



**IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA.**

CWP No. 9093/2014, 2145, 2789,  
2814, 3131, 3140, 3311, 3467, 3468,  
4229 of 2015, 267, 674, 1157, 1163,  
1164, 1165, 1166, 1167, 1168, 1189,  
1190, 1191, 1192, 1193, 1194, 1195,  
1279, 1606, 1711, 1725, 1855, 1991  
and 2762 of 2016

Reserved on: 26.10.2016

Decided on: 2.12. 2016

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**1. CWP No. 9093/2014**

Pawan Kumar.

...Petitioner.

Versus

Union of India and another.

...Respondents.

**2. CWP No. 2145/2015**

Rama Kumari.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**3. CWP No. 2789/2015**

Anil Kumar.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**4. CWP No. 2814/2015**

Leela Vati.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**5. CWP No. 3131/2015**

Asha Devi.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**6. CWP No.3140/2015**

Ex. Dfr. Gurdial Singh .

...Petitioner.

Versus

Union of India and others.

...Respondents.

**7. CWP No.3311/2015**

Saurabh Kumar.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**8. CWP No.3467/2015**

Sanjeev Kumar.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**9. CWP No.3468/2015**

Sangeeta Devi.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**10. CWP No.4229/2015**

Anju Sachdeva.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**11. CWP No.267/2016**

Dr. Kapil Dev.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**12. CWP No.674/2016**

Ankita Sharma.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**13. CWP No.1157/2016**

Sonu.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**14. CWP No.1163/2016**

Kumar Gurung.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**15. CWP No.1164/2016**

Suman Lata.

...Petitioner.

|                                    |                 |
|------------------------------------|-----------------|
| Versus                             |                 |
| Union of India and others.         | ...Respondents. |
| <b><u>16. CWP No.1165/2016</u></b> |                 |
| Vipan Kumar.                       | ...Petitioner.  |
| Versus                             |                 |
| Union of India and others.         | ...Respondents. |
| <b><u>17. CWP No.1166/2016</u></b> |                 |
| Vandna Athwal.                     | ...Petitioner.  |
| Versus                             |                 |
| Union of India and others.         | ...Respondents. |
| <b><u>18. CWP No.1167/2016</u></b> |                 |
| Arun Kumar.                        | ...Petitioner.  |
| Versus                             |                 |
| Union of India and others.         | ...Respondents. |
| <b><u>19. CWP No.1168/2016</u></b> |                 |
| Amit Bhatia.                       | ...Petitioner.  |
| Versus                             |                 |
| Union of India and others.         | ...Respondents. |
| <b><u>20. CWP No.1189/2016</u></b> |                 |
| Ex. NK Surender Kumar.             | ...Petitioner.  |
| Versus                             |                 |
| Union of India and others.         | ...Respondents. |
| <b><u>21. CWP No.1190/2016</u></b> |                 |
| Ex. Sepoy Sunil Kumar.             | ...Petitioner.  |
| Versus                             |                 |
| Union of India and others.         | ...Respondents. |
| <b><u>22. CWP No.1191/2016</u></b> |                 |
| Anil Kumar.                        | ...Petitioner.  |
| Versus                             |                 |
| Union of India and others.         | ...Respondents. |
| <b><u>23. CWP No.1192/2016</u></b> |                 |
| Santosh Kumar.                     | ...Petitioner.  |
| Versus                             |                 |
| Union of India and others.         | ...Respondents. |

**24. CWP No.1193/2016**

Sonu Kumar.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**25. CWP No.1194/2016**

Parween Kumari.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**26. CWP No.1195/2016**

Ex. Havaladar Rajinder Kumar.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**27. CWP No.1279/2016**

Dr. Madan Mohan Marol.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**28. CWP No.1606/2016**

Dr. Vishal Sharma.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**29. CWP No.1711/2016**

Hema Devi.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**30. CWP No.1725/2016**

Chain Singh.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**31. CWP No.1855/2016**

Ex. PO Ravinder Kumar.

...Petitioner.

Versus

Union of India and others.

...Respondents.

**32. CWP No.1991/2016**

Ashwani Kumar.

...Petitioner.

Versus  
Union of India and others. ...Respondents.  
**33. CWP No.2762/2016**  
Ex. Suresh Kumar. ...Petitioner.  
Versus  
Union of India and others. ...Respondents.

**Coram:**

**Hon’ble Mr. Justice Mansoor Ahmad Mir, Chief Justice**  
**Hon’ble Mr. Justice Tarlok Singh Chauhan, Judge.**  
**Hon’ble Mr. Justice P.S. Rana, Judge.**

**Whether approved for reporting?**<sup>1</sup> Yes

**For the Petitioner(s):** Mr. Dilip Sharma, Sr. Advocate with Mr. J.L. Bhardwaj, Mr. Tara Singh Chauhan, Mr. Adarsh K. Vashista, Mr. G.R. Palsara and Mr. Manish Sharma, Advocates for the respective petitioners.

**For the Respondents:** Mr. Shashi Sirsoo, Central Government Counsel for respondents in CWP Nos. 3468, 4229 of 2015, 1163, 1164, 1157 and 1195 of 2016  
  
Ms. Rita Goswami, Central Government Counsel for respondents/Union of India in CWP Nos. 3311 of 2015, 1168, 1194 and 1855 of 2016.  
  
Mr. Neel Kamal Sharma, Central Govt.  
  
Counsel for respondents/Union of India in CWP Nos. 1193 and 1606 of 2016.  
  
Mr. Vikas Rathour, Central Govt. Counsel for respondents/Union of India, in CWP No. 1191 of 2016.  
  
Mr. Desh Raj Thakur, Central Govt. Counsel for respondents/Union of India in CWP No. 1189 of 2016.

<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment? Yes

**Mr. Nipun Sharma vice Mr. Vinod Thakur,  
Central Govt. Counsel for respondents/Union  
of India in CWP No. 1190 of 2016.**

**Mr. Ashok Sharma, Asstt. Solicitor General of  
India with Mr. Angrez Kapoor, Advocate for  
the respondents/Union of India in the  
remaining writ petitions.**

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**Justice Tarlok Singh Chauhan, Judge:**

In view of the divergent views in two judgments by the learned Division Benches of this Court, the first being CWP No. 1282/2014, titled as **Ashok Dutt Sharma** versus **Union of India and others**, decided on 24.3.2014 and the second being CWP No. 4064/2015, titled as **Bir Pal Singh** versus **Union of India and others** decided on 1.1.2016, a learned Division Bench of this Court vide order dated 16.3.2016 in CWP No. 9093/2014, referred the matter for consideration to a larger Bench.

2. The order of reference reads thus:

“Mr. Ashok Sharma, learned Assistant Solicitor General of India, has placed on record photocopies of the two judgments passed by the two Coordinate Benches of this Court and stated that both the judgments, involving the same issue as has been urged in the instant writ petition, are contradictory to each other. We have gone through the judgments and are of the opinion that the instant writ petition is required to be heard by a larger Bench. The

matter be processed accordingly on the administrative side.”

3. The seminal question that emanates in all these writ petitions is: whether an employee, who is appointed purely on contractual basis for a fixed tenure in accordance with non-statutory Scheme, can claim that his appointment be made co-terminus with the scheme or in the alternative his services be continued till the age of superannuation or would his services be liable to be terminated on the expiry of the period of contract, as is provided for in the Scheme.

4. The Ministry of Defence, Government of India, in the year 2003, introduced the Ex-Servicemen Contributory Health Scheme (hereinafter referred to as the “Scheme”). This scheme aimed to provide medicare to ex-servicemen and their dependants through a network of polyclinics and service medical facilities spread across the country. The Scheme was a contributory Scheme and was to extend the earlier referred benefits on payment of contribution. The appointment of the staff was to be on contractual basis. Para 4 of the Scheme reads as under:

"4. When requisite percentage of ex-servicemen under the reservation quota are not available, specific certificate signed by GOC Area to that effect should be placed on record and thereafter the vacancies utilized by employing a suitable civilian. The GOC Area's sanction for employment of the civilian staff on contract will be valid for a period of twelve months only. During this period efforts will be made to appoint a suitable Ex-Serviceman."

Under the terms and conditions of the contractual appointment, para 8 (d) stipulates duration of employment which reads as under :-

"TERMS AND CONDITIONS FOR CONTRACTUAL EMPLOYMENT

8. The detailed criteria are listed in Appendix-'A' and 'B'. The general terms and conditions for employment of the Medical/Para medical/Non medical staff under the ECHS are listed below:-

XXX XXX XXX

(d) Duration of employment. The employment of the staff will be entirely contractual in nature and will be normally for a period of two years at the maximum subject to review of their conduct and performance after twelve months."

Para 14 relates to contract, wherein tenure of contract appointment has been stated that it is for 2 years and review of appointment after 12 months. Extract of para 14 reads as under :-

"CONTRACT

14. Contractual agreements in the prescribed format will be signed by the Station headquarters with the individual candidates and the contracting agency as the case may be :-



(a) Contract with individual employee. The contractual agreement between the contractual employees and the Station Headquarters will include the following :-

- (i) Designation of Appointment.
- (ii) Place of appointment.
- (iii) Contractual nature of appointment for period of two years.
- (iv) Review of appointment after 12 months."

The Scheme also provides for procedure for disciplinary action. Para 15 to 17 reads as under :-

**"PROCEDURE FOR DISCIPLINARY ACTION**

15. In case an ECHS contractual employee is involved in any act of professional misconduct, unethical practices, medical negligence or administrative negligence, disciplinary action will be initiated against the employee and his contract may be terminated after giving a show cause notice without prejudice to any further action that may be deemed fit and initiated considering the nature of the offence committed.

16. The Station Commander will initiate the action for termination of contract on recommendations of the concerned O I/C Polyclinic. A show cause notice will be given to the employee detailing the nature of offences. An inquiry ordered by the Stn Cdr will go into details of the case including the replies to the show cause notice of the employee. The Station Commander may also take legal action under the existing laws of the land for any act listed in para 15 above.

17. The Appointing authority will be the authority for termination of contract."

5. It is not in dispute that it is in pursuance to the aforesaid Scheme that all the petitioners have

been appointed on different dates on contractual basis and on cessation of their contractual service, their services have been dispensed with and aggrieved thereby have filed these writ petitions.

6. While construing the provisions of the Scheme, a Division Bench of this Court in **Ashok Dutt Sharma's** case (supra) dismissed the petition by observing as under:

“Petitioner’s appointment as Lab Assistant was on contract basis. We find that the period of contract has come to an end in the month of February, 2014 and as such we find no illegality with the impugned order dated 14.2.2014 (Annexure P-2), whereby petitioner’s contractual employment stands terminated. Petition stands disposed of accordingly, so also pending application(s), if any.”

7. Whereas another Division Bench of this Court in **Bir Pal Singh's** case (supra), and earlier to that in case of **Govind Ram and others vs. Union of India and others**, CWP No.4446/2014 decided on 16.12.2015, allowed the petition by observing as under:

11. The Hon'ble Apex Court in a catena of decisions has deprecated the endeavours on the part of the employer to displace contractual appointees by substituting them with appointees alike to the petitioners herein. It appears that the diktat of the verdicts of the Hon'ble Apex Court

frowning upon the employer resorting to displace or dislodge the services of contractual appointees by concerting to substitute or replace them by appointees whose terms of appointments bear an affinity or are alike to the appointments on a contractual basis of the petitioner herein stands openly irrevered by the respondents herein. The irreverence meted by the respondents herein to the principle aforesaid encapsulated in verdicts of the Hon'ble Apex Court reproaching the employer against its substituting contractual appointees by concerting their replacement by appointments on an alike basis, has led the respondents herein to make an indefensible endeavour to by issuing advertisements elicit applications from desirous aspirants for being considered for selection and appointment against post on a contractual basis which hitherto on an alike contractual basis was or stand manned by the petitioner herein. The said endeavour warrants its being baulked especially when its being permitted to be carried forward would overwhelm the experience gained by the petitioner herein on the post whereon he stood/stand appointed on a contractual basis defeating the salutary purpose of skilled man power manning the polyclinics established under ECHS for hence purveying optimum medical care to the stakeholders."

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

9. Mr. Dilip Sharma, learned Senior Advocate assisted by Mr. Tara Singh Chauhan, Advocate would vehemently contend that *ad hoc* or temporary employee cannot be replaced by other *ad hoc* or temporary employee 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. vs. 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 should not be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

10. The aforesaid ratio is not clearly applicable to the facts obtaining in the instant cases 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.

11. 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).

12. The difference in the fact situation obtaining in the instant cases vis-à-vis *Piara Singh's* case (supra) is stark and clear. In the instant cases, 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 Singh's* case cannot be blindly applied to the facts of the present cases 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.

13. The fixed term contractual appointment, as envisaged under the Scheme, is not only to provide medical facilities to the ex-servicemen but at the same time is a mode of adjusting the personnel superannuating from the Army for a short period so as to enable them to adjust suitably even after the tenure with the ECHS Clinics. Thus, the avowed object is to engage such employment to a large number of persons, therefore, the persons, who are given fixed term service contract, cannot claim any right of renewal of such 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.

14. A careful reading of the letter of appointment as also the Scheme 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 Scheme 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.

15. 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.

16. 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).

17. 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 scheme placed on record governing the service conditions of



the petitioners makes it abundantly clear that petitioners in all these petitions had been appointed on contractual basis, that too, on a non-statutory scheme.

18. 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 scheme 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.

19. In order to buttress their submission reliance is placed on the judgment of the Hon'ble Supreme Court in ***Mohd. Abdul Kadir and another vs. Director General of Police, Assam and others*** (2009) 6 SCC 611 wherein it was held as under:

18. We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and re-appointment every year should be avoided and the appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, co-terminus with the scheme. The circular dated 17.3.1995 directing artificial breaks by annual terminations followed by fresh appointment, being

contrary to the PIF Additional Scheme and contrary to the principles of service jurisprudence, is liable to be is quashed.

[19] Before parting we may however refer to two aspects. One is with reference to the term of the scheme itself. Second is with reference to the pay.

20. The PIF Scheme has been in force for nearly five decades. PIF Additional Scheme has been in force for more than two decades. The object of the Scheme is detection and deportation of illegal immigrants/fresh infiltrators/re- infiltrators, establishment of second line of defence on Assam Bangladesh Border to man the areas not covered by Border Security Force and monitoring the occurrences on international border. The staff entrusted with such sensitive functions and duties can work wholeheartedly and with commitment in adverse and hostile conditions only if they have security of tenure, without having to constantly worry about their future. If the task under the scheme is perennial, there is no point in executing it as a "temporary" Scheme, though to start with it might have been thought that the task was a short term task.

21. Another aspect to be noticed is that duties discharged by the Border staff belonging to Assam Police Border Organization under the PIF Scheme is said to be somewhat similar or parallel to the duties discharged by regular forces like Border Security Force and Assam Special Peace keeping Force. Further, part of the very same Border Organization under PIF Scheme is manned by regular police personnel. Therefore, if those working as ad hoc or temporary staff for decades on, are converted to regular permanent staff, that would boost their morale and efficiency.

22. We are conscious of the fact that the issue is a matter of policy having financial and other implications. But where an issue involving public interest

has not engaged the attention of those concerned with policy, or where the failure to take prompt decision on a pending issue is likely to be detrimental to public interest, courts will be failing in their duty if they do not draw attention of the concerned authorities to the issue involved in appropriate cases. While courts cannot be and should not be makers of policy, they can certainly be catalysts, when there is a need for a policy or a change in policy.

23. Another issue requiring consideration by the respondents is the question of pay. The order of appointment in the case of first appellant shows that he was appointed in a time scale of pay. First appellant and similarly placed will therefore be entitled to increments in terms of the pay scale. Second appellant was appointed on a fixed pay. But even in the case of second appellant and others appointed on fixed pay, it is alleged that the State Government had treated their appointments as being in a time scale of pay and claiming reimbursement from the Central Government on that basis.

24. If the State Government has treated the appointments on fixed salary as appointments on a time scale, and claimed reimbursement from the Government of India on that basis, the State Government should, in all fairness, pass on the benefit of such time-scale of pay to the employees concerned. When persons are engaged under the same Scheme, discriminatory treatment, that is extending benefit of increments to some and denying the said benefit to others, should be avoided.

20. 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 Scheme, but in no manner would have a right to claim that their appointments now be treated as co-terminus with the project.

21. It may be noticed that the petitioners had voluntarily accepted the appointment granted to them subject to the conditions clearly stipulated in the scheme. 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.

22. Indubitably, there is an age of superannuation provided in the Scheme; however, the same is only in the nature of providing outer limit to which the employment or contract could have been extended. It does not suggest that there was any specific or implied condition of employment that the petitioners would continue to serve till they attain the age of superannuation. The extensions given to the

petitioners were subject to and in accordance with the terms and conditions stipulated in the scheme. The appointment letters, in favour of the petitioners, specifically stated that their services would be governed under the Scheme. The Scheme itself makes manifest that the appointments under the Scheme were only on contractual basis. That being so, it is difficult to see how the appointments could be continued beyond what was envisaged and provided for therein.

23. Learned counsel for the petitioners would then contend that having undergone a selection process, the petitioners had every right to continue in service as their appointments cannot be said to be backdoor appointments.

24. Indisputably, the Scheme 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.

25. 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 Scheme 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.

26. In addition to the aforesaid, in case the contention of the petitioners is accepted that their services be made co-terminus with the Scheme 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 Scheme under which they have been appointed. Obviously, such a course is legally impermissible.

27. Learned counsel for the petitioners would then argue that some of the petitioners have put in 8-10 years of service, and therefore, their services cannot be dispensed with. Even this contention cannot be accepted as the Hon'ble Constitution Bench of the Hon'ble Supreme Court in ***Secretary, State of Karnataka and others vs. Uma Devi (3) and others***, (2006) 4 SCC 1 had clearly held that the courts are not to be swayed by the consideration that the concerned person has worked for some time or for a considerable length of time as the person, who is engaged on such appointment is temporary or casual or contractual, is fully aware of the nature of his employment and having accepted such appointments with eyes open cannot turn around and claim permanency or continuation as this would create another mode of employment, which is not permissible. It is relevant to reproduce relevant observations as under:

[45] While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not

aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other, words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the



procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the constitution of India.

28. It needs no reiteration that framing of Scheme by the respondents is a policy matter and it is more than settled that it is neither within the domain of the Courts nor the scope of judicial review to embark upon an inquiry as to whether a particular public Scheme is wise or better public policy can be evolved. Nor are the Courts inclined to strike down a policy at the behest of the petitioner merely because it has been urged that a different policy would have been formulated or more scientific or logical.

29. As a last ditch effort, learned counsel for the petitioners would then contend that they have legitimate expectation to continue in service.

30. As already observed earlier, appointment offered to the petitioners was limited one and the respondents had not at any given time offered to the petitioners that they would continue in service till the existence of Scheme or till the date they 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 insofar as the tenure to which they were appointed. Therefore, the question of legitimate expectation to continue in service does not arise. The petitioners at the time of entering into contractual appointment were fully aware of the consequences of appointments being contractual in nature, therefore, such a person(s) cannot invoke the theory of legitimate expectation for being continued in the post.

31. Identical issue has already been considered by the Constitution Bench in ***Uma Devi's*** case (supra) and it was negated by observing as under:

[46] Learned senior counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial taxes Department, should be directed to be regularized

since the decisions in *dharwad (supra)* , *Piara Singh (supra)* , *Jacob*, and *Gujarat Agricultural University* and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the Administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn (see *Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service*, *National Buildings Construction Corp'n. v. S. Raghunathan*, and *Dr. Chanchal Goyal v. State of Rajasthan*). There is no case that any assurance was given by the government or the concerned department while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the commissioner of the Commercial taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after the *dharwad* decision. Though, there is a case that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial

directions, either of the Administrative Tribunal or of the High Court and in some case by this court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the Court had directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

[47] When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the state has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

32. In view of aforesaid discussion, the question raised in these petitions is answered by holding that the petitioners who have been appointed purely on contractual basis for a fixed term, in accordance with the non-statutory scheme, have no right to claim higher right than what is envisaged in their contract of the appointment and the same would automatically come to an end by efflux of time in terms of the contract. The petitioners holding such posts have no right to continue or claim renewal of the contract, save and except, if so provided in the scheme itself. Therefore, they cannot lay claim that the appointments be made co-terminus with the scheme or in the alternative the services be continued till they attain the age of superannuation.

33. Moreover, the petitioners having accepted the offer of appointment with eyes open cannot turn around by claiming higher rights ignoring the conditions subject to which the appointments had been accepted. There was no uncertainty or ambiguity in the appointments made by the respondents insofar as the tenure to which they were appointed.

34. Evidently, the petitioners at the time of entering into contractual appointments were fully aware of the appointments being contractual in nature. Therefore,

they cannot also invoke the theory of legitimate expectation for being continued in the posts.

35. Having said so, we are of the considered opinion that the view taken by the learned Division Bench in **Bir Pal Singh's** and **Govind Ram's** cases does not lay down the correct law and are accordingly over ruled and the view taken by Coordinate Division Bench in **Ashok Dutt Sharma's** case is affirmed.

36. Now that we have held that the petitioners have no right to continue beyond the period as stipulated in the contract, there is no need to refer these matters back to the learned Division Bench for deciding individual cases as none of these petitions are maintainable and accordingly are dismissed. Pending application(s), if any, also stands disposed of leaving the parties to bear their own costs.

**(Mansoor Ahmad Mir),**  
**Chief Justice**

**(Tarlok Singh Chauhan),**  
**Judge.**

**(P.S. Rana),**  
**Judge.**

2.12. 2016\*awasthi\*