2024:DHC:1074

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 13th February, 2024**

\+ W.P.(C) 3122/2019 & CM APPL. 14297/2019 & CM APPL. 40552/2019 & CM APL. 40564/2019 & CM APL. 53418/2023

RAVINDRA KUMAR AND ANR. ..... Petitioners

Through: Mr. R.K Kapoor, Ms. Diksha Gulati and Ms. Shweta Kapoor, Advocates

versus

TECHNOLOGY INFOMATION, FORECASTING AND ASSESSMENT COUNCIL (TIFAC) AND ORS. ..... Respondents

Through: Mr. Chetan Sharma, ASG and Mr. Anurag Ahluwalia, CGSC with Mr. Amit Gupta, Mr. R. V. Prabhat, Mr. Saurabh Tripathi and Mr. Anuj Kishore Saxena, Advocates

\+ W.P.(C) 3133/2019 & CM APPL. 14317/2019 & CM APPL. 40577/2019 & CM APL. 40579/2019

MR DEEP PRAKASH AND ORS. ..... Petitioners

Through: Mr. R.K Kapoor, Ms. Diksha Gulati and Ms. Shweta Kapoor, Advocates

versus

TECHNOLOGY INFORMATION, FORECASTING AND ASSESSMENT COUNCIL (TIFAC) AND ORS..... Respondents

Through: Mr. Chetan Sharma, ASG and Mr. Anurag Ahluwalia, CGSC with Mr. Amit Gupta, Mr. R. V.

Prabhat, Mr. Saurabh Tripathi and Mr. Anuj Kishore Saxena, Advocates

\+ W.P.(C) 3134/2019 & CM APPL. 14319/2019 & CM APPL. 39060/2019 & CM APPL. 40545/2019 & CM APL. 53419/2023

DR. P. K. ANIL KUMAR AND ORS. ..... Petitioners

Through: Mr. R.K Kapoor, Ms. Diksha Gulati and Ms. Shweta Kapoor, Advocates

versus

TECHNOLOGY INFORMATION, FORECASTING AND ASSESSMENT COUNCIL (TIFAC) AND ORS..... Respondents

Through: Mr. Chetan Sharma, ASG and Mr. Anurag Ahluwalia, CGSC with Mr. Amit Gupta, Mr. R. V. Prabhat, Mr. Saurabh Tripathi and Mr. Anuj Kishore Saxena, Advocates

\+ W.P.(C) 3138/2019 & CM APPL. 14358/2019 & CM APPL. 40569/2019 & CM APPL. 40575/2019 & CM APPL. 53565/2023

DALIP KUMAR AND ORS. ..... Petitioners

Through: Mr. R.K Kapoor, Ms. Diksha Gulati and Ms. Shweta Kapoor, Advocates

versus

TECHNOLOGY INFORMATION, FORECASTING AND ASSESSMENT COUNCIL (TIFAC) AND ORS..... Respondents

Through: Mr. Chetan Sharma, ASG and Mr. Anurag Ahluwalia, CGSC with Mr. Amit Gupta, Mr. R. V. Prabhat, Mr. Saurabh Tripathi and Mr. Anuj Kishore Saxena, Advocates

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\+ W.P.(C) 7459/2015 & CM APPL. 13767/2015 & CM APPL. 13369/2019 & CM APPL. 40553/2019 & CM APL. 30216/2022

SAHEBRAO KASHINATH MUNESHWAR ..... Petitioner

Through: Mr. Gagan Mathur, Mr. Varun Kumar, Mr. Shitanshu and Ms. Sakshi, Advocates

versus

UNION OF INDIA AND ORS. ..... Respondent

Through: Mr. Chetan Sharma, ASG and Mr. Anurag Ahluwalia, CGSC with Mr. Amit Gupta, Mr. R. V. Prabhat, Mr. Saurabh Tripathi and Mr. Anuj Kishore Saxena, Advocates

\+ W.P.(C) 7469/2015 & CM APPL. 13788/2015 & CM APPL. 13373/2019 & CM APPL. 40558/2019 & CM APL. 30215/2022

DEEPAK KUMAR ..... Petitioner

Through: Mr. Gagan Mathur, Mr. Varun Kumar, Mr. Shitanshu and Ms. Sakshi, Advocates

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Chetan Sharma, ASG and Mr. Anurag Ahluwalia, CGSC with Mr. Amit Gupta, Mr. R. V. Prabhat, Mr. Saurabh Tripathi and Mr. Anuj Kishore Saxena, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The petitioners in the present batch of matters are working at the respondent no. 1 ('respondent Council' hereinafter) and were appointed in the respondent Council at various posts pursuant to the advertisements notified subsequent to the approval of Technology Vision 2020 ('TV 2020 scheme' hereinafter) by the Cabinet Committee on Economic Affairs ('CCEA' hereinafter) in the year 2005.

2. Pursuant to their selections, the petitioners were issued offer letters stating terms and conditions with respect to the job. One such letters is reproduced herein for reference:

> *Dear Shri Kumar,*
> *With reference to your application and subsequent interview attended by you on 15th January 2010 in this Council, we are pleased to offer you the post of Assistant Manager (Technical) in the pay scale (PB-2) Rs. 9300- 34800 + Rs. 4600 (Grade Pay) initially for a period of one year on the following terms and conditions: -*
> *1Your services shall be regulated in accordance with the Central Govt. Rules which have been mutatis-mutandis adopted by Technology information, Forecasting and Assessment Council (TIFAC).*
>
> *2 You are offered an initial pay of Rs. 9300 {Rupees Nine thousand six hundred only) in the scale pay of Rs. 9300-34800 plus Grade-Pay of Rs. 4600/-. In addition, you will be entitled to such allowances as are admissible to the employees of the*

Technology Information, Forecasting and Assessment Council (TIFAC).

3. You will be on probation for a period of one year from the date of your appointment, which may be extended or curtailed at the discretion of the competent authority.

4. During the above period of your assignment, your services can be terminated any time by giving one month's notice without assigning any reason. You may also resign if you so like by giving one month's notice. Further, if at any stage the competent authority is satisfied that you were ineligible for appointment to the post in the first instance itself, your services can be terminated forthwith.

5. You will be posted to work at Delhi but the appointment carries with it the liability to serve anywhere in India under the control of the Technology Information, Forecasting and Assessment Council (TIFAC).

6. You will be entitled to leave and leave salary, medical facilities, leave travel concession as per rules of the Council.

7. You will be required to join the Contributory Provident Fund Scheme of the Council from the date of your joining service in the Council and shall be subject to the rules of the Fund from time to time in force. You will also be required to join Group Saving Linked Insurance Scheme of TIFAC, under L.I.C of India, from due date.

8. Your appointment is subject to the condition that your character and antecedents are found satisfactory and you are found medically fit by the competent medical authority.

9. You will also be required to take an Oath of Allegiance to the Constitution of India (or make a solemn affirmation to that effect) and also an Oath of Secrecy in the prescribed form on your reporting for duty.

10. Your appointment will be further subject to your producing at the time of joining duty the following documents, viz

i) A declaration in the prescribed form regarding your marital status, home town, details of family etc.

ii) Documentary evidence regarding date of birth, nationality, educational qualifications, previous experience etc (original certificates and certified true copy of such documents), and Certificate of Scheduled Caste/Tribe, if you claim to belong this Caste.

iii) Communication in writing whether you have applied for any appointment or a scholarship/fellowship elsewhere or appeared for a competitive examination for admission to a service and if so, your undertaking to withdraw all such applications immediately. Copies of such correspondence to be endorsed to this office for record;

iv) An undertaking that you will not apply for any post or scholarship/fellowship elsewhere without the prior permission obtained in writing from the competent authority.

v) Attestation forms (copy enclosed) duly filled (in triplicate) along with five copies of your recent passport size photographs.

vi) You should intimate whether you are already under obligation to serve a Central Government Department/Organisation/ a State Government/a Public Authority. If so, you should produce a 'No Objection Certificate' from the authorities concerned upon your accepting this offer of appointment.

11. You will devote your whole time to your duties and obey at all times the Rules and Regulations prescribed from time to time. You will be governed by the terms and conditions of service under the relevant rules and orders in force in the Technology Information, Forecasting and Assessment Council (TIFAC).

12. This offer of appointment is sent to you in duplicate and if this offer of appointment is acceptable to you on the above terms and conditions, you are requested to sign one copy of

the offer of appointment and send it to the undersigned within 15 days from the date of issue of this letter.

13. After you accept the offer of appointment and if you are found medically fit you may report for duty immediately.
14. If you fail to convey the acceptance of this offer or after acceptance if you fail to report for duty, within 30 days from the date of acceptance, this offer of appointment will be automatically treated as cancelled."

3. Pursuant to the acceptance of the terms mentioned in the offer letter, the respondent Council issued office orders thereby appointing them for a probation period of one year respectively.

4. After successfully completing their probation period, the petitioners were granted extension *vide* various office orders. While they were on extension, the petitioners sent representations requesting consideration for the regularization of their services in the respondent Council, however, no decision was taken by the appropriate authority with respect to the said representations.

5. Aggrieved by the same, and due to apprehension of getting removed after completion of the last extension period, the petitioners have approached this Court by way of filing writ petitions bearing no. 3122/2019, 3133/2019, 3134/2019, 3138/2019, 7459/2015 & 7469/2015 seeking similar reliefs. One such relief as sought by the petitioners reads as under:

(a) Issue a writ, order or direction including a writ of mandamus or any other appropriate writ directing the Respondents to continue to grant regular pay scale to the petitioners considering their long continuous service for over 9 years;

(b) Issue a writ, order or direction including a writ of mandamus or any otiier appropriate writ restraining respondents from changing the service conditions of the petitioners adversely, like continuity of job, grant of regular pay scale , increments, 7 Pay Commission (since 6th CPC was given).
(c) Issue a writ, order or direction including a writ of mandamus or any other appropriate writ directing them to grant all other consequential\ and incidental benefits incidental to regular pay scale, considering the nature of work to be perennial in nature; and
(d) any other relief/ order which this Hon'ble Court deems fit and proper in the facts and circumstances of the case may also be passed in favour of the Petitioner and against the respondents,
(e) Award costs of the proceedings in favour of the Petitioner.

PLEADINGS

6. Mr. Kapoor, learned counsel appearing for all the petitioners in the present batch of matters has filed a brief synopsis of the written arguments. The same is taken on record and the relevant portion of the same reads as under:

A. Umbrella Scheme on 'Technology Vision 2020' Projects in Mission Mode (TV 2020) against which Petitioners are recruited The Umbrella Scheme on 'Technology Vision 2020' Projects in Mission Mode is a scheme of Department of Science & Technology (DST-Respondent No.2) for formulating & implementing useful projects in six identified sectors, being implemented by Technology Information, Forecasting and Assessment Council (TIFAC-Respondent No.1). [Refer para 2.3, Page No.44 of Additional Document]. The approved minutes of EFC held on 08th March 2002 clearly mention that TV 2020 was a one-time announcement and did not mention any specific duration for

continuation of such schemes [Refer para 2, page No.10 of additional document]. The EFC Memorandum for approval of TV 2020 submitted to the EFC during June 2003 confirms that the 'Technology Vision 2020 Projects in Mission Mode' is a continuing Central Government Scheme [Refer para 2(a), page no.18 of Additional Document]. Further, 32 technical and 15 nontechnical (Administrative) posts were proposed as permanent posts for approval under TV 2020. [Refer additional document page no.38]. The programme management expenditure including manpower was envisaged to be met within the budget proposed". EFC approval was sought for Rs.347 Crores for TV 2020 scheme. [Refer para 12(C), page no.40 of Additional Document]

B. The Cabinet Committee on Economic Affairs (CCEA) approved TV 2020 Scheme along with 32 Technical & 15 non-technical posts after the approval by EFC and MoF [Refer para 4.1, page no.114-115 of CCEA note dated 10.01.2005 and Page. No.113 of CCEA approval of Counter Affidavit]. The major highlights of the cabinet note submitted by DST are: Manpower Requirement: "With regard to the need of manpower, it was clarified during the EFC meeting that the manpower (32 Technical and 15 non-technical) is the minimum core support required for various activities including pre-proposal actions such as inviting proposals through different mechanisms" [Refer counter affidavit page no.141 of Cabinet Note]. It is, highlighted that TV 2020 is a scheme of DST/Govt of India, and TIFAC is only the implementing agency [Refer page no.142 of Cabinet Note of counter affidavit].

C. Ministry of Finance (MoF) OM No: 7(7)-E(Coord)/93 dated 3rd May 1993 regarding guidelines for Creation of Posts in the Government Department and Autonomous bodies under the Govt Department, clearly states that for the creation of Group 'A,B&C' Posts under Non-Plan Posts may be created with the approval of Cabinet after obtaining the approval of Finance Minister. From the OM it is clear that the posts created with approval of CCEA are non-Plan Posts

i.e. permanent posts [Refer Page No.9 of Additional Document].

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E. That the Respondent no.1 has cleared probation period of all the Petitioners [Refer page No.41 of main petition] through office order dated 09.05.2012. It is pertinent to mention here that once the probation period is cleared by issuing the order to the effect that the "probation period" "is discharged" means the employees mentioned therein got confirmed by the employer. It clearly shows that the petitioners were made to complete their probation against the sanctioned posts in the grade, particularly when an employee is put on contract basis he cannot be put on probation, it means when the persons were put on probation they were not on contract terms but against sanctioned post for which the scale was also prescribed and granted to the Petitioners.

F. That as per the Planning Commission, GoI guidelines for 10th Five Year Plan i.e. 2002-07, for Plan & Non Plan Expenditures, it has been mentioned that in case of Schemes, expenditures towards headquarter staff/field staff is to be treated as Non-plan expenditures [Refer guideline item no G(iii) at Page no.225 of Rejoinder]. Further that TV 2020 is a scheme which is a continuous process and is still continuing till date. The posts of the Petitioners had been approved by the Cabinet. The document dated 24th of June 2006 issued by the Registrar, TIFAC (Respondent No.1) on the subject matter of "Continuation of services of staff under Umbrella Scheme for Technology Vision 2020 Projects in Mission Mode", it has been mentioned that subsequently 19 technical and 6 non-technical posts are processed for creation, which are within the approval accorded by CCEA [refer para 1 at page no.154 of Counter Affidavit].

G. That the Petitioners were recruited against the Advertisements published by Respondent no.1 following all the recruitment procedure/Govt. Norms. Further the extensions without any break were granted from time to time in both the cases, since the posts are permanent and regular

in nature as per approval from the Cabinet Committee on Economic Affairs (CCEA), GoI.

H. That the petitioners were recruited against the sanctioned posts under TV 2020 Scheme which are permanent posts [Refer page no.38 of EFC Memo June 2003 of Additional Document, para 1, Page No.149 of Minutes of EFC Memo 12th September, 2003 & Page No. 114-115 & 113 of CCEA approval of Counter Affidavit] and the Respondents have been taking regular work continuously from Petitioners for more than a decade and offering them pay scale at par with regular/permanent employee, including benefits like DA, LTC, Leave encashment, Medical facilities and other incidental benefits as per the central service norms. Thus, they are equally entitled for VIIth Central Pay Commission as well particularly when VI th CPC was already been provided to them.

I. The posts of TV 2020 are duly approved by Cabinet Committee on Economic Affairs (CCEA) in 2005. The TV 2020 was never a time bound project/mission and the recruitment of the petitioners was not co-terminus with the said project since it falls under Continuous Central Scheme-being implemented by TIFAC(DST).

J. That the petitioners were given the benefit of the New Pension Scheme (NPS) as per the Government Rules monitoring the service conditions of the Regular Government Employees, wherein the Government makes 14% contribution of the Basic+DA of the Employers along with 10% contribution from employee. Thus, the petitioners are regular employees.

K. The claim of the respondents that the 32 Technical + 15 Non-technical Posts under TV 2020 is not duly approved by Ministry of Finance is wrong in light of OM No: 7(7)-E(Coord)/93 dated 3rd May 1993 issued by Ministry of Finance [Refer Page No.9 of Additional Document] and an attempt to mislead, since the fact is that DST has clearly mentioned that the posts are duly approved by the finance ministry [Refer page no.41 of Additional Document & Page

No.113 of Counter Affidavit]. The communication from the DST (Respondent No.2&3) cannot be wrong.
L. TIFAC i.e. Respondents No.1 on 28th October, 2016, submitted a proposal to the Respondents No.2&3 for regularization of the Petitioners against the post of TV 2020 [Refer Para-8 (iii & iii-b) at Page.240 & 241 of TIFAC note dated 27th Oct 2016 of Rejoinder] in which respondent no.1 has admitted that the posts of TV 2020 are regular posts and the posts have been approved by CCEA without any fixed duration. That Respondent no.1 again submitted a proposal on 30th January 2017, to the Respondent No.2&3 for regularizing the posts of the Petitioners [Refer Page No.55, 59&60 of Additional Document].

7. In response to the grounds taken by the petitioners in their pleadings, the respondent Council has submitted the counter affidavit to rebut the said grounds. The relevant parts of the counter affidavit reads as under:

"1. It is submitted that the Cabinet Committee on Economic Affairs (CCEA) in Year 2005 approved for 32 technical and 15 non-technical posts for implementation of Umbrella Scheme on Technology Vision 2020 (herein after refer to as TV 2020) projects in Mission Mode for the period upto 2006-07 (TIFAC's Programme in the Tenth Five Year Plan). Against the 32 technical and 15 non-technical posts, keeping in view of the functional requirement, a total no of 25 posts (19 technical & 06 non- technical) were decided to be filled on a contractual basis during of 2005-06, through an approval note dated 30.03.2005 for the recruitment of personnel for filling up posts in the said project in Umbrella Scheme on Technology Vision 2020 Projects in Mission Mode. Copy of the Notification (approval of the CCEA) for the allocation of the programme by Government of India (Ministry of Science & Technology) to TIE AC in the Tenth

Five Year Plan Period 2002-03 to 2006-07 along with minutes of the meeting dated 27.01.2005 are annexed hereto and marked as ANNEXURE R-1 (Colly). A copy of the TIPAC note / approval dated 30.03.2005 for recruitment in Umbrella Scheme is annexed hereto and marked as ANNEXURE R-2.

2. It is submitted that subsequently during the year 2007, the activities of Umbrella Scheme on Technology Vision 2020 projects in Mission Mode were extended with prior approval of Chairman, TIFAC Executive Committee/ Secretary DST in the Eleventh Five Year Plan (till 31/03/2012). Copy of the note sheet dated 24.06.2006 for continuation of services of the staff under "Umbrella Scheme for Technology Vision 2020 Projects in Mission Mode is armexed hereto and marked as ANNEXURE R-3.

3. It is submitted that during the year 2008, a committee was constituted for review and reorganisation of activities of TIFAC. The committee during its meeting held on 13.02.2009 noted that there were vacancies available for certain posts available under the Umbrella Scheme in Technology Vision 2020 projects in Mission Mode (which was extended upto 31.03.2012) and considering TIFAC's further requirement in the Projects the Committee inter-alia recommended re-designation of seven posts including two ' posts (the Petitioners are holding) of Scientific Assistants to Assistant Manager-Technical and Computer Assistant respectively. Copy of the minutes of the meeting held by the review committee on 13.02.2009 is annexed hereto and marked as ANNEXURE R-4.

4. It is submitted that the recommendations of the committee were approved during February 2009 by the Chairman-TIFAC Executive Committee (TEC) and Secretary-DST and accordingly an advertisement was released during the

period of May 2009 for filling up of seven vacant posts under Umbrella Scheme on Technology Vision 2020 projects. It was clearly mentioned in the advertisement that the posts were temporary to be continued on year to year basis. The posts were to be filled through direct recruitment/ on contract basis. A copy of the advertisement is annexed with the petition as Annexure P-1.

5. It is submitted that the Petitioners namely Shri Ravindra Kumar and Shri Anoop Aswal applied for the posts of Assistant Manager-Technical and Computer Assistant respectively and after the selection procedure, the above mentioned persons were offered appointment letters against respective posts under the Umbrella Scheme on Vision 2020 projects. The offer letters were initially for a period of one year.

6. It is submitted that the posts of Shri Ravindra Kumar and Shri Anoop Aswal have emerged from the posts under Umbrella Scheme on Technology Vision 2020 projects in Mission Mode. It is further submitted that TIFAC has made all the appointments during the period between 2005 to 2010 under the Umbrella Scheme on Technology Vision 2020 projects in Mission Mode, on contract basis, which were coterminous with the term of the project.

7. That the Petitioners have been well aware of the terms and conditions of appointment. In their letters of appointment and the office orders issued to them from time to time for the extension of their tenure in TIFAC, it is clearly indicated that the Petitioners were appointed purely on contractual basis based on project requirement. As there was no formal requirement for a permanent recruitment, candidates were recruited on contract basis as per requirement of the project.

8. That the Respondent No. 1 is a scientific organization under the control of Ministry of Science and Technology. The payment of the salaries and other expenditures are met through Government Grants released from time to time Though the TV 2020 project was not extended beyond 31.03.2012 however, keeping in view the requirement of manpower in allied activities in TIFAC namely Technology Vision 2035, the Petitioners along with other staff were granted extension and were continued to be engaged, on the same terms and conditions.

9. That the Respondent No. 1 keeping in view of the functional need granted extension from time to time upto the period 31st March 2019 (reference extension orders dated 30.03.2017, 28.03.2018, 28.09.2018). Thereafter in absence of sufficient project related work, the Department of Science and Technology has taken a conscious decision to dispense with the services of TV 2020 contractual project employees w.e.f. 31.03.2019. Further it was decided that as the project related work not being perennial in nature, regular posts were not sanctioned by the sanctioning authority being Ministry of Finance. A copy of email dated 29.03.2019 from Respondent No. 2 to Respondent No. 1 is annexed hereto and marked as ANNEXURE R-5.

10.It is submitted that the project work cannot be termed as perennial in nature because the appointment of the staff was Upto 31.03.2019 as such nothing survives beyond that period. Further no regular posts were sanctioned by the sanctioning authority (Ministry of Finance). It is contended that the instant petition is misconceived and the same is nothing but misuse of the process of law. The Respondents have no obligation to create new posts in order to extend the appointments of the Petitioner as it was clearly mentioned in the advertisement that the posts were temporary to be

continued on year to year basis. The posts were to be filled through direct recruitment on contract basis. A copy of the 51st Minutes of the Meeting held on 25th April, 2019 of TIP AC is annexed hereto and marked as ANNEXURE R-6.

11.That the Petitioners were engaged on contractual basis and the terms & conditions of contract shall be applicable to them. The pay and allowances and incidental benefits could not be compared to what the regular TIFAC employees are being granted. It is therefore clear that there has been no violation of law committed by the Respondents.

xxx xxx xxx

B. That the contents of Para III (B) of the writ petition are wrong and denied. The contents of the preliminary submissions are reiterated in reply to the para under reply. The Petitioners have failed to show any right in law to demand regular pay scale. It is reiterated that the petitioners were engaged on contractual basis in Respondent No. 1. It is submitted that posts were temporary and the tenure was extended as per the requirement in the respective project on a yearly basis. It is stated that salaries of the contractual employees were paid as per respective contracts and pay scale mentioned in the same. Therefore, it may not be construed that work is of perennial nature. The contentions in Para III (B) are devoid of any merit whatsoever. Further the Petitioners have not been given 7th Central Pay Commission (referred as "CPC" hereinafter) in terms of notification of Ministry of Finance OM No. 1/1/2016/E.III(A) dated 13.01.2017 for implementation of 7th CPC in autonomous bodies of Government of India. The Petitioners being contractual employees 7th CPC is not extended to them. The pay and allowances and incidental benefits of the contractual employees may not be compared to that of the regular TIFAC employees. A copy office memorandum dated

13.01.2017 is annexed hereto and marked as ANNEXURE R-7…"

ARGUMENTS FOR THE PETITIONERS

8. The learned counsel appearing on behalf of the petitioners submitted that the advertisement notified by the respondent Council was issued after approval from the CCEA where 32 Technical & 15 Non-technical posts were approved under the TV scheme 2020 in the year 2005.

9. It is submitted that as per the Cabinet note, the said TV 2020 scheme is a scheme of the respondent no. 2 ('respondent Department' hereinafter) while the respondent Council is merely an implementing agency of the said scheme.

10. It is submitted that as per the Office Memorandum bearing OM no. (MoF) OM No: 7(7)-E(Coord)/93 dated 3rd May, 1993, issued by the Ministry of Finance, the rule regarding creation of the non-plan posts in various Government Department bodies and autonomous agencies is clearly that the said posts can only be created after the approval of the Cabinet along with approval from the Minister of Finance. Therefore, the said OM makes it clear that the posts created with the approval of the CCEA are non-plan posts i.e., permanent posts.

11. It is submitted that the petitioners had duly completed their probation period and same is evident from the first extension orders, therefore, the successful completion of the probation period would make them eligible to be regularized in the respondent Council.

12. It is submitted that the petitioners were recruited against the permanent posts and provided services to the respondent Council continuously for more than a decade. It is also submitted that they were offered pay scale at par with the regular/permanent employees, including benefits like Dearness Allowance (DA), Leave Travel Concession (LTC), leave encashment and other incidental benefits and are drawing salary as per the recommendations of the 6th Central Pay Commission ('CPC' hereinafter).

13. The learned counsel for the petitioners contended that the TV 2020 scheme as approved by the CCEA in the year 2005 was never a time bound project and therefore, the recruitment of the petitioners was not co-terminus with the said project and falls under the Continuous Central Scheme, being implemented by the respondent Council.

14. It is submitted that the respondent Council had granted benefits of the New Pension Scheme (NPS) to the petitioners and the Government was making 14% contribution towards the NPS for the petitioners.

15. It is submitted that the material on record such as minutes of the meeting of the respondent Council, RTI reply Etc. clearly establishes the fact that the petitioners were recruited against the sanctioned permanent posts under the TV 2020 scheme.

16. It is further submitted that one of the former employees recruited under the TV 2020 scheme of the respondent Council had submitted his technical resignation from the services to join another organization under the administrative control of the respondent no. 2 & 3, therefore, highlighting that the said employees recruited under the TV 2020 scheme are permanent/regular employees.

17. Therefore, in view of the foregoing contentions, the learned counsel for the petitioners prays that the present batch of petitions may be allowed, and reliefs be granted as prayed.

ARGUMENTS FOR THE RESPONDENTS

18. *Per Contra*, the abovementioned contentions advanced by the learned counsel for the petitioners were vehemently opposed by the learned ASG and CGSC submitting to the effect that the present batch of petitions are devoid of any merit, and therefore, liable to be dismissed.

19. The learned ASG submitted that the CCEA had approved the umbrella scheme on Technology Vision, 2020 whereby 25 posts were decided to be created on contractual basis for fulfillment of the functional requirement. The learned ASG further submitted that the activities under the said scheme were extended to the petitioners only after approval of the chairman of the respondent Council.

20. It is submitted that the petitioners were appointed to the respective positions and the said appointments were coterminous with the term of the project and the contractual nature of the job was also intimated to the petitioners *vide* various office orders.

21. It is submitted that the extensions granted to the petitioners were done in furtherance of the decision of the respondent Council to depute them to allied activities of the respondent Council namely Technology Vision 2035, however, in the absence of sufficient project related work, the services of the contractual employees have been decided to be terminated after the completion of last extension granted on 28th September, 2018.

22. It is submitted that the Ministry of Finance has not sanctioned any regular post for the said work and therefore, the project work cannot be considered to be perennial in nature and the respondent is not duty bound to create new posts to regularize the employment of the petitioners.

23. It is submitted that the petitioners have failed to establish any right in law to demand regular pay scale and no rights provided under Article 14, 21 and 300 (A) of the Constitution of India have been violated by the respondent Council.

24. It is also submitted that the appointment of the petitioners was done on contractual basis and the same was duly intimated in the advertisement itself, therefore, the issue of regularization does not arise in any case.

25. The learned ASG concluded his arguments by submitting that the regularization is not possible as the Government has already decided to shut down the TV 2020 scheme and therefore, the services of the petitioners employed specifically under the said scheme are no longer required.

26. Thereafter, Mr. Ahluwalia, the learned CGSC began his submissions on behalf of the respondent Council and submitted that the petitioners have not been given benefits of the 7th CPC as they are not covered under the Ministry of Finance OM no. 1/1/2016/E.III(A) notified on 13th January, 2017 by which the said benefits were only extended to the regular employees.

27. It is submitted that the petitioners have already enjoyed the terms of the services as were applicable to them and therefore, there is no infringement of the rights of the petitioners in any manner whatsoever.

28. In light of the same, both the counsels appearing on behalf of the respondent Council prayed that the present petition, being devoid of any merits may be dismissed.

ANALYSIS AND FINDINGS

29. Heard the learned counsel for the parties and perused the records.

30. In the present batch of matters, the petitioners have approached this Court seeking regularization of their employment. During the course of the proceedings, the learned counsel appearing on behalf of the petitioners has submitted that the posts under which the petitioners were appointed are the regular posts and the same can be proved with the evidence adduced before this Court. The learned counsel has relied upon the minutes of the meeting of the respondent Council based on which it is claimed that the employees appointed and working under the umbrella scheme TV 2020 are regular employees and therefore, they ought to get a permanent appointment and other consequential benefits thereto. The table specifying the services of various petitioners reads as under:

S.no.	Basis	3122	3133	3134	3138	7459	7469
1	Posts	Assistant manager+ computer Assistant	Account officer+ assistant GradeII/ assistant grade III	Scientist in Grade C	Peon	Scientist in Grade C	Scientist in grade D
2	Year of appointment	2010	2005/2006	2009	2008	2003	2005/2006
3	End of probation	09.05.2012	13.10.2010	27.12.2012	13.10.2010	27.12.2012	27.12.2012

	period						
4	Years of work	9 years	13 years	8-10 years	11 years	12 years	9 years
5	Year of advertisement	2009	2005	2008	working with respondent for last more than 20-22 years	2002 for umbrella technology vision 2020	2002 for Umbrella scheme technology vision 2020

31. In the rival submissions, Mr. Chetan Sharma, the learned Additional Solicitor General opposed the arguments advanced by the learned counsel of the petitioners and submitted that the said scheme of the respondent Council has already been discontinued and therefore, the respondent Council does not have the requirement to further engage the employees appointed for the said scheme. The learned ASG further submitted that the office orders issued for extension of services clearly mentions the contractual nature of the job, and therefore, the extensions were granted in furtherance of the requirement of employees at the relevant time, and such requirement no longer exists.

32. In view of the above submissions, the limited question for adjudication before this Court is whether the petitioners in the present batch of matters are deemed to be regular employees of the respondent council, or can their services be regularized by this Court on the basis of services rendered by them in the respondent Council.

33. Before delving into the issue as flagged above, this Court deems it imperative to discuss the settled position regarding the regularization of the contractual employees.

34. The issue of regularization of the contractual employees is no longer *res integra* and has been dealt with by the Hon'ble Supreme Court and this Court time and again. The position regarding regularization of the employees has evolved over a period of time during which the Hon'ble Court expounded and enunciated various principles/conditions to be met by the parties seeking regularization.

35. The landmark judgment in this regard is the one rendered by the Hon'ble Supreme Court in the case of ***State of Karnataka v. Umadevi (3)***[1] whereby the issues revolving around the question of regularization of the employees illegally appointed in the Government instrumentalities, were addressed. The relevant parts of the said judgment are reproduced herein:

> ***42.*** *While answering an objection to the locus standi of the writ petitioners in challenging the repeated issue of an ordinance by the Governor of Bihar, the exalted position of rule of law in the scheme of things was emphasised, Bhagwati, C.J., speaking on behalf of the Constitution Bench in D.C. Wadhwa (Dr.) v. State of Bihar [(1987) 1 SCC 378] stated : (SCC p. 384, para 3)*
>
> *"The rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State whether it be the legislature or the executive or any other authority should be within the constitutional limitations and if any practice is adopted by the executive which is in flagrant and systematic violation of its constitutional limitations, Petitioner 1 as a member of the*

[1] **(2006) 4 SCC 1**

public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice."

43. *Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had*

continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. *The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990)*

12 ATC 902 : (1990) 1 SCR 544] the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. *While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned 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 open eyes. It may be true that he is not in a position to bargain—not at arm's 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 succour 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.

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 regularised since the decisions in Dharwad [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] , Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] , Jacob [Jacob M. Puthuparambil v. Kerala Water Authority, (1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] and Gujarat Agricultural University [Gujarat Agricultural University v.*

Rathod LabhuBechar, (2001) 3 SCC 574 : 2001 SCC (L&S) 613] and the like, have given rise to an expectation in them that their services would also be regularised. 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 for Civil Services Union v. Minister of Civil Service [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] , National Buildings Construction Corpn. v. S. Raghunathan [(1998) 7 SCC 66 : 1998 SCC (L&S) 1770] and Chanchal Goyal (Dr.) v. State of Rajasthan [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] .] There is no case that any assurance was given by the Government or the department concerned 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 Dharwad decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] . Though, there is a case that the State had made regularisations in the past of similarly situated employees, the fact remains that such regularisations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases 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 regularised 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 regularisation 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 recognised 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 cases concerned, 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.*

48. *It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not*

being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. *It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a*

direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

50. *It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of*

public employment would defeat the constitutional scheme and the constitutional goal of equality.

51. *The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.*

52. *Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises*

whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College [1962 Supp (2) SCR 144 : AIR 1962 SC 1210] . That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

53. *One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up,*

> *in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.*
> ***54.*** *It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.*

36. The settled position of law was again reiterated by the Hon'ble Supreme Court in ***Union of India v. Ilmo Devi***[2] whereby the Hon'ble Court emphasized certain aspects related to the regularization of employees and held as under:

> ***"14.*** *Even the regularisation policy to regularise the services of the employees working on temporary status and/or casual labourers is a policy decision and in judicial review the Court cannot issue mandamus and/or issue mandatory directions to do so. In R.S. Bhonde [State of Maharashtra v. R.S. Bhonde, (2005) 6 SCC 751 : 2005 SCC (L&S) 907] , it is observed and held by this Court that the status of permanency cannot be granted when there is no post. It is further observed that mere continuance every year of seasonal work during the period when work was available does not constitute a permanent status unless there exists a post and regularisation is done.*
> ***15.*** *In Daya Lal [State of Rajasthan v. Daya Lal, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340] in para 12, it is observed and held as under : (SCC pp. 435-36)*

[2] **(2021) 20 SCC 290**

"12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by

extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in Government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

[See State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , M. Raja v. CEERI Educational Society Pilani [M. Raja v. CEERI Educational Society Pilani, (2006) 12 SCC 636 : (2007) 2 SCC (L&S) 334] , S.C. Chandra v. State of Jharkhand [S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943] , Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand [Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand, (2007) 15 SCC 680 : (2010) 1 SCC (L&S) 742] and Official Liquidator v. Dayanand [Official Liquidator v. Dayanand, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] .]"

16. *Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularisation as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work."*

37. Upon perusal of the aforesaid paragraphs, it is made out that the Hon'ble Court had expounded and deliberated upon the issues pertaining to regularization and laid down the parameters for regularization of services of the employees hired on contractual basis.

38. On such aspect as discussed by the Hon'ble Supreme Court in the aforementioned cases is of *litigious employees*, where the Hon'ble Court made it amply clear that the fact that the aggrieved contractual employees have approached the Courts and gotten a relief in their favor does not create a right on its own rather their services shall be categorized as *litigious employees*.

39. In the instant case as well, the Predecessor Bench of this Court had provided relief to the petitioners by granting them an interim protection *vide* various interim orders. The relevant parts of one such said order dated 29th March, 2019 read as follows:

> *"Issue notice.*
> *Learned counsel accepts notice on behalf of the respondents and seeks time to file the counter affidavit.*
> *Let the needful be done within a period of four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.*
> *Renotify on 17.05.2019.*
>
> *Till further orders, status quo shall be maintained with regard to the service conditions of the petitioner including protection of his salary and scale."*

40. Therefore, in compliance with the said order, the services of the petitioners are still continuing due to pendency of the instant batch of petitions before this Court.

41. In the said events, the question which arises before this Court is whether the continuance in service due to an interim order can be construed as continuance of services for the purpose of regularization. The answer lies in the negative. The ***Uma Devi (Supra)*** judgment as reproduced earlier makes it clear that the said continuance does not create any right in favor of the petitioners.

42. Now adverting to the other issue discussed in the above cited cases, i.e., the issue of equal pay for equal work. On the said aspect, the Hon'ble Supreme Court held that the principle of equal pay is based on the equality enshrined in the Constitution and it does not justify declaring the appointments made in violation of established legal procedures to be deemed permanent. Such a directive would undermine the principle of equal opportunity.

43. Having dealt with some of the issues discussed by the Hon'ble Supreme Court in the said case, at this stage, it is apposite for this Court to discuss the contentions made by both the learned counsel for the parties and determine whether the petitioners can be absorbed in the respondent Council as regular employees or not.

44. The material on record, i.e., the pleadings filed by the petitioners points out several reasons which in their opinion are compelling enough to grant them regularization in the respondent Council. Some of the important contentions made by the learned counsel for the petitioners in the written submissions have already been reproduced earlier.

45. During the course of proceedings, the learned counsel for the petitioners vehemently argued that the TV 2020 Scheme is a continuous scheme and therefore, the employees employed under the said scheme are

deemed to be regular. In order to supplement the said claim, the learned counsel for the petitioners has referred to the RTI reply dated 27th February, 2012, whereby the list of employees under the TV scheme 2020 is included in the category of regular employees

46. Another fact on which the reliance has been placed by the learned counsel for the petitioners is that they were granted benefits like DA, LTC, leave encashment, medical facilities and other incidental benefits as per the central service norms and are also equally entitled to the pay as per recommendations of the 7th CPC.

47. With regards to the contention of extension of benefits such as DA, LTC, leave encashment, it is to be noted that the same has been mentioned in the offer letters issued by the respondent Council and therefore, this Court does find the said argument helpful for the petitioners in proving the regular nature of the job.

48. Now, coming to the contents of the counter affidavit filed by the respondent Council, it is important to note that *inter alia* the respondent Council has rebutted the claim for grant of 7th CPC and stated that the benefits under the same cannot be extended to the petitioners as the employment of the petitioners does not come under the ambit of the OM no. 1/1/2016/E.III(A) notified by the Ministry of Finance on 13th January, 2017, whereby the said benefits were only provided to the regularized employees.

49. Therefore, the learned counsel for the respondent Council submitted that the non-grant of the benefits clarifies that the petitioners are merely contractual employees in the respondent Council. The relevant parts of the OM dated 13thJanuary, 2017 is reproduced herein:

"The employees working in the Quasi- Government Organizations, Autonomous Organizations, Autonomous Organizations, Statutory Bodies etc. set up and funded/controlled by the Central Government , are not Central Government employees and therefore the benefits implemented by Central Government in respect of Central Government employees as part of their service conditions, are not directly applicable to the employees working in such autonomous organizations. The application of such benefits as given to Central Government employees in respect of employees of such autonomous organization as well as the manner and conditions governing such application , including sharing of additional financial implications arising thereon , requires specific approval of the Central Government. The autonomous organizations are expected to manage their affairs in such a fashion that their dependence on Central Government for financial support to meet the extra financial implications is minimal , as such autonomous organizations are expected to be financially self –sufficient so as not to cause any extra burden on the Central Exchequer.

2. In the above background , the question of extension of the revised pay scales in terms of the CCS (RP) Rules , 2016 as notified on 25.07.2016 in respect of Central Government employees based on the recommendations of the 7th Central Pay Commission , to the employees of the Quasi-Government Organizations, Autonomous Organizations , Statutory Bodies etc, set up and funded /controlled by the Central Government , where pattern of emolument structure, i.e pay scales and allowances, in particular Dearness Allowance, House Rent Allowance and Transport Allowance , are identical to those in case of the Central Government employees, has been considered by the Government and it has been decided that the revised pay scales as per the Pay matrix, as contained in Part –A of the Schedule of the CCS (RP) Rules , 2016 as well as the principle of pay fixation as

contained in the said rules, may be extended to the employees of such organizations, subject to the following stipulatons:-

i. The conditions of service of employees of these organization, especially those relating to hours of work, payment of OTA etc. are exactly similar those in case of the Central Government employees,

ii. The revised pay structure shall be admissible to those employees who opt for the same in accordance with the extant Rules.

iii. Deductions an account of Provident Fund, Contributory Provident Fund or National Pension System , as may be applicable , will have to be made on the basis of the revised pay w.e.f the date an employees opts to elect the revised pay structure.

3. The revised pay scales contained in Parts B&C of the Schedule of the CCS (RP) Rules , 2016 shall not be automatically applicable to the employees of Autonomous Organizations. The concerned Administrative Ministry shall consider such cases keeping in view whether these pay scales are justified for the category of staff of Autonomous Organizations based on functional considerations , recruitment qualifications , as well as the applicable pre-revised pay scales. Based on such an examination by the concerned Administrative Ministry , appropriate proposals , if justified would be submitted to the Ministry of Finance , Department of Expenditure , through their Integrated Finance.

4. In case of those categories of employees whose pattern of emoluments structure , i.e, pay scales and allowances and conditions of service are not similar to those of the Central Government employees , a separate ' Group of Officers ' in respect of each of the Autonomous Bodies may be constituted in the respective Ministry/Department . The Financial Adviser of the respective Ministry/Department will represent

the Ministry of finance on this Group. The Group would examine the proposals for revision of pay scales etc. taking into account the views, if any, expressed by the staff representatives of the concerned organizations. It would be necessary to ensure that the final package of benefits proposed to be extended to the employees of these Autonomous Organization etc. is not more beneficial than that admissible to the corresponding categories of the Central Government employees. The final package recommended by the ' Group of Officers' will require the concurrence of the Ministry of Finance.

5. In regard to the additional financial impact arising out of the implementation of the revised pay scales , as provided above , the following parameters shall be kept in view:-

i. In respect of those Autonomous Organizations, which have not been depending upon the Government Grants for their operations or for meeting the cost of salary , including those autonomous Organizations , which have not been depending upon the Government Grants for their operations or for meeting cost of salary , including those autonomous organizations which are in a position to meet the additional financial impact from their own internal resources , the additional financial impact shall be met by the concerned autonomous organizations without any financial support whatsoever from the Government . No financial support shall be given by the Central Government in such cases.

ii. In the respect of the other Autonomous Organizations , which are not in a position to meet the additional financial impact, either fully or partly, on account of the implementation of the revised pay scales , the concerned autonomous organization will take up the proposals with the Financial Advisers of the respective pay scales, the concerned autonomous organization will take up the

proposals with the Financial Advisers of the respective Administrative Ministry/Department , bringing out the extent to which the additional cost could be met internally, the shortfall to be made up and the reasons for the shortfall. While giving concurrence to the implementation of the revised pay scales, the Financials Advisers shall ensure that the extent of Government support is kept at the minimum, and in no case the Government support shall be more than 70% (seventy percent) of the additional financial impact.

iii. In respect of Autonomous organizations set up under specific Act of Parliament , not generating adequate internal resources to meet the additional financial impact , the extent of Government support may be more than 70% of the additional impact , provided in the opinion of the concerned Financial Adviser the nature of functions and the fund position of the organizations so warrant.

iv. The mode of payment of arrears , as laid down in Rule 14 of the CCS (RP) Rules , 2016 shall be followed , subject to the overall financial impact and the capacity of the concerned autonomous organization to absorb the cost without putting any avoidable burden on the Governments finances, provided the conditions mentioned above are met.

6. *The Central Government has not taken any decision so far in regard to various allowances based on the 7th Central Pay Commission in respect of Central Government employees and , therefore until further orders the existing allowances in autonomous organizations shall continue to be admissible as per the existing terms and conditions , irrespective of the revised pay scales having been adopted."*

50. The said OM as notified by the Ministry makes it clear that the benefits of the 7th CPC shall only be provided to the employees having regular employment with the Central Government, and the extension of the said benefits to the Quasi-Government organization, Autonomous Organizations, Statutory bodies Etc. shall not be done automatically.

51. The OM also clarifies that the onus of extension of the said scheme to the autonomous organizations was upon the respective Ministries under which the said organizations falls, and therefore, the concerned Department/Ministry has to decide on the said issue.

52. As per the material on record, after issuance of the aforementioned OM, the parent department of the respondent Council, i.e. respondent no. 2 issued a circular dated 4th September, 2018 for extension of the 7th CPC benefits to the regular employees. The extract of the circular reads as follows:

> *"Dear Dr. Singh,*
> *1. This is to inform you that the Competent Authority in DST, while examining the case for grant of 7th CPC to TIFAC has, inter alia, made the following observations:*
> *(a) In respect of posts in TIFAC, it is pertinent to mention that in term of DST OM No. N.42014/2186-Admn.I(A) dated 28.05.1986, (subject to availability of budget) power to create Scientific posts was vested with DST (page 138-(39(A)/Cor). The said power was withdrawn vide DOE OM dated 24.09.2000. Likewise, Administrative, Ministries were also empowered to create non-scientific Grp B, C and D posts, under its administrative control upto 28.03.1994 (withdrawn vido OM No. 7(12)-E.Coord/94 dated 29,03.1994). In the light of above, the posts created upto 24.09.2000 with the approval of DST stands at 34 (the details are mentioned at page 32-34/Cor).*

Apart from above to MTS under temporary status, made regular w.e.f. 09.02.2009 are also eligible.
(b) In respect of 14 employees (as mentioned on page 3S/C), those were regularised during 2009 with the approval of DST, 7 CPC shall be applicable, only after ex-post facto concurrence is accorded by MoF for creation of these posts.*
(c) The 21 employees working under project "Umbrella, Scheme on Technology Vision 2020 Projects in Mission Mode" (as mentioned on page 36-37/cor) are not eligible for 7° CPC, they being project employee. There casas may be taken up for revision of emoluments separately.
(d) The 4 employees working on construct (a3 mentioned on page 38/cor) are not eligible for 7% CPC, they being appointed on contract basis."

The pages from the file referred to in observations (a) to (d) above are enclosed.

2. In view of the position stated above, the Competent Authority in DST has granted approval for implementation of 7ª CPC in TIPAC with the following conditions:
(a) Upto 70% of the likely expenditure to be incurred on implementation of the 7th CPC shall be borne by DST;
(b) In respect of total 36 (34+2) employees as mentioned in page 32-34/cor, 7th CPC shall be payable to all employees, except for those whose names find mentioned among the irregularly created/ upgraded 20 posts (appearing at Annexure IV of Para 3.3.1 of CAG Report), In respect of those withhold posts (among 36 mentioned above), 7th CPC shall be granted after the audit para has been settled or after ex-post facto concurrence is accorded by MoF. for creation/ upgradation of those posts.
(c) Similarly, in respect of 14 posts as mentioned in para 2(iii) (b) above, 7th CPC shall only be considered after ex-post facto concurrence is accorded by MoF, for creation of these 14 posts in TIFAC.
(d) Remaining employees as mentioned in para 2(iii)(e) and para 2(iii)(d) above 7th CPC shall not be admissible.

> *(e) For waiver of 30% financial implication from MoF, separate proposal may be moved. However, possibility may be explored to generate at least 5-10% of the financial implication from its internal resources."*
> *Pages 32-34/cor from the file have been enclosed with this letter. And, "para 2(iii)" mentioned in para 2(c) and para 2(d) of this letter refers to "para l" of this letter.*
> *3. We shall be grateful if TIFAC takes further necessary action in the matter at its end. In addition to the comments in para 1 and 2 of this latter, it may be noted that on page 32-34/cor (attached with this letter), the two posts of Registrar and Manager (O) are also included in the list of 34 posts. A proposal for ex post facto creation of these two posts is under consideration in DST. Therefore, any action regarding these two posts may be kept in abeyance till a decision on their creation is taken."*

53. The extracted portion of the abovesaid circular makes it amply clear that the benefits of the 7th CPC were only extended to the regular employees of the respondent Council and not the ones appointed on contractual basis.

54. Furthermore, the contents also clarify that the employees under the TV 2020 scheme are project employees and not regular employees of the respondent Council.

55. Therefore, this Court accepts the said contention of the respondent council and it is held that the non-grant of benefits under the 7th CPC to the petitioners was solely due to the contractual nature of job.

56. Another contention argued in the counter affidavit is regarding the extension of the contract of the petitioners. The learned ASG has referred to the office orders and submitted that the respondent Council had made it clear that the appointment of the petitioners was purely contractual in

nature and under the TV 2020 scheme. One such order issued to one of the petitioners is reproduced herein:

> *F.No. 14/127/Tifac/Estt./2010 February 19, 2010*
>
> *OFFICE ORDER*
>
> *Consequent upon his selection based on interview, and his acceptance of the offer extended to him vide TIFAC's letter No.TF/03/013/2009-Estt. dated 11.2.2010, Shri Ravindra Kumar is hereby appointed as Assistant Manager(Technical) In the scale of pay of Rs. 9300-34800 plus Grade Pay of Rs.4600/- p.m for a period of one year w.e from the forenoon of 12.2.2010 or until further orders whichever is earlier.*
>
> *2. The pay of Shri Ravindra Kumar is fixed at Rs. 9300+GP Rs. 4600/- per month.*
>
> *3. The other terms & conditions will be the same as contained in the offer of appointment letter No. TF/03/013/2009-Estt. Dated 11.02.2010 (copy enclosed).*

57. Upon perusal of the above-said order, it is crystal clear that the extension orders were issued to the petitioners as per the manpower requirement for the TV 2020 scheme and the said scheme was sanctioned by the CCEA in the year 2005.

58. Therefore, at this stage, it becomes pertinent to determine whether the posts as sanctioned by the CCEA were for a specific duration or whether they create a same right of regularization in favor of the petitioners.

59. In this regard, it is important for this Court to refer to the communication between the respondent Council and respondent Department and the minutes of the meeting convened for the purpose of discussing the further course of action regarding the continuance of the TV 2020 scheme. The record, i.e. the e-mail by the respondent Department and the relevant extracts of the minutes of the meeting reads as under:

> *E-mail sent by the respondent Department*
>
> *"As desired, DSTs decision is as following:-*
> *Sub: Awarding fresh contract to twenty existing employees working under*
> *"Umbrella Scheme on TV 2020 Projects in Mission Mode" on consolidated remuneration basis for carrying out TIFAC's Regular activities in the Interim Period - regarding.*
> *D.O. letter No. 30013/0172019-S&T dated 5th March, 2019 from the Chairman, Governing Council, TIFAC addressed to the Secretary in this Department on the above mentioned subject sought approval of the DST for awarding fresh contract to the twenty employees w.e.f. 1st April, 2019 onwards for a period of one year on a consolidated remuneration basis for carrying out regular programmes/activities of Technology information, Forecasting & Assessment Council (TIF/\C).*
> *2. While examining this proposal, it was found that C&AG audit has already made adverse observations on continuation of service of TV-2020 employees in TIFAC for so many years. These persons were appointed under TV-2020 Projects in Mission Mode approved by the CCEA till 2006-2007 and various audit observations have pointed out that the continuation of services of these employees under TV-2020 beyond the approved duration of the project was irregular.*

3. Hitherto the irregularity was perpetuated by the internal mechanisms of TIFAC and it is for the first time that this matters has been escalated to the Department's level.
4. Awarding fresh contract to twenty existing employees appointed under "Umbrella Scheme on TV 2020 Projects in Mission Mode" on consolidated remuneration basis,, shall be contrary to the existing provisions in GFR-2017 and it would manifest the perpetuation of the irregularity.
5. In view of the above, this Department finds it appropriate that the request regarding continuation of services of persons recruited under TV-2020 Projects in Mission Mode beyond 31.03.2019 cannot be acceded to.

Minutes of meetings

10.1 Umbrella Scheme on Technology Vision 2020 Projects in Mission Mode

The Council after discussions and deliberations noted that the approved duration of "Umbrella Scheme on Technology Vision 2020 Projects in Mission Mode" was over on 31st March 2007. Council also observed that in the 43rd meeting of the TIFAC Governing Council held in December 2011, it was noted that the activities under this programme were tapering off.

The Council in the above 43rd meeting had also decided to move away from executive function and funding role under different programs. All the TIÉAC programs were subsequently reviewed and re-aligned with the TIFAC mandate.

The Council, accordingly, concluded and decided that for all practical purposes, the implementation of "Umbrella Scheme on Technology. Vision 2020 Projects in Mission Mode" should be considered virtually completed by the end of XI plan i.e. 31st March 2012.

However, as the formal closure of the Project has not yet been done, it is now to be treated as formally and technically completed and closed."

60. Upon perusal of the above said extracts, it is made out that both respondent Council and the Department had deliberated on the issue pertaining to the continuation of the scheme and regularization of the employees there under, however, due to the discontinuation of the scheme itself, the employees appointed under the said scheme were not granted any further extension.

61. The aforesaid extract also makes it clear that pursuant to the approval from the Governing body, the respondent Council had decided to wind up the scheme *in toto*.

62. The information regarding closure of the said scheme by the competent authority, i.e. the CCEA makes it evident that the TV 2020 scheme is no more in function and the petitioners are continuing in the respondent Council merely on the basis of the interim orders passed by the Predecessor Bench of this Court.

63. In view of the above discussions, the question before this Court is whether the petitioners are still eligible for permanent employment/regularization despite closure of the scheme under which they were recruited initially. To answer the same, it is important for this Court to discuss how the said issue was dealt with by the Hon'ble Supreme Court in a similar case.

64. In ***BhagwanDass v. State of Haryana***[3] the Hon'ble Supreme Court was dealing with the issue related to equal work and equal pay and held that the abandonment of a scheme would lead to termination of the services of contractual employees appointed for the purpose under the

[3]**(1987) 4 SCC 634**

said scheme. Even though the Hon'ble Court had directed the State to pay the difference in salaries, it had denied absorption of the employees as a permanent one due to closure of the scheme under which they were appointed. The relevant paragraph of the said judgment reads as follows:

> ***15.*** *We are now faced with the problem arising in the context of the fact that appointments of the petitioners were initially made for six months and after giving a break of a day or two they were reappointed to the same posts by fresh order. The counter-affidavit filed on November 23, 1985 by the State of Haryana and the documents placed on record go to show that the petitioners' contention that this is done deliberately with a view to deny to them the benefits enjoyed by the employees similarly situated and discharging similar duties and functions as Supervisors in the regular cadres. We find it difficult to accept the contention of the petitioners that this is being done deliberately and with mala fides attributed to the respondent-State. The petitioners have been appointed in the context of a scheme which is by the very nature of things transient and temporary. Annexure R-1 to the aforesaid counter-affidavit shows that the scheme was expected to function for ten months. No doubt it has been extended from year to year. But by the very nature and scope of the scheme, once the objective of Adult Education is accomplished in the sense that the illiterate adults of the cluster of villages become literate pursuant to the education imparted at the centres, the need for adult education would diminish progressively and ultimately cease. As disclosed in paras 16 and 17 of the aforesaid counter-affidavit the targets were expected to be achieved latest by 1990. It was in this background that the posts were sanctioned on year to year basis (para 11 of the counter-affidavit). Having regard to these facts and circumstances we do not think that the respondent-State can be accused of making appointments on a temporary six months basis with any ulterior or oblique motive. In our opinion, therefore, the prayer of the petitioners to absorb them as regular employees on a*

permanent basis from the date of their initial appointment has no justification. That however does not mean that the petitioners should be deprived of the legitimate benefits of being fixed in a pay scale corresponding to the one applicable to Respondents 2 to 6 by treating them as employees who have continued from the date of initial appointment by disregarding the breaks which have been given on account of the peculiar nature of the scheme. While, therefore, the petitioners cannot claim as a matter of right to be absorbed as permanent and regular employees from the inception, they would be justified in claiming pay on the basis of the length of service computed from the date of their appointment depending on the length of service by disregarding the breaks which have been given for a limited purpose. If this is not being done the anomaly such as the one highlighted by the petitioners in their rejoinder affidavit dated December 13, 1985 will arise. As stated by the petitioners in paragraph 4(c) of the aforesaid rejoinder affidavit, while a peon in the regular service would be drawing Rs 650 the petitioners would be getting only Rs 500 as fixed salary notwithstanding the nature and importance of the functions discharged by them and the role played by them in the important field of advancement of literacy in the State. And finally we must deal with the question of date with effect from which the petitioners should be paid the difference in salary. In our opinion having regard to the facts and circumstances of the present case ends of justice would be met if the petitioners are paid the difference in salaries with effect from the date of the institution of the writ petition viz. September 18, 1985. But it will be convenient to direct the implementation with effect from September 1, 1985. We accordingly allow the writ petition partly and direct as under:

I

The petitioners shall be fixed in the same pay scale as that of Respondents 2 to 6.

II

The pay of each of the petitioner shall be fixed having regard to the length of service with effect from the date of his initial appointment by ignoring the break in service arising in the context of the fact that the initial appointment orders were for 6 months and fresh appointment orders were issued after giving a break of a day or two.

III

The fixation shall be made as per the general principles adopted whenever pay revisions are made. In case upward revision has been effected in respect of the Supervisors in the regular cadre such revision should be taken into account in refixing the pay of the petitioners.

IV

The amount representing the difference in pay of the petitioners computed as per the present order shall be paid to each petitioner preferably latest by Mahatma Gandhiji's birthday which falls on October 2, 1987 or latest by November 1, 1987. The petitioners will be entitled to increments in the pay scale in accordance with law notwithstanding the break in service that might have been given.

V

We hope and trust that the State of Haryana will not show displeasure at the petitioners who have approached this Court in order to vindicate their right to claim equal pay and that service of no petitioner would be terminated except on reaching the age of superannuation or by way of appropriate disciplinary action, or on abandonment of the scheme. For the sake of abundant caution we direct accordingly.

VI

Fresh appointment orders will have to be issued reappointing the petitioners who have continued in service on the expiry of the six months period from time to time in order to give effect to the direction contained in clause V hereinabove.

VII

> *In case the amounts of difference in pay cannot be computed within the time limit granted by this order, provisional and approximate calculations should be made and payment should be made on such basis subject to final adjustment within the time granted.*

65. The above cited paragraph makes it clear that the termination of a scheme under which a person was employed/appointed on contractual basis would lead to termination of the services of the said employee as well.

66. In the aforesaid case, the Hon'ble Supreme Court while granting equal pay to the contractual employees had denied absorption of the said employees and allowed the appeal only limited to the extent of providing difference in wages.

67. Therefore, the factual matrix of the instant case, being similar to the case cited above makes it evident that the petitioners do not have a right to be regularized as their appointment stems out of a scheme approved by the CCEA in the year 2005 and wound up by the respondent Council in the year 2019, leading to approval by the CCEA as well.

68. The material on record, i.e., the communication between the respondent Council and the Department as well as the minutes of the meeting of the decision-making body of the respondent Council clearly suggests that continuation of the petitioners would not serve any purpose as the scheme does not exist any longer.

69. At this stage, this Court also deems it appropriate to deal with the last contention of the petitioner, whereby the learned counsel has vehemently relied upon the RTI reply of 2012 which has been interpreted

in a manner where the petitioners can be categorized as the regular employees.

70. The perusal of the said reply clearly states the number of regularized employees, however, it is also mentioned that the said number includes the employees working in the TV 2020 scheme. Therefore, this Court is of the view that the said reply merely talks about number of employees working in the respondent Council and this Court is unable to infer anything more from the same and accordingly, not inclined to delve into it.

71. In light of the same, this Court is of the opinion that mere placement of the said employees as similar to the other permanent employees do not vest in them a right to be regularized, rather the abandonment of the scheme under which they were initially appointed can be the sole reason for their non-absorption in the respondent Council.

72. Therefore, this Court is of the view that the regularization as prayed by the petitioners in the present batch of petitions cannot be allowed as the TV 2020 scheme under which the petitioners were appointed no longer exist.

73. Furthermore, the closure of the said scheme is not under challenge before this Court and as per the settled position of law, something not prayed for may not be dealt with by the Court. In ***Bachhaj Nahar v. Nilima Mandal***[4]**,** the Hon'ble Supreme Court had discussed the purpose and relevance of pleadings at length and held that the Courts may not look into an issue not highlighted in the pleadings. Therefore, delving

[4]**(2008) 17 SCC 491**

into an issue not prayed for in the pleadings would lead to miscarriage of justice.

74. The said position of law was again reiterated by the Hon'ble Court in ***Bharat Amratlal Kothari v. DosukhanSamadkhan Sindhi***[5] whereby it was held that even though the Courts have wide discretion in deciding the writs, they cannot grant a relief which is not prayed by the petitioner.

75. Hence, this Court cannot deal with the aspect of the said decision taken by a high-powered committee of the Government if the same is not under challenge herein.

CONCLUSION

76. The issue regarding regularization of the contractual employees as deliberated by the Hon'ble Supreme Court in judgments such as ***Uma Devi*** and ***ilmo Devi (supra)*** shed light on the procedural aspects related to the regularization sought by an employee working in a Government instrumentality.

77. In the instant batch of petitions, the petitioners in all the cases were appointed under the TV 2020 umbrella scheme and were initially appointed for a specific period which got extended due to requirement of manpower on the project, however, the decision of closure of the said scheme would also lead to end of the employment of the employees working under the said scheme.

78. Furthermore, the last office orders issued for extension of the services of the employees for 6 months was done in furtherance of the decision of closure of the TV 2020 scheme where the decision-making

[5]**(2010) 1 SCC 234**

body of the respondent Council had decided to put an end to the scheme which was subsequently approved by the CCEA as well.

79. In light of the same, this Court does not deem it appropriate to exercise its extraordinary jurisdiction conferred under Article 226 of the Constitution of India to direct the regularization of the petitioners in the respondent Council.

80. Therefore, in view of the above facts and circumstances, it is held that there is no force in the propositions put forth by the petitioners before this Court and therefore, the present batch of petitions is liable to be dismissed.

81. Therefore, the present batch of writs, being devoid of any merits, is dismissed, along with pending applications, if any.

(CHANDRA DHARI SINGH)
JUDGE

FEBRUARY 13, 2024
gs/av/ds