

(2014) 02 PAT CK 0090

In the Patna High Court

Case No : CWJC No. 24458 of 2013, LPA Nos. 1844 of 2011 in CWJC No. 8986 of 2011, 248 of 2012 in CWJC 9583 of 2011, 2011 of 2011 in CWJC Nos. 12659 and 2028 of 2011 and in CWJC No. 13590 of 2011

Vinod Kumar Mishra and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 21, 226

Citation : (2015) 1 PLJR 297

Hon'ble Judges : Kishore Kumar Mandal, J; I.A. Ansari, J

Bench : Division Bench

Advocate : Vinod Kanth, Akashdeep, Shyameshwar Kr. Singh and Sanjay Pandey, Advocates for the Appellant; Lalit Kishore, Ashok Kumar Keshri, Ujwal Kr. Sinha, Brajesh Kumar and Amarjeet Prabhakar, Advocates for the Respondent

Judgement

I.A. Ansari, J.—Did sub-clause (b) of Clause (ii-B) of Rule 8 of Bihar Medical Education Service Cadre and Appointment to Its Cadre Posts Rules, 1997 (hereinafter referred to as "1997 Rules"), as amended by Bihar Medical Education Service Cadre and Appointment to Its Cadre Posts (Amendment) Rules, 2004 (hereinafter referred to as "2004 Rules"), prescribe a regular mode of recruitment to the posts covered by Bihar Medical Education Service Cadre (hereinafter referred to as "teaching cadre") or did sub-clause (b) of clause (ii-B) of 1997 Rules, as amended by 2004 Rules, read with sub-clause (c) of clause (ii-B) of Rule 8 of 1997 Rules, prescribe the mode of recruitment as a mere working arrangement/appointment on contract basis till regular appointments were made? The above are the two of some of the important questions, which have arisen for determination in the present appeals and the present writ petition.

2. Yet another question, which has arisen, is: whether a person, having accepted and acted upon an offer of appointment made to him, on contractual basis by State Government, can turn around and claim that notwithstanding the contractual appointment, which had been offered to him, accepted and acted

upon by him, his contractual appointment must be regarded as an appointment made on regular basis, because his appointment, on contractual basis, is contrary to the relevant recruitment rules?

3. Considering the fact that the appeals have arisen out of a common judgment and order, dated 8.9.2011, passed, in CWJC No. 8986 of 2011, and other analogous cases, by a learned single Judge of this Court and considering also the fact that the present writ petition, registered as CWJC No. 24458 of 2013 (and pending till this day) is based on identical set of facts and has given rise to common questions of law, the appeals and the writ petition, in question, have been heard together and are being disposed of by this common judgment and order.

4. In order to correctly appreciate" the questions, which have arisen for determination, coupled with the question as to what shall be the answers to the various questions, which have been raised in the present set of appeals and the writ petition, appropriate it is that the material facts, leading to the filing of the writ petition, namely, CWJC No. 24458 of 2013 as well as the present set of appeals (arising out of various writ petitions, namely, CWJC Nos. 8986 of 2011, 9583 of 2011, 12659 of 2011 and 13590 of 2011), may, first, be taken note of.

5. BACKGROUND FACTS:

"(i) Prior to the year 1997, no separate teaching cadre existed in Bihar State Health Services for the purpose of imparting of education in medical colleges and all doctors, in Bihar State Health Services, were appointed as Medical Officers on recommendation of the Bihar Public Service Commission (hereinafter referred to as "Commission").

(ii) From amongst the doctors of Bihar State Health Services, teaching posts, in medical colleges, in the State of Bihar, were filled up on the basis of seniority-cum-eligibility from year-wise merit list. While the posts of Resident Doctors and Registrars were treated as Junior Teaching Posts, the posts of Assistant Professor, Associate Professor and Professor were treated as Senior Teaching Posts.

(iii) The 1997 Rules came into force, on 24.5.1997, introducing, for the first time, thereunder, separate teaching cadre, by making, under Rule 8 (i) of 1997 Rules, provisions, for appointment, in accordance with the availability of vacancies, to the Bihar Medical Education Cadre (which is being referred to as teaching cadre) on the basis of the written examination, through Bihar Junior Medical Education Examination, to be conducted by the Commission, the entry level to the Medical Education Cadre (i.e. teaching cadre) being Lecturer by those, who held post graduation qualification in the subject specified.

(iv) Thus, under Rule 8(i) of 1997 Rules, provisions were made for direct recruitment, as Lecturer, through a written examination to be conducted by the Commission. Moreover, under 1997 Rules, the posts of Resident Doctors and Registrars were amalgamated and redesignated as "Lecturer".

(v) Coupled with the above, under Rule 5(C) of 1997 Rules, those doctors, who had been working against teaching posts, on 24.5.1997 (i.e. the date on which 1997 Rules came into force), were given benefit of opting for teaching cadre if they so wished. Thus, one of modes of recruitment to the teaching cadre, in medical colleges, at the initial stage, was carved out of the doctors from Bihar State Health Services Cadre.

(vi) Many of the doctors, in Bihar State Health Services Cadre, opted, under Rule 5(C) of 1997 Rules, for being appointed to the teaching posts in the teaching cadre. On the basis of the option so obtained, the doctors, who had opted, were treated as having become members of the teaching cadre. However, many of the doctors of Bihar State Health Services Cadre, although had held teaching posts in the past, but stood reverted to the non-teaching posts in Bihar State Health Services Cadre before 24.5.1997 (when 1997 Rules came into force), were not provided with opportunity to opt for teaching cadre in Bihar Medical Education Services Cadre.

(vii) Pursuant to Rule 8(i) of the 1997 Rules, direct recruitment were made only once in 2002 and, thereafter, till 2008, no direct recruitment was made to the post of Lecturer/Senior Resident. Provisions for "promotion" of doctors' appointment as Lecturers/Senior Residents, under the 1997 Rules, had been made in Rule 8(ii) of 1997 Rules.

(viii) Admittedly, thus, 1997 Rules provided for 2 (two) specific modes of entry into the teaching cadre, one being competitive examination as provided by Rule 8(i) and the other as envisaged by Rule 5(C) by exercise of option as indicated hereinbefore.

(ix) However, under Rule 7(2) of 1997 Rules, the Lecturers, appointed in teaching cadre, were to be deemed to be on probation for a period of two years and the service of a probationer, in the post of Lecturer, was required to be confirmed on satisfactory completion of probation.

(x) Due to shortage of teachers in the teaching cadre, coupled with the threat of the medical colleges, in Bihar, being de-recognized by Medical Council of India (hereinafter referred to as "M.C.I."), 1997 Rules were made to undergo, with effect from 21.2.2003, amendments by Bihar Medical Education Service Cadre and Appointment to Its Cadre Posts (Amendment) Rules, 2002 (hereinafter referred to as "2002 Rules"), which provided for working arrangement/ad hoc promotion to higher posts from amongst members of teaching cadre as one-time measure and, in the case of their unavailability, 2002 Rules provided for making of contractual appointments restricting such working arrangement/contractual appointments to only retired teachers of same category. Under 2002 Rules, the term "Lecturer" was replaced by term "Senior Resident" for Clinical Departments and the term "Tutor" for Non-Clinical and Para Clinical Departments.

(xi) An advertisement was issued, on 10.3.2004, by the State Government, inviting applications for making of contractual appointments |from amongst the

doctors of Bihar State Health Services Cadre. Pursuant to the advertisement, dated 10.3.2004, writ petitioners, who were members of Bihar State Health Services Cadre, applied for being appointed on contractual basis in the teaching cadre, in medical colleges, although they were on the graded pay-scale in Bihar State Health Services Cadre. However, the process," so initiated by the advertisement, dated 10.3.2004, was abandoned and no appointments were made pursuant to the advertisement, dated 10.3.2004. The writ petitioners claim that the appointments were not made, because the advertisement was in violation of the relevant rules.

(xii) The 1997 Rules underwent yet another amendment, with effect from 22.3.2004, by virtue of 2004 Rules, whereunder Rule 8(ii) of 1997 Rules, which provided for "promotion", was replaced by a new Rule 8(ii) and 2 (two) new clauses were added to Rule 8(ii), the two clauses being Clause (ii-A) of Rule 8 and Clause (ii-B) of Rule 8. Rule 8(ii-B) of 2004 Rules was further divided into three distinct categories covered by Rules 8(ii-B)(a), 8(ii-B)(b) and 8(ii-B)(c).

(xiii) Rule 8(ii-B)(a) read with Rule 8(ii-B)(c) of 1997 Rules, admittedly, continued with the provisions for working arrangement/contract appointment against the posts of Assistant Professor, Associate Professor and Professor either from amongst members of teaching cadre itself or, in the event of their non-availability, from amongst a pool of retired teachers of the same category without any claim for benefit of the higher post.

(xiv) Rule 8(ii-B)(b), however, provided separate and specific mode of appointment to the post of Senior Resident/Tutor from amongst eligible members of Bihar State Health Services Cadre on the basis of seniority-cum-eligibility after following the rules of reservation and "inviting applications".

(xv) Because of the fact that Rule 8(ii-B)(c) of the 2004 Rules stated, "The aforesaid working arrangement/appointment on contract basis shall only continue till the regular appointment is made and on this basis no claim of regular appointment over the higher post or any financial benefit over any post will be admissible", the interpretation of the expression "working arrangement/appointment on contract basis", appearing in Rule 8(ii-B)(c) of 2004 Rules, lies, in the present lis, at the root of the controversy inasmuch as the State contends:

(a) that the expression "working arrangement/appointment on contract basis" covers not only the appointments made pursuant to Rule 8(ii-B)(a), but also under Rule 8(ii-B)(b) of 2004 Rules, the basis for this contention being that notwithstanding the two amendments, which 1997 Rules underwent, by virtue of 2002 Rules and 2004 Rules, Rule 8(i) of 1997 Rules, which had provided for regular mode of recruitment, on the basis of written examination to be conducted by the Commission, remained unamended; and it is for this reason that no regular direct recruitment or direct appointment, since after coming into force of 1997 Rules, could have, in the light of Rule 8(i) of 1997 Rules, been made or were made; whereas the writ petitioners (i.e. respondents in appeals),

on the other hand, contend;

(b) that the expression "working arrangement/appointment on contract basis", appearing in Rule 8(ii-B)(c) of 1997 Rules, refers to Rule 8(ii-B)(a) and not to Rule 8(ii-B)(b), for, according to the writ petitioners (i.e. respondents in the appeals), Rule 8(ii-B)(b) of 1997 Rules provided for an independent mode of recruitment, regular in nature, to the teaching cadre from the members of Bihar State Health Services Cadre on the basis of seniority-cum-eligibility and by inviting applications.

(xvi) Many doctors, including the writ petitioners, who had been working as members of the Bihar State Health Services Cadre, and who had applied pursuant to the advertisement, dated 10.3.2004, aforementioned, were given, on 4.10.2006, offers of contractual appointment as Senior Residents, mentioning therein clearly that benefit of experience, acquired on the basis of contractual appointment, shall not entitle the appointee to receive benefit of experience with further stipulation that the experience, which a contractual appointee might acquire in the post of Senior Residents/Tutors, would not be taken into account. Having accepted the offers of contractual appointment so made, the writ petitioners, amongst others, started working and have been working accordingly, in the teaching cadre, in the medical colleges till date on the basis of extension of their contractual appointment from time to time, the last such extension having been granted in the month of February, 2012.

(xvii) However, having accepted the offers of contractual appointment and having acted thereupon, as mentioned above, some of the appointees made representations claiming that the word "contract", appearing in their letters of appointment, was incorrect and illegal and that they ought to be treated as regular appointees under Rule 8(ii-B)(b) of 1997 Rules inasmuch as they were not granted any contractual amount, but were granted graded pay scale with all allowances and were used as poster boys by the authorities concerned by presenting them before the M.C.I. from time to time as Senior Residents so as to save medical colleges from being derecognized, because the medical colleges were under constant threat of de-recognition due to insufficient number of teachers.

(xviii) The appointees, individually as well as through their association, thus, objected to the use of the word "contract" appearing in their letters of appointment and requested the Government to remove the word "contract" from their letters of appointment, these objections having, however, been raised by the writ petitioners after having accepted the offers of contractual appointments and having started working in teaching cadre on the basis of such accepted contractual appointments.

(xix) In order to avoid duplicity and conflict in various statutory rules framed under Article 309 of the Constitution of India by different departments of the State Government, the State Government constituted, on 30.6.2005, a High-

Level Empowered Committee to look into various aspects of different cadres/ services and make recommendation, through Draft Rules, directly to the Government without routing such recommendations through any other department including the Departments of Finance, Law or Personnel. Though Draft Rules were prepared, the same were never accepted and acted upon by the Government.

(xx) With effect from 13.9.2008, 1997 Rules have been replaced by Senior Resident/Tutor and Medical Education Service Cadre Recruitment, Appointment and Promotion Rules, 2008 (hereinafter referred to as the "2008 Rules". Rule 7 of 2008 Rules provides for direct recruitment to the posts of Assistant Professor on the recommendations of the Commission as per the procedure laid down in Annexure-B to 2008 Rules. Consequently, the posts of Senior Residents/Tutors, in Government medical colleges, have been made tenure posts of four years" duration.

(xxi) Under 2008 Rules, the posts of Senior Residents/Tutors were, first, to be filled up on the basis of 40% posts from amongst the doctors of the Bihar State Health Services Cadre, 40% from the doctors, who have completed P.G. Course, under Residency Scheme (incorporated in 2008 Rules) from the State Medical Colleges and the remaining 20% from doctors, who have obtained P.G. Course (Residency Scheme) from outside the State.

(xxii) 2008 Rules conceptualize making of direct recruitment to the posts of Assistant Professor on the basis of a panel to be prepared by the Commission in accordance with the procedure laid down in Annexure-B of 2008 Rules. The doctors of the Bihar State Health Services Cadre, who have already served as Senior Residents/Tutors, for a period of minimum three years, in teaching cadre, may apply for the post of Assistant Professor, the criterion for selection being on the basis of marks obtained at different levels and also for original publications, etc. For Senior Residents/Tutors too, the criterion for appointment is similarly on the basis of marks obtained in different examinations.

(xxiii) It is, however, provided under Rule 6 criteria (ii) that the previous non-tenure post of Senior Residents/Tutors, held by medical teachers, under the panel system and as per the provisions of 1997 Rules on regular basis, shall be deemed to be vacant after the incumbents are promoted as Assistant Professors and, then, only these posts would stand converted to tenure posts of four years" duration. It is also provided by Rule 7(iii)(c) that in those subjects, where Senior Residents/Tutors, appointed under earlier panel system or as per provision of 1997 Rules, are working, new appointment (under 2008 Rules) to the posts of Assistant Professor shall be made after earmarking that much number of posts for promotion for all such working Senior Residents/Tutors.

(xxiv) As regard Senior Residents/Tutors, who had been appointed under 1997 Rules and working on the given date, Rule 7(iii)(c) of 2008 Rules mandates for earmarking of like number of posts of Assistant Professor for them.

(xxv) The writ petitioners, being aggrieved, approached this Court, with writ petitions, made under Article 226 of the Constitution of India, seeking directions to be issued to the State to consider and promote them, with all consequential benefits, as Assistant Professors against the posts earmarked under Rule 7(iii)(c) of 2008 Rules in terms of the criteria embodied in Rule 6(ii) read with Rule 7(iii)(c) of 2008 Rules. The writ petitions gave rise to C.W.J.C. Nos. 8986 of 2011, 9583 of 2011, 12659 of 2011 and 13590 of 2001.

(xxvi) During pendency of the writ petitions aforementioned, the Commission published advertisement, dated 20.7.2011, for regular appointment to the posts of Assistant Professors without allegedly following the procedure prescribed by Annexure-B of the 2008 Rules or without earmarking posts of Assistant Professor in accordance with Rule 7(iii)(c) of the 2008 Rules. The said advertisement, too, therefore, came to be challenged seeking amendments in the writ petitions by filing interlocutory applications. Interlocutory applications, seeking addition of parties in order to avoid multiplicity of litigation, were also filed in the aforementioned writ petitions.

(xxvii) The amendments, sought for by the writ petitioners, were allowed and the advertisement, dated 20.7.2011, was also made a subject matter of adjudication.

(xxviii) Some intervention applications were also filed and allowed making the interveners party to the proceedings.

(xxix) The learned single Judge, under common judgment and order, dated 8th September, 2011, allowed the writ petitions striking down the provisions for award of 20 marks for interview, being contrary to 2008 Rules, and directing earmarking of the posts of Assistant Professor as required under Rule 7(iii)(c) of 2008 Rules.

(xxx) Feeling aggrieved, the State Government has preferred Letters Patent Appeal Nos. 1844 of 2011, 2011 of 2011, 2028 of 2011 and 248 of 2012, wherein liberty has been given to the State Government, by order, dated 16th February, 2012, to proceed further with the recruitment process pursuant to the advertisement, dated 20.7.2011, subject to the condition that any exercise undertaken would be subject to further orders.

(xxxi) Thereafter, a Division Bench, under order, dated 30th July, 2012, has granted interim stay of the operation and implementation of the judgment and order, dated 8th September, 2011 passed in C.W.J.C. No. 8986 of 2011 and analogous writ petitions, subject to the condition that appointment made, if any, to the post of the Assistant Professors, in teaching cadre, pursuant to the advertisement, dated 20th July, 2011, shall be without prejudice to the rights and contentions raised by the writ petitioners and shall be subject to the result of the appeals. The intervention applications, filed in opposition to appeals, were directed to be considered at the time of hearing of the appeals."

6. We have, accordingly, heard learned Counsel, appearing before us, in the

appeals and the writ petition. We have also heard learned Counsel for the intervenors.

7. SUBMISSIONS MADE ON BEHALF OF THE WRIT PETITIONERS (i.e. RESPONDENTS IN APPEALS):

"(A) The petitioners have been regularly appointed after coming into force of 2004 Rules and after following the rules of reservation. The mere mentioning of the word "contractual", in their appointment letters, has no relevance inasmuch as there is no provision, under 2004 Rules, for making contractual appointment to the post of Senior Residents and, thus, the term "contractual", appearing in their respective letters of appointment, has to be ignored as being de hors 1997 Rules. As the petitioners were already Government servants, working in Bihar State Health Services, at the relevant point of time, there was no question of their being appointed, as Senior Residents/Tutors, on contractual basis and the term "contractual" was intended to merely limit their period of appointment to one year.

(B) Since Rule 8(ii-B)(b) of 1997 Rules, as amended by 2004 Rules, does not make any provision for appointment on contractual basis, the executive authorities could not have acted contrary to the Rules once they had considered the cases of the petitioners on the basis of the eligibility criteria laid down therein.

(C) The State Government had, as a matter of fact, conceded to the situation, as has been contended by the writ petitioners, inasmuch as none of the Senior Residents/Tutors, appointed by the Government, was sent back to Bihar State Health Services Cadre on completion of one year term and they have continued, on the said post, since the dates of their respective appointments till date and, thus, the use of the term "contract" as well as the term "period of one year", appearing in the letters of appointment of the writ petitioners, are nothing, but mischievous apart from being de hors the relevant Rules and does not affect the status of the writ petitioners as regularly appointed Senior Residents/Tutors under 1997 Rules read with amendments thereof by 2004 Rules.

(D) As and when M.C.I., carried out its inspection of Government Medical Colleges, the petitioners were held out to be legally and regularly appointed Senior Residents/Tutors and on this basis, the medical colleges were saved from the threat of de-recognition and the writ petitioners were, therefore, issued smart cards by M.C.I. as Senior Residents. Any attempt by the State to hold otherwise can only lead to the conclusion that the State Government had tried to defraud the M.C.I., while holding out before the M.C.I., that the petitioners were Senior Residents/Tutors in the Medical Colleges.

(E) Although the appointment letters of the writ petitioners state that the benefit of experience shall not accrue to the petitioners, the State Government has ultimately accepted that the petitioners would be entitled to the benefit of experience for the period they have served as Senior Residents.

(F) Notwithstanding the fact that the letter of appointment of the writ petitioners used the term "contractual", the fact remains that the State Government cannot act contrary to the statutory rules and, hence, the appointments of the petitioners ought to be treated as regular appointments having been made under Rule 8(ii-B)(b).

(G) If there is a statute or rules laying down the manner in which power conferred shall be exercised, then, it has to be exercised in that very manner and not in any other way.

(H) Even the Empowered Committee of Secretaries had come to the conclusion that the Senior Residents, like the petitioners, are entitled to the benefit of posts being earmarked for them as Assistant Professors, but due to action of certain vested interests, the same could not be adopted or acted upon. Thus, the equity is in favour of the petitioners and, therefore, the appointments of the petitioners, as Senior Residents, have to be treated as regular appointments under Rule 8(ii-B)(b) of 1997 Rules and the petitioners would be automatically entitled to the benefit of Rule 7(iii)(c) of 2008 Rules.

(I) The impugned advertisement, dated 20.7.2011, issued by the Commission, is bad in law inasmuch as the advertisement does not earmark 231 posts of Senior Residents/Tutors, while applications were invited to fill up all the 394 vacant posts of Assistant Professors and, hence, the impugned advertisement has been rightly quashed.

(J) The impugned advertisement is also bad, because it provides for 20 per cent marks for interview, whereas no such provision is found in Annexure-B to 2008 Rules, which clearly provides for appointment on the basis of marks allotted as per the criteria laid down therein without there being any whisper about marks for interview. The provision for interview has been introduced on account of certain vested interest to favour certain candidates."

8. SUBMISSIONS MADE ON BEHALF OF THE APPELLANTS, IN THE APPEALS, WHO ARE RESPONDENTS IN THE WRIT PETITION:

"(a) The appointments of the writ petitioners were clearly contractual appointments for a maximum period of one year and it was mentioned clearly, in the letters of appointments, that the contractual appointments would not entitle the appointees to the benefit of experience with further stipulation that the experience, which contractual appointees might acquire in the post of Senior Residents/Tutors, would not be taken into account. This apart, the petitioners, having accepted and acted upon the offers of contractual appointments, so made, cannot turn around and challenge the same at this belated stage. The contractual appointments of the writ petitioners were inherently temporary in nature meant for a transitory period of one year, which has been extended from time to time for reasons of necessity as had been clearly stated in the letters of appointment themselves. This extension of contractual appointments would not change the nature or character of the contractual appointments and would not

convert the contractual appointments into appointments of permanent nature.

(b) While Rule 8(i) of 1997 Rules, which related to direct recruitment by following the process of competitive examination to be conducted by the Commission, never underwent any change, the changes, which had been made in 1997 Rules, by virtue of amendments carried out under 2002 Rules, were in respect of working arrangement/contractual appointment or temporary arrangement.

(c) Considered thus, the primary rule of direct recruitment, envisaged by Rule 8(i) of 1997 Rules, was never amended and whatever amendments had been made to Rule 8 of the 1997 Rules by 2002 Rules or by 2004 Rules, the same were for the purpose of making transitory appointments until the time regular recruitment took place.

(d) Many persons, placed in the position as the writ petitioners were placed, had, indeed, appeared in the competitive examination pursuant to the advertisement, dated 10.3.2004, and were directly recruited by taking resort to Rule 8(i) of 1997 Rules; whereas the writ petitioners did not participate in the competitive examination conducted by the Commission and, thus, their merit has never been tested for the purpose of determining if they are suitable or capable to work, in teaching cadre, in the medical colleges.

(e) The writ petitioners have, thus, adopted circuitous way to enter, as permanent appointees, in the teaching cadre, which ought not to have been permitted by the learned single Judge inasmuch as allowing the writ petitioners to be treated as permanent appointees would divest the State of its duty to determine the merit and capability of the writ petitioners so as to ascertain as to whether they are fit to be retained in the teaching cadre or not.

(f) The appointments of the writ petitioners, on contractual basis, were in the form of working arrangement until the time regular appointments were made, but keeping in view the fact that the writ petitioners had worked, in the teaching cadre, provisions have been made in 2008 Rules to give them relaxation in age and also experience, but the writ petitioners were scared to face any test of their merit and have, therefore, claimed their contractual appointments to be treated as permanent recruitment, which, though contrary to the relevant recruitment rules, has been accepted by the learned single Judge as a correct proposition.

(g) The benefit of Rule 7(c) of 2008 Rules has no application to the writ petitioners as the benefit, envisioned by Rule 7(iii)(c) of 2008 Rules, is meant for those, who had been regularly appointed under 1997 Rules, i.e. under Rule 8(i), and the writ petitioners, having not been so appointed, cannot be considered for the post of Assistant Professors and, thus, the advertisement, issued for 394 posts, without earmarking the posts for Senior Residents, like the writ petitioners, does not suffer from any illegality and ought not to have been interfered with by the learned single Judge.

(h) In the year 2009, regular appointments of Senior Residents were held and as

many as 3 (three) of the writ petitioners, having been selected for the posts of Senior Residents, stand appointed on the tenure post and have accordingly joined the same.

(i) Though the State has given the benefit of experience to the writ petitioners as Senior Residents/Tutors and has also relaxed the age of recruitment for them, the writ petitioners do not want, under any circumstances, to allow their merit to be tested and to face any competitive examination; rather, they want to be straightaway appointed as Assistant Professors, which would be unfair, devastating and contrary to the public interest inasmuch as State cannot allow such contractual appointees to be promoted and work as Assistant Professors without determining their merit to occupy the post of Assistant Professors.

(j) In the light of the provisions of 2008 Rules, allotting 20 per cent marks for interview is not wholly impermissible and beyond the powers of the State.

(k) Repelling the submissions made on behalf of the State, Mr. Vinod Kanth, learned Senior Counsel, appearing on behalf of the writ petitioners, who are respondents in the appeals, has submitted that the writ petitioners, having obtained the requisite qualification many years ago, cannot be compelled to compete with the doctors, who have obtained requisite qualification in the recent past. Such a competitive examination, according to Mr. Vinod Kanth, learned Senior Counsel, would be wholly unreasonable, arbitrary and unfair and, hence, may not be permitted by this Court."

DISCUSSION ON MERIT OF THE SUBMISSIONS:

9. Before entering into the merit of the various submissions, made on behalf of the parties, it is, to our mind, necessary to bear in mind that though the employment of a Government employee and the employment of a person in a private sector is, originally, contractual in nature, what distinguishes a Government employee from others is that a Government employee acquires, on his appointment to a Government office, a status. As a result of this status, which he acquires, his service conditions are determined on the basis of the relevant provisions of the Constitution and the statute. In consequence thereof, a Government servant's rights and obligations can be determined by the statutory or the constitutional authority concerned and, for such exercise of powers, the authority concerned does not, unlike the case of a private employee, require consent from the Government employee concerned.

10. In other words, Government can alter terms and conditions of its employees unilaterally, though, in practice, such alteration may face protest from the employees concerned. This does not, however, mean, we must hasten to add, that the consent of the Government employee is a condition precedent for changing the terms and conditions of his service by the statutory or constitutional authority. A reference may be made to *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, wherein the Supreme Court has held thus:

"It is well settled that though employment under the Government like that under any other master may have a contractual origin, the Government servant acquires a "status" on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or constitutional authority which, for its exercise, requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally and through in modern times consensus in matters relating to public services is often attempted to be achieved consent is not a pre-condition of the validity of rules of service, the contractual origin of the service notwithstanding."

(Emphasis is supplied)

11. What follows from the above is that the service conditions of a Government employee can be changed by making changes in the relevant statutes or rules by the statutory or constitutional authority concerned. This power to alter conditions of service, undoubtedly, includes the power to alter the conditions of service with retrospective effect. Such a broadly stated position of law governing the status of a Government employee is, however, subject to the condition that the benefits acquired with regard to the conditions of service, by virtue of the relevant existing statutory or constitutional provisions, cannot, with retrospective effect, be taken away, abridged or withdrawn by amending the statute concerned and/or the Constitution nor can such amendments be allowed if such amendment is arbitrary, discriminatory, unreasonable or violative of Articles 14 and 16 of the Constitution of India inasmuch as by acquiring such benefit, the employee is vested with a right and such a right cannot be taken away by a mere change in the statute or the rules with retrospective effect. While considering this aspect of the matter, the observations of the Supreme Court in *Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others*, may be referred to, and borne in mind, which run as follows :

"12. In *T.R. Kapur v. State of Haryana* three petitioner T.R. Kapur, Mahinder Singh and V.D. Grover, who were Diploma holders, were working as Sub-Divisional Officers on regular basis under the unamended Rule 6(b) of the Punjab Service of Engineers Class-I, Public Works Department (Irrigation Branch) Rules, 1964. They were eligible for promotion as Executive Engineer in Class-I service despite the fact that they did not possess a degree in Engineering. By the notification, dated 22.6.1984, Rule 6(b) was amended and it was provided that a degree in Engineering was an essential qualification for promotion as Assistant Engineers (Irrigation Branch) to Class-I service and thereby the petitioners were rendered ineligible for promotion to the post of Executive Engineer in Class-I service. The amendment was challenged in this Court by way of a petition under Article 32 of the Constitution of India. This Court came to the conclusion that the retrospective effect given to the amendment was violative of Articles 14 and 16 of the Constitution of India on the following reasoning: (SCC p. 595, Para 16).

"It is well settled that the power to frame Rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the

power to amend or altered the Rules with a retrospective effect: B.S. Vadera v. Union of India, Raj Kumar v. Union of India, K. Nagaraj v. State of A.P. and State of J&K v. Triloki Nath Khosa. It is equally well settled that any Rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualification for promotion, is also competent to change the qualifications. The Rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This Rule is however subject to a well recognised principle that the benefit acquired under the existing Rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a Rule under the proviso to Article 309 which affects or impairs vested rights".

13. Finally this Court considered the effect of retrospective legislation on the vested rights of the affected person in P.O. Agarwal v. State of U.P. under the U.P. Service of Engineer (Buildings and Roads Branch) Class-II Rules, 1936, the Assistant Engineers substantively appointed against temporary vacancies became members of the service and were entitled to seniority on the basis of continuous length of service. The Rules were amended in the years 1969 and 1971 wherein it was provided that the Assistant Engineers would only become members when they are selected and appointed against the quota meant for them and their seniority would be determined only for the date of order of appointment in substantive vacancies. These amendments were made with retrospective effect thereby taking away the vested rights of the Assistant Engineers appointed against temporary posts. The High Court held that the retrospective amendment of the Rules to be arbitrary and unconstitutional. This Court held the judgment of the High Court on the following reasoning: (SCC p. 637, Para 16; p. 638, Para-18; p. 639, Para-18)

"It has been urged that Government has the power to amend Rules retrospectively and such Rules are quite valid. Several decisions have been cited of this Court at the bar. Undoubtedly, the Government has got the power under proviso to Article 309 of the Constitution to make Rules and amend the Rules giving retrospective effect. Nevertheless, such retrospective amendments cannot take away the vested rights and the amendments must be reasonable, not arbitrary or discriminatory violating Articles 14 and 16 of the Constitution."

12. From a close reading of the law laid down in Tushar Ranjan Mohanty (supra), it becomes evident that the power to frame rules to regulate conditions of service under the provisions of Article 309 carries with it the power to amend or alter the rule with retrospective effect. This rule is, however, subject to well recognized principle that the benefit acquired, under the existing rule, or a right, vested in a Government employee under the existing rules, cannot be taken away by amending the rules with retrospective effect, for, there is no power under the proviso to Article 309 enabling the Government to make rule in a manner so as to take away or impair an accrued or vested right.

13. In order to convert a contract of appointment between the State, on the one hand, and the employee concerned, on the other, into a valid recruitment under a given set of rules and confer on the employee the status of a Government servant, it is imperative that there be a valid contract. When validly appointed, such an appointment, though contractual in nature, at its beginning, would become an appointment under the relevant recruitment rules, if any, and the terms and conditions of the employment will, thereafter, be governed by the relevant rules of recruitment, the conditions of service being, however, changeable unilaterally by the State without the consent of its employee subject to the condition that the vested rights cannot be taken away provided that the appointment is in terms of the relevant recruitment rules and in consonance with the policy of public employment as guaranteed by Article 14 and Article 16 of the Constitution of India, which warrants that no person be appointed against vacant sanctioned posts by any Government without having followed a reasonable selection process, which is transparent, fair, reasonable and just, affording every eligible person an opportunity to participate in the selection process. The reference may be made, in this regard to *Roshan Lal Tandon Vs. Union of India (UOI)*, wherein Ramaswami, J., speaking for the Court, observed as under:

"6.....It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and a servant. The legal relationship is something entirely different something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest-In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:

"So we may find both contractual and status obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligation defined by the law itself and so pertaining to the

sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status." (Salmond and Williams on Contracts, 2nd edition, p. 12)

7. We are therefore of the opinion that the petitioner has no vested contractual right in regard to the terms of his service and that Counsel for the petitioner has been unable to make good his submission on this aspect of the case." (Emphasis is supplied)

14. What is, however, necessary to bear in mind is that a contractual appointment would not automatically convert into a contract of employment under a given set of rules unless the appointment, though contractual, is in accordance with the provisions of the relevant recruitment rules and, in the absence of any recruitment rules, recruitment/appointment shall be made in terms of public policy which obviously will mean that the policy is adopted in the interest of the public and not in the interest of any individual employee, so that every eligible willing person can participate in the selection process.

15. In the case of Satish Chandra Anand Vs. The Union of India (UOI), , the petitioner, in 1945, was employed by the Government of India on a five-year contract. This contract, of service was deemed to have expired in 1950. However, shortly before expiration of the contract of service, the Government of India made, to the petitioner, a new offer inviting him to continue in service on the expiry of his contract on the terms specified in the letter, dated 30.6.1950; one of the conditions, which became the subject of controversy read, "other conditions of service: On the termination of your contract you will be allowed to continue in your post temporarily for the period of the Resettlement and Employment Organization and will be governed by the Central Civil Services (Temporary Service) Rules, 1949 unless you are a permanent Government servant". Responding to the letter, dated 30.6.1950, aforementioned, the petitioner intimated his willingness to continue in service on the terms, which had been offered by letter, dated 30.6.1950, and having accepted the offer, the petitioner continued in service. It was argued, before the Constitution Bench in Satish Chandra Anand (supra), that the petitioner's contractual appointment shall be treated as a temporary service and shall, therefore, be held to be governed by temporary service rules and the petitioner's service could have been validly terminated by giving a month's notice and it was this termination

which had been challenged by the petitioner.

16. In *Satish Chandra Anand* (supra), the Court pointed out (as relevant for our purpose) that there was no compulsion on the part of the petitioner to enter into the contract, which the petitioner eventually entered into, inasmuch as he was free under law, as any other person, to accept or reject the offer, which was made to him by the Government of India, but having accepted, he can enforce his right only under his contract of employment and the petitioner has to be treated like any other person to whom an offer of temporary employment under a contract is made inasmuch as the State can enter into a temporary employment and against special terms in each case so long as the employment is not inconsistent with the Constitution and those, who accept contractual employment, are bound by the terms and conditions, which they have entered into, and same would be the position of the State inasmuch as the State would also be bound by the terms of the contract of employment, which the State has entered into.

17. The relevant observations, appearing, in this regard, in *Satish Chandra Anand* (supra), at paragraphs 10 and 11, read as under:

"10. There was no compulsion on the petitioner to enter into the contract he did. He was as free under the law as any other person to accept or to reject the offer which was made to him. Having accepted, he still has open to him all the rights and remedies available to other persons similarly situated to enforce any rights under his contract which have been denied to him, assuming there are any, and to pursue in the ordinary Courts of the land such remedies for a breach as are open to him to exactly the same extent as other persons similarly situated. He has not been discriminated against and he has not been denied the protection of any laws which others similarly situated could claim. The remedy of a writ is misconceived.

11. Article 16(1) is equally inapplicable. The whole matter rests in contract. When the petitioner's first contract (the five year one) came to an end, he was not a permanent Government servant and Government was not bound either to re-employ him or to continue him in service. On the other hand, it was open to Government to make him the offer it did of a continuation of his employment on a temporary and contractual basis. Though the employment was continued, it was in point of fact, and in the eyes of the law, under a new and fresh contract which was quite separate and distinct from the old even though many of its terms were the same. Article 16(1) deals with equality of opportunity in all matters relating to employment or appointment to any office under the State. The petitioner has not been denied any opportunity of employment or of appointment. He has been treated just like any other person to whom an offer of temporary employment under these conditions was made. His grievance, when analysed, is not one of personal differentiation but is against an offer of temporary employment on special terms as opposed to permanent employment. But of course the State can enter into contracts of temporary employment and

impose special terms in each case, provided they are not inconsistent with the Constitution, and those who chose to accept those terms and enter into the contract are bound by them, even as the State is bound. When the employment is permanent there are certain statutory guarantees, but in the absence of any such limitations, Government is, subject to the qualification mentioned above, as free to make special contracts of service with temporary employees, engage in works of a temporary nature, as any other employer."

(Emphasis is added)

18. It is with some degree of concern that we point out and emphasis that every action of the Government, under our scheme of Constitutional governance, has to be in public interest. Even when an act is done by the Government by taking into account the welfare of an employee, such an act, in order to survive, must be in public interest, for, it is in the interest of the public and the society that the Government acts, while dealing with its employees, as a model employer, and takes welfare of its employees into account, while taking an action or while omitting to take an action.

19. Thus, when an employee's transfer is modified by the Government, because of some personal difficulty of the employee, such an action, on the part of the Government, has to be in public interest, because the relationship of employer and employee between the Government and its employee is not a private affair, but an affair, wherein interest of the public is involved and it is here that there is a paradigm shift, in the vision of the State, between what its (State's) vision used to be, when we were ruled, as subject of the British empire, and the vision of the State after the Constitution adopted by us, "We, the people of India", has started governing all of us. The paradigm shift is clearly visible in the decision of the Constitution Bench, in *Roshan Lal Tandon* (supra), wherein the Court, as already indicated above, observed, "the duties and status are fixed by the law and in the enforcement of these duties, society has an interest".

20. From the above observations, made in *Roshan Lal Tandon* (supra), what becomes transparent is that the duties of a Government servant are fixed by law and in the enforcement of these duties, society has an interest. The discharge of his duties by a Government servant is really a discharge of his obligation towards the society. Similarly, the powers of a Government employee given by law is held by the Government servant as a trustee of such powers and he, therefore, has the responsibility of discharging such powers, as a trustee, in public interest and not otherwise.

21. The interest of the Government or of the State is not, and cannot be, different from public interest. As a corollary to what has been mentioned above, it follows that there cannot be a conflict of interest between public interest and the interest of the State.

22. When a power is given to the State under the Constitution, the State becomes repository of the power given to it by the people of India and, as a

trustee of such powers, the State has to exercise its powers, where the exercise of such powers is called for; otherwise, public interest would be defeated and the rule of law would be a casualty.

23. The right of the Government to proceed against an erring employee casts, in reality, an obligation, on the Government, to ensure that it, ordinarily, takes action against its erring employee. The Government cannot, therefore, arbitrarily exercise its power either to punish an employee or to "condone" the misconduct of the employee. Every action of the Government has to be tested on the anvil of its Constitutional obligations and if its action fails to satisfy such a test, the action cannot be sustained.

24. While considering the statement of law made by the Constitution Bench, in Roshan Lal Tandon (*supra*), that the duties of status of a Government servant are fixed by law and, "in the enforcement of these duties, society has an interest", it needs to be also noted that though a decision cannot be read as a statute, the fact of the matter remains that we cannot ignore, and must be aware of, the fact that though the system of governance, as was envisaged for this country under the Government of India Act, 1935, has, to some extent, continued, the vision, the focus of attention and the spirit of governance has prominently changed and materially shifted from being merely a part of the administered area of the British Empire to a democratic republic. The Government of India Act, 1935, obliged the elected representatives and also its executives to be faithful and bear the allegiance to His Majesty.

25. No wonder, therefore, that the oath of office-be he a legislature or executive-was to be faithful and bear true allegiance to His Majesty. In fact, the oath prescribed read:

"I.A.B., having been elected (or nominated or appointed) a member of this Council (or assembly), do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King, Emperor to India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

26. Thus, under the Government of India Act, 1935, it was the faithfulness and allegiance to His Majesty, which was material. The people of India did not occupy any place, far less eminent space, in the vision of governance. The vision was to remain faithful, and hold allegiance, to His Majesty. However, the people of India occupy, now, the central stage in the scheme of governance under the Constitution of India. Every action, therefore, of the legislature, the executive and the judiciary has to be in the interest of the people of India. [See *State of Tripura and Others Vs. Sanatan Talukdar and Others*, .

27. In the light of the observations made above, equally important it is that a person, appointed by the State, must not be such as would infringe or deny to the citizens their constitutional or any other rights. Article 21 of the Constitution of India guarantees "right to life" not only to citizens, but to non-citizens as well.

28. Undoubtedly, Article 21 of the Constitution of India guarantees "right to life", which is an inviolable right. Nothing can, therefore, be done by the State, which exposes a person, in India, to the threat of being deprived of his right to life and personal liberty. A mere animal existence is not "life" within the meaning of Article 21 of the Constitution of India. Life would, therefore, mean a healthy life. As a corollary, the State must use its power in such a manner as would ensure that the step, which it (the State) takes, does not infringe the guarantee of public health and public safety to citizens and non-citizens in India.

29. An appointment, therefore, made by State must not be construed or interpreted in such a manner as would defeat the indomitable right, which Article 21 of the Constitution of India guarantees.

30. Consequently, the terms and conditions of employment of a Government servant cannot be read and interpreted as a contract of employment between two private individuals. Far from this, an employment, contractual or otherwise, has to be interpreted from the standpoint of the Constitution. The constitutional guarantee of public health and public safety, assured to all citizens and non-citizens in India, cannot, therefore, be defeated by interpreting terms and conditions of employment of a Government servant, such as, a doctor. Logically extended, it would mean that the contract of employment, even of an opportunity, has to be interpreted in a manner, which would mean right to life, guaranteed by Article 21 of the Constitution of India, meaningful and would not render such an indefeasible right, redundant or otiose.

31. Bearing in mind the above aspects governing public employment, more particularly, employment of doctors, let us, first, turn to 1997 Rules.

32. As has already been pointed out above, no separate teaching cadre had existed in Bihar State Health Services, prior to the year 1997, for the purpose of imparting education in medical colleges. Consequently, from amongst the doctors of Bihar State Health Services, teaching posts, in Medical Colleges, in the State of Bihar, used to be filled up on the basis of seniority-cum-eligibility from year-wise merit list. While the posts of Resident Doctors and Registrars were treated as Junior Teaching Posts, the posts of Assistant Professor, Associate Professor and Professor were treated as Senior Teaching Posts.

33. It was precisely on 24.5.1997 that 1997 Rules was introduced constituting, thereunder, a separate teaching cadre. Rule 8(i) and Rule 8(ii) of 1997 Rules, being of great importance, are reproduced below:

"8. Appointment and promotion.-

(i)(a) Entry :- First entry in the Medication Education Cadre shall be only as Lecturer on the basis of written examination through Bihar Junior Medical Education Examination, in accordance with availability of vacancies. This competitive examination shall be conducted by Bihar Public Service Commission. If Commission desired, it may take the services of Examination Controller, Health

Services;

(b) Eligibility for Examination--For being eligible to participate in the Bihar Junior Medical Education Examination, candidate must have post graduate qualification in the specified subject;

(c) In super specialty, recognition to the D.M./MCH qualification shall be granted in light of mandatory recommendations of MCI;

(d) To participate in the Competitive Examination for entry in the Bihar Medical Education Cadre, the age of candidate shall be equivalent to the age for entry in the Government service and the maximum and minimum age fixed by the Government from time to time shall be applicable in this also;

(e) To participate in the Bihar Junior Medical Education Competitive Examination, the doctor must be registered with the Bihar State Doctors Registration Council under the Bihar Medical Registration Regulation.

(ii) Promotion :

(a) Promotion from Lecturer to Assistant Professor, shall be given on the basis of seniority between the Lecturers, Educational Qualification, standard research work in the concerned subject published in the accredited journals by National Organization or International Journal. Four years minimum Teaching Experience as Lecturer shall be essential for this post;

(b) Promotion from Assistant Professor to Associate Professor shall be on the basis of seniority of the Assistant Professors posted in the concerned subject, teaching experience and research works etc. provided they hold the qualification prescribed by the Medical Council of India. For promotion to these posts, 5 years teaching experience as Assistant Professor shall be essential.

(c) In case of non-availability of candidates with requisite teaching experience, relaxation in KALAWADHI (qualifying service) may be granted;

(d) On all posts of Professor, appointment shall be made through selection on the basis of All India Advertisement issued under the rules of the Medical Council of India. For this post, apart from the minimum education qualification for other posts, 5 years teaching experience as Associate Professor is essential;

(e) Deputy Director-Posting on this post shall be made by the Government by selection from amongst Professors;

(f) Principal:-Appointment to these posts, shall be made by selection from between the Professors on the basis of seniority/eligibility, work efficiency etc. in accordance with the mandatory regulation of Medical Council of India;

(g) Joint Director/Additional Director/Director:-These posts shall be filled by selection from between the principals on the basis of seniority, eligibility and work efficiency etc."

34. A careful reading of Rule 8(i) of 1997 Rules shows that Rule 8(i) provided for direct recruitment to the posts of Lecturer, which was the post at the entry level in the teaching cadre, and Rule 8(ii), on the other hand, made provisions for promotion to the post of Assistant Professor from the post of Lecturer, which was the post at the entry level in the teaching cadre.

35. In order to enable a person participate, in Bihar Junior Medical Education Examination, for the post of Lecturer, as a direct recruit, the candidate was required to have post-graduate qualification in the specified subject and selection was to be made on the basis of competitive examination to be conducted by the Commission, the basis of competitive examination being a written examination in accordance with the availability of vacancies.

36. it is extremely important to note that there was, admittedly, no other regular mode of recruitment to the post of Lecturer, in the teaching cadre, which was, as already mentioned above, the post at the entry level.

37. As mentioned above, though the sole distinct mode of recruitment to the entry level post of Lecturer, in the teaching cadre, was competitive examination, Rule 5(C) of 1997 Rules provided, although not regular in nature, an opportunity of receiving appointment of permanent nature, in the teaching cadre, to those doctors, who had been working against teaching posts in the teaching cadre if they so wished.

38. In other words, coupled with the direct mode of recruitment, as envisaged by Rule 8(i) of 1997 Rules, those doctors, who had been working against teaching posts, on 24.5.1997 (i.e., the date on which 1997 Rules had come into force), were, under Rule 5(C) of 1997 Rules, given the benefit of opting for teaching cadre if they so wished.

39. Thus, apart from direct recruitment to the entry level post of Lecturer, yet another mode of recruitment to the teaching cadre, in medical colleges, at the initial stage, was carved out of the doctors from Bihar State Health Services Cadre.

40. Many of the doctors, in Bihar State Health Services Cadre, opted, under Rule 5(C) of 1997 Rules, for being appointed to the teaching posts in the teaching cadre. On the basis of the option so obtained, the doctors, who had opted, were treated as having become members of the teaching cadre. However, many of the doctors of Bihar State Health Services, although had held teaching posts in the past, but stood reverted to the non-teaching posts in Bihar State Health Services Cadre before 24.5.1997 (when 1997 Rules came into force), were not provided with opportunity to opt for teaching cadre in Bihar Medical Education Services.

41. Admittedly, thus, 1997 Rules provided for 2 (two) specific modes of entry into the teaching cadre, one being competitive examination as provided by Rule 8(i) and the other as envisaged by Rule 5(C) by exercise of "option" as indicated hereinbefore. While, however, the regular mode of recruitment into the teaching

cadre was, as indicated above, on the basis of competitive examination, the other mode of entry into the teaching cadre, as one-time measure, was made in favour of those, who had been members of the teaching cadre, at the time of coming into force of 1997 Rules.

42. Pursuant to Rule 8(i) of 1997 Rules, direct recruitment were made only once in 2002 and, thereafter, till 2008, no direct recruitment was made to the post of Lecturer/Senior Resident. Provisions for "promotion" of doctors" appointment as Lecturers/Senior Residents, under the 1997 Rules, had been made in Rule 8(ii) of 1997 Rules.

43. So far Rule 8(ii) was concerned, it provided for promotion from the posts of Lecturer to the posts of Assistant Professor and other promotional posts thereafter.

44. 1997 Rules also envisaged a scheme known as residency scheme, whereunder it was envisaged that all tenure posts, including the post of Resident Medical Officer and Registrar, which had been continued since before coming into force of 1997 Rules, shall be converted to the post of Lecturer. Rule 9 of 1997 Rules, therefore, provided that 3 (three) years" postgraduate course shall be implemented as residency course.

45. The aim of 1997 Rules was, undoubtedly, clear that the State, as envisioned by 1997 Rules, wanted to do away with the appointment of Lecturers, in the medical colleges and hospitals, by engrafting them from members of Bihar State Health Service Cadre. No wonder, therefore, that post-graduate degree became requisite qualification for entry level post of Lecturer in the teaching cadre.

46. In order to obtain, as a temporary measure, services of those doctors, who had been members of Bihar State Health Services Cadre, but were teaching in medical colleges and hospitals and had been functioning as members of the teaching cadre, a new clause, namely, clause (iii) was added to Rule 8 by 2002 Rules. Consequently, Rule 8(iii), as the same had existed in 1997 Rules, was renumbered as Rule 8(iv).

47. Since Rule 8(iii), introduced by 2002 Rules, is relevant for our purpose, Rule 8(iii) is quoted below:

"8(iii) Appointment on working arrangement/contract basis: Due to delay in selection process for appointment on vacant posts or otherwise in situation of posts being vacant and warning for de-recognition of Medical Colleges, in the interest of work, different posts can be filled up, as a one time working arrangement, from the medical teachers on the basis of their cadre seniority-cum-eligibility, in their own pay-scale, on the recommendations of the Departmental Promotion Committee constituted under the provisions of the Personnel and Administrative Department Resolution No. 2653, dated 28.2.1989. In any category, in case of non-availability of suitable candidates for appointment against vacancies under the working arrangement, retired medical teachers of

the same category shall be appointed on contract basis in accordance with the Appointment Department Resolution No. 27(17) dated 9.1.2002:

Provided that such working arrangement or contract appointment, shall be applicable only till regular appointment:

Provided further that no claim for benefit of any post or regularization on the higher post, on the basis of such working arrangement, shall be admissible."

48. From a combined reading of Rule 8(i) and Rule 8(iii), which was introduced by 2002 Rules, it becomes clear that apart from the provisions of recruitment, embodied in Rule 8(i), which was the sole mode of direct recruitment into teaching cadre, in medical colleges, on the basis of competitive examination, Rule 8(iii) conceived a transitory scheme for appointment not only to the posts, at the entry level {i.e. the posts of Lecturer) but also to the posts higher thereto by introducing the concept of working arrangement/appointment on contract basis. This working arrangement or appointment on contract basis was introduced, because of the fact that a large number of posts, in medical colleges, were lying vacant and medical colleges were facing the threat of de-recognition by M.C.I.

49. What, however, needs to be kept in view is that the working arrangement or appointment on contractual basis was conceived as one time measure. The working arrangement postulated that medical teachers {i.e. the persons who, as members of the teaching cadre, had been teaching in medical colleges) shall be engrafted into the posts of Lecturer and also to the posts higher thereto on the basis of their cadre seniority-cum-eligibility in their own pay-scale; but this appointment, on the basis of working arrangement, could not have been made except "on the recommendation of the Departmental Promotion Committee".

50. It is, thus, extremely important to note that even as a "one-time measure, working arrangement did make provisions for testing the merit of a candidate as a teacher, in medical colleges, by prescribing that no appointment, on the basis of working arrangement, could have been made except on the "recommendation of the Departmental Promotion Committee".

51. After taking resort to filling-up of posts, in medical colleges by way of working arrangement if any post, in any category-be it Lecturer or otherwise-were left vacant, such posts were to be filled-up under Rule 8(iii) by retired medical teachers of the same category on contract basis in the sense that a retired Lecturer would be appointed, on contractual basis, to the post of Lecturer and, similarly, an Assistant Professor was to be appointed, on contractual basis, to the post of Assistant Professor and so was the case with the retired Professor inasmuch as a retired Professor could be appointed, on contractual basis, to a vacant post of Professor if the post could not be filled up by the prescribed mode of working arrangement.

52. Moreover, the first proviso to Rule 8(iii) made it clear that the working

arrangement or contract appointment shall be resorted to, and be applicable, until regular appointment was made. The second proviso to Rule 8(iii) made it further clear that no claim for benefit of any post or regularization on the higher post can be demanded on the basis of such working arrangement as perceived by Rule 8(iii).

53. Thus, as already indicated above, the concept of working arrangement or appointment on contract basis under Rule 8(iii) was inherently temporary in nature. The working arrangement was made for those doctors, who had already been teaching, at the relevant point of time, in medical colleges, but everyone of them could not have been appointed to the post they had been holding; rather, such an appointment, though temporary, was to be made on the basis of the recommendations of the Departmental Promotion Committee and as far as the contractual appointments were concerned, the contractual appointment were made to be given to retired teachers with clear stipulation that neither the appointments, on the basis of working arrangement, nor the appointments, on the basis of contract, would entitle a person to demand regular appointment or claim any benefit of the post.

54. Rule 8(iii), introduced by 2002 Rules, further made it clear that the appointments, on the basis of working arrangement, as well as appointments, on the basis of contract, were inherently temporary in nature inasmuch as such appointments were to be continued until regular recruitment were made. This apart, under 2002 Rules, the post of Lecturer was redesignated as "Senior Resident" for clinical departments and as "Tutor" for non-clinical and para-clinical departments.

55. A bare reading of Rule 8(iii), as it came to be introduced by 2002 Rules, exhibits State's anxiety to save medical colleges from being de-recognized. The threat of de-recognition did not mean that the State could have dispensed with quality of teaching in medical colleges. In order to, therefore, strengthen the teaching cadre, Rule 8(iii) conceived and provided for appointment on working arrangement or on contract basis, the scheme of working arrangement aimed at filling up of vacant posts, as a one-time measure, from medical teachers (i.e. the doctors, who had been teaching in medical colleges) "on the basis of the recommendations to be made by the Departmental Promotion Committee" and, in case, no suitable candidate was found for a given vacancy to be filled up by the working arrangement, which clause (iii) of Rule 8 envisaged, provisions were made for appointment of retired medical teachers to fill up that category of post, which he was holding at the time of his retirement, making it, however, absolutely clear that the working arrangement/appointment on contract basis would remain intact until regular appointments were made and no claim or benefit of any posts or regularization on the higher posts, on the basis of such working arrangement, shall be admissible.

56. Two important features of Rule 8(iii), as amended by 2002 Rules, may now be noticed. Though introduced as a one-time working arrangement, on the basis

of seniority-cum-eligibility, the appointment under the working arrangement was to be made from a serving doctor of a medical college on "recommendation" of Departmental Promotion Committee.

57. There was, thus, a "test" to be applied for making appointment even on the basis of working arrangement, which was otherwise also, inherently temporary in nature until regular appointment by resorting to competitive examination was made in terms of the provisions embodied in Rule 8(i). Viewed from this angle, it becomes clear that even under the scheme of working arrangement, which 2002 Rules had introduced, every doctor, whether or not he was capable to impart education in medical college, could not have been appointed, for, such appointees needed recommendation of the Departmental Promotion Committee.

58. So far as the contractual appointments were concerned, the contractual appointments, in terms of 2004 Rules, were to be from already retired medical teachers of the given category.

59. It is, therefore, clear that since contractual appointments could have been made only in favour of retired medical teachers, their ability to teach in the category, which they retired from, had already been "tested".

60. The 1997 Rules underwent yet another amendment, with effect from 22.3.2004, by virtue of 2004 Rules, whereunder Rule 8(i)(d), as introduced by 2004 Rules (with effect from 22.4.2004), provided for relaxation of 5 years of age, in favour of those doctors, who had been working in Bihar State Health Services Cadre, so that they can also, if they so wished, enter into the teaching cadre at the level of Lecturer. As regards promotion thereafter, 2004 Rules made it clear that from the posts of Senior Residents/Tutors (which stood converted into, and redesignated as, Lecturer), would be governed by such educational qualification, eligibility and teaching experience as may be prescribed by the M.C.I.; whereas the prescribed age of entry into teaching cadre, in respect of others, remained equal to the age for entry into Government Service.

61. Thus, under Rule 8(i) of 2004 Rules (which came into force on 22.4.2004), which had (with effect from 22.4.2004), made provisions for direct recruitment to the entry level post of Lecturer (which was later on, re-designated as "Senior Resident" for clinical departments and "Tutor" for non-clinical and para-clinical departments), was relaxed in favour of those doctors, who belonged to Bihar State Health Services Cadre and wanted to participate in the competitive examination for the purpose of being able to receive regular employment, as a direct recruit, to the post of Lecturer, inasmuch as Rule 8(i)(d) (as introduced by 2004 Rules with effect from 22.4.2004), provided for relaxation of 5 years of age, in favour of those doctors, who had been working in Bihar State Health Services Cadre, so that they could also, if they so wished, enter into the teaching cadre at the level of Lecturer.

62. Rule 8(i), thus, remained intact except relaxation of prescribed age of entry, as mentioned hereinbefore, in favour of serving members of Bihar State Health

Services Cadre. This apart, amendments to Clause (ii) of Rule 8 of 1997 Rules were made by virtue of 2004 Rules as regard promotions from the post of Lecturer to the post of Assistant Professor and onward. The primary mode of direct recruitment, however, remained, under Rule 8(i) unchanged.

63. By virtue of Rule 8(H) of 1997 Rules, which provided for "promotion", was replaced by a new Rule 8(ii) and 2 (two) new clauses were added to Rule 8(ii), the two clauses being Clause (ii-A) of Rule 8 and Clause (ii-B) of Rule 8. Rule 8(ii-B) of 2004 Rules was further divided into three distinct categories covered by Rule 8(ii-B)(a), 8(ii-B)(b) and 8(ii-B)(c).

64. Rule 8(ii-B)(a) read with Rule 8(ii-B)(c) of 1997 Rules, admittedly, continued with the provisions for working arrangement/contract appointment, but not against the post of Lecturer, rather, the scheme of working arrangement/contractual appointment were retained for posts of Assistant Professor, Associate Professor and Professor either from amongst members of teaching cadre itself or, in the event of their non-availability, from amongst a pool of retired teachers of the same category without any claim for benefit of the higher post.

65. Rule 8(ii-B)(b), however, provided separate and specific mode of appointment to the post of Senior Residents/Tutors from amongst eligible members of Bihar State Health Service on the basis of seniority-cum-eligibility after following the rules of reservation and "inviting applications".

66. Because of the fact that Rule 8(ii-B)(c) of the 2004 Rules stated, "The aforesaid working arrangement/appointment on contract basis shall only continue till the regular appointment is made and on this basis no claim of regular appointment over the higher post or any financial benefit over any post will be admissible", the interpretation of the expression "working arrangement/appointment on contract basis", appearing in Rule 8(ii-B)(c) of 2004 Rules, lies, in the present lis (as already mentioned above), at the root of the controversy inasmuch as the State contends:

"(a) that the expression "working arrangement/appointment on contract basis" covers not only the appointments made pursuant to Rule 8(ii-B)(a), but also under Rule 8(ii-B)(b) of 2004 Rules, the basis for this contention being that notwithstanding the two amendments, which 1997 Rules underwent, by virtue of 2002 Rules and 2004 Rules, Rule 8(i) of 1997 Rules, which had provided for regular mode of recruitment, on the basis of written examination to be conducted by the Commission, remained unamended; and it is for this reason that no regular direct recruitment or direct appointment, since after coming into force of 1997 Rules, could have, in the light of Rule 8(i) of 1997 Rules, been made or were made; whereas the writ petitioners (i.e. respondents in appeals), on the other hand, contend;

(b) that the expression "working arrangement/appointment on contract basis", appearing in Rule 8(ii-B)(c) of 1997 Rules, refers to Rule 8(ii-B)(a) and not to Rule 8 (ii-B)(b), for, according to the writ petitioners (i.e. respondents in the

appeals), Rule 8(ii-B)(b) of 1997 Rules provided for an independent mode of recruitment, regular in nature, to the teaching cadre from the members of Bihar State Health Services on the basis of seniority-cum-eligibility and by inviting applications."

67. For the purpose of clarity, let us, now, take into account and re-produce hereinbelow sub-clauses (a), (b) and (c) of Clause (ii-B) of Rule 8, after amendment of Rule 8(ii) of 1997 Rules by 2004 Rules:-

"(ii-B)(a) On account of posts being vacant and in view of the threat of derecognition of medical colleges by the Medical Council of India, the vacant posts of Assistant Professor, Associate Professor and Professor, shall be filled under working arrangement from the persons of the Medical Education Cadre, in their own pay-scale after following the provisions of Reservation, on the basis of seniority-cum-eligibility, and on the recommendations of the Departmental Promotion Committee. In the event of non-availability of suitable medical Teachers for appointment under the working arrangement, appointment on contract shall be made of Retired Medical Teachers of the same category, after following the provisions for Reservation.

(b) On account of existence of vacancies, in view of apprehension of de-recognition of the medical colleges by the Medical Council of India, the vacant posts of Senior Resident/Tutor, shall be filled from the qualified officers of the Bihar Health Service on the basis of seniority-cum-eligibility, after following the provisions of reservation and inviting applications.

(c) The aforesaid working arrangement/appointment on contract basis shall only continue till the regular appointment is made and on this basis no claim of regular appointment over the higher post or any financial benefit over any post will be admissible."

68. What needs to be, now, carefully noted is that Rule 8(ii-B)(a) retained, in reality and substance, the same provisions as had stood embodied in Rule 8(iii), which had been introduced by 2002 Rules. Consequently, the concept of working arrangement or appointment on contract basis, as had been introduced by 2002 Rules by adding Clause (iii) to Rule 8, remained, in substance and reality, intact, which made it clear that the appointment, on working arrangement, or the appointment, on contract basis, were to continue until regular appointments were made with further clarification that no claim for benefit of any post or regularization on a higher post would be admissible.

69. Situated thus, it is clear, that the provisions with regard to appointment on working arrangement or appointment on contract basis, remained inherently temporary in nature until direct recruitments were to take place or regular promotions were made.

70. Sub-clause (b) of Clause (ii-B) of Rule 8 cannot but be read as inherently temporary in nature and will fall, if so read, within the ambit of contractual

appointments inasmuch as it were because of contract of employment that the doctors, serving in Bihar State Health Services Cadre, had been brought into the medical colleges, as teachers, to fill-up various vacant posts on the basis of seniority-cum-eligibility "after inviting applications" from the willing candidates, apart from the working arrangement, which sub-clause (a) to Clause (ii-B) of Rule 8 had envisaged, in respect of filling up of the posts of Lecturer, which had come to be designated as Senior Resident.

71. What surfaces from the above discussion is that the State, having failed to fill up all vacant posts in medical colleges, by way of direct recruitments under Rule 8(i) of 1997 Rules on the basis of competitive examination to be conducted by the Commission, introduced, with the help of 2002 Rules, a scheme of working arrangement on the basis of seniority-cum-eligibility in their own pay-scale on recommendation of the Departmental Promotion Committee, from amongst doctors, serving, at the relevant point of time, in Bihar State Health Services Cadre, and, on the basis of contractual appointments, from amongst those doctors, who had retired as members of the teaching cadre of medical colleges. This scheme of working arrangement or contractual appointments was continued, in reality and substance, under sub-clause (a) of Clause (ii-B) of Rule 8 (as amended by 2004 Rules) not in respect of the posts of Lecturer re-designated as Senior Resident, but for the posts higher to that of Assistant Professor.

72. Coupled with the above, in sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules (as came to be amended by 2004 Rules), the State introduced a further scheme of recruitment to the post of Lecturer, re-designated as Senior Resident, by providing that the vacant posts of Senior Residents/Tutors shall be filled up from qualified doctors of Bihar State Health Services on the basis of seniority-cum-eligibility after following the provisions of reservation and "inviting applications".

73. What is of immense important to note is that the merit of those, who were to be recruited, under sub-clause (b) of Clause (ii-B) of Rule 8, were not required to be "tested" by anyone. Consequently, the merit of a doctor, who was to be appointed by taking resort to sub-clause (b) of Clause (ii-B) of Rule 8, was never "tested".

74. It is wholly unreasonable to infer that while those doctors, who had already been teaching in the posts of Lecturer and other teaching posts, in a medical college, could not have been appointed, under the working arrangement, except by way of selection to be made on the basis of recommendation of the Departmental Promotion Committee, a doctor, who may not have ever taught in a medical college and had all along been serving in Bihar State Health Services, could have been appointed on permanent basis without "testing" his "merit" as a teacher of medical science merely because sub-clause (b) of Clause (ii-B) of Rule 8 did not, in specific terms, provide any process of selection except seniority-cum-eligibility by, of course, "inviting applications".

75. In the backdrop of the scheme of appointments, which we have discussed above, there can be no escape from the conclusion that the appointments, made under sub-clause (b) of Clause (ii-B) of Rule 8, ought to be inherently temporary in nature or else, we would be having, in medical colleges, such teachers, whose teaching ability, knowledge and other components of merit were never tested by anyone and would still be allowed to teach and produce graduates, in medical science, for generations to come and the doctors, so produced, would be treating patients and playing thereby with human lives and their safety.

76. Such a paradoxical interpretation of sub-clause (b) of Clause (ii-B) of Rule 8, as has been depicted above, would make the Constitutional guarantee, provided under Article 21 of the Constitution of India, as regards "right to life", facile and otiose. To put it a little differently, such an interpretation of sub-clause (b) of Clause (ii-B) of Rule 8 would be wholly contrary to the solemn guarantee of public health and public safety, which Article 21 of the Constitution of India provides to citizens as well as non-citizens of India.

77. Because of the fact that public health and public safety cannot, but be treated as components of public interest, the State cannot, even if it wishes to, make permanent appointment from amongst those doctors, whose knowledge, ability or skill to teach and other components of merit were never tested by resorting to a process of appointment, which is based on mere seniority-cum-eligibility (though on the basis of "applications" made) and thereby allowed to produce graduates in medical science, who would be "supposedly" protecting public health and public safety, though they might not have been.

78. Necessarily, therefore, sub-clause (c) of Clause (ii-B) of Rule 8 must be construed and read to cover not only those doctors, who were appointed, on the basis of working arrangement, from amongst the members of the teaching faculties of a medical college, but also those doctors, who were appointed, in teaching cadre, by taking resort to sub-clause (b) of Clause (ii-B) of Rule 8. Such an interpretation would be in keeping with the scheme of the relevant recruitment rules and also consistent with the scheme of the Constitution. When so interpreted, it would mean that a doctor, who had been appointed under sub-clause (c) of Clause (ii-B) of Rule 8, be treated not as a permanent appointee, but as an inherently temporary appointee until the time regular recruitment was made.

79. Let us, however, assume for a moment, that sub-clause (b) of Clause (ii-B) of Rule 8 provides an independent mode of recruitment, permanent in nature, into teaching cadre. Then, also, the question would arise and must be, therefore, answered if the writ petitioners could have been, in the facts and attending circumstances of the present case, be held to be covered by sub-clause (b) of Clause (ii-B) of Rule 8 as doctors, who were recruited to teaching cadre on permanent basis.

80. Even if, for a moment, it is assumed that sub-clause (b) of Clause (ii-B) of

Rule 8 of 1997 Rules, as amended by 2004 Rules, prescribed a mode of recruitment, which was permanent in nature, the question, which still remains to be answered is: whether the writ petitioners were, in the facts and attending circumstances of the present case, appointees to the teaching cadre within the scheme of recruitment as was envisaged by sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules"?

81. The question, posed above, brings us to the facts, which led to the appointments of the writ petitioners on contractual basis, as has been contended by the State.

82. While considering the question, which arises, as indicated above, it is imperative to note that the State Government published an advertisement, on 10.3.2004, inviting applications for appointment to the posts of Senior Residents/Tutors in the Medical Education Cadre.

83. The advertisement, dated 10.3.2004, clearly stipulated that the State Government had decided to make appointment to the posts of Senior Residents/Tutors in medical colleges and hospitals, on contract basis, for one year and, accordingly, applications were invited from such doctors of Bihar State Health Services Cadre, who had qualifications pre(sic)ed by 1997 Rules and desirous to work on the basis of contract, for one year, subject to other conditions, the conditions being that the appointment shall be made for one year and, on completion of the period of one year, the incumbent shall be sent back to Bihar State Health Services Cadre and, during the period of contract, they would receive graded pay-scale as the contractual amount, that is to say, pay protection was provided and the services rendered, on the basis of contract appointments, were promised to be treated as services rendered to the Government.

84. What is most important to note, in the advertisement, dated 10.3.2004, aforementioned, is that the advertisement made it clear that the benefit of service, rendered on the basis of the contractual appointment, shall not be admissible for joining teaching cadre later on. The advertisement further stipulated that only those persons would be eligible to apply, whose date of retirement is after 31.3.2006.

85. From a bare reading of the advertisement, dated 10.3.2004, it becomes clear that the offers of appointment, made under the advertisement, dated 10.3.2004, were contractual appointment as Senior Residents. The writ petitioners have contended and the learned single Judge has concluded that this advertisement, dated 10.3.2004, was contrary to the rules and were, therefore, abandoned.

86. Thus, the writ petitioners knew that the advertisement, dated 10.3.2004, had offered appointment to the post of Senior Residents on contractual basis, which, according to the writ petitioners, contrary to the scheme of 1997 Rules.

87. Knowing fully well that the appointments, which had been offered by the

advertisement, dated 10.3.2004, were contractual in nature and the writ petitioners as well as persons, similarly situated, were not obliged to apply seeking contractual appointment to the posts of Senior Resident (as had been stipulated in the advertisement, dated 10.3.2004), the writ petitioners did apply, seeking to be appointed, on contractual basis, as members of teaching cadre at its entry level.

88. In other words, notwithstanding the fact that the advertisement, in question, had invited applications for making appointment on contractual basis, the writ petitioners did happily apply seeking contractual appointments, though they knew, according to their own case, that the advertisement, dated 10.3.2004, aforementioned, was contrary to the relevant recruitment rules and were, therefore, not sustainable and would not, consequently, entail a valid appointment. Amazing, undoubtedly, it is to note that no resistance was offered by any of the writ petitioners to the advertisement, dated 10.3.2004, which had invited applications for appointment to the posts of Senior Residents on contractual basis, though the writ petitioners claim, and the learned single Judge has agreed, that offers of such contractual appointments were contrary to the relevant recruitment rules.

89. Interestingly enough, the advertisement, dated 10.3.2004, remained unchallenged by the writ petitioners and persons similarly placed. Far from this, the writ petitioners happily grabbed the offers of contractual appointments and did apply to receive contractual appointments in terms of the advertisement, dated 10.3.2004, aforementioned.

90. However, the applications made pursuant to the advertisement, dated 10.3.2004, were abandoned.

91. In the light of the facts and circumstances as depicted above, what is, now, unavoidable to notice is that the State, having abandoned the process of appointment on the basis of the advertisement, dated 10.3.2004, aforementioned, made, vide notification, dated 4.10.2006, offers of contractual appointment by issuing letters of appointment to the writ petitioners and others.

92. In order to gather the noticeable features of the notification, dated 4.10.2006, which so made offers of contractual appointment, the notification, dated 4.10.2006, is reproduced hereinbelow:

"No. 17/A3-16/2006-80-1 (17) Patna, dated 4.10.2006.

1. The following doctors are posted in the Medicine Department on the vacant post of Tutor/Senior Resident, in the Medical College and Hospitals of the State, for one year, or until their regular appointment (whichever is earlier) as mentioned against their names, under the following conditions:-

(a) After expiry of the period of one year or till the regular appointment on these posts (whichever is earlier), all the doctors shall be returned to their basis (sic-basic?) cadre. They shall not claim the period of their service rendered on

contract basis, for their appointment/promotion on educational posts.

(b) The same pay and allowance being received by the concerned doctors, earlier, shall be payable to them during their posting on contract basis.

(c) The service rendered during the period of posting on contract basis, shall be treated as Government Service, for all purposes.

2. All the Medical Officers are directed to assume their charge on their new place of posting by 10.10.2006."

93. From a close scrutiny of the notification, dated 4.10.2006, it becomes transparent that the offers of appointment, made to the writ petitioners and others, were to the posts of Senior Residents/Tutors in medical colleges and hospitals of the State of Bihar. Secondly, the appointments, so offered, were for a period of one year or until regular appointments, whichever is earlier, made making it, however, crystal clear that the period of contractual appointments, which the notification, dated 4.10.2006, had offered, was extendable and it is on this basis that the contractual appointment made on the basis of the Governments offer, contained in the notification, dated 4.10.2006, aforementioned, continued from time to time. Had the appointments not been continued, the result would have been governed by the conditions of appointment, which included, under clause (a) of the notification, dated 4.10.2006, that all the appointees shall return to their basic cadre and they shall not claim the period of their service, rendered on contract basis, for their appointment/promotion in educational posts, i.e. in teaching cadre.

94. Clause (b) of the notification, dated 4.10.2006, also made it clear that the doctors, appointed as Senior Residents/Tutors by notification, dated 4.10.2006, would continue to receive the pay and allowance, which were being received by them as doctors in the Bihar State Health Services Cadre. Merely because of the fact that the graded pay-scale and allowances were made available, this, in itself, did not make any change in the nature of appointment, which had been offered by notification, dated 4.10.2006, or the contract, which the writ petitioners and persons similarly situated, on the one hand, and the State, on the other hand, had entered into.

95. In other words, nature of appointment remained contractual and the consideration of appointment was that the appointees, on contractual appointment, would receive, as mentioned hereinbefore, graded pay and allowances, which they had been receiving on the date of their contractual appointments as members of Bihar State Health Services Cadre.

96. Lest the contractual appointments, so offered, did not become a cause of break in service of the contractual appointees as members of Bihar State Health Services Cadre, Clause (c) of the notification, dated 4.10.2006, clearly provided that the service, rendered during the period of posting, on contract basis, shall be treated as period spent, on Government Service, for all purposes.

97. Above all, making it more than transparent and explicit that though the doctors, serving at the relevant point of time, as members of Bihar State Health Services Cadre, were being engrafted into the teaching cadre of the medical colleges, in the vacant posts of Senior Residents/Tutors, and were being offered graded pay and allowances and would be treated, during the period of such contractual appointment, as having remained in Government Service, Clause (a) of the notification, dated 4.10.2006, has stated, in no uncertain words, thus, "After expiry of the period of one year or till the regular appointment on these posts (whichever is earlier), all the doctors shall be returned to their basic cadre. They shall not claim the period of their service rendered on contract basis, for their appointment/promotion on educational posts".

98. Thus, looked at from every angle, what the notification, dated 4.10.2006, had offered to the writ petitioners was contractual appointments making it clear to them that upon expiry of the period of one year or till regular appointments were made to the posts of Senior Residents/Tutors, all the contractual appointees shall be returned to their basic cadre and shall not be entitled to claim the period of service, which they had rendered on contract basis, for either appointment or promotion on education posts i.e., teaching cadre.

99. It was entirely left to the discretion of the writ petitioners and the doctors, similarly placed as the writ petitioners were, whether to accept the offers of contractual appointment, so made, or spurn the same by refusing to oblige the Government and declining to accept the appointments on contractual basis.

100. As the facts of the present case, admittedly, reveal, none of the writ petitioners raised any protest to the offer of appointment of contractual nature by notification, dated 4.10.2006; rather, they grabbed the opportunity with their eyes open and accepted the appointments, so offered, by joining, on the basis of offers of such contractual appointments, the posts of Senior Residents/Tutors.

101. A binding contract, therefore, between the writ petitioners, on the one hand, and the State, on the other, was entered into. Following their respective offers of appointment, the writ petitioners joined the posts, which had been offered to them on contractual basis.

102. Having accepted the contractual appointments and acted thereupon, the writ petitioners raised objections by filing representations individually as well as through their association.

103. Since the representations, seeking to be treated as permanent appointees, were wholly contrary to the terms and conditions of the notification, dated 4.10.2006, the State did not obviously concede to the requests made, or demands raised, by the writ petitioners or by persons of this category. If the contract, which the writ petitioners and persons similarly situated had entered into with the Government, was illegal, this illegal contract did not vest in the writ petitioners any right whatsoever; more so, when the writ petitioners did not express any inclination to opt out of the contractual appointments and rejoin

their parent service as members of Bihar State Health Services. On the basis of such contractual appointments, the writ petitioners, as contractual appointees, continued.

104. In the above factual background of the present cases, the pertinent question, which arises, is: Notwithstanding the nature of appointment, which the writ petitioners had accepted and acted upon to their detriment, whether it was open to the writ petitioners to turn back and claim themselves as regularly appointed incumbents of the posts of Senior Residents/Tutors by demanding to be treated as appointees under sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules (as amended by 2004 Rules).

105. While considering the above immensely important aspect of the present set of cases, it needs to be noted that even if sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules is conceived as a mode of appointment, permanent in nature, to the posts of Senior Residents/Tutors, let us examine as to what are the essential conditions of recruitment prescribed by sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules.

106. With regard to the above, it is quite significant to note that the first inescapable condition, stipulated for making an appointment under sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules, is that the State Government has to "invite applications" for making appointment to the post covered by sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules. The second unavoidable condition of recruitment, embodied in sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules, is that the selection, out of the applicants, has to be made on the basis of the seniority-cum-eligibility.

107. The question, therefore, which, now, arises and cannot be avoided by the writ petitioners, is: was there any application invited by the State Government for making appointment, under sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules even if sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules is to be interpreted as a mode of recruitment of permanent nature? The answer to this inescapably important question is an emphatic "no". This apart, was any exercise, carried out by the State Government to make selection out of applications made? The answer to this vital question, too, has to be in the negative.

108. Thus, the conditions precedent, which sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules, stipulated as conditions of recruitment/appointment, had not been fulfilled. By no means, therefore, the writ petitioners could have been treated, nor can they, now, be treated as appointees under sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules. If the mode of recruitment, conceived by sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules, is to be treated as a permanent mode of recruitment, offer of appointment by notification, dated 4.10.2006, without inviting applications, was ex facie arbitrary, most unreasonable and in denial of the scheme of public employment inasmuch as no

appointment, in public domain, in the light of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , can be made by resorting to a system of "pick and choose" without enabling every eligible candidate an effective opportunity to participate in such a selection process.

109. So far as the contractual appointment, which had been offered by the advertisement, dated 10.3.2004, is concerned, it needs to be pointed out that every doctor might not have been interested, even if eligible, to offer his services for contractual appointment to the posts of Senior Residents/Tutors. Without allowing every eligible candidate to participate in the selection process of permanent nature [if sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules is to be treated as a mode of recruitment of permanent nature], when an appointment is arbitrarily made, such as, the case at hand, such an appointment may not accrue to an appointee a vested right to remain in service. Viewed from this angle too, the writ petitioners' appointments [if sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules is interpreted in the manner as the writ petitioners contend] cannot be treated as valid appointments under sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules.

110. True it is, as contends Mr. Kanth, learned Senior Counsel, that when the law required an authority to act in a particular manner, he has to act in that manner or not at all. True also it is, as submits Mr. Kanth, that when an appointment is made in violation of, or contrary to, the relevant recruitment rules, the recruitment is bad in law. Converse is, however, not true meaning thereby that an appointment, made contrary to rules, cannot be treated to have been validly made under the recruitment rules, more particularly, when the conditions of the recruitment have not been followed.

111. The learned single Judge has pointed out that the appointments of the writ petitioners being contrary to the rules, their contractual appointments must be treated as invalid. The learned single Judge has not stopped here, but proceeded to hold that the appointments of the writ petitioners ought to have been treated, and must be treated, as the appointments made under sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules.

112. What appears to have escaped the attention of the learned Single Judge is that even if sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules were to be treated to have provided a mode of recruitment to the posts of Senior Residents/Tutors as a permanent mode of recruitment, the question would still remain if the writ petitioners were appointed, or could have been treated to have been appointed, under sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules. To this query, the simple answer is that the appointment of the writ petitioners, and persons, similarly placed as the writ petitioners are, had not been in tune with the conditions of recruitment, which were prescribed by sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules.

113. At the instance of the writ petitioners, therefore, the impugned

advertisement, dated 20.7.2011, could not have been interfered with and the State ought to have been allowed to proceed and take to its logical end the impugned advertisement, which the State had published.

114. Lastly, it has been contended, on behalf of the petitioners in the writ petition and respondents in the appeals, that the contract, which had been entered into by the parties concerned, was unconscienceable contract and was, therefore, wholly illegal. In support of this submission, reliance has been placed on Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, .

115. It is noticeable, with regard to the above, that for the reasons, which we have already assigned above, including the reason that the appointments, which have been made, were not in terms of the conditions prescribed by the provisions embodied in sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules, even if the contract, in question, is treated as unconscienceable* contract, the fact would still remain that this illegality would not, render the appointments of the writ petitioners and persons similarly situated as valid appointments in terms of sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules.

116. Coupled with the above, while considering the question of unconscienceable* contract, one must bear in mind that the inequality of bargaining powers, in the realm of contract, is a question, which has always tilted balance in favour of the person, who has entered into a contract on such terms and conditions, which are unfair and unreasonable to him, but has accepted such terms and conditions for reasons of his inequality in the bargaining strength. Irrespective of the fact whether such unfair and unreasonable terms and conditions are entered into between two unequally placed private individuals or between the State and its instrumentalities, on the one hand, and a private individual, on the other, the Court would, indeed, interfere so long as such terms and conditions have been agreed to, because of unequal bargaining strength.

117. In fact, if a citizen accepts unfair and unreasonable terms of contract merely because of the fact that the State is strong and the citizen is weak, this weakness, having arisen out of unequal strength, a High Court, as a conscious keeper of the Constitution, would have no option but to interfere, particularly, if the State fails to justify the arbitrariness in the terms of the contract. While offering a contract of appointment, the State must act according to constitutional conscience and must not insist that its citizen must accept the terms of contract howsoever unreasonable, irrational or arbitrary those terms may be.

118. In fact, it was Lord Denning, who, had, for the first time, while construing an indemnity clause in a contract, in *Giliespi Brothers and Co. Ltd. v. Roy Bowies Transport Ltd.* [(1973) 1 QB 400], raised the question as to whether Courts should permit a party to enforce his unreasonable clause, even when this clause is so unreasonable, or applied so unreasonably, as to be unconscionable. Reacting to

such a situation, Lord Denning observed, "When it gets to this point, I would say, as I said many years ago, "there is the vigilance of the common law which, while allowing freedom of contract, watches to see that it is not abused". It will not allow a party to exempt himself from his liability at common law, when it would be quite unconscionable for him to do so".

119. Lord Diplock outlined the theory of unreasonableness or unfairness to relieve a party from the contract, when the relative bargaining powers of the parties were not equal. In *A. Schroeder Music Publishing Company Ltd. v. Macaulay*, [(1974) 1 WLR 1308], the song writer had contracted with the publisher the terms more onerous to him and favourable to the publisher. The song writer was relieved of the bargain of the contract on the theory of restraint on trade being opposed to public policy. The distinction was made even in respect of standard forms of the contracts emphasizing that when the parties to a commercial transaction, having equal bargaining power, have chosen to adopt the standard form of contract, it was intended to be binding on the parties. Conversely put, when the parties to a commercial transaction are not evenly situated and one of the parties has greater bargaining strength than the other and is in a position to say, "if you want these goods or services at all, these are the only terms on which they are obtainable. Take it or leave it, the Court would not, if need be, refuse to relieve the party, which forces the other weaker party to enter into such a contract, and the Court may, if necessary, even relieve the weaker party of the terms of such a contract. The Court would not relieve any of the parties from such a contract if the contract is between the parties, whose bargaining strength is equal.

120. That a State, its instrumentalities or public authority, whose acts have the insignia of public element, cannot defend its action even in the field of private law on the ground that they are free to prescribe any conditions or limitations in their actions as private citizens simpliciter do in the field of private law is clear from the observations made in the *LIC of India and Another Vs. Consumer Education and Research center and Others*, , wherein it has been observed as follows:-

"23. Every action of the public authority or the person acting in public interest or any act that gives rise to public element, should be guided by public interest. It is the exercise of the public; power or action hedged with public element becomes open to challenge. If it is shown that the exercise of the power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any, conditions or limitations in their actions as private citizens, simpliciter do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations."

121. Striking down one of the conditions of service, which had provided for

termination of service of a permanent employee by giving one month's notice or salary in lieu thereof, the Supreme Court, in *Central Inland Water Transport Ltd.* (supra), while dealing with the development of the law, on the subject of unequal bargaining powers, held thus:

"37. Should then our Courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the Courts sit back and watch supinely while the strong trample under foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to uphold the Constitution and the laws. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deductible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause, in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No Court can visualize the different situations, which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however, unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex, world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations, which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The Court must judge each case on its own facts and circumstances."

122. In Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , it was held that the State, when acting in its executive power, enters into contractual relations with an individual, Article 14 would be applicable to the exercise of the power. The action of the State or its instrumentality can be checked under Article 14. Their action must be subject to the rule of law. If the governmental action, even in the matter of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. Rule of reason and rule against arbitrariness and discrimination, rules of fair play, natural justice are part of the rule of law applicable to situation or action of the State or its instrumentality in dealing with the citizens. Even though the rights of the citizens, therefore, are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play and natural justice, equality and non-discrimination.

123. From a careful reading of the decision in Mahabir Auto Stores (supra), it is more than abundantly clear that duty to act in a fair, just and equitable manner is inherent in the activities of the State, when its action, even in the sphere of contractual relations with private individuals, bear insignia of public element. No wonder, therefore, that in LIC of India (supra), the Court held as follows:-

"26. This Court has rejected the contention of an instrumentality of the State that its action is in the private law field and would be immune from satisfying the tests laid under Article 14. The dichotomy between public and private law rights and remedies, though may not be obliterated by any strait-jacket formula, it would depend upon the factual matrix. The adjudication of the dispute arising out of a contract would, therefore, depend upon facts and circumstances in a given case. The distinction between public law remedy and private law field cannot be demarcated with precision. Each case will be examined on its facts and circumstances to find out the nature of the activity, scope and nature of the controversy. The distinction between public law and private law remedy has not become too thin and practicably obliterated.

27. In the sphere of contractual relations, the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner, i.e. fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest."

124. In no uncertain words, the Supreme Court expressed the position of law on the subject of unconscienceable* contract in LIC of India and Another Vs.

Consumer Education and Research center and Others, , thus:-

"47. It is, therefore settled law that if a contract or a clause in a contract is found unreasonable or unfair or irrational, one must look to the relative bargaining power of the contracting parties. In clotted line contracts, there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. He has either to accept or leave the services or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forego the service forever. With a view to have the services of the goods, the party enters into a contract with unreasonable or unfair terms contained therein and he would be left with no option but to sign the contrast."

125. In the light of the principles enunciated above, when we revert to the facts of the present case, it becomes transparent that since the writ petitioners and persons similarly situated were persons, who were, at the relevant point of time, already employees of the Government, their services being governed by a set of recruitment rules as members of Bihar State Health Services Cadre, and there was not even a particle of force, coercion or undue influence applied by the State, the contracts, which the writ petitioners and persons similarly situated as the writ petitioners are, had entered into, were validly made contracts.

126. In fact, it is not even in dispute that there has been no pleading, in the writ petitions, (which have already been disposed of) nor is there any pleading in the writ petition, which has, now, been heard, that the contracts, in question, were unconscienceable* contract, because of unequal bargaining power. When the writ petitioners were already members of Bihar State Health Services Cadre and no force, coercion or undue influence was applied on them to give up their services as members of Bihar State Health Services Cadre and apply for contractual appointment, in the teaching cadre, in medical colleges and hospitals, and when there was no seen or unseen force, coercion or undue influence applied by the Government to make the writ petitioners and the persons similarly situated succumb to the Government's offer of entering into the contractual appointments-which the petitioners have entered into-retaining, in effect, their lien as members of Bihar State Health Services Cadre, the contracts, in question, cannot be regarded as unconscienceable* contract

127. Furthermore, as has already been discussed above, the rules of recruitment have to be read from the standpoint of the Constitution and when the case, at hand, is one, wherein Article 21 of the Constitution of India has not only a significant role to play, but forms an integral and inseverable part of the employment or of the contract, in question, one cannot held, but hold, and we do hold, that the writ petitioners, and persons, similarly situated as the writ petitioners are, could not have been legally held, and ought not to have been legally held, as having been appointed in terms of provisions of sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules.

128. Situated thus, we have no hesitation in holding that in the light of the

discussions held above, writ petitioners and persons, who are similarly situated, have to be treated as inherently temporary in nature until the time regular recruitments in terms of the relevant provisions of recruitment rules, are made even if their appointments are to be treated as appointments under sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules.

129. What surfaces from the discussions, held as a whole, is that the terms and conditions of recruitment to a public employment have to be read from the standpoint of Constitution. Necessarily, therefore, the interpretation of a given set of rules of recruitment or promotion has to be in a manner, which is consistent with the scheme of governance as envisaged by the Constitution and not running contrary thereto. If public good and public interest form the basis of governance, as conceived by the Constitution, it logically follows that while interpreting the relevant rules in the present case, the Court has to bear in mind the nature of post, which an incumbent, under the present set of rules, holds and its relevance in the light of the constitutional provisions.

130. Right to life, which Article 21 of the Constitution of India guarantees, would obviously include good health and public safety. Good health would include not a mere animal existence. Necessarily, therefore, it is duty of the State, if it has to keep the letter and spirit of Article 21 of the Constitution of India alive, that its citizens as well as non-citizens are treated by competent doctors. Quality of education, particularly, quality of education in medical colleges, is an important facet of Article 21 of the Constitution of India.

131. Good quality of education, in medical colleges, would obviously require that the teaching cadre, in the medical colleges, has knowledge of the subject concerned, the teaching cadre has the necessary aptitude of teaching and it has the teaching skill so that the doctors, good enough to treat patients, can be produced by medical colleges. The doctors, all and sundry, cannot be appointed, on permanent basis, as members of teaching cadre in medical colleges anywhere in the country.

132. If the above principle is kept in focus, it necessarily follows that there has to be some kind of "test" to be applied for making permanent appointment in the teaching cadre so that a person's merit and ability to teach are determined. With this perspective in mind, when 1997 Rules are considered, it becomes clear that Rule 8 perceives, with all the amendments, which it had undergone, four modes of recruitment.

133. The primary source of recruitment, in the form of direct recruitment, was prescribed by Rule 8(i), which envisaged making of appointments on the basis of a competitive examination to be conducted by Commission.

134. Due to, however, a large number of vacancies in medical colleges and hospitals in the State and the threat of derecognition of these colleges by the M.C.I., the State made statutory provisions for a working arrangement and this working arrangement postulated making of appointments to the vacant posts of

Senior Residents/Tutors by those, who had been teaching on the relevant date as members of teaching cadre, which is known as Medical Education Cadre.

135. Notwithstanding the fact that the doctors, to be engrafted under the working arrangement in the teaching cadre, were to be selected on the basis of recommendations by Departmental Promotion Committee, the appointments still remained a working arrangement, which was explicitly made temporary in nature until the time regular appointments were made disentitling such an appointee to claim any benefit of permanency in the nature of their appointment.

136. The third mode of appointment, which 1997 Rules perceived, was on contract basis by filling-up the posts of various categories, in medical colleges and hospitals, by persons, who may have retired from the same category. These contractual appointees could also have been continued until direct recruitment was made.

137. The fourth mode of appointment was from the doctors of Bihar State Health Services by "inviting applications", the criterion for appointment to the posts of Senior Residents/Tutors being seniority-cum-merit. There was no provision for testing the merit and ability or capability of these persons to teach in a medical college; whereas the doctors, who had already been teaching, were required to have, at least, recommendation from the Departmental Promotion Committee and yet their appointments were kept temporary in nature.

138. It is inconceivable that the State wanted to recruit, on permanent basis, doctors as teachers, in medical colleges, without testing their capability to teach. The relevant rules have to be treated as inherently temporary or else, the recruitments, so made, would amount to denial of "right to life" and negate the very foundation of the "right to life", which Article 21 of the Constitution has guaranteed.

139. Medical colleges are required to produce doctors, who will be taking care of the health of the citizens and non-citizens. The lives of citizens and non-citizens cannot be left in the hands of all and sundry. Good quality of education, if we may repeat, is unavoidable and imperative and if it be so, sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules has to be treated as inherently temporary in nature until permanent recruitment is made by bringing in those people in the teaching cadre, who are capable of teaching in medical colleges and hospitals.

140. When the writ petitioners had joined on the basis of offers of contractual appointment with their eyes and ears open, they cannot turn back and claim that their contractual appointments ought to be treated as permanent appointments, because 1997 Rules do not conceive making of contractual appointments under sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules. If 1997 Rules did not perceive making of contractual appointments and such contractual appointments were illegal, these illegal appointments cannot be clothed as legal and valid by engrafting these illegal appointees into sub-clause (b) of Clause (ii-B) of Rule 8 of 1997 Rules, especially, when the writ petitioners and persons similarly situated

had acquiesced to the offers of contractual appointments, which the State Government had given them by notification, dated 4.10.2006, aforementioned.

141. What crystallizes from the above discussions is that the writ petitioners have failed to make out any case warranting interference with the impugned advertisement, dated 20.7.2011, and, hence, the writ petitions could not have been allowed and ought not to be allowed.

142. In the result and for the reasons discussed above, the appeals are allowed and the present writ petition is dismissed. Consequently, the impugned judgment and order shall stand set aside, the impugned advertisement, dated 20.7.2011 shall stand restored resulting into dismissal of the writ petitions, which have given rise to the impugned judgment and order.

143. With the above observations and directions, these appeals and the present writ petition shall stand disposed of. No order as to costs.

Kishore Kumar Mandal, J.

I agree.