

W.P.No.4195/2015 W.P.No4240/2015, W.P.No.4263/2015, W.P.No.4265/2015 and W.P.No.4315/2015 since it is jointly submitted by the learned counsel for the parties that all these writ petitions involve identical issues on the similar fact situation.

[2] For convenience, the facts are noted from W.P.No.1340/2015.

[3] In brief, the petitioner was appointed on the post of Computer Programmer in IT Cell of the respondent company on contract basis after selection in pursuance to the advertisement dated 26.9.2009. In other connected writ petitions in the similar manner the petitioners were appointed on contract basis in pursuance to the advertisement on the post of Junior/ Assistant Engineer, System Analyst etc. The initial period of contract was 3 years and the contract agreement was also executed on 25.5.2010. On completion of three years period, the contract was further extended for a period of two years and the fresh contract agreement for two years was executed on 26.2.2015. The petitioner thereafter had filed the representations seeking regularization in service and in the meanwhile the advertisement dated 30.5.2015 was issued for making the regular recruitment on the post in

question. In these circumstances, writ petitions have been filed with a prayer to restrain the respondents from terminating the services of the petitioner and to regularize the petitioner's service.

[4] Learned counsel for the petitioner submits that the petitioners have already served for a period of five years, therefore, they are entitled for the regularization in service. She has further submitted that the appointment of the petitioners was after following the regular process, therefore, it was a regular appointment and that in the fresh regular recruitment process certain minimum eligibility conditions have been added which the petitioners do not fulfill, therefore, they will be debarred from participating in the same.

[5] Learned counsel for the respondents have opposed the writ petition.

[6] I have heard the learned counsel for the parties and perused the record.

[7] The record reflects that in the advertisement itself, in pursuance to which the petitioners were appointed, it was disclosed that the maximum period of contract will be five years. The advertisement mentions that the contract appointment will be for initial period of three years which could

be extended for a period of two years subject to the mutual agreement. Apart from clearly providing that the maximum contract of five years, it was also provided that the contract can be terminated by either side by giving three months notice or salary-in-lieu thereof without assigning any reasons. In the general conditions, it was disclosed that the selection is temporary in nature and for specified period. In the initial order of appointment of the petitioners also it was clearly stated that the appointment is on contract basis for a period of three years which may be extended for a period of two years. In the initial contract agreement also the same conditions were reiterated. After expiry of initial three years period of contract, the contract was renewed for a further period of two years vide order dated 2.2.2013 (in W.P.No.1340/2015 and similar orders were also passed in other connected matters also) specifically mentioning that “the contract agreement shall be terminated automatically after completion of extended contract period of two years”. In pursuance to the said extension order, fresh contract agreement for a period of two years was executed between the parties. Thus, the petitioners had accepted the contract appointment with the open eyes that the appointment was for a period of five years and, therefore, now it is not open

to the petitioners to claim regularization on the expiry of the said contract period. It is the settled position in law that a contract appointment is governed by the terms of the contract.

[8] The petitioners have contended before this court that their appointment was regular appointment by following the due process of regular appointment but such a contention cannot be accepted in view of the fact that the advertisement, in pursuance to which the petitioners were appointed, itself mentions that the appointment is a fixed tenure contract appointment. The respondents in their reply have disclosed that the recruitment was not in pursuance to any statutory rule but looking to the urgency which was cropped up, the Board of Directors had approved the recruitment on contract and left the procedure to the discretion of the Chairman and Managing Director of the Company and the Chairman and Managing Director with consultation with other officers had adopted ad-hoc procedure for appointing the petitioners. In these circumstances, the petitioners who are the contract appointees cannot be put at par with the regular appointees.

[9] That apart, the reply filed by the respondents also reveal that the petitioners in the meanwhile were given several opportunities to participate in the regular selection process

which had taken place in the year 2011-12, 2012-13, 2010-11 but the performance of the petitioners in the said selection process was very poor and they were much below in the merit list. Some of the contract employees had performed well and they have been granted the regular appointment and they are not before this Court.

[10] In these circumstances, if a direction is issued to regularize the petitioners' services then, the rule of merit will be violated and the right of a more eligible candidate who may ultimately be selected in the regular selection process on that basis will be defeated.

[11] The Supreme Court in the matter of **Secretary, State of Karnataka Vs. Uma Devi, reported in (2006) 4 SCC 1** as one time measure has directed regularization of those employees who are irregularly appointed and who had worked for more than ten years or more in duly sanctioned posts and has further directed to ensure the regular recruitment to fill up the vacant sanctioned posts that are required to be filled up in cases where temporary employees or daily wages employees are being now employed. The Supreme Court has in clear terms mandated that there should be no further bypassing of the constitutional requirement and regularising or making the

permanent, those not duly appointed as per the constitutional scheme.

[12] In the matter of **State of Rajasthan Vs. Daya Lal, reported in (2011) 2 SCC 429** it has again been reiterated that the High Court in exercise of powers under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming the regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. In the present case, though the petitioners have been appointed in pursuance to the advertisement but since the advertisement was for contract appointment, therefore, the respondents are right in contending that in the said selection process many meritorious candidates have not participated keeping in view the limited scope of contractual appointment. Therefore, the selection process cannot be said to be in accordance with the recruitment rules, the general object of which is to appoint most suitable and meritorious candidate.

[13] Counsel for the petitioner has placed the reliance upon the judgment of the Delhi High Court dated 3.5.2013 passed in W.P(c).No.1045/2013 in the matter of **Amrish Chanana &**

Others Vs. Government of NCT of Delhi and Anr. but in the said judgment in Para 22 the Court had found that the appointment of the petitioners was not contractual but a regular employment.

[14] So far as the judgment of the Rajasthan High Court in the matter of **Damodar Prasad Meena and 73 Ors. Vs. State of Rajasthan and Others** dated 13.3.2014 in SB Civil Writ Petition No.1702/2010 is concerned, the said judgment is distinguishable on its own facts since in that case there was a government policy which was not found to be a comprehensive policy.

[15] So far as the judgment in the matter of **Vijay Goel Vs. Union of India & Anr.** reported in **AIR 1998 SC 101** is concerned, in that case, employees were working for last 18-20 years and even otherwise that was a case prior to the Supreme Court judgment in the matter of **Uma Devi (Supra)**.

[16] The Single Bench judgment in the matter of **Dr. Pankaj Mishra Vs. The State of Madhya Pradesh** dated 20.4.2015 passed in W.P.No.13343/2013 is also of no help to the petitioners' case because that was a case where the order of regularization was sought to be annulled without giving an opportunity of hearing.

[17] Counsel for the petitioner has also placed reliance upon the judgment of the Supreme Court in the matter of **State of Jharkhand and Others Vs. Kamal Prasad and Others** reported in **2015 (1) MPLJ 34** but that was also a case where the employees concerned were appointed in the year 1981 and were found to be discharging the service as permanent employees and found to be entitled for regularization in terms of the judgment in the matter of **Uma Devi (Supra)**.

[18] Aforesaid position in law, keeping in juxta position with the facts of this case and especially the fixed tenure contract appointment of five years, reveals that the petitioners have no right of either regularization in service or extension of period of contract after completion of the prescribed maximum period of five years.

[19] The petitioners have raised an additional issue that in the regular selection process some additional qualifications have been prescribed which the petitioners do not possess, therefore, those qualifications should be deleted so that the petitioners can participate in the regular selection process. The prescription of the qualification or the additional qualification lies within the domain of the administrative and policy decisions and normally not open to interference unless

found to be in violation of constitutional and statutory provision or found to be having no reasonable nexus with the function and duties attached to the post. [see **Basic Education Board UP Vs. Upendra Rai, reported in (2008)3 SCC 432** and **Chandigarh Administration Vs. Usha Khetrapal, reported in (2011) 9 SCC 645**] but in the present case none of these offending factors have been pointed out.

[20] Besides above, counsel for the respondents has also pointed out that similar writ petitions being W.P.No.10901/2015 in the matter of **Deepak Chaudhary and others Vs. State of MP** and W.P.NO.10327/2015 in the matter of **Mukesh Bidwal and others Vs. State of MP and others** by identically placed petitioners have been dismissed by the Principal Seat by order dated 21.7.2015.

[21] In view of the aforesaid analysis, I am of the opinion that the writ petitions filed by the petitioners are devoid of any merit which are accordingly dismissed. However, it is made clear that the contract appointees whose period of contract of five years is not yet over will be allowed to continue in accordance with the terms of the contract till the completion of the said period.

[22] Original order be kept in the file of WP No.1340/2015

and a copy of the order be placed in the record of connected
Writ Petitions.

(Prakash Shrivastava)
JUDGE

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