar matter as noted earlier against which S.L.P. has been dismissed by this Court as mentioned earlier.

16. Accordingly, it has to be held that in the absence of any advertisement or selection process, the appointment of the respondent is not protected and could be validly terminated. Learned single Judge was justified in dismissing the writ petition while the Division Bench erred in interfering with the same."

18. Applying the test in these cases, the petitioners have failed to make out a case. The apex Court has gone further while laying down the ratio that even if a

person has spent 14 or 20 years of service in an institution, came to be appointed without due process of law, is a back-door entry and cannot claim regularization. The termination of such employee has been held valid even without issuing a notice, as discussed hereinabove.

19. This question arose before the Division Bench of this Court in a batch of LPAs and CWPs, lead case of which is LPA No. 107 of 2014 titled Amit Attri and others versus Anil Verma and others, and this Court, after discussing the entire facts and law applicable, laid down the same proposition of law. It is apt to reproduce para 16 to 21 and 24 of the said judgment herein.

"16. It is worthwhile to record herein that the petitioners have accepted the terms and conditions, as contained in their appointment orders, one of which stands reproduced supra. They have been appointed purely on lecturer/hourly basis for one hour lecturer basis, cannot claim regularization.

17. The apex Court in Indu Shekhar Singh & Ors. v. State of U.P. & Ors reported in 2006 AIR SCW 2582 in para 24 held as under:

"24. The State was making an offer to the Respondents not in terms of any specific power under Rules, but in exercise of its residuary power (assuming that the same was available). The State, therefore, was within its right to impose conditions. The Respondents exercised their right of election. They could have accepted the said offer or rejected the same. While making the said offer, the State categorically stated that for the purpose of fixation of seniority, they would not be obtaining the benefits of services rendered in U.P. Jal Nigam and would be placed below in the cadre till the date of absorption. The submission of Mr. Verma that for the period they were with the Authority by way of deputation, should have been considered towards seniority cannot be accepted simply for the reason that till they were absorbed, they continued to be in the employment of the Jal Nigam. Furthermore, the said condition imposed is backed by another condition that the deputed employee who is seeking for absorption shall be placed below the officers appointed in the cadre till the date of absorption. The Respondent Nos. 2 to 4 accepted the said offer without any demur on 3.9.87, 28.11.91 and 6.4.87 respectively.

25. They, therefore, exercised their right of option. Once they obtained entry on the basis of election, they cannot be allowed to turn round and contend that the conditions are illegal. [See R.N. Gosain Vs. Yashpal Dhir, , Ramankutty Vs. Avara, and Bank of India and Others Vs. O.P. Swarnakar etc., .] Further more, there is no fundamental right in regard to the counting of the services rendered in an autonomous body. The past services can be taken into consideration only when the Rules permit the same or where a special situation exists, which would entitle the employee to obtain such benefit of past service."

18. In University of Rajasthan and Anr. v. Prem Lata Agarwal alongwith other connected matters reported in 2013 AIR SCW 989, the apex Court in para 34 held as under:

"34. In view of the aforesaid, the irresistible conclusion is that the continuance after the fixed duration goes to the root of the matter. That apart, the teachers were allowed to continue under certain compelling circumstances and by interdiction by courts. Quite apart from the above, this Court had categorically declined to accede to the prayer for regularization. In such a situation, we are afraid that the reliance placed by the High Court on paragraph 53 of the pronouncement in *Uma Devi*, (AIR 2003 SC 1806) can be said to be justified. In this regard, another aspect, though an ancillary one, may be worth noting. *Prem Lata Agarwal and B.K. Joshi* had retired on 31.3.2001 and 31.1.2002, and by no stretch of imagination, *Uma Devi* (supra) lays down that the cases of any category of appointees who had retired could be regularized. We may repeat at the cost of repetition that the protection carved out in paragraph 53 in *Uma Devi* (supra) could not be extended to the respondents basically for three reasons, namely, (i) that the continuance of appointment after the fixed duration was null and void by operation of law; (ii) that the respondent continued in the post by intervention of the court; and (iii) that this Court had declined to regularize their services in 1998."

19. In *Chief Executive Officer, Pondicherry Khadi and Village Industries Board and Anr v. K. Aroquia Radja and Ors* reported in 2013 AIR SCW 1759, it was held as under:

"17. The learned Single Judge who heard the Writ Petition No. 3181 of 2008 and also the Division Bench which heard the writ appeal could not have ignored that the respondents were clearly told that their services were co- terminus, and they will have no right to be employed thereafter. Condition No. 4 and 6 of the earlier referred terms and condition are very clear in this behalf. The respondents had taken the co-terminus appointment with full understanding. It was not permissible for them to challenge their dis- engagement when the tenure of the Chairman was over.....

18. As stated by this Court in *Umadevi* (supra), absorption, regularization or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees appointed/recruited and continued for long in public employment de hors the constitutional scheme of public employment is impermissible and violative of Article 14 and 16 of the Constitution of India. As recorded in paragraph 53 of the report in SCC, (para 44 of *Secretary, State of Karnataka and Others Vs. Umadevi and Others*,) this Court has allowed as a one time measure, regularization of services of irregularly appointed persons, provided they have worked for ten years or more in duly sanctioned posts. That is also not the case in the present matter."

20. In *Hari Nandan Prasad and Anr. v. Employer I/R to Management of FCI and Anr.* reported in 2014 AIR SCW 1383 the apex Court in para 34 held as under:

"34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any

unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wagger etc. may amount to backdoor entry into the service which is an anathema to Art. 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14 , rather than violating this constitutional provision."

21. Applying the ratio of the aforesaid apex Court's judgments to the facts and circumstances of the present case, one comes to an inescapable conclusion that the candidates, who have got appointment/engagement on hourly basis or seasonal basis, cannot claim regularization, not to speak of declaring him/them to have been appointed on contract basis.

22-23..... ..

24. As discussed hereinabove, the petitioners have no right for seeking a writ of mandamus to declare them to be appointed on contract basis. It is also well established that a person, who is appointed without following due process of law, cannot claim that he should be declared to have been appointed in due course, in terms of the judgment titled Secretary, State of Karnataka and Others Vs. Umadevi and Others, . It is apt to reproduce para 45 of the said judgment herein:

"45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not

permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution."

20. This judgment was questioned before the apex Court by the medium of SLP but the same was dismissed vide order dated 30.3.2015 in SLP No. 9089-9090 of 2015 titled Anil Verma & others versus Amit Attri and others etc.

21. Again, this question arose before the Division Bench of this Court in a batch of LPAs and writ petitions, lead case of which is CWP No. 6916 of 2011 and the same principles of law were laid down, though the facts were slightly different.

22. Applying the test in these writ petitions, the petitioners have no case.

23. Having glance of the above discussion, the writ petitions merit dismissal and are accordingly dismissed, along with pending applications, if any.