IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.2369 of 2020.

Judgment reserved on: 15.09.2020.

Date of decision: 18.09.2020.

Dr. Rajesh Kumar Sharma and others **.....Petitioners.**

Versus

Union of India and others **.....Respondents.**

Coram

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.
Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?[1] Yes

For the Petitioners : **Mr. Bhuvnesh Sharma and Mr. Ramakant Sharma, Advocates.**

For the Respondents: **Mr. Shashi Shirshoo, Central Government Counsel, for respondent No.1.**

Mr. K.D.Shreedhar, Senior Advocate with Ms. Shreya Chauhan, Advocate, for respondents No. 2 and 3.

COURT PROCEEDINGS CONVENED THROUGH VIDEO CONFERENCE.

Tarlok Singh Chauhan, Judge

The instant petition has been filed for grant of the following substantive reliefs:

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

"(i) That in view of the new Recruitment Rules of 29.05.2017 at Annexure P-8 and amended Statutes of NIT, 2017 at Annexure P-9, the condition of tenure of five years of the contract of the petitioners, may kindly be held to have been rendered infructuous and inapplicable and their appointment may kindly be directed to be governed by the provisions of the amended NIT Statutes, 2017 at Annexure P-9, instead of applying the Rules in the letter dated 15.01.2014 at Annexure P-7.

(ii) That in view of the NIT Statutes of 2009 at Annexure P-5 as were applicable at the time of recruitment of the petitioners, they may kindly be deemed to be in regular and continuous service of the NIT, Hamirpur."

2. Respondent No.2, the National Institute of Technology, (for short 'NIT') invited applications for different posts including the posts of Assistant Professors on contract basis. The petitioners being eligible applied for the said posts and were selected. The letter of appointment clearly envisages that the appointment of the petitioners was for a period of five years. However, it is averred by the petitioners that since their services are governed by the National Institutes of Technology Act, 2007, therefore, they had a right to continue beyond five years, more particularly, when the term of five years that was

prescribed under the 4-Tier Flexible Faculty Structure has already been struck down by the Allahabad High Court.

3. The respondents have contested the petition by filing reply wherein the very maintainability of the petition has been questioned on the ground that the appointment of the petitioners was made purely on contract basis as categorically specified in the 4-Tier Flexible Faculty Structure (MHRD notification No. F.No.33-9/2011-TS.III dated 23.08.2013 even No. dated 15.01.2014 and F.No. 33-3/2014-TS.III dated 17.06.2015 (Annexure P-7). The Ministry of Human Resource Development vide its letter No. F.No.33-9/2011-TS.III dated 23.08.2013 forwarded the approved norms of four-tier flexible faculty structure wherein it was clearly mentioned that the post of Assistant Professor in PB-3 of Rs.15600-39100 with AGP Rs.6000 is on contract basis. Moreover, at Clause No.3 of Annexure-III of the above referred letter it was clearly mentioned that "Faculty, who are appointed on contractual basis, shall be for a fixed period not exceeding five years" (Annexure P-7). The agenda for the consideration and adoption of four tier flexible faculty structure, for the implementation in National Institute of Technology, Hamirpur, was placed on 23rd meeting of Board of Governors of the Institute vide item No.

BOG/23/2013-10/12 and in its decision the Board of Governors considered and approved the adoption of MHRD notification (Annexure R-2/1). Therefore, the appointments of the petitioners are in consonance with the letter dated 15.01.2014 (Annexure P-7).

4. In addition to the aforesaid, the petition is opposed on the ground of estoppel as first representation against the appointment was made by petitioner No.1 only on 06.07.2020. Even though, a number of other objections have also been raised in the reply, however, we do not find it necessary to deal with those objections as they are not necessary for decision of this case, save and except, the additional ground raised for opposing the claim of the petitioners that they had applied under the Recruitment Rules, 2017, for the post of Assistant Professor in the respective departments and appeared before the Selection Committee, but were not recommended and, therefore, the petition is liable to be dismissed on the ground of *suppressio veri, suggestio falsi.*

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. Mr. Bhuvnesh Sharma, learned counsel for the petitioners, would vehemently contend that contract

employees cannot be replaced by other contract employees and would place heavy reliance upon the judgment rendered by the Hon'ble Bench of three Judges of the Hon'ble Supreme Court in ***State of Haryana and others etc.*** versus ***Piara Singh and others etc.***, ***AIR 1992 SC 2130***, more particularly, the following observations:

> *"25. Before parting with this case, we think it appropriate to say a few words concerning the issue of regularisation of ad hoc/temporary employees in government service.*
>
> *Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."*

7. The aforesaid ratio is clearly not applicable to the fact situation obtaining in the instant case as it cannot be disputed that the petitioners herein were selected and thereafter appointed pursuant to an advertisement, which never envisaged appointment on permanent basis and were to be appointed only on contractual basis.

8. Once the appointments were purely contractual then by efflux of time as envisaged in the contract itself the same came to an end and the persons holding such posts can have no right to continue or renewal of contract of service as a matter of right, and therefore, such cases are clearly distinguishable from

repeated and *ad hoc* appointments, which was adopted as a matter of practice by the State Government in case of *Piara Singh's* case (supra).

9. The difference in the fact situation obtaining in the instant case vis-à-vis *Piara Singh's* case (supra) is stark and clear. In the instant case, the petitioners were appointed on fixed term contract and after lapse of period of service are claiming continuity of the same, and therefore, their services cannot be equated with the *ad hoc* employment as was in the case of *Piara Singh* (supra). The *ad hoc* appointment against a vacancy by the State repeated with number of vacancies, one after another, was construed to be an unfair practice by the Hon'ble Supreme Court and it accordingly directed the State to frame a scheme for regularization of such employees consistent with the reservation policy, if not already framed. Therefore, the judgment in *Piara Sing*h's case cannot be blindly applied to the facts of the present case where the petitioners have been appointed on a fixed term contractual appointment and after lapse of the period of contract, are claiming the continuation of the term by excluding other persons from seeking similar term of appointment.

10. The fixed term contractual appointment as envisaged under the 4-Tier Flexible Faculty Structure is not to provide permanent employment, but the laudable object is to enable bright young scholars to teach and earn experience in premier institutions. This is clearly envisaged in the norms of 4-Tier Cadre Structure of Faculty Posts in the National Institutes of Technology (NITs) which reads as under:

Sr. No.	Designation, Pay Band and Academic Grade Pay	Essential Qualification and Relevant Experience
1.	**Assistant Professors (On contract)** PB-3 of Rs.15600-39100 with AGP of Rs.6,000/- p.m.	(i) Assistant Professors to be recruited on contractual basis are not part of the regular faculty cadre in NITs. Appointment at this level may be made on contract basis to enable bright young Ph.D.s scholars to teach and earn experience in premier institutions. (ii) At the entry level they may be placed in Pay Band PB-3 of Rs.15600-39100 with Academic Grade Pay (AGP) of Rs.6000/- p.m. with seven non-compoundable advance increments. (iii) To encourage fresh Ph.D.s to join the teaching system, at least 10% of the total faculty strength should be recruited at this level. However, relaxation in respect of educational qualifications could be given upto 25% of total Assistant Professors recruited. The reasons for such relaxations should be duly recorded and reported to the Board of Governors of the respective

		institutions. (iv) After one year of post Ph.D experience, these Assistant Professors shall be placed in the AGP of Rs. 7,000/- p.m.

11. Thus, once the avowed object is to engage employment to a large number of persons, therefore, the persons, who are given fixed term service contract cannot claim any right of renewal or continuity of employment after the period of contract is over. The same can neither be equated with repeated ad hoc employment nor can it be termed as unfair practice. It lies best in the wisdom of the employer to grant such appointments on contract to various terms and unless the decision making process is established to be arbitrary on the face of it, the Court will be loath to exercise its extra-ordinary jurisdiction to quash such appointment of fixed term basis.

12. A careful reading of the letters of appointment as also the norms of 4-Tier Flexible Faculty Structure leaves no manner of doubt that the appointment offered to the petitioners was limited one. The respondents at any given time had never offered to the petitioners that they would continue in service till the existence of the 4-Tier Flexible Faculty Structure or till the

time they did not attain the age of superannuation. It is not even the case of the petitioners that there was any uncertainty or ambiguity in the appointments made by the respondents in so far as the tenure on the post to which they were appointed.

13. There is a clear distinction between public employment governed by the statutory rules and private employment governed purely by contract. No doubt with the development of law, there has been a paradigm shift with regard to judicial review of administrative action whereby the writ court can examine the validity of termination order passed by the public authority and it is no longer open to the authority passing the order to argue that the action in the realm of contract is not open to judicial review. However, the scope of interference of judicial review is confined and limited in its scope. The writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract.

14. However, judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the arm chair of the administrator to decide whether more reasonable decision or

course of action could have been taken in the circumstances. (Refer ***Gridco Ltd. & Another*** vs. ***Sadananda Doloi & Ors***, ***AIR 2012 SC 729***).

15. The petitioners have failed to place before this Court any material to show that the action of the respondents is either unreasonable or unfair or perverse or irrational. As observed earlier, the norms of 4-Tier Flexible Faculty Structure placed on record governing the service conditions of the petitioners make it abundantly clear that petitioners had been appointed on contractual basis.

16. Faced with this situation, learned counsel for the petitioners would then contend that the action of the respondents in terminating and re-appointing the petitioners was required to be avoided as the petitioners were entitled to be continued as long as the 4-Tier Flexible Faculty Structure continued or till the time they did not attain the age of superannuation and as such the action of the respondents being contrary to the principles of service jurisprudence was liable to be quashed.

17. We are unable to agree with the aforesaid contention for the reason already set out hereinabove. Apart from that, it is beyond cavil that the petitioners are contractual

employees, and therefore, would have a right to remain in employment only for the period mentioned in the contract, that too, subject to other conditions contained in the 4-Tier Flexible Faculty Structure, but in no manner would have a right to claim that their appointments now be treated as co-terminus with the Institute.

18. It may be noticed that the petitioners had voluntarily accepted the appointment granted to them subject to the conditions clearly stipulated in the 4-Tier Flexible Faculty Structure. These appointments subject to the conditions have been accepted with their eyes wide open, therefore, now the petitioners cannot turn around claiming higher rights ignoring the conditions subject to which the appointments had been accepted.

19. Indisputably, the 4-Tier Flexible Faculty Structure under which the petitioners have been appointed does prescribe a mode of selection but looking to the nature of appointment, more especially, the tenure thereof, it cannot be said that the best talent would apply, and therefore, even though such appointments may not amount to backdoor appointments yet nevertheless they would be side door appointments and depend upon the contract service.

20. It is more than settled that the State or its instrumentalities may be required to employ persons in posts which may be temporary or like in the present case on contract basis which are not regular faculty cadre so as to enable bright young Ph.D. scholars to teach and earn experience in premier institutions. The legitimacy of such appointments can be found in the judgment rendered by a Constitutional Bench of the Hon'ble Supreme Court in ***Secretary, State of Karnataka and others*** *versus* ***Uma Devi (3) and others (2006) 4 SCC 1***, wherein it was held as under:

> *"12.In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment.*

Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

43..... If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment.

.....It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right."

21. Similar reiteration of law can be found in a subsequent judgment of the Hon'ble Supreme Court in

Official Liquidator *versus* ***Dayanand and others (2008) 10 SCC 1*** wherein after relying upon the judgment in ***Uma Devi's case*** (supra), it was observed as under:

> *"75. By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in Secretary, State of Karnataka vs. Uma Devi (supra) is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed by different two-Judges Benches for declining to entertain the claim of regularization of service made by ad hoc/temporary/ daily wage/casual employees or for reversing the orders of the High Court granting relief to such employees - Indian Drugs and Pharmaceuticals Ltd. vs. Workmen [2007 (1) SCC 408], Gangadhar Pillai vs. Siemens Ltd. [2007 (1) SCC 533], Kendriya Vidyalaya Sangathan vs. L.V. Subramanyeswara [2007 (5) SCC 326], Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh [2007 (6) SCC 207]. However, in U.P. SEB vs. Pooran Chand Pandey [2007 (11) SCC 92] on which reliance has been placed by Shri Gupta, a two-Judges Bench has attempted to dilute the Constitution Bench judgment by suggesting that the said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of the seven-Judges Bench in Maneka Gandhi vs. Union of India [1978 (1) SCC 248].*

> *92. In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judges Bench in UP State Electricity Board vs. Pooran Chandra Pandey (supra) should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench."*

22. It is also well settled that regularization, absorption or permanent continuance of an employee cannot be directed by a Court, unless the employees have been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process against sanctioned vacant posts. In taking this view, we are supported by the judgment of the Hon'ble Supreme Court in ***State of Rajasthan & Ors.*** *versus* ***Daya Lal & Ors. (2011) 2 SCC 429***, which reads as under:

> *"12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:*
>
> > *(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be*

> *scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized."*

23. Moreover, advertising the posts, as fixed term contractual appointment initially and thereafter permitting the incumbents so appointed to continue and making their appointments co-terminus with the 4-Tier Flexible Faculty Structure or permitting them to continue in service till the age of superannuation, would amount to playing fraud with those multitude of people, who would otherwise be eligible to apply and may have skipped the employment process thinking that it is only for a temporary period or a contractual period.

24. In addition to the aforesaid, in case the contention of the petitioners is accepted that their services be made co-terminus with the 4-Tier Flexible Faculty Structure or they be continued till the age of retirement, then this would amount to rewriting the contract by way of interpretation, contrary to the terms and conditions, that are agreed by the parties to the contract, besides substituting the very norms of 4-Tier Flexible

Faculty Structure under which they have been appointed. Obviously, such a course is legally impermissible.

25. The learned counsel for the petitioners would then once again argue that it is settled law that a contract/temporary employee cannot be replaced by another employee and would rely upon the judgment rendered by a Co-ordinate Bench of this Court of which one of us (Hon'ble Ms. Justice Jyotsna Rewal Dua) was a member, in ***CWP No. 3054 of 2019*** titled '***Dr. Meera Devi*** *versus* ***Himachal Pradesh University another'*** decided on 07.01.2020.

26. We have gone through the judgment and find that the issue therein was regarding termination and appointment of Guest Faculty/Teacher. It was in this background that the Court after relying upon the judgment of the Hon'ble Supreme Court in ***State of H.P.*** *versus* ***Suresh Kumar Verma and another (1996) 7 SCC 562*** held the action of the respondent-University to be bad and directed the continuance of the petitioner till regular appointment was made.

27. Clearly, the ratio laid down in the aforesaid judgment does not apply to the facts of the instant case as there are two categories of posts of Assistant Professors in the Institute. One is filled up on contract basis while the other is

on regular basis. One filled up on contract basis, as observed above, is not a part of the regular faculty cadre and is made to enable bright young scholars to teach and earn experience in premier institutions.

28. The learned counsel for the petitioners would next rely upon the judgment delivered by one of us (Justice Tarlok Singh Chauhan) in ***CWP No. 4451 of 2013*** titled ***Dharam Pal Singh*** *versus* ***State of H.P. and others,*** decided on 26.03.2015, which again relates to a contractual employee being replaced by another contractual employee.

29. For the reasons stated above, even this judgment is of no assistance to the petitioners.

30. Lastly, learned counsel for the petitioners would rely upon the judgment authored by one of us (Justice Tarlok Singh Chauhan) in ***LPA No. 132 of 2014,*** titled '***Dr. Lok Pal*** *versus* ***State of Himachal Pradesh and others,*** decided on 18.12.2014, to contend that the respondents on the sheer strength of their bargaining power cannot take advantage of their position and impose wholly un-equitable and unreasonable condition of employment on their employees, who did not have any other choice but to accept the

employment on the terms and conditions offered by the respondents.

31. We fail to understand as to how the ratio of this judgment is of any assistance to the petitioners. There is no gainsaying that the respondent-Institute i.e. National Institute of Technology is a premier institute running various institutes pan India and has consciously provided an avenue for Ph.D scholars to earn experience in teaching in the premier institutions under the norms of 4-Tier Cadre Structure of Faculty Posts as reproduced (supra). The avenue so provided by the respondents is not a source of employment, but is only for the purpose of gaining teaching experience in a premier institute.

32. As already observed earlier, the appointment of the petitioners was limited one and the respondents had not at any given time offered to the petitioners that they would continue in service even after the tenure of five years has come to an end. In addition to the above, it is not the case of the petitioners that there was any uncertainty or ambiguity in the appointments made by the respondents in so far as the tenure to which they were appointed.

33. The petitioners at the time of entering into the contractual employment were fully aware of the appointments

being contractual and such persons cannot even invoke the theory of legitimate expectation for being continued in the post. The petitioners being appointed on contractual basis can have no right to claim higher right than what is envisaged in the contract of appointment and same would come to an end by efflux of time as entered in the contract. Moreover, the petitioners having accepted the offer of appointment with eyes wide open cannot turn around by claiming higher rights ignoring the conditions subject to which the appointments had been accepted.

34. Now, adverting to the contention of the petitioners regarding the 4-Tier Flexible Faculty Structure being struck down by the Allahabad High Court, suffice it to state that this contention if accepted would boomerang on the petitioners themselves as it would invalidate their very appointments.

35. Lastly and more-importantly, the petitioners after participating unsuccessfully in the process of selection to the regular posts of Assistant Professors are estopped from filing the instant petition as they very well knew that their appointments are on contract basis that too only for a maximum period of five years and that is why they

participated in the selection process for the regular vacancy of Assistant Professors.

36. In view of the aforesaid discussion, we find no merit in this writ petition and the same is dismissed, leaving the parties to bear their own costs. Pending application(s), if any, also stands disposed of.

(Tarlok Singh Chauhan)
Judge

(Jyotsna Rewal Dua)
Judge

18th September, 2020.
(krt)