HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 22.09.2022
Pronounced on: 27.10.2022

WP(C)No.988/2021
CM No. 3189/2021
CM No. 5312/2022

Raheela Nazir and ors ...Petitioner(s)

Through:- Mr. Jahangir Iqbal Ganai, Sr. Advocate
With Mr. Muzaffar Nabi Lone, Advocate.

V/s

J&K EDI and others ...Respondent(s)

Through:- Mr. Raies din Ganai, Dy. A. G.

HIGH COURT JAMMU & KASHMIR

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. Pursuant to various advertisement notifications issued by the respondent No.1 in the years 2017 and 2018, the petitioners came to be appointed as Assistant Faculty, Associate Project Managers, Office Associates, Stenographers, Plumbers, Electricians and Drivers on contractual basis for a period of one year on consolidated salary. The appointment was initially for a period of one year and terminable with a notice period of one month from either side. The term of contractual appointment of the petitioners was extended from time to time by the respondent No.1 by issuing formal orders of extension. The petitioners claim that they having rendered more than two years service, are entitled to their regularization in view of the decision taken by the Governing Body of

respondent No.1 in its meeting held on 18-12-2007. The fourth decision taken in the aforesaid meeting is strongly relied upon by the petitioners to contend that, after completion of initial contractual period of two years, right has accrued to the petitioners to have their contractual service regularized.

2. With a view to confer such benefit of the policy decision upon the petitioners and others, the respondent No.1 had called upon all the contractual appointees to submit their Appraisal Reports for previous years duly endorsed by their immediate officer. It is the further case of the petitioners that, after the receipt of the Appraisal Reports of the petitioners the case was also processed further for regularization. Since no decision has been taken by the respondents to regularize the services of the petitioners, as such, the petitioners are left with no option but to invoke the extra ordinary jurisdiction of this Court to seek a direction to the respondents to regularize their services against the posts they have been appointed with effect from the date of completion of their two years successful contractual service.

3. The petitioners have also placed on record certain documents to substantiate their plea that out of 165 positions of different level, 116 employees have already been regularized after completion of mandatory period of two years service and it is only the petitioners who have been left out despite sufficient number of vacant posts available with respondent No.1. The petitioners claim that they constitute a single class with those

contractual employees who have been regularized after completion of their two years service and, therefore, they cannot be discriminated.

4. On being put on notice, respondents have entered appearance through Mr. Rais-ud-Din Ganai, Deputy Advocate General, who has filed two sets of objections, one on behalf of respondent No.1 and another on behalf of respondent No.2.

5. In the objections filed by respondent No.1 (JKEDI), the claim of the petitioners for regularization is contested on the ground that the decision of the Governing Body of the respondent No.1 relied upon by the petitioners is conditional and the regularization of the contractual appointees, after completion of contract period, is subject to their performance and need of the Institute. It is, however, admitted by respondent No.1 that the matter of regularization of the petitioners was taken up with the Administrative Department (respondent No.2), which has put the process of regularization on hold in terms of Government Order No. 190-Ind of 2020 dated 28-12-2020 and Government Order No. 212-Ind of 2021 dated 28-10-2021, until the administrative issues, which have cropped up over the period of time, are sorted out. It is thus submitted that there is clear direction from the Administrative Department not to make any further regularization or appointment in the Institute. It is also the stand of the respondents that since the engagement of the petitioners was for a fixed period terminable by one month's notice, as such, no right of regularization has even accrued to them.

6. So far as reply of respondent No.2 is concerned, it is submitted that the Government in terms of Government Orders dated 28-12-2020 and 28-10-2021, has kept the process of regularization of the services of the petitioners on hold. The regularization of the petitioners has been kept in abeyance only on the advice of the Finance Department conveyed vide UO No. FD-BDGTOD-11/21/2021-03-FD dated 30-09-2021 wherein one of the conditions stipulates that no further regularization or appointment shall be made by the Institution unless the posts are created by the competent authority and such creations are funded by the Government. It is further pleaded in the objections that the Government in the General Administration Department, vide Government Order No. 462-JK(GAD) of 2022 dated 21-04-2022 has constituted a Committee for re-structuring of JKEDI and the said Committee, apart from examining other issues, has also mandated framing revised salary structure and promotion norms of the Institute etc. It is thus contended by respondent No.2 that it has acted strictly as per the advice tendered by the Finance Department. Lastly it is submitted that the only provision stipulating regularization of consolidated, contractual and *ad hoc* employees made by way of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 has been repealed post reorganization of the State.

7. Heard learned counsel for the parties and perused the material on record.

8. The Jammu and Kashmir Entrepreneurship Development Institute (JKEDI) is a society registered under the Jammu and Kashmir Societies

Registration Act of 1998 (1941-AD) and is established by the Government of Jammu and Kashmir to effectually enable entrepreneurship development in the State. The society is fully controlled and funded by the Government of Jammu and Kashmir. As a matter of fact, there has been no serious objection taken by the learned counsel for the respondents with regard to the nature and character of the respondent No.1 as instrumentality of the State. With a view to run its affairs, the Governing Body of respondent No.1 in its second meeting held on 18-12-2007 took few important decisions, which for facility of reference are reproduced hereunder:-

> "It was further decided that
>
> i. All the employees borne on the cadre of the Institute will b e adjusted against the posts carrying identical pay scales. IN respect of those employees who do not fit in their identical pay scales under the new structure will be adjusted in the next higher positions/pay scales.
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> ii. An option will be sought from all the faculty members of the Institute to identify their areas of interest in the new structure and will be accordingly placed in the concerned faculties, based on their eligibility.
>
> iii. All the faculty members and other ministerial stall members recruited after following the prescribed selection procedure, will be regularized against the post they we selected; after the completion of their contract period. This will however, be subject to their performance during their tenure in the Institute.
>
> ***iv. All the fresh recruitments whether faculty or ministerial will initially be made on contract for a period of 2 years. The regularization of appointees can be considered only after the completion of contract period subject to their performance and need of the Institute.***
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> v. All the vacant positions in the new organizational structure will be advertised and filled up through open competition.
>
> vi. The proposed organizational structure shall remain in force for a period of 5 years. However, review can be taken after 3 years, if the need arises.
>
> The meeting ended with a vote of thanks to the Chair."

9. As per Clause IV above, all fresh recruitments, whether faculty or ministerial, are to be made on contract basis for a period of two years. The regularization of the appointees is to be considered only after completion of the contract period subject to their performance and need of the Institute. It is in pursuance of this decision of the Governing Body, the process for recruitment to various positions was set in motion by respondent No.1. In the year 2017 and 2018 also several advertisement notifications were issued for making these contractual appointments. After following a proper selection process, several employees including the petitioners herein came to be appointed to different positions by respondent no. 1 on contract basis initially for a period of one year on consolidated salary. Those of the employees, who were appointed prior to the petitioners, were regularized on successful completion of their contractual period of 2 years. The petitioners also completed their 2 years contractual period in the years 2019 and 2020. Their Appraisal reports were also sought by respondent no. 1 to process their cases for regularization. It is not the case of the respondents that the services of the petitioners are not required or the need, which existed at the time of their appointment, has ceased to exist. As a matter of fact, the employer of the petitioners i.e., respondent no. 1 agrees in principle that petitioners have also become entitled to their regularization but it is showing its inability to do so because of some instructions of the administrative department based upon the advisory issued by the Department of Finance.

10. From the record it clearly transpires that respondent No.1-Institute has processed the case of the petitioners for regularization and submitted the same to the Administrative Department. As is revealed by the reply affidavit of respondent No.2, the matter of regularization of the petitioners has not been taken to its logical end in view of the advice tendered by the Finance Department. The Government has come up with two Government Orders calling upon respondent No.1 to keep in abeyance the process of regularization of the petitioners. The Government Order No. 212-Ind of 2021 dated 28-10-2021, whereby the Administrative Department has released the funds to the tune of Rs. 400.00 lacs in favour of respondent No.1, *inter alia* mandates the JKEDI not to resort to further regularization or appointment in the Institution unless the posts are created by the competent authority and are funded by the Government. In the instant case, as the pleading of the parties, the documents and the record produced shows that the posts are available and are not required to be created. That being the position, it is not understandable as to how the Government Order dated 28-10-2021 can be read against the petitioners. So far as Government Order No. 462-JK (GAD) of 2022 dated 21-04-2022 is concerned, the same only pertains to the constitution of a Committee for re-structuring of respondent No.1 and, therefore, cannot be taken to be an order impinging upon the right of the petitioners to regularization. The stand of the respondent No.1 is clear and unequivocal. It is not disputed by respondent No.1 that petitioners have been appointed against available posts and have successfully completed their contractual term and that the need for their services is perennial. It is because of this reason that respon

dent No.1 processed the case of the petitioners for regularization. The Governing Body's decision taken in the year 2007 serves as basis for making recruitment to various positions in the respondent No.1 from time to time. When the advertisement notifications were issued and the petitioners were appointed, the aforesaid decision of the Governing Body was in existence. The petitioners had legitimate expectation that like their colleagues, who had earlier been regularized in terms of the decision of the Governing Body, the petitioners too would be accorded the same treatment and their services would be regularized after successful completion of their contract period. Their expectation was based on the past practice of consistently adhering to the decision of the Governing Body of respondent No.1. There was thus, unequivocal representation to the petitioners that their contractual services shall also be regularized after successful completion of the contract period. To top it all, the respondents have acted on the decision and accorded regularization to more than hundred similarly placed appointees. Allowing the respondents to deviate from the stated practice would be manifestly unfair and arbitrary. The doctrine of substantive legitimate expectation is one of the ways to ensure fairness and non-arbitrariness guaranteed under Article 14 of Constitution of India. The subtle distinction between the Doctrine of Legitimate expectation and Promissory estoppel has been very comprehensively brought out by the Hon'ble Supreme Court in the recent judgment in State of **Jharkhand and ors v. Brahmputra Metallic's Ltd,** **2020 SCC Online SC 968**. What is stated by Hon'ble the Supreme Court in para Nos. 37 to 47 is reproduced herein below:-

"**37**. Under English Law, the doctrine of legitimate expectation initially developed in the context of public law as an analogy to the doctrine of promissory estoppel found in private law. However, since then, English Law has distinguished between the doctrines of promissory estoppel and legitimate expectation as distinct remedies under private law and public law, respectively. De Smith's Judicial Review notes the contrast between the public law approach of the doctrine of legitimate expectation and the private law approach of the doctrine of promissory estoppel:

> "[d]espite dicta to the contrary [Rootkin v. Kent CC, [1981] 1 WLR 1186 (CA); R v. Jockey Club Ex p RAM Racecourses Ltd., [1993] A.C. 380 (HL); R v. IRC Ex p Camacq Corp, [1990] 1 WLR 191 (CA)], it is not normally necessary for a person to have changed his position or to have acted to his detriment in order to qualify as the holder of a legitimate expectation [R v. Ministry for Agriculture, Fisheries and Foods Ex p Hamble Fisheries (Offshore) Ltd., (1995) 2 All ER 714 (QB)]… <u>Private law analogies from the field of estoppel are, we have seen, of limited relevance where a public law principle requires public officials to honour their undertakings and respect legal certainty, irrespective of whether the loss has been incurred by the individual concerned</u> [Simon Atrill, 'The End of Estoppel in Public Law?' (2003) 62 Cambridge Law Journal 3]."

(emphasis supplied)

38. Another difference between the doctrines of promissory estoppel and legitimate expectation under English Law is that the latter can constitute a cause of action . The scope of the doctrine of legitimate expectation is wider than promissory estoppel because it not only takes into consideration a promise made by a public body but also official practice, as well. Further, under the doctrine of promissory estoppel, there may be a requirement to show a detriment suffered by a party due to the reliance placed on the promise. Although typically it is sufficient to show that the promisee has altered its position by placing reliance on the promise, the fact that no prejudice has been caused to the promisee may be relevant to hold that it would not be "inequitable" for the promisor to go back on their promise. However, no such requirement is present under the doctrine of legitimate expectation. In Regina (Bibi) v. Newham London Borough Council , the Court of Appeal held:

> "55 The present case is one of reliance without concrete detriment. We use this phrase because there is moral detriment, which should not be dismissed lightly, in the prolonged disappointment which has ensued; and potential detriment in the deflection of the possibility, for a refugee family, of seeking at the start to settle somewhere in the United Kingdom where secure housing was less hard to come by. <u>In our view these things matter in public law, even though they might not found an estoppel or actionable misrepresentation in private law, because they go to fairness</u>

> and through fairness to possible abuse of power. To disregard the legitimate expectation because no concrete detriment can be shown would be to place the weakest in society at a particular disadvantage. It would mean that those who have a choice and the means to exercise it in reliance on some official practice or promise would gain a legal toehold inaccessible to those who, lacking any means of escape, are compelled simply to place their trust in what has been represented to them."
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> (emphasis supplied)

39. Consequently, while the basis of the doctrine of promissory estoppel in private law is a promise made between two parties, the basis of the doctrine of legitimate expectation in public law is premised on the principles of fairness and nonarbitrariness surrounding the conduct of public authorities. This is not to suggest that the doctrine of promissory estoppel has no application in circumstances when a State entity has entered into a private contract with another private party. Rather, in English law, it is inapplicable in circumstances when the State has made representation to a private party, in furtherance of its public functions.

H.5 Indian Law and the doctrine of legitimate expectations

40. Under Indian Law, there is often a conflation between the doctrines of promissory estoppel and legitimate expectation. This has been described in Jain and Jain's well known treatise, Principles of Administrative Law :

> "At times, the expressions 'legitimate expectation' and 'promissory estoppel' are used interchangeably, but that is not a correct usage because 'legitimate expectation' is a concept much broader in scope than 'promissory estoppel'.
>
> …

A reading of the relevant Indian cases, however, exhibit some confusion of ideas. It seems that the judicial thinking has not as yet crystallised as regards the nature and scope of the doctrine. At times, it has been referred to as merely a procedural doctrine; at times, it has been treated interchangeably as promissory estoppel. However both these ideas are incorrect. As stated above, legitimate expectation is a substantive doctrine as well and has much broader scope than promissory estoppel.

…

In Punjab Communications Ltd. v. Union of India, the Supreme Court has observed in relation to the doctrine of legitimate expectation:

"the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way Reliance must have been placed on the said representation and the representee must have thereby suffered detriment."

It is suggested that this formulation of the doctrine of legitimate expectation is not correct as it makes "legitimate expectation" practically synonymous with promissory estoppel. Legitimate expectation may arise from conduct of the authority; a promise is not always necessary for the purpose."

41. While this doctrinal confusion has the unfortunate consequence of making the law unclear, citizens have been the victims. Representations by public authorities need to be held to scrupulous standards, since citizens continue to live their lives based on the trust they repose in the State. In the commercial world also, certainty and consistency are essential to planning the affairs of business. When public authorities fail to adhere to their representations without providing an adequate reason to the citizens for this failure, it violates the trust reposed by citizens in the State. The generation of a business friendly climate for investment and trade is conditioned by the faith which can be reposed in government to fulfil the expectations which it generates. Professors Jain and Deshpande characterize the consequences of this doctrinal confusion in the following terms:

> "Thus, in India, the characterization of legitimate expectations is on a weaker footing, than in jurisdictions like UK where the courts are now willing to recognize the capacity of public law to absorb the moral values underlying the notion of estoppel in the light of the evolution of doctrines like LE [Legitimate Expectations] and abuse of power. If the Supreme Court of India has shown its creativity in transforming the notion of promissory estoppel from the limitations of private law, then it does not stand to reason as to why it should also not articulate and evolve the doctrine of LE for judicial review of resilement of administrative authorities from policies and longstanding practices. If such a notion of LE is adopted, then not only would the Court be able to do away with the artificial hierarchy between promissory estoppel and legitimate expectation, but, it would also be able to hold the administrative authorities to account on the footing of public law outside the zone of promises on a stronger and principled anvil. Presently, in the absence of a like doctrine to that of promissory estoppel outside the promissory zone, the administrative law adjudication of resilement of policies stands on a shaky public law foundation.

42. We shall therefore attempt to provide a cogent basis for the doctrine of legitimate expectation, which is not merely grounded on analogy with the doctrine of promissory estoppel. The need for this doctrine to have an independent existence was articulated by Justice Frankfurter of the United State Supreme Court in Vitarelli v. Seton :

> "An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly

established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.”

43. However, before we do this, it is important to clarify the understanding of the doctrine of legitimate expectation in previous judgments of this Court. In National Buildings Construction Corporation v. S. Raghunathan (“National Buildings Construction Corpn.”), a three Judge bench of this Court, speaking through Justice S. Saghir Ahmad, held that:

“18. The doctrine of “legitimate expectation” has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of “legitimate expectation” was evolved which has today become a source of substantive as well as procedural rights. But claims based on “legitimate expectation” have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.”

(emphasis supplied)

44. However, it is important to note that this observation was made by this Court while discussing the ambit of the doctrine of legitimate expectation under English Law, as it stood then. As we have discussed earlier, there was a substantial conflation or overlap between the doctrines of legitimate expectation and promissory estoppel even under English Law since the former was often invoked as being analogous to the latter. However, since then and since the judgment of this Court in National Buildings Construction Corporation (supra), the English Law in relation to the doctrine of legitimate expectation has evolved. More specifically, it has actively tried to separate the two doctrines and to situate the doctrine of legitimate expectations on a broader footing. In Regina (Reprotech (Pebsham) Ltd) v. East Sussex County Council , the House of Lords has held thus:

“33. In any case, I think that it is unhelpful to introduce private law concepts of estoppel into planning law. As Lord Scarman pointed out in Newbury District Council v. Secretary of State for the Environment [1981] A.C. 578, 616, estoppels bind individuals on the ground that it would be unconscionable for them to deny what they have represented or agreed. But these concepts of private law should not be extended into “the public law of planning control, which binds everyone”. (See also Dyson J in R v. Leicester City Council, Ex p Powergen UK Ltd. [2000] JPL 629, 637.)

34. There is of course an analogy between a private law estoppel and the public law concept of a legitimate expectation created by a public authority, the denial of which may amount to an abuse of power… But it is no more than an analogy because remedies against public authorities also have to take

into account the interests of the general public which the authority exists to promote. Public law can also take into account the hierarchy of individual rights which exist under the Human Rights Act 1998, so that, for example, the individual's right to a home is accorded a high degree of protection (see Coughlan's case, at pp 254-255) while ordinary property rights are in general far more limited by considerations of public interest : see R (Alconbury Developments Ltd) v. Secretary of State for the Environment, Transport and the Regions [2001] 2 WLR 1389.

35. It is true that in early cases such as the Wells case [1967] 1 WLR 1000 and Lever Finance Ltd. v. Westminster (City) London Borough Council [1971] 1 Q.B. 222, Lord Denning MR used the language of estoppel in relation to planning law. At that time the public law concepts of abuse of power and legitimate expectation were very undeveloped and no doubt the analogy of estoppel seemed useful…..It seems to me that in this area, public law has already absorbed whatever is useful from the moral values which underlie the private law concept of estoppel and the time has come for it to stand upon its own two feet."

(emphasis supplied)

45. In a concurring opinion in Monnet Ispat and Energy Ltd. v. Union of India ("Monnet Ispat"), Justice H.L. Gokhale highlighted the different considerations that underlie the doctrines of promissory estoppel and legitimate expectation. The learned judge held that for the application of the doctrine of promissory estoppel, there has to be a promise, based on which the promisee has acted to its prejudice. In contrast, while applying the doctrine of legitimate expectation, the primary considerations are reasonableness and fairness of the State action. He observed thus:

"Promissory Estoppel and Legitimate Expectations

289. As we have seen earlier, for invoking the principle of promissory estoppel there has to be a promise, and on that basis the party concerned must have acted to its prejudice. In the instant case it was only a proposal, and it was very much made clear that it was to be approved by the Central Government, prior whereto it could not be construed as containing a promise. Besides, equity cannot be used against a statutory provision or notification.

290…..In any case, in the absence of any promise, the Appellants including Aadhunik cannot claim promissory estoppel in the teeth of the notifications issued under the relevant statutory powers. Alternatively, the Appellants are trying to make a case under the doctrine of legitimate expectations. The basis of this doctrine is in reasonableness and fairness. However, it can also not be invoked where the decision of the public authority is founded in a provision of law, and is in consonance with public interest."

(emphasis supplied)

46. In Union of India v. Lt. Col. P.K. Choudhary , speaking through Chief Justice T.S. Thakur, the Court discussed the decision in Monnet Ispat (supra) and noted its reliance on the judgment in Attorney General for New South Wales v. Quinn . It then observed:

> "This Court went on to hold that if denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or in violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 of the Constitution but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles."

47. Thus, the Court held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution."

11. The relationship between Article 14 of the Constitution and the doctrine of legitimate expectation has been very precisely explained in Para 7 and 8 in the judgment in **Food Corporation of India v. Kamdhenu Cattle Feed Industries, <u>(1993) 1 SCC 71</u>** by a three Judge bench of the Apex Court, which reads thus:-

"**7**. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which nonarbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of nonarbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

> **8**. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of nonarbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of nonarbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.
> (emphasis supplied)"

12. From the perusal of the two Government Orders (supra) relied upon by respondent No.2, it clearly transpires that those orders are meant for future regularization and appointments by providing that unless the posts are created by the competent authority and are funded by the Government, there shall be no fresh appointment in the respondent No.1.

13. In the instant case, the posts are available and created by the competent authority. The petitioners have been selected pursuant to a valid selection process initiated by issuance of public advertisements/notifications. They have completed their period of contractual service successfully and, therefore, they have a legitimate expectation that they shall also be given the benefit of 2007 decision of the Governing Body of the respondent No.1. They are also correct in contending that by treating them a class apart from those who were similarly situated with them except that they were engaged earlier, the respondents are visiting the petitioners with invidious discrimination. The

contractual employees, who were appointed by the respondent No.1 prior to 2017 and the contractual appointees who were appointed after 2017 do not fall in two different classes. More so, when both set of employees were appointed pursuant to a decision of the Governing Body taken in the year 2007. The selection and appointment in both the cases were after following the due process of law. The cut off line, dividing the employees appointed prior to year 2017 and after 2017 is totally imaginary, irrational and does not have any nexus with the object sought to be achieved.

14. Viewed from any angle, the petitioners herein and the contractual employees who have been regularized by respondent No.1 from time to time prior to 2017 constitute one homogeneous class and, therefore, there could be no further classification within the class. Article 14 of the Constitution of India strikes at such classification which is based on no rational basis and which has no nexus with the object sought to be achieved. Reference in this regard is invited to the case of D. S. Nakara v. Union of India, (1983) 1 SCC 305. Paras 13, 14 and 15 of the judgment are set out below with advantage:-

> "**13**. The other facet of Art. 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in Maneka Gandhi's case in the earliest stages of evolution of the Constitutional law, Art. 14 came to be identified with the doctrine of classification because the view taken was that Art. 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in EP. Royappa v. State of Tamil Nadu(1), it was held that the basic principle which informs both Arts. 14 and 16 is equality and inhibition against discrimination. This Court further observed as under:
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> "From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim

> and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.
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> **14**. Justice Iyer has in his inimitable style dissected Article 14 in Maneka Gandhi case as under:
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> "The article has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of 'executive excesses'- if we may use current cliche-can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law; be you ever so high, the law is above you.
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> Affirming and explaining this view, the Constitution Bench in Ajay Hasia v. Khalid Mujib Sehravardi held that it must, therefore, now be taken to be well settled that what Art.14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Art. 14. After a review of large number of decisions bearing on the subject, in Air India etc. etc. v. Nargesh Meerza & Ors. etc etc. (1) the Court formulated propositions emerging from analysis and examination of earlier decisions. One such proposition held well established is that Art. 14 is certainly attracted where equals are treated differently without any reasonable basis.
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> **15.** Thus the fundamental principle is that Art. 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differntia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

16. The petitioners are not backdoor entrants to service and, therefore, cannot be treated unfairly by the State. They participated in the selection process, competed with other eligible candidates and were selected on the basis of their merit. True it is that in the order of their appointment there was a stipulation that their services were terminable by one month's notice of either side but such stipulation has lost its significance when it was not resorted to during their initial period of contract. Having regard to the

services rendered by the petitioners, they were given extension in their services and on completion of two years contract, the cases of the petitioners were also processed for regularization. It is true that respondent No.2 could not take a final call in the matter due to intervention made by the Department of Finance. Once the posts are created in an institution of the Government, it must be presumed that these are created with financial concurrence by the Government. It would have been a different matter had the petitioners been appointed against no posts or for their regularization fresh creation was called for. Viewed from any angle the petitioners qualify for regularization in the light of the decision of the Governing Body taken on 18-12-2007 on the analogy of hundreds of employees similarly situated with the petitioners, who stand regularized in the respondent No.1 Institute from time to time prior to year 2017.

17. For the foregoing reasons, I find merit in this petition and the same is, accordingly allowed. The respondents are directed to complete the process of regularization of the services of the petitioners against the posts on which they have been appointed with effect from the date they have successfully completed their two years contractual service with all consequential benefits and pass appropriate order within a period of two months.

(Sanjeev Kumar)
Judge

SRINAGAR:
27.10.2022
Anil Raina, Addl. Reg/Secy

Whether the order is reportable : Yes/No