
(2021) 12 SHI CK 0059

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1339, 1755, 1756, 3743 Of 2021

Vikas Gupta And Others

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 17-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2021) 12 SHI CK 0059

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Adarsh K. Vashista, Rajinder Dogra, Vijay Chaudhary

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. Since all these petitions involve common question of law and facts, therefore, these have been heard and are being decided together by a common judgment.

2. The substantive reliefs as prayed in these petitions commonly are as under:

"(I) A Writ in the nature of Certiorari may kindly be issued for quashing the condition incorporated in order, dated 16.12.2020, Annexure P-8 to the effect that "The services of the employees of the Society would stand automatically dispensed with and they will not be considered for taking over in Government Departments."

(II) That the order dated 16.12.2020 (Annexure P-12) may kindly be modified and the respondents may kindly be directed to regularize the services of the petitioners after completion of the requisite years of services as per their date of joining on contract basis, as per the Government Policy prevailing at the relevant time along with all consequential benefits of seniority, increments, allowances and arrears of pay."

3. Petitioners in CWP Nos. 1756 and 3743 of 2021 are the technical staff (Junior

Engineers, Assistant Engineers and Draftsman), whereas, petitioners in CWP Nos. 1339 and 1755 of 2021 were non-technical staff (Lecturers, Accountants, Data Entry Operators, Clerks and Peons) employed with Himachal Pradesh School Education Society (HPSES). The HPSES was formed in 1995 initially to implement District Primary Education Programme (DPEP) and later programmes/projects such as Sarva Shiksha Abhiyan (SSA), Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and currently "Samgra Shiksha". The above noted holistic programmes/projects have been launched from time to time to focus on provision of basic quality School education to all in mission mode.

4. Initial recruitment of all the petitioners was on contract basis in HPSES under DPEP or SSA as the case may be. Petitioners continued to be contract employees of HPSES till their regularization on 16.12.2020. Before their regularization, as noticed above, majority of the petitioners have continuously served on contract basis for more than 20 years. Petitioners are now aged in the range of 40 to 56 years.

5. The State Government for the last many years has adopted mode of recruiting the personnel to be employed in its various departments either on temporary/ad-hoc basis or on contract basis, notwithstanding the fact that their requirement was predictably permanent. Therefore, the State Government, from time to time, has come up with various Schemes/Policies whereunder services of such temporary/ad-hoc/contract employees have been regularised after a specific period of time ranging from 3 years to 10 years.

6. Petitioners also raised the demand for their regularization on completion of continuous and uninterrupted services of more than 8 years. They claimed that ever-since their employment on contract basis, they had been discharging the duties assigned to them to the satisfaction of their superiors and nothing adverse had been conveyed against them regarding performance of the duties. Seeking parity, with contract employees in other departments of the State Government, whose services were regularised, from time to time, petitioners raised their claim. Petitioners had also sought parity with EGS Instructors (Teachers), who were appointed under the Education Guarantee Scheme in SSA and had been permanently absorbed in the Education Department as "Gramin Vidya Upasaks" i.e. teachers in the Government Primary Schools after having worked there for only four years.

7. The Executive Committee of HPSES on 23.02.2012 resolved to grant regular pay scale to its contractual employees including petitioner. Vide office order dated April, 2012, the employees who had completed 8 years of service as on 31.3.2010 and 31.3.2011, respectively, were granted revised contractual remuneration at par with the Government employees in other departments, thus the petitioners also availed the said benefit.

8. Vide letter dated 24.10.2011, the State Project Director had apprised the Chairman of the Governing Body of HPSES i.e. the Hon'ble Chief Minister that the

services of the contractual employees could be considered for regularization since the HPSES was a sister wing of the Education Department. The matter pertaining to regularisation of the services of petitioners, however, attracted least priority.

9. Aggrieved against non-fulfilment of their demands, some of the petitioners approached this Court by way of CWP No. 6275 of 2012 titled Sanjay Gharu and others vs. State of Himachal Pradesh and others and CWP No. 1497 of 2012 titled Tilak Chand Sharma vs. State of Himachal Pradesh and others. These petitions came to be decided by learned Single Judge of this Court vide common judgment dated 16.10.2014 in the following terms:

"10. Accordingly, in view of the observations and analysis made hereinabove, both the writ petitions are allowed and the respondents are directed to regularize the services of the petitioners from the date when they have completed eight years of service with all consequential benefits within a period of three months from today. Pending application(s), if any, also stand disposed of. No orders as to costs."

10. Respondents-State assailed the aforesaid judgment in LPA No. 66 of 2015. However, in the meantime, the State Government took a conscious decision to merge the technical staff of HPSES in HP PWD and I&PH Department. The relevant communication dated 26.9.2017 in that regard from Mission Director (SSA)-cum Director Elementary Education, Himachal Pradesh to the Engineer-in-Chief (PWD), which reads as under:

"No. HPSES(SSA/RMSA) HO-VI.II-7395

OFFICE OF THE STATE PROJECT DIRECTOR SSA/PMSA H.P. SCHOOL EDUCATION SOCIETY, DPEP BHAWAN LAL PANI, SHIMLA-171001.

Dated: 26/09/17

To

The Engineer-in-Chief (PWD)

Nirman Bhawan, Nigam Vihar,

Shimla - 171 002.

Subject: Regarding merger of technical staff (Civil Engineers and Draftsmen) of HPSES Employees in HPPWD and IPH Department in view of the Hon'ble High Court order.

Sir,

With reference to letter dated 22.09.2017, on the subject noted above, matter regarding merger of technical staff of Himachal Pradesh School Education Society (HPSES) in HPPWD and I&PH has been approved by the Council of Ministers in its meeting held on 18.09.2017. Accordingly, as per the ratio approved by the Council of Ministers, 60% of total employees are to be merged in PWD

Department.

You are, therefore, requested to do the needful as per the list enclosed. It is further apprised that these employees are being paid pay scales equivalent to regular employees of Government Department as per Annexure-A, B and C.

It is also brought to your kind notice that the Council of Ministers has further approved that one Assistant Engineer and 18 Junior Engineers after merging in PWD Department as per list enclosed as Annexure 'D' be deputed in HPSES (SSA) on secondment basis to supervise ongoing works of the department of Education. Therefore, necessary action may please be taken at your end at the earliest please.

Yours faithfully,

Sd/-

Encls: As above. Mission Director (SSA)-cum-Director

Elementary Education,

Letter dated 22.9.17. Himachal Pradesh."

11. Vide letter dated 13.11.2017, the Special Secretary (PW) to the Govt. of H.P. requested the Mission Director (SSA) to provide the requisite information regarding the technical staff of HPSES for further transmission to the H.P. Public Service Commission, in sequel to the proposed merger of the technical staff of HPSES in HPPWD and I&PH Department.

12. While the above noticed process was going-on, LPA No.66 of 2015 was disposed of on 10.10.2017 in the following terms:

"Learned Deputy Advocate General has placed on record instructions, dated 29th September, 2017, which read as under:-

"To

The Ld. Advocate General,

H.P. High Court, Shimla-1.

Sub: Regarding withdrawal of L.P.A. No. 66 of 2015 filed by the State of H.P.

Sir,

I am the honour to enclose herewith the copy of letters received from the Principal Secretary (Education) vide which approval of CMM and the Council of Ministers held on 18.09.2017 has been conveyed to this office.

In this context it is submitted that vide above mentioned letters following has been conveyed:

"LPA No. 66/2015 filed by the Government against the order passed by the

Hon'ble High Court in CWP No. 6275 of 2012 and CWP No. 1497/2012 and other litigation/CWPs filed by the Society and individual be withdrawn."

It is, therefore, requested to kindly withdraw the L.P.A. No. 66/2015 filed by the State of H.P., as desired by the Government.

Yours faithfully,

Sd/-

State Project Director(SSA & RMSA) H.P., Shimla-1"

2. At this stage, learned counsel for the writ petitioners, under instructions, states that in view of intervening developments, writ petitioners seek permission to withdraw the original writ petitions being CWP Nos. 1497 of 2012 and 6275 of 2012.

3. Learned Deputy Advocate General also seeks permission to withdraw the present Letters Patent Appeal. Permission, as prayed for, is granted.

4. Consequently, judgment, dated 16th October, 2014, passed in CWP No. 6275 of 2012, titled Sanjay Gharu and others Vs. State of H.P. and others (supra) is rendered infructuous. It stands clarified that all issues are left open, reserving liberty to the petitioners to agitate the same, if so desired at a later stage. Pending applications, if any, also stand disposed of."

13. That after disposal of LPA No. 66 of 2015, the matter with respect to regularization of petitioners was placed before the Cabinet on 25.10.2017 and the Cabinet approved the proposal to merge the technical staff of HPSES with HPPWD and I&PH Department.

14. Despite the decision having been taken by the State Government to merge the technical staff of HPSES with HPPWD and I&PH Department, no action was taken which forced the petitioners to approach the Court again by way of CWPOA No. 5637 of 2020 titled Manoj Kumar and others vs. State of H.P. and others and CWPOA No. 5567 of 2020 titled Bimla Devi and others vs. State of H.P. and others. During the pendency of these petitions, the respondents regularised the services of technical staff as well as non-technical staff vide orders dated 16.12.2020, respectively. The respondents-State while regularizing the services of the petitioners on their existing posts with existing pay scales in HPSES under "Samagra Shiksha" imposed a condition that their employment would be co-terminus with the existence of HPSES and on dissolution of such Society their services will stand automatically dispensed with and they shall not be considered for taking over by any other Government Departments. In view of the intervening development, CWPOA No. 5637 of 2020 and CWPOA No. 5567 of 2020 were disposed of by this Court on 22.12.2020 in the following terms:

"Since the services of the petitioners have already been regularized as is evident from order dated 16th December, 2020 we deem it proper to dispose of all these petitions, making it clear that in case any of the petitioner is still aggrieved by

non-grant of any of the relief including the one claimed in these petitions and has subsisting cause of action, he/she is always at liberty of approach this court for redressal of the same. Pending miscellaneous application(s), if any also stand disposed."

15. By way of instant petitions, the petitioners have assailed the action of the State Government primarily on two grounds, firstly, that instead of regularizing the services of the petitioners on completion of 8 years at par with the other similarly situated Government employees, they were regularized after serving for more than 20 years and, secondly, the stipulation to the effect that their employment would be co-terminus with HPSES is arbitrary. The petitioners have assailed the action of the State Government being illegal, unjust and arbitrary as according to the petitioners a promise was held out to them by the express as well as implied conduct of respondents and hence the respondents were estopped from resiling from the promise to regularize the services of the petitioners. In support of such contention, it has been submitted that the respondents have regularized the contract employees in various departments after 8 years of continuous service and the conduct of respondents in allowing the petitioners to work for a period of more than 20 years on contract basis and also allowing them financial benefits at par with other Government servants except to regularize their services was itself a promise to the petitioners that their services would be regularised in due course. On such promise, the petitioners had stuck to their jobs with HPSES and have now reached such a stage of life where they will not be able to generate any other employment for them. As per petitioners, the imposition of stipulation in their regularization order amounts to resiling from the promise. In addition, such conduct of the State Government is clearly violative of Article 14 and 16 of the Constitution as in all other cases, the respondents have allowed the employees on closure or dissolution of various public sectors/organizations to be absorbed in other departments.

16. Further contention of petitioners is that they had earned a judgment in their favour which was passed by this Court on 16.10.2014 after considering the merits of the case. The respondents were under direction to regularize the services of the petitioners from the date when they had completed 8 years of continuous service on contract basis.

The petitioners were made to withdraw the petitions on the promise that their services would be regularised and as a pre-condition thereof, they were required to withdraw the petitions.

17. In reply, the respondents have submitted that the petitioners were engaged under 'Sarv Shiksha Abhiyan' on contract basis and as per para 37.1 of the Manual of Financial Management procurement, no permanent liability could be accrued on the Society or the State Government by filling up of the posts. As per the respondents, some of the petitioners were engaged under DPEP project which was wound up in 2003 resulted their contract had come to an end

whereafter they were engaged afresh under 'Sarv Shiksha Abhiyan'. It has been alleged that petitioners cannot be equated with the Government employees as they are selected after due process and through competitive exam, interview etc. in accordance with the relevant R & P Rules, whereas in case of petitioners, no R & P Rules were there and the petitioners were recruited without adoption of procedure in accordance with law. The reason of financial implication has also been mentioned as one of the grounds for not regularizing the petitioners retrospectively. The contractual remuneration of the petitioners were enhanced at par with regular Government employees only by taking a lenient view. The petitions are stated to be bad for non-joinder of necessary parties. According to respondents, the Union of India is necessary party in view of fact that Samagra Shiksha is aided by the Government of India to the extent of 90%. The respondents have also submitted that the decision of Cabinet dated 22.9.2017 was reviewed in the meeting dated 23.11.2020 and approval was accorded for regularization of petitioners in the HPSES itself under 'Samagra Shiksha Abhiyan'.

18. I have heard learned counsel for the parties and have gone through the records.

19. The tone and tenor of the averments in instant petitions reveal that petitioners have based their claim on the doctrine of promissory estoppel. In order to succeed on the strength of said doctrine, it is incumbent upon petitioners to prove existence of pre-existing right in their favour the extension of which may have led to certain promises being made by the public authorities. In the given facts of the case, the petitioners may not qualify the requisite condition. However, the doctrine of promissory estoppel is akin to principle of legitimate expectation and both have overlapping traits. The only marked difference being that principle of legitimate expectation can be applied even in absence of any existing right. The claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.

20. The Hon'ble Supreme Court in State of Jharkhand and others Vs Brahmputra Mettals Ltd. 2020 (13) SCALE 500 has expounded in detail the concept of legitimate expectation in the context of India law as under:

"40. Under Indian Law, there is often a conflation between the doctrines of promissory estoppel and legitimate expectation. This has been described in Jain and Jain's well known treatise, Principles of Administrative Law::

"At times, the expressions 'legitimate expectation' and 'promissory estoppel' are used interchangeably, but that is not a correct usage because 'legitimate expectation' is a concept much broader in scope than 'promissory estoppel'.

...

A reading of the relevant Indian cases, however, exhibit some confusion of ideas. It seems that the judicial thinking has not as yet crystallised as regards the

nature and scope of the doctrine. At times, it has been referred to as merely a procedural doctrine; at times, it has been treated interchangeably as promissory estoppel. However both these ideas are incorrect. As stated above, legitimate expectation is a substantive doctrine as well and has much broader scope than promissory estoppel.

...

In *Punjab Communications Ltd. v. Union of India*, the Supreme Court has observed in relation to the doctrine of legitimate expectation:

"the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way Reliance must have been placed on the said representation and the representee must have thereby suffered detriment."

It is suggested that this formulation of the doctrine of legitimate expectation is not correct as it makes "legitimate expectation" practically synonymous with promissory estoppel. Legitimate expectation may arise from conduct of the authority; a promise is not always necessary for the purpose."

41. While this doctrinal confusion has the unfortunate consequence of making the law unclear, citizens have been the victims. Representations by public authorities need to be held to scrupulous standards, since citizens continue to live their lives based on the trust they repose in the State. In the commercial world also, certainty and consistency are essential to planning the affairs of business. When public authorities fail to adhere to their representations without providing an adequate reason to the citizens for this failure, it violates the trust reposed by citizens in the State. The generation of a business friendly climate for investment and trade is conditioned by the faith which can be reposed in government to fulfil the expectations which it generates. Professors Jain and Deshpande characterize the consequences of this doctrinal confusion in the following terms:

"Thus, in India, the characterization of legitimate expectations is on a weaker footing, than in jurisdictions like UK where the courts are now willing to recognize the capacity of public law to absorb the moral values underlying the notion of estoppel in the light of the evolution of doctrines like LE [Legitimate Expectations] and abuse of power. If the Supreme Court of India has shown its creativity in transforming the notion of promissory estoppel from the limitations of private law, then it does not stand to reason as to why it should also not articulate and evolve the doctrine of LE for judicial review of resilement of administrative authorities from policies and longstanding practices. If such a notion of LE is adopted, then not only would the Court be able to do away with the artificial hierarchy between promissory estoppel and legitimate expectation, but, it would also be able to hold the administrative authorities to account on the

footing of public law outside the zone of promises on a stronger and principled anvil. Presently, in the absence of a like doctrine to that of promissory estoppel outside the promissory zone, the administrative law adjudication of resilement of policies stands on a shaky public law foundation."

42. We shall therefore attempt to provide a cogent basis for the doctrine of legitimate expectation, which is not merely grounded on analogy with the doctrine of promissory estoppel. The need for this doctrine to have an independent existence was articulated by

Justice Frankfurter of the United State Supreme Court in *Vitarelli v. Seton*:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

43. However, before we do this, it is important to clarify the understanding of the doctrine of legitimate expectation in previous judgments of this Court. In *National Buildings Construction Corporation v. S. Raghunathan* ("National Buildings Construction Corpn."), a three Judge bench of this Court, speaking through Justice S. Saghir Ahmad, held that:

"18. The doctrine of "legitimate expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel."

(emphasis supplied)

44. However, it is important to note that this observation was made by this Court while discussing the ambit of the doctrine of legitimate expectation under English Law, as it stood then. As we have discussed earlier, there was a substantial conflation or overlap between the doctrines of legitimate expectation and promissory estoppel even under English Law since the former was often invoked as being analogous to the latter. However, since then and since the judgment of this Court in *National Buildings Construction Corporation* (supra), the English Law in relation to the doctrine of legitimate expectation has evolved. More specifically,

it has actively tried to separate the two doctrines and to situate the doctrine of legitimate expectations on a broader footing. In *Regina (Reprotech (Pebsham) Ltd) v. East Sussex County Council*³⁰, the House of Lords has held thus:

"³³ In any case, I think that it is unhelpful to introduce private law concepts of estoppel into planning law. As Lord Scarman pointed out in *Newbury District Council v. Secretary of State for the Environment* [1981] A.C. 578, 616, estoppels bind individuals on the ground that it would be unconscionable for them to deny what they have represented or agreed. But these concepts of private law should not be extended into "the public law of planning control, which binds everyone". (See also Dyson J in *R v. Leicester City Council, Ex p Powergen UK Ltd.* [2000] JPL 629, 637.)

³⁴ There is of course an analogy between a private law estoppel and the public law concept of a legitimate expectation created by a public authority, the denial of which may amount to an abuse of power... But it is no more than an analogy because remedies against public authorities also have to take into account the interests of the general public which the authority exists to promote. Public law can also take into account the hierarchy of individual rights which exist under the Human Rights Act 1998, so that, for example, the individual's right to a home is accorded a high degree of protection (see Coughlan's case, at pp 254-255) while ordinary property rights are in general far more limited by considerations of public interest : see *R (Alconbury Developments Ltd) v. Secretary of State for the Environment, Transport and the Regions* [2001] 2 WLR 1389.

³⁵ It is true that in early cases such as the Wells case [1967] 1 WLR 1000 and *Lever Finance Ltd. v. Westminster (City) London Borough Council* [1971] 1 Q.B. 222, Lord Denning MR used the language of estoppel in relation to planning law. At that time the public law concepts of abuse of power and legitimate expectation were very undeveloped and no doubt the analogy of estoppel seemed useful.....It seems to me that in this area, public law has already absorbed whatever is useful from the moral values which underlie the private law concept of estoppel and the time has come for it to stand upon its own two feet."

(emphasis supplied)

⁴⁵. In a concurring opinion in *Monnet Ispat and Energy Ltd. v. Union of India* ("Monnet Ispat"), Justice H.L. Gokhale highlighted the different considerations that underlie the doctrines of promissory estoppel and legitimate expectation. The learned judge held that for the application of the doctrine of promissory estoppel, there has to be a promise, based on which the promisee has acted to its prejudice. In contrast, while applying the doctrine of legitimate expectation, the primary considerations are reasonableness and fairness of the State action. He observed thus:

"Promissory Estoppel and Legitimate Expectations

289. As we have seen earlier, for invoking the principle of promissory estoppel

there has to be a promise, and on that basis the party concerned must have acted to its prejudice. In the instant case it was only a proposal, and it was very much made clear that it was to be approved by the Central Government, prior whereto it could not be construed as containing a promise. Besides, equity cannot be used against a statutory provision or notification.

290.....In any case, in the absence of any promise, the Appellants including Aadhunik cannot claim promissory estoppel in the teeth of the notifications issued under the relevant statutory powers. Alternatively, the Appellants are trying to make a case under the doctrine of legitimate expectations. The basis of this doctrine is in reasonableness and fairness. However, it can also not be invoked where the decision of the public authority is founded in a provision of law, and is in consonance with public interest."

(emphasis supplied)

46. In *Union of India v. Lt. Col. P.K. Choudhary*, speaking through Chief Justice T.S. Thakur, the Court discussed the decision in *Monnet Ispat (supra)* and noted its reliance on the judgment in *Attorney General for New South Wales v. Quinn*. It then observed:

"This Court went on to hold that if denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or in violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 of the Constitution but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles."

47. Thus, the Court held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution.

48. As regards the relationship between Article 14 and the doctrine of legitimate expectation, a three judge Bench in *Food Corporation of India v. Kamdhenu Cattle Feed Industries*, speaking through Justice J.S. Verma, held thus:

"7. In 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. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. 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 non-arbitrariness, 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 extent."

(emphasis supplied)

49. More recently, in *NOIDA Entrepreneurs Assn. v. NOIDA*, a two-judge bench of this Court, speaking through Justice B.S. Chauhan, elaborated on this relationship in the following terms:

"39. State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a "democratic form of Government demands equality and absence of arbitrariness and discrimination". The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

...

41. Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. "Public authorities cannot play fast and loose with the powers vested in them." A decision taken in an arbitrary manner contradicts the principle of

legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other...]"

(emphasis supplied)

50. As such, we can see that the doctrine of substantive legitimate expectation is one of the ways in which the guarantee of non-arbitrariness enshrined under Article 14 finds concrete expression."

21. Adverting to the instant petitions, the factual position is more or less admitted. The initial recruitment of petitioners on contract basis, the longevity of their continuous service, grant of financial benefits to the petitioners at par with regular Government employees holding equivalent posts, consideration and decision at the end of the State Government to grant the petitioners benefit of continuity of service either by merger or regularization are the facts which admittedly have taken place. The respondents have also not denied that the similarly situated persons in other departments/organizations of State Government were initially regularised after rendering 8 years of continuous service on contract basis and subsequently in certain cases the period of contract service for regularization was reduced to 5 years or even 3 years.

22. The only exception that has been sought to be carved out by the respondents is that petitioners were not initially appointed through procedure in accordance with law. Their appointments were not in accordance with any rules relating to their recruitment and promotion.

23. It is not the case of respondents that petitioners were not holding minimum essential qualifications as required for recruitment to the respective posts held by them in other Government departments/organizations. This plea otherwise could not have been available to the respondents as the services of the petitioners have already been regularized.

24. The question only remains whether the denial of regularization to the petitioners retrospectively and also imposition of the condition, as noticed above, in regularization order of petitioners, is justified and legal?

25. Indisputably, the State Government has resorted to the mode of recruitment through contract employment since long. The contract employees have been regularized after putting in certain years of continuous service, as noticed above. The initial recruitment of the petitioners was though under a specific project, nevertheless, the project was for a laudable object to spread education in masses as an initiative of the Government itself. Merely the funding of project to larger extent was by the Central Government, it cannot be said the project was alien to the State Government as it was under the aegis of the State Government that the projects have worked. Importantly, the project that commenced about 25 years back is still in operation. The HPSES has been created to run the project

in question as well as other related projects. It is not the case of respondents that the project or consequent creation of HPSES was for a limited period or purpose. Even the State Government never had any illusion about the continuance of projects being managed by HPSES. It will be gainful to extract a passage from the Minutes of Meeting To Review the Progress of Absorption of Engineering Staff Engaged Under SSA under the Chairmanship of the Chief Secretary held on

27.8.2020."Chairman asked Secretary (Education) to explore the possibility of Engineering wing and regularizing the services of all employees of the Society in the Society itself as Samagra Shiksha has to be implemented and for implementation of new education policy, services of these employees would be required. There will not be any burden on the Society as these employees are being paid the regular salary at par with their counterparts in the departments. If these employees are placed in some other department, they would move to the department and other employees will have to be inducted which will be a continuing cycle. He has pointed out that at present salary is being claimed under the project from the Government of India and Government of H.P. in the ratio of 90:10, whereas these employees are inducted in some other department, complete burden will fall on the State Government. He further suggested that if services of these employees are regularised in the Society then Samagra Shiksha Programme will run smoothly and will also help in implementing New Education Policy in the State for which these employees have attained expertise". It becomes evident from above noticed facts that the project in which the petitioners were employed were not temporary in nature by any stretch of imagination. The continuity of the project for more than 25 years as also the purpose sought to be achieved through such project clearly implies that the same is necessitated by inescapable obligations vis-à-vis spread of education in the mass

26. The State Government has to act as a model employer in a welfare State. It cannot have different yardstick for different persons. Conceptually, the executive authorities have the onerous duty to work for the benefit of the public at large. As far as the mode and manner in which the Government has to achieve its purpose is to be chosen by the Government itself, however, with caveat that the same cannot be irrational, unreasonable or arbitrary. In a State where rule of law prevails, the Government is no exception. Right of equality being one of the fundamental traits of the Constitution, the same cannot be denied at the whims and fancies of the authorities.

27. The benefit of regularization to the petitioners on completion of 8 years of continuous contract service has been delayed by the respondents and the petitioners cannot be blamed for that. The financial implication as pleaded by the respondents, therefore, cannot be a ground to deny the right to the petitioners which had accrued to them especially when the learned Single Judge of this Court had ruled in their favour vide judgment dated 16.10.2014 passed in CWP

No. 6275 of 2012 and CWP No. 1497 of 2012 and held the petitioners entitled for regularization from the date when they completed 8 years of continuous contract services. The right so earned by petitioners cannot be obliterated by respondents at such a belated stage under the garb of financial implication. The respondents have failed to justify the reasons for delay in granting the benefit of regularization to the petitioners. Thus, the petitioners had a right to be regularised on completion of 8 years of continuous service on contract basis.

28. The conduct of the respondents throughout belies their assertions. It is not in dispute that the matter of regularization of petitioners was not being considered by the respondents. In fact, in 2017 itself, the State Cabinet had approved the proposal to merge the technical staff working with HPSES with HPPWD and I&PH Department of the State Government and the State Cabinet had again reaffirmed the said proposal in 2019. Various communications exchanged inter se the concerned departments, from time to time, were evident of the fact that the matter with respect to regularization of petitioners was under active consideration. Evidently, the petitioners had withdrawn their petitions being CWPOA No. 5637 of 2020 and CWPOA No. 5567 of 2020 on the clear promise being held out to them by the respondents that the matter of their regularization would be taken ahead only after withdrawal of their petitions. The fact that the petitioners withdrew their petitions after having earned judgment in their favour clearly reflects the unambiguous promise being held out to them by the State Government. The admitted facts of the case clearly suggest that the respondents had held out a clear promise to the petitioners regarding grant of benefit of regularization of their services. The fact that the petitioners have been allowed to work on contract basis for more than 20 years continuously itself was sufficient to instill a feeling of security of job in the petitioners. At no point of time, the respondents had represented to the petitioners that their employment was not permanent. The petitioners had every reason to believe that their services would be regularized as the same treatment was being meted to contract employees in other departments. Undoubtedly, the petitioners have brought themselves into such stage of life, ostensibly under the legitimate expectation, that any clog on continuity of their respective jobs at this stage will be catastrophic for them.

29. It can also be noticed from the admitted facts of the case that the petitioners had fallen in circumstances which had inculcated a legitimate expectation in them that their services would be regularized at par with the other Government employees and such expectation in the given facts cannot be termed as unreasonable or excessive. In my considered view the evident conduct of the respondents amount of denial of a legitimate expectation of petitioners and thus, leads to the violation of Article 14 of the Constitution.

30. Accordingly, in view of the observations and analysis made hereinabove, all the writ petitions are allowed and the respondents are directed to regularize the services of the petitioners from the date when they have completed eight years of service with all consequential benefits within a period of three months from

today. However, in the peculiar facts and circumstances of the case, the financial benefits, if any, shall be permissible to the petitioners only for a period of three years immediately preceding the filing of these petitions. The regularization orders of the petitioners dated 16.12.2020 are held illegal and arbitrary and hence quashed to the extent these contains the condition to the effect that the regular employment of petitioners will be co-terminus with the existence of HPSES. The State Government shall remain under direction to provide continuous regular employment to petitioners till their respective dates of superannuation in accordance with law, unless petitioners render themselves incapable for such benefit under relevant conduct rules.

All the petitions are accordingly disposed of, in the aforesaid terms, so also the pending miscellaneous application(s) if any. The parties are left to bear their own costs.