

W.A.Nos.617/2015, 668/2015, 975/2015, 976/2015, 977/2015, 978/2015, 979/2015, 980/2015, 981/2015, 982/2015, 983/2015, 984/2015, W.P.Nos.2135/2016 (s), 2137/2016 (s) Conc. No.358/2016

18.03.2016

Smt. Meena Chaphekar, learned counsel for the appellants in W.A.Nos.975/2015, 976/2015, 977/2015, 978/2015, 979/2015, 980/2015, 981/2015, 982/2015, 983/2015, 984/2015 & W.P.Nos.2135/2016 (s) & 2137/2016 (s).

Shri Rajesh K.Chand, learned counsel for the appellant in W.A.Nos.617/2015, 668/2015.

Shri Anoop Nair, learned counsel for the respondents in W.A.Nos.617/2015, 668/2015.

Shri Prassan Prasad, learned counsel and Shri Abhay Pandey, learned counsel for the respondents.

Heard counsel for the parties.

These appeals raise identical question. In each of these appeals the appellants were appointed on contract basis. The appointment was tenure appointment initially for two years and extended from time to time. As per the last extension, the contractual appointment was valid till 14.01.2016. It is not in dispute that no further extension order of appointment has been issued in favour of any of the appellants so far. Instead, the respondents had

commenced the process of filling up the regular posts by resorting to selection process stipulated in the extant Regulations.

The appellants filed writ petitions before the High Court praying for setting aside the advertisement dated 30.05.2015 inviting application for appointment of Junior Engineers on regular basis. The appellants not only challenged that advertisement but also sought direction against the respondents to regularize them in service on the basis of their initial appointment extended from time to time and having spent almost 5 years in service.

The respondents on the other hand, asserted that since the initial appointment was on contract basis and for fixed period, the fact that it has been extended from time to time until 14.01.2016 does not create any right in favour of the appellants to be continued for further period, muchless, being regularized in service against the regular vacancy of the Class-III post concerned.

The learned Single Judge examined the rival submissions and by the impugned judgment rejected the writ petitions on the finding that the appellants have failed to substantiate existence of any legal right to be continued for further period or to be regularized in service of the

respondent Company against the regular vacancies.

The argument of the appellant that although they were appointed on contract basis, but, the process adopted for selection and appointment was nothing less than the procedure prescribed for making appointments on regular basis against the regular post; and for which reason, the respondent Company was bound to consider their request for regularization in service against the regular post.

Even this contention has been considered by the learned Single Judge and negatived for the reasons recorded in the impugned judgment.

The argument of the appellant that the respondent/Company was obliged to fulfill the policy of the State Government as manifested from the Vision Document (Annexure P-3) also did not find favour with the learned Single Judge.

It is in this backdrop, present appeals have been filed. No doubt, while admitting the appeals the Court granted ad-interim protection to the appellants, but, that was on the assumption that the contractual appointment period was still valid till 14.01.2016. However, after expiry of the contract period the interim protection in ordinary course ought to expire; but for the nature of the order passed the

appellants have been continued in service till this date.

According to the appellants, the appellants had made representation to the appropriate Authority of the respondent Company for considering their request for regularization, but even that representation has not been decided since the year 2013; and on the other hand, the respondents were hastening the process of making appointment on regular posts against the vacant posts which would result in removal of the appellants and not to continue them for further period.

Having considered the rival submissions, we have no hesitation in affirming the view taken by the learned Single Judge, as it is founded on the basis of settled legal position that the fact that the contractual term of the appellants were extended from time to time will not create any right in favour of the appellants to be continued in employment muchless to be regularized against the regular posts. Notably, the initial appointment of the appellants was on the basis of the advertisement issued in the year 2010. The advertisement Clause 11.1 dealing with the selection and appointment plainly provided for tenure appointment on the conditions specified therein :-

“11. SELECTION AND APPOINTMENT

11.1 Based on the merit list declared, selected candidates shall be engaged purely on contract basis for the position of Assistant Engineer (Electrical- Contract) & Junior Engineer (Electrical – Contract) for a period of two years only. The contract agreement shall be terminated automatically after completion of contract period of two years. No further extension will be granted under any circumstances. The decision of the company shall be final and binding in this regard.”

Each of the appellants accepted these conditions and were fully aware that their services would be continued on contract basis only for a period of 2 years. It is a different matter that the appellants were continued in service, but, by extending contract period, their appointment nevertheless, shall remain on contract basis. No document or Regulation has been filed by the appellants and atleast brought to our notice, which may even remotely suggest that there was an agreement reached between the parties that on completion of 5 years of contractual service the concerned employee would be regularized in service. The fact that the appellants have now become over age and will not be eligible for appointment elsewhere, cannot be the basis to answer the controversy. The matter has to be

answered keeping in mind that the contractual employee cannot insist for regularization in absence of policy, scheme or regulation having the backing of law and enforceable against the employer. In the present case, no such document has been brought to our notice. As a result, it is not open to this Court to issue writ to direct the respondents to regularize the appellants in service. The fact that the appellants have served the respondent/Company for almost five years, by itself, cannot be the basis to issue such direction unless it is a case of legally enforceable right which has enured in favour of the appellants. That is not the case at hand.

The counsel for the appellants was at pains to point out (Annexure P-3) – that it is the commitment of the respondent Company to regularize all the employees appointed on contract basis.

As aforesaid, Annexure P-3 is only a vision document. It is not a document which can be enforced against the respondent Company nor it is possible to press it into service, to invoke the principle of estoppel against the respondent Company. If the appellants have suffered any loss or disability in getting future employment, it is open to the appellants to take recourse to the remedy as

may be permissible in law for being compensated in that behalf. But, by no stretch of imagination, writ of mandamus can be issued against the respondent/Company to direct the respondent/Company to regularize the appellants in service. Law on this subject is well settled that such appointment cannot partake the colour of regular appointment, in the light of the decision of the Constitution Bench of the Supreme Court in the case of **Secretary, State of Karnataka Vs. Uma Devi and others** reported in **2006 4 SCC 1**; and subsequent decisions to which learned Single Judge has already adverted to.

The fact that the appellants representation has remained pending since 2013 also cannot be the basis to issue writ of mandamus, as prayed. This Court can only express a sanguine hope that the appropriate Authority of the respondent Company must decide the representation made by the appellants, expeditiously, preferably within two weeks from today. Besides this, no more indulgence can be shown to the appellants.

Counsel for the appellants was at pains to persuade us to direct the respondents to continue the appellants till the representation is decided. We make it clear that it is not possible to issue such direction to the respondents, but it is

for the respondents to consider the request of the appellants to continue the appellants until the decision on the representation or, for that matter, to extend their contractual service. That is the prerogative of the respondent Company and no direction in that behalf can be issued by this Court, in exercise of writ jurisdiction, not being an enforceable right.

As a result, we find that these appeals are devoid of merits. As a matter of fact, the appellants could not have continued in service after the expiry of the contract period, but since the appellants have been continued on the basis of the interim order passed by this Court, the respondent Company may take such steps as may be necessary keeping in mind the observations made hitherto.

The appeals are **disposed of** accordingly.

Interim order is vacated on the above terms.

In view of disposal of the appeals, nothing survives for consideration in the review petitions, which were directed against the interlocutory orders passed in the appeals. Hence, **disposed of**.

W.A.Nos.617/2015 & 668/2015

Smt. Meena Chaphekar, learned counsel submits that she has no instructions to appear in these appeals today.

None appears for the appellants when the matters are taken up for consideration.

Dismissed for non-prosecution.

Later on :-

Shri Rajesh K.Chand, counsel for the appellants appeared and requested the Court to recall the order dismissing the appeals for non-prosecution by pointing out that at the relevant time he was held up in some other Court.

Shri Prasanna Prasad, counsel for the respondents has no objection.

For the reason stated across the Bar, in the interest of justice, as the litigant should not suffer for the mistake of the Advocate, the order passed in the earlier session dismissing the appeals for non-prosecution is **recalled**. The appeals are restored to its original number and proceeded forthwith, by consent.

Shri Rajesh K.Chand, learned counsel appears for the appellants.

Shri Prassan Prasad, learned counsel and Shri Abhay Pandey, learned counsel for the respondents.

Heard counsel for the parties.

The only additional argument that needs to be dealt

with in these appeals is whether it is open to the employer to once again invite application for appointment on contractual basis. We have already observed in the companion matters that it is the prerogative of the employer respondent Company to either continue with such contractual employee by extending the contract period or to fill in the vacancy on regular basis instead of extending the contract period of the present employees or resort to such other option as is permissible in law. There is no impediment, at least, no legal provision is brought to our notice, which mandates that the respondent /Company is not free to invite fresh applications for appointment on contract basis.

Taking any view of the matter, these appeals are devoid of merits and are **dismissed**.

Conc.No.358/2016

Shri Rajesh K. Chand, learned counsel for the applicant.

For the same reasons stated in the companion matters disposed of today, even this petition stands **dismissed**.

(A. M. Khanwilkar)
Chief Justice

(Alok Aradhe)
Judge