2024:DHC:1397

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

% **Pronounced on: 22nd February, 2024**

\+ W.P.(C) 9434/2022, CM APPL. 5716/2023 & CM APPL. 5717/2023

ALKA SHRIVASTAVA ..... Petitioner

Through: Mr.M.S. Ganesh, Sr Advocate with Mr.K. Seshachary, Mr.TVS RaghavendraSreyas, Mr.Amitesh Kumar, Mr.SiddharthVasudev and Mr.Rao Raj Bahadur Singh, Advocates

versus

INDIAN COUNCIL OF SOCIAL SCIENCE RESEARCH & ORS. ..... Respondents

Through: Mr.Amitesh Kumar, Ms.Priti Kumari and Mr.Mrinal Kisho, Advocates for R-1.
Mr. K.C. Dubey, Sr. Panel Counsel with Mr. Mimansak Bhardwaj, Advocate for R-2/UOI.
Dr. S. S. Hooda, Mr.Aayushman Aeron and Mr. Ashutosh Kumar, Advocates for R-3/CAG.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

1. The instant petition has been filed seeking following relief:

"(i) Call for the records of the case, including, in particular, those of:

a. WP (C) No.l3454 of 2021 entitled Alka Srivastava v. ICSSR & others, on the file of this Hon'ble Court and;
b. F No. A(47)/89- A on the files of ICSSR Respondent No.1;

(ii) hold and declare that the statement made and undertaking given on behalf of the ICSSR Respondent No.1 as recorded in paragraph 3 of this Hon'ble Court's order dtd 02-12-2021 in WP (C) No.13454 of 2021 are a fraud upon this Hon'ble and upon the Petitioner and a nullity and constitute contempt of this Hon'ble Court;
(iii) Restore to file the Petitioners earlier WP (C) No.13454 of 2021 and direct the same to be heard along with this WP.
(iv) Hold and declare that (a) the impugned Office Order No. 7/2021 bearing F No. A(47)/89-A dtd 18-03-2021 (Annexure P-31),(b) the order bearing F. No. A(47)/89 -A dtd 18-03-2021(Annexure P-32) and (c) the impugned decision bearing F.No. A(47)/89 - A dtd 04- 03-2022(Annexure P-34) are ultra vires and violative of the Petitioner's fundamental rights under Arts. 14, 16(1) and 300 A of the Constitution, and vitiated by legal malafides;
(v) issue an appropriate writ, order or direction in the nature of Certiorarified mandamus striking down the impugned orders and decisions being dated 18.03.2021 i.e., Annexures P-31, P-32 and dated 04.03.2022 i.e., P-34 respectively as mentioned. in prayer
(iv) above and directing (a) her service proper to be counted from 13-07-1989 as recommended by the Justice Malimath Committee and already accepted and approved by the Plenary Council of ICSSR, Respondent No.1. and (b) Grant of MACP on completion of 30 years of service w.e.f July 2019.
(vi) award compensatory and exemplary costs of this WP to the Petitioner and against the Respondents jointly and severally; and
(vii) pass such further and other orders as this Hon'ble Court may deem"

FACTUAL HISTORY

2. The petitioner joined respondent no.1/ICSSR on 13th July 1989 as Research Assistant on ad-hoc basis for a period of six months. The services of petitioner was terminated vide office order dated 2nd February, 1990 bearing No. F. A (47)/88A with effect from 10th January, 1990.

3. The petitioner herein being an ad-hoc temporary employee was appointed periodically with a technical break of 1 day every 6 months and was reappointed as ad-hoc temporary employee from the period of 2nd January, 1990 to 22nd February, 1996.

4. The petitioner was absent from the period of 11th March, 1996 to 31st August 1996 and the respondent no.1 issued a memorandum dated 6th March, 1997 seeking her explanation for her absence during the period from 11th March, 1996 to 31st August 1996 without leave. The petitioner filed her reply to the memorandum and the respondent no.1 after considering her reply dated 12th March, 1997, permitted the petitioner to join on ad hoc basis vide order dated 19th September, 1997, subject to final decision of the respondent no.1 in the matter.

5. A High-Powered Committee chaired by Justice VS Malimath was constituted by respondent no. 1, to address the issue of regularisation of ad-hoc appointments and promotions of the ad- hoc employees including the respondent no.1 vide office order dated 19th January 1997. Pursuant to which, the Committee submitted its report on June, 1998 to respondent no. 1 with respect to various employees.

6. The respondent no.1 issued an office order bearing no. F No. 19-21/98-1 dated 14th December, 1998 regularizing their service of the other five incumbent Research Assistants as recommended by Malimath Committee.

7. Moreover, in accordance with the decision taken by the respondent no.1 in its 83rd Metting on 16th September 1998, the respondent no.1 regularised the service of the petitioner w.e.f. 1st January 1996 vide office order dated 14th December 1998 and 17th March, 1999 in the pre-revised pay scale of Rs.1640-60-2600-75-2900 (revised to Rs.5500-175-9000) with effect from 1st January, 1996. It regarded the employment break of the petitioner for 563 days as technical break on grounds of equity based on the recommendation of the Committee.

8. The Department of Personnel and Training (DoPT), Ministry of Personnel, Public Grievances and Pensions of Government of India vide OM No.35034/1/97-Estt.(D) dated 9th August, 1999 issued "the Assured Career Progression Scheme (ACP Scheme) for the Central Government Civilian Employees" for financial upgradation in Group 'A' 'B' 'C' and 'D' category posts as recommended by the 5th Central Pay Commission.

9. The respondent no.1 issued office order dated 31st May, 2000, wherein the date of regularization of petitioner remained unchanged as 1st January, 1996.

10. A copy of the gradation list of officers and staff of the Respondent No. 1 Council as on 1st January, 2001 was circulated vide office

memorandum bearing no. F. No. 5-48/200 I-A dated 20th March, 2001 which stated petitioner's date of initial appointment as 13th July, 1989.

11. The petitioner made representation to the respondent no. 1 to regularise her service w.e.f 13th July 1989 from the period of March 1999 to October 2002.

12. The respondent no.1 issued vide office order bearing no. F. No. A (47)88-A dated 29th October, 2002 in respect of petitioner's appointment as regular employee fixing the pay on notional basis w.e.f. 13th July, 1989 and with financial benefits from 1st January, 1996. Pursuant to which, vide office order dated 8th July, 2008 bearing No. F. No. 3-4/2008-A(Vol-I) the respondent no. 1 granted the petitioner the first ACP with effect from 1st September, 2001 after the regular service of 12 years from the date of initial joining that is 13th July, 1989.

13. The policy planning and administration committee in its 65th meeting on 29th January, 2008 and endorsement of the council in its 108th meeting held on 24th March, 2008, the earlier order dated 31st May, 2000 was revoked and withdrawn with immediate effect. Hence, the order dated 17th March, 1999 was directed to be implemented. Therefore, the seniority of the petitioner was to be computed from w.e.f. 1996.

14. The petitioner was promoted to the post of Assistant Director from the post of Research Assistant by the Respondent No.1 vide Office Order Dated 9th April, 2009 bearing No. F. No. 8(15)2008-A. The petitioner topped the merit list prepared by the Selection Committee.

15. The Department of Personnel and Training (DoPT), Ministry of Personnel, Public Grievances and Pensions of Government of India vide OM No. 35034/3/2008-Estt. (D) dated 19th May, 2009 issued "the Modified Assured Career Progression Scheme (MACP Scheme) for the Central Government Civilian Employees" for financial upgradation in Group 'A', 'B', 'C' and 'D' category posts as recommended by the Fifth Central Pay Commission. The respondent no. 1 granted the Petitioner 2nd MACP w.e.f 13th July, 2009 i.e., after completing 20 years of regular service from the date of initial joining i.e. 13th July, 1989 vide office order bearing No. F.No. 10-3/2009-A dated 30th December, 2011.

16. Pursuant to the recommendations of the departmental promotion/ selection committee, the petitioner was promoted to the post of the Deputy Director by the respondent No.1 vide Office Order bearing no. F.No.3-5/2016-Admn. dated 13th April, 2018 with pay scale of Rs. 67800-208700.

17. The petitioner applied for the grant of 3rd MACP on completion of the 30 years of regular service in the respondent no.1 counted from 13th July, 1989 and she wrote a letter to the administrative officer, respondent No.1 requesting for the rectification of office order dated 29th October, 2002 issued by the respondent No.1 and her initial date of appointment is 13th July, 1989.

18. The respondent no.1 vide Office order no. 7 of 2021 bearing no. F. No. A (47)/89-A dated 18th March, 2021 issued the recovery orders on account of withdrawing the benefits of 1st ACP and 2nd MACP granted with effect from 1st September, 2001 and 13th July, 2009 respectively.

19. The petitioner received letter dated 18th March, 2021 bearing no. F No. A(47)/89-A from the respondent No.1 denying the request of the petitioner to rectify the order dated 29th October, 2002.

20. Aggrieved by which, the petitioner filed a writ petition before the Coordinate Bench of this Court bearing no. W.P(C) 13454/2021 wherein learned counsel of the respondent no.1 submitted before the Court that, on instructions from the Administrative Officer of the respondent no.1, that a committee has been formed to investigate the representation of the Petitioner and is pending decision, hence, no coercive action including recovery from the pay of the Petitioner would be taken. Accordingly, the aforesaid writ petition was disposed of vide order 2nd December, 2021 on the basis that no coercive action will be taken against the petitioner and the Committee constituted by the respondent no.1 will consider the grievances of the petitioner.

21. Pursuant to which, the respondent no.1 issued a letter bearing No. F-(47)/89-A dated 4th March, 2022 conveying its decision on the petitioner's letter dated 9th April, 2021 that the Competent Authority of the respondent no.1 has not acceded to the request dated 9th April, 2021 of the petitioner.

22. Aggrieved by the aforesaid orders, the petitioner has filed the instant petition.

PLEADINGS PROCEEDINGS BEFORE THIS COURT
PLEADINGS

23. The petitioner had filed the instant writ petition and submitted the below stated arguments:

"The fallacy of the impugned decision is demonstrable as follows:
i. In terms of the Rule 2 of the CCS(Pension) Rules, the Rules apply only to "Government servants" and Rule 3(1)(i) defines "Government" to mean the Central Government. The CCS(Pension) Rules have no application per se to employees of autonomous bodies such as the ICSSR. [Swamy's Pension Compilation incorporating the CCS (Pension) Rules, 24 th Edn 2020 pages 2 to 4.

ii. Similarly, the Fundamental Rules have no application to employees of autonomous bodies such as the ICSSR. FR 2 & 3 reads:
"FR 2. The fundamental rules apply, subject to the provisions of Rule 3, to all Government servants whose pay is debitable to Civil Estimates and to any other class of Government servants too which the President may, by general or special order, declare them to be applicable."
"FR 3. Unless in any case it be otherwise distinctly provided by or under there rules, these rules do not apply to Government servants whose conditions of service are governed by Army or Marine Regulations." [Swamy's Compilation of FR SR, 20th Edn 2010 Part I General Rules pages 1 - 2].

iii. In the ICSSR Service Regulations 1970, approved by the Government of India vide Ministry of Education & Social Welfare Lr. No. 12-34/36 PLG II dtd 06-12-1976, the resolution referred to in the impugned decision is pasted as a typed slip:
" A copy of the resolution adopted by the Administration Committee at its 2nd meeting held on 30 Aug 1969 is reproduced below:
Item No.13: Application of General Rules and orders of the Central Government to the Council's staff.
It was agreed that rules and orders of the Central Government may apply to the staff in matter which are not specifically

covered by the Council's own rules, regulations and orders."

iv. It is obvious that the said resolution dtd 30-08-1969 is not and could not be - part of the approval granted on 06-12-1976 by the Central Government to the ICSSR Service Regulations 1970. There are two compelling reasons for this conclusion. First, the Central Government was and is well aware that the ICSSR is an autonomous body registered under the Societies Registration Act on 31-07-1969 and that its employees are not and could never be "Government servants" within the meaning of any statutory rules framed under the proviso to the Art. 309 of the Constitution. Secondly, the Central Government was and is also aware that if any such statutory rules are to apply to and in the ICSSR, they would necessarily have to be adopted mutatis mutandis for the purposes of the ICSSR, then framed as a set of service regulations of the ICSSR and finally approved by the Central Government. In other words, the requirement of such specific rules and regulations framed by the Council in a format analogous to that of the Central Government rules, with the previous approval of the Central Government, is a prerequisite and mandatory, as required under Rule 23 of the ICSSR's Memorandum of Association and Rules 1969. Likewise, the Govt. of India decisions or executive instructions under the said statutory rules made in exercise of powers conferred by Art. 73 r/w Art. 53 of the Constitution would have to be adapted mutatis mutandis and adopted by a formal resolution of the Council. As a logical corollary, any adoption of such statutory rules or executive instructions by a resolution/ decision of the Council and duly approved by the Central Government must be deemed to be such an adaptation mutatis mutandis as aforesaid. Thus the application of the ACP/MACP scheme in this context of this WP is directly a case in point.

v. The same conclusion flows from another stand point as well. Assuming, without admitting, that the Council's said resolution

dtd. 30-08-1969 is applicable, it could apply only to the statutory rules or executive instructions as at that date and not to any subsequent ones. Every subsequent amendment to the statutory rules and executive instructions or promulgation of new statutory rules would have to necessarily abide the mandatory requirements of the said Rule 23 before they become applicable to the ICSSR.

21.The Petitioner says that, finding that her pay has been reduced, she requested for her salary certificate for the period January 2021 to December 2021. The salary certificate dtd 09-03-2022 for the said period issued by DDO, ICSSR reveals that, contrary to the solemn undertaking given by it to this Hon'ble Court on 02-12-2021, the ICSSR, in addition to the coercive action taken against her by the Memo dtd 01-12-2021, has taken further coercive action by making recoveries from her pay. A true copy of the said salary certificate for the period of January 2021 to December 2021 issued by DDO, ICSSR dt. 09-03-2022 IS annexed hereto and marked as Annexure P/4.

22.The Petitioner says and submits that the conduct of the ICSSR Respondent No.1 in the proceedings in her earlier WP (C) No. 13454/2021 IS obnoxious and suffers from the following vices:
a. The statement made on 02-12-2021 before this Hon'ble Court by "learned counsel appearing for the respondent No.1 on instructions from the Administrative Officer" is a fraud upon this Hon'ble Court and renders the order passed on that basis and in good faith by this Hon'ble Court a nullity. Despite knowing full well that her said WP was directed to be listed on 02-12-2021 before the Ld. Single Judge (Coram: Hon'ble Mr. Justice V. Kameswar Rao) by a ***DB*** *of this Hon'ble Court vide its Order dtd 29-11-2021, a day prior to that, on 01-12-2021, the ICSSR issued a memo to the Petitioner for having approached this Hon'ble Court. Both the Ld. Counsel and the*

Administrative Officer representing the Respondent No.1 in making their statement as recorded in para 3 of this Hon'ble Court's order dtd 02-12-2021, suppressed from this Hon'ble Court the factum of issuance of the said memo. They made matters worse by serving the said memo in the afternoon of 02-12-2021, after the conclusion of the hearing before this Hon'ble Court in the forenoon of02-12-2021.
The said nullity vitiates all subsequent conduct of the so-called Administrative Committee and the ICSSR itself as a continuation of the fraud and hence as also a nullity.

b. Likewise, the undertaking given to this Hon'ble Court by the ICSSR that "till such time the Committee take a final decision, no coercive action including recovery from the pay of the Petitioner, in terms of order at page 169 of the writ petition shall be effected" as recorded in para 3 of this Hon'ble Court's order dtd 02-12-2021, is a fraud upon this Hon'ble Court. A bare comparison of the Office Order No. 7/2021 dtd 18-03-2021 impugned in the Petitioner's earlier WP (C) No. 13454/2021 [Annexure P-26 at pages 169 -172] with the ICSSR's salary certificate for the period January to December 2021 issued on 09-03-2022 shows that they continued to make recoveries from her pay even while the matter was under issue before this Hon'ble Court which was seized of the matter. The ICSSR wilfully suppressed these facts from this Hon'ble Court while giving the said undertaking.

c. Both the above aspects of fraud committed by the ICSSR, besides rendering the order obtained by such fraud a nullity, constitute brazen contempt of this Hon'ble Court. The contempt is aggravated. On 06-12-2021 the Petitioner replied to the said memo dtd 01-122021 issued to her and specifically called upon the ICSSR (Respondent No.1) and its concerned officials to do the following:
"(a) to tender forthwith on affidavit before the Hon'ble High

Court (Coram Hon'ble Mr. Justice V. Kameswar Rao) an unconditional and unqualified apology for issuing the memo bearing F No. A(47/89-A dated 01- 12-2021; and

(b)to tender likewise an affidavit before the Hon'ble High Court of Delhi (Coram Hon'ble Mr. Justice V Kameswar Rao) unreservedly withdrawing your memo under reference. "

d. To date, the Petitioner has received no response from the ICSSR to her said reply dtd 06-12-2021 nor, to the best of the Petitioner's knowledge, has the ICSSR complied with the above quoted requisitions.

e. The Petitioner submits that the above conduct of the concerned officials of the ICSSR and those representing the ICSSR, both by act and omission, are civil as well as criminal contempt of this Hon'ble Court.

f. The said conduct constitutes civil contempt for two reasons. First, it amounts to wilful disobedience to the order and process of this Hon'ble Court commencing with the Order dtd 29-11-2021 in WP (C) No. 13454/2021 passed by the DB of this Hon'ble Court. Secondly, it constitutes wilful breach by the persons aforesaid of the undertaking given to this Court as recorded in para 3 of the Court's order dtd 02-12-2021.

g. The said conduct also constitutes criminal contempt of this Hon'ble Court, again for two reasons. The memo dtd 01-12-2021 issued by the ICSSR lowers the authority of this Hon'ble Court and interfered with the due course of the judicial proceedings in the Petitioner's WP No. 13454/2021 and obstructed the administration of justice by pre-empting the authority and dignity of this Hon'ble Court.

h. Accordingly, by way of a contempt petition in the said WP (C) No. 13454/2021 and as a necessary adjunct to this WP, the Petitioner is filing a substantive contempt petition arising out of and in virtue of this Hon'ble Court's order dtd 02-12-2021 in the said WP (C) No. 13454/2021.

i. The Petitioner says and submits that it is in the above setting that this Hon'ble Court may be pleased to appraise and

adjudicate upon the present WP.

j. The Petitioner further says and submits that on the facts and in the circumstances of the present case, especially since this Hon'ble Court's said Order dtd 02-12-2021 has been rendered a nullity by the conduct of the ICSSR Respondent No.1, her earlier WP (C) No.13454/2021 is liable to be restored to file and adjudicated along with the present WP and inter alia, prays accordingly.

k. ***In*** *the above light, the Petitioner impugns in this WP the following office orders/communications issued to her by ICSSR:*

i. Office order No. 7/2021 bearing FNo. A(47)/89-A dtd 18-032021(***Annexure P- 31).***

ii. Letter bearing FNo. A(47)/89-A dtd 18-03-2021 issued to the Petitioner by ICSSR Respondent No. 1 (Annexure P- 32).

iii. Letter bearing FNo. A(47)/89-A dtd 04-03-2022 issued to the Petitioner by ICSSR Respondent No.1 (Annexure P- 34).”

24. In response to the present petition, the respondent no.1 had filed his reply/counter affidavit, opposing the present petition by advancing the following arguments:

“*62. That keeping in view the findings arrived at by the administrative committee and recommendations thereof, the ICSSR vide its letter dated 04.03.2022 did not accede to the request of the Petitioner as contained in her representation dated 09.04.2021. A true copy of letter dated 04.03.2022 of ICSSR is annexed herewith and being marked as ANNEXURE. R.51.*

63. That it is submitted that high powered committee recommended regularisation of the service of the Petitioner w.e.f. 01.01.1996. As per office order dated 29.10.2002, though the pay of Petitioner was fixed on notional basis w.e.f.

13.07.1989 i.e. the date of her entry into the service as per rules, however, as per para 3 of the said office order, the national fixation of pay did not confer any right to the Petitioner to claim any "seniority & regularization from the date of her initial appointed". The Petitioner neither represented against the said office order dated 29.10.2002 nor challenged the same except submitting a
belated representation dated 21.09.2019 after the lapse of almost 17 years. It is further submitted that grievances of the Petitioner have still been considered by the Committee and the Committee has given clear finding that the request of the Petitioner for counting of her regular service w.e.f. 13.07. 1989 in place of 01.01.1996 cannot be considered.
in view of the above, the ICSSR is completely justified in rejecting the belated representation of the Petitioner by passing the letter dated 04.03.2022.

64. That it is further submitted that Department of Personnel and Training, Ministry of Personnel Public Grievances and Pensions and its office memorandum of 09.08.}999 notified the Assured Career Progression (ACP) Scheme for Central Government Civilian Employees. As per Para 3, it was notified to grant two financial upgradations to Group "B", "C" and "D" employees on completion of 12 years and 24 years of regular service respectively. It was stipulated that certain categories of employees such ag Casual Employees (including those without temporary status), Ad-hoc and Contract Employees shall not qualify for benefits under the scheme. it is submitted that in Para 3.2 of the Scheme, it was specifically stipulated as under: -
"3.2 Regular Service for the purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/Service Rules."

A true copy of office memorandum dated 09.08. 1999 of Department of Personnel and Training, Ministry of Personnel, Public Grievances and pensions is annexed herewith and being marked as ANNEXURE R-52

65, That subsequently, the DoPT vide OM dated 10.02.2000 issued various clarifications "on point of doubt" in relation to ACP Scheme It is submitted that vide the said OM, the fallowing clarification was provided in relation to point of doubt No. 11: -

S. No.	Point of Doubt	Clarification
11	In the case of an employee appointed on ad hoc basis and who is subsequently regularized, the ad hoc service is counted towards increment. Whether the ad hoc service may be counted for the ACPS also?	No. In terms of Para 3.2 of the Office Memorandum, dated August 9, 1999 (ACPS), only regular service which counts for the purpose of regular promotion in terms of relevant Recruitment/ Service Rules shall count for the purpose of upgradation under ACPS.

A true copy of DOPl' OM dated 10.02.2000 is annexed hwewith and being marked as ANNEXURE R-53.

66. That subsequently, the MHRD (now Ministry of Education), Government of India vide its letter dated 19.12.2011 conveyed its approval for grant of Modified Assured Progression Scheme (MACPS) to all categories of ICSSR to whom the benefit of 6th Payment Commission K' as approved by the Government of India vide order dated 26.03.2010.

67. That it is subrnitted that in terms of the OM dated 09.08.1999 read with OM dated 10.02.2000 of DOPT, "only regular service which counts for purpose of regular promotion in terms of relevant Recruitment/ Rules shall count for the purpose of upgradation under ACPS".

As the Petitioner has been regularized w.e.f. al,01.1996 therefore the Petitioner is in entitled for grant of financial

benefits under ACP/MACP by counting her regular service only w.e.f. 01.01.1996 and also keeping in view the findings recorded by the committee in para 3 of its report. ' I-bus, the ICSSR is completely justified in issuing the office order dated }8.03.2021 withdrawing the benefits of Ist ACP and 2nd MACP granted to the Petitioner w.e.f. 01,09,2001 and 13.07.2009 respectively and waxing her financial benefits.

68. That it is further submitted that so far as the grievances raised by the Petitioner in respect of memo dated 01.12,2021 is concerned, it is respectfully submitted that the ICSSR vide its communication dated. 20.07.2022 has already withdrawn the said memo under intimation to the Petitioner and the Petitioner has received the said communication on 20.07.2022 itself A true copy of memo dated 01.12.2021 and 20.07.2022 of ICSSR are annexed herewith and being marked as ANNEXURE R-54 (Colly).

69. That in view of the aforesaid writ petition filed by the Petitioner does not merit consideration and is liable to be dismissed by this Hon'ble Court."

25. In response to the present petition, the respondent no.3 had filed his reply/counter affidavit, opposing the present petition by advancing the following arguments:

"*7. That it is submitted that during the audit of Respondent No.1/ICSSR, the answering Respondent found some irregularities with respect to the Assured Career Progression (ACP) scheme benefits granted to its Grade 'A' officers by the Respondent No.1. Accordingly, the answering Respondent raised an Audit Objection regarding such irregularities in its Audit Inspection report for the period 2009-2011.*

8. That it is submitted that the Department of Personnel and Training (DOP&T) vide its Office Memorandum bearing No. 35034 /1/97-Estt(D) dated 09.08.1999 had introduced Assured

Career Progression (ACP) scheme for the Central Government civilian employees in all ministries and Departments.

9. That it is submitted that as per the above-mentioned Office Memorandum, the said ACP scheme was introduced only for employees who had completed either 12 or 24 years of regular service. Moreover, as per the said Office Memorandum, no financial up gradation was proposed for employees.

X X X

12.That it is submitted that the answering respondent in terms of the Office Memorandum dated 09.08.1999 and the GFR, 2005 while carrying out audit of The Respondent No.1/ICSSR for the period 2009-2011 raised the objection that in violation of the GFR, 2005 the Respondent No.1/ICSSR without prior approval of the Ministry of Finance granted benefits of ACP scheme to Group 'A' officers which is in contravention to the said Office Memorandum dated 09.08.1999. It was further observed that the Respondent No.1/ICSSR granted the said benefits to employees on completion of 12/8 years whereas, the said Memorandum granted benefits of ACP scheme to employees only on completion of either 24 or 12 years of service."

26. The petitioner has filed rejoinder to the counter affidavit of the respondent no. 1. The relevant extract of the rejoinder is as follows:

"2. It is submitted that in paragraph 44 the counter affidavit adverts to and quotes from an office order dated.29.10.2002 (Annexure R-35 at Page 109). The said office order refers to some writ petition filed by some adhoc employees of the Council. However, the deponent does not say that this petitioner was(is a party to the said writ petition. In fact, she is not. Neither the said office order nor the counter affidavit discloses either the number of the writ petition nor states as to whether it is pending or has since been disposed of. Nor even does the deponent plead as to what relevance or application the

said writ petition and proceedings therein have to the petitioner's case in her present writ petition and the reliefs claimed therein.

3. Likewise, in paragraph 47 of the counter affidavit~ the deponent has referred to and quoted from an alleged undertaking given by the petitioner. The deponent has neither disclosed the date of the alleged undertaking or annexed that document nor has pleaded as to what relevance or application the same has to her present writ petition and the reliefs prayed for herein.

4. As it is, Respondent no. 1 and its concerned officials are facing contempt proceeding before this Hon'ble Court in the Petitioner's contempt petition being Contempt Case (C) No. 624 of 2022 entitled Alka Shrivastava vs. Indian Council of Social Science Research and Others for willful breach of the order date 02.12.2021 passed by this Hon'ble Court in her earlier WP (C) 13454 of2021. On the very day i.e., 02.12.2021, that the respondents gave an undertaking to this Hon'ble Court that no coercive action shall be taken against her, the respondents served her with a memo threatening her with disciplinary proceeding for having approached this Hon'ble Court. The said contempt proceeding is now fixed for hearing on 10.10.2023.

5. The counter affidavit contains no para-wise traverse of the averments in the Writ Petition. As such, all the factual averments in the Writ Petition stands admitted by non traverse, on the principles underlying Order VIII Rule 3 to Rule 5 of the CPC, 1908. On those principles, the general and bald denial in paragraph 72 of the counter affidavit is of no avail to the respondents.

6. The counter affidavit is unduly prolix and repetitive. It purports to set out a narrative and annexes documents which are already pleaded and annexed to the Writ Petition. The

counter affidavit is calculated to make it appear ~ I that there are factual controversies, when, in fact, there are none.

7. The crux of the petitioner's case lies in and flows from the recommendation of the High-Powered Committee (HPC) (Justice V. S. Malimath Committee) specifically regarding the Petitioner and the admitted acceptance of those recommendations by the ICSSR. Admittedly, further, the ICSSR acted on its acceptance on those specific recommendations. However, the Respondent once again sought to obfuscate the issue and to willfully mislead this Hon'ble Court once again, as they had done in the Petitioner's earlier WP (C) 13454 of 2020 for which they are facing contempt proceeding in Contempt Case (C) No. 624 of 2022 pending before this Hon'ble Court. Indeed, by their statements in paragraph 45 onwards of their counter affidavit the respondents have aggravated the said contempt. The untruthful and dishonest and shifting stands of the Respondents are exposed below.

8. Vis-a-vis the Petitioner, specifically the HPC made two findings and recommendations (see the WP pages 47 to 49 para 'h' read with Annexure P-17 (colly) pages 160 to 195): a. She was first appointed on 13.07.1989 (see the WP at page 179 first sentence; and b. She shall be given notional fixation from that date, viz -13.07.1989 and financial effect from 01.1.1996 but with the further condition that no arrears shall be paid for the period between 11.3 .1996 and 25.09.1997 (see the WP at page 195 last paragraph).

9. Although in para 38 of counter affidavit the Respondents have purported to quote from HPC recommendations and to annexed abstracts there from as Annexure R-30 at pages 99-100, the Respondents have willfully withheld from this Hon'ble Court the crucial recommendations as abstracted in the WP at page 195."

27. The petitioner and the respondent no. 1 have also filed their judgment compilations as well as the written submissions.

PROCEEDINGS BEFORE THIS COURT

(submissions on behalf of the petitioner)

28. Mr. M.S. Ganesh, learned senior counsel appearing on behalf of the petitioner submitted that the respondent no.1 erred in passing the impugned order since the petitioner is entitled for regularization from the year 1989 and not from the year 1996.

29. It is submitted that the impugned Office Order dated 18th March, 2021 and the decision dated 4th March, 2022, passed by the respondent no.1 and all antecedent acts and omissions of the respondent No.3, respondent No.2 and the respondent No.1 are without any jurisdiction and authority.

30. It is submitted that the statement made, and undertaking given by and on behalf of the respondent No.1 on the basis of which WP(C) 13454/2021 filed before this Court was disposed vide Order dated 2nd December, 2021 are a wrongful submissions.

31. It is further submitted that the learned counsel for the respondent no. 1 suppressed the fact from the Court that the respondent no.1 on 1st December, 2021, had issued a memo to the petitioner demanding her explanation for having approached this Court by way of the writ petition.

32. It is further submitted that the Central Government's statutory rules and the respondent no.1's service regulations were cited as justification in the aforesaid memo dated 1st December, 2021 have no application to the

petitioner's case in and the subject matter of her WP (C) 13454/2021 since the petitioner is not a Central Government employee.

33. It is submitted that the petitioner as per the service protocol and discipline, the petitioner submitted a detailed reply dated 6th December, 2021 to the aforesaid memo.

34. It is submitted that the plenary Council of the respondent no.1 had accepted the said recommendations, in the year 1998, it could not be revoked as an afterthought by the respondent no.1, especially without giving notice to the petitioner.

35. It is further submitted that as per the impugned decision dated 4th March, 2022, which states that the Competent Authority of the respondent no. 1 has not acceded to the request dated 9th April, 2021 of the petitioner. However, the respondent no.1's competent authority has no jurisdiction, power or authority to override the decision made by the Plenary Council in 1998 in respect of the petitioner.

36. It is submitted that the impugned decision dated 4th March, 2022 is also internally inconsistent, self-contradictory, and self- defeating. It admits unequivocally that the report of the Justice Malimath Committee has "already been accepted by the Competent Authority" vide sub-para 1 of the penultimate para of that decision. Since, the terms of reference of the Justice Malimath Committee included *inter alia* all those who are holding the post of Research Assistants Grade I. Hence, all other assertions and arguments advanced in the impugned decision does not hold any water.

37. It is further submitted that the petitioner being at the position of Research Assistants Grade I was qualified to be regularised from her initial date of appointment i.e. in the year 1989 and not from the year 1996.

38. It is submitted that when the State *qua* employer makes a reference to a Pay Commission in respect of a set of employees and it accepts the recommendations, it is bound to implement the recommendations in respect of all such employees.

39. It is submitted that when an autonomous department or board of the State (analogous to a body such as the respondent no.1) makes such a reference to a Pay Committee in respect of its employees and accepts such committee's recommendations, it is bound to give the benefit of the recommendations to all employees covered by the terms of reference and not confine such benefit only to some of them.

40. It is submitted that the respondent no.1 must implement the accepted recommendations from the same date in respect of all employees covered by the Pay Commission and it is not open to the State to deny the benefit of the revised grade and scale w.e.f. a particular date as in the case of all other persons merely because of some administrative difficulties as the same would be discriminatory.

41. It is submitted that the respondent no.1 has been wrongly recovering the financial benefits granted to the petitioner vide MACP and ACP scheme. The petitioner is legally entitled to the aforesaid financial benefits.

42. It is further submitted that the respondent no.1 has *malafidely* passed the impugned recovery order against the petitioner.

43. It is submitted that the respondent no.1, that the impugned orders and decision of the respondent no. 1 are not merely *ultra vires* of petitioner's fundamental rights under Articles 14, 16(1) and 300 A of the Constitution of India but also vitiated by *malafide (mala prohibita).*

44. It is submitted that in view of the foregoing submissions, the instant petition may be allowed and the reliefs as prayed for may be granted.

(submissions on behalf of the respondent)

45. *Per Contra,* learned counsel appearing on behalf of the respondent no.1 vehemently opposed the instant petition and submitted that the instant petition, being devoid of any merit, is liable to be dismissed.

46. It is submitted that the impugned orders passed by the respondent no. 1 are in due compliance with the statutory rules and does not suffer from any illegality.

47. It is submitted that respondent no.1 vide its order dated 13th July, 1989 appointed the petitioner as Research Assistant on "ad hoc basis" for a period of six months with the specific stipulation that the appointment will not confer any right on her for any regular appointment with the respondent no. 1. Thereafter, the respondent no.1 issued various orders from time-to-time appointing petitioner on ad-hoc basis for fixed periods with break in between on similar terms during the period of 12th January, 1990 till 25th March, 1998.

48. It is further submitted that during the said period of ad-hoc appointment, the respondent no.1 had also issued a memorandum dated 06th

March, 1997 seeking her explanation for her absence during the period from 11th March, 1996 to 31st August 1996 without leave and after considering her reply dated 12th March, 1997, the petitioner was permitted to join on ad hoc basis vide order dated 19th September, 1997, subject to final decision of the respondent no.1 in the matter.

49. It is submitted that the high-powered committee in Para 2.18.14 of its report has stated that the petitioner did not have any order of appointment in her favour between 1st September, 1996 and 25th September, 1997 hence, she did not perform duty during the said period not on account of any lapse on the part of the council.

50. It is further submitted that the high-powered committee in Para 2.18.15 has recommended that the services of petitioner be regularized in relaxation of the relevant rules and given notional fixation of pay w.e.f. 1st January, 1996, as has been recommended in all other cases, subject to the condition that no arrears shall be paid for the period of her absence from 11th March, 1996 to 25th September, 1997.

51. It is submitted that as per decision taken by the respondent no.1 in its 83rd Meeting held on 16th September, 1998, the respondent no.1 regularized the services of the petitioner in temporary capacity as Research Assistant w.e.f. 1st January, 1996 vide office order dated 17th March, 1999 was issued in this regard. Thereafter, the respondent no.1 issued office order dated 24th August, 1999 refixing the pay of petitioner w.e.f. 01st January, 1996.

52. It is submitted that the respondent no.1 issued another office order dated 31st May, 2000, the date of regularization of petitioner remained

unchanged as 1st January, 1996 and it was specifically stipulated that the petitioner will be treated as junior to the regular employees of the respondent no.1 as on 1st January, 1996 in his/her cadre. Hence, the benefit of past services of the ad-hoc employee will not count for any purpose pending the decision to be taken by a committee formed for the purpose as per order of the Chairman of the respondent no.1.

53. It is further submitted that petitioner submitted two representations dated 12th July, 2001 and 1st March, 2002 seeking rectification of her notional pay fixation as on 1st January, 1996. The said representations were rejected vide Memo dated 19th March, 2002 and 10th April, 2002 respectively. Pursuant to which, the respondent no.1 issued an office order dated 29th October, 2002 fixing the pay of petitioner on notional basis w.e.f. 13th July, 1989 subject to certain conditions which included a condition that the notional fixation of pay shall not confer any right to petitioner to claim any seniority and regularization from the date of her initial appointment.

54. It is submitted that in view of the decision taken by the Policy Planning and Administration Committee (PPAC) in its 65th meeting held on 29th January, 2008 and endorsement of the Council in its 108th meeting held on 24th March, 2008, the respondent no.1 issued an office order dated 24th April, 2008 whereby, the earlier office order dated 31st May, 2000 was revoked and withdrawn with immediate effect and consequently, the Office order dated 17th March, 1999 based upon the decision taken by Council in its 83rd meeting held on 16th September, 1998 was directed to remain effective.

55. It is submitted that the respondent no.1 issued office order dated 08th July, 2008 and office order 30th December, 2011 extending the benefit of ACP and MACP respectively to petitioner by erroneously counting her date of initial appointment on ad hoc basis i.e. 13th July, 1989 instead of regular service rendered by her regularization w.e.f. 01st January, 1996.

56. It is submitted that in view of audit report for the period 2009-11 in respect of respondent no.1 forwarded by the office of Director General of Audit (Central Expenditure) by their letter dated 01st August, 2011 wherein objection was pointed out in respect of irregular grant of benefit of ACP etc., the Department Screening Committee of the respondent no.1 in its meeting held on 30th September, 2019 noted that though the petitioner was regularized w.e.f. 1st January 1996, however, she was granted lst ACP w.e.f. 01st September, 2001 and 21st MACP w.e.f. 13th July, 2009 by counting her service from the date of her ad hoc appointment i.e. 13th July, 1989. Accordingly, the committee recommended that lst ACP granted to her may be made effective from 1st January 2008 and 2nd ACP from 1st January 2016.

57. It is further submitted that after delay/lapse of 17 years, petitioner submitted a representation dated 21st September 2019 for substituting the word “on” in place of the word “and” in Para 3 of the office order dated 29th October 2002. The said representation was followed by another representation dated 13th March 2020. The representation dated 21st September 2019 was rejected by the respondent no.1 vide its letter dated 18th March 2021.

58. It is submitted that the respondent no.1 vide its office order dated 9th September 2021 constituted a three members committee to consider the representation of petitioner regarding regularization of her service w.e.f. 13th July 1989 instead of 1st January 1996.

59. It is submitted that the three members committee thoroughly examined the entire factual position and submitted its detailed report. The committee has specifically recommended as under that the substitution of the word 'and' with 'on' cannot be done in the recommendations of the High Powered Committee as the report of the committee already been accepted by the Competent Authority. Moreover, the recommendations of the High-Powered Committee cannot be changed or modified by any other committee as even more substitution of the word "and" with "on" has huge implications. Hence, the request of petitioner, Deputy Director for counting of her services as regular w.e.f. 13th July1989 instead of 1st January 1996, cannot be accepted as it is beyond rationality and is devoid of any merit. Accordingly, the respondent no.1 issued the impugned communication dated 4th March 2022 rejecting the petitioner's representation dated 9th April 2021 regarding her claim of rectification of date of regularization of her service w.e.f. 13th July 1989 instead of regularization of her service w.e.f 01st January 1996.

60. It is submitted that high powered committee itself recommended regularization of service of the petitioner only w.e.f. 1st January 1996. Accordingly, the respondent no.1 issued order 17th March 1999 regularizing the service of petitioner only w.e.f. 1st January 1996. All subsequent office

orders issued by respondent no.1 clearly stipulate that service of petitioner is regularized only w.e.f. 1st January 1996.

61. It is submitted that the office order dated 31st May 2000 stipulates that benefit of past service of the ad hoc employee will not count for any purpose and her service stands regularized w.e.f. 1st January 1996. Thus, it is the service of petitioner was regularized only w.e.f. 1st January 1996 and the petitioner neither has any statutory /vested right nor entitled to claim regularization of her service w.e.f. 13th July 1989.

62. It is further submitted that initially petitioner was appointed on ad hoc basis for fixed period w.e.f. 13th July 1989 in contravention with the recruitment rules and no process of recruitment was followed for her appointment on ad hoc basis.

63. It is submitted that the high-power committee recommended regularization of service of petitioner on equitable considerations and in relaxation of relevant rules. Thus, once initial appointment of the petitioner on ad hoc basis was not in accordance with rules, the petitioner is not entitled to count her past ad hoc service for any purpose and the petitioner is not entitled to claim regularization w.e.f. 13th July 1989 in place of regularization granted to her w.e.f. 1st January 1996.

64. It is submitted that the Hon'ble Supreme Court has repeatedly held that the person who is appointed purely on ad hoc basis for a fixed period without following the recruitment /selection rule and process, is not entitled for counting of past ad hoc service for any purpose including seniority. In the instant petition, the petitioner was initially appointed on ad hoc basis for

fixed period without following the recruitment /selection rules & process, the petitioner is not entitled to counter her past ad hoc service w.e.f. 13th July 1989 in place of regularization granted to her w.e.f. 1st January 1996.

65. It is submitted that DOPT vide its once memorandum of 9th August 1999 notified the Assured Career Progression (ACP) Scheme, which is applicable to respondent no.1. As per Para 3 of the said office memorandum, two financial upgradations to Group "B", "C" and "D" employees on completion of 12 years and 24 years of regular service respectively is contemplated. Para 3.2 of the OM clearly stipulates that certain category of employees such as Casual Employees (including those without temporary status), Ad-hoc and Contract Employees shall not qualify for benefits under the scheme.

66. It is submitted that as per the Scheme, service of an ad hoc employee, whose service was subsequently regularized, will not be counted for the benefit of ACP

67. It is submitted that in terms of the office memorandum dated 9th August 1999 read with OM dated 10th February 2000 of DOPT, the petitioner has been regularized w.e.f. 1st January 1996 therefore, the petitioner is entitled for grant of financial benefits under ACP/MACP by counting her regular service only w.e.f. 1st January 1996. Thus, the respondent no. 1 is completely justified in issuing the office order dated 18.03.2021 withdrawing the benefits of 1st ACP and 2nd MACP granted to the petitioner w.e.f. 1st September 2001 and 13th July 2009 respectively and refixing her financial benefits.

68. It is further submitted that the Hon'ble Supreme Court of India in the matter of ***High Court of Punjab & Haryana & Ors. vs. Jagdev Singh***[1] has held that the principle enunciated in Para 10 of the judgment in ***State of Punjab Vs. Rafiq Masih***[2] cannot apply to a situation where the employee concerned was placed on notice that any payment found to have been made in excess would be required to be refunded and the employee furnished an undertaking while opting for the revised pay scale. Hence, the employee is bound by the aforesaid undertaking.

69. It is submitted that in the present matter, the petitioner submitted her two undertakings to the effect that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment, will be refunded by her or the same may be deducted from her salary. In view of the above and keeping in view the principle laid down by the Hon'ble Supreme Court of India in the aforesaid matter of ***Jagdev Singh (Supra)***, the respondent no.1 is completely justified in issuing the impugned office orders.

70. It is submitted that once the petitioner has submitted the aforesaid undertaking/declaration for refund/adjustment of excess financial benefits extended to her, then the petitioner is not entitled to turn around and challenge the recovery.

71. It is further submitted that order regularizing the service of petitioner w.e.f. 1st January 1996 was issued on 17th March 1999 followed by office

[1] 2016 (14) SCC 267
[2] 2015 (4) SCC 334

order dated 24th August 1999 and 31st May 2000. Her representations dated 12th July 2001 and 1st March 2002 were rejected vide Memo dated 19th March 2002 and 10th April 2002 respectively. The petitioner did not choose to challenge either the aforesaid office orders dated nor aforesaid rejection of her two representations hence, the said decisions attained finality.

72. It is submitted that as per office order dated 29th October 2002, though the pay of petitioner was fixed on notional basis w.e.f 13.07.1989 i.e. the date of her entry into the service as per rules, however, as per para 3 of the said aforesaid order, the notional fixation of pay did not confer any right to the petitioner to claim any "seniority & regularization from the date of her initial appointment".

73. It is submitted that the Petitioner neither represented against the said office order dated 29th October 2002 nor challenged the same except submitting a belated representation on 21st September 2019 after the lapse of almost 17 years.

74. It is submitted that the claim made by the petitioner by way of aforesaid representation suffers from well recognized principle of laches & delay as well as acquiescence.

75. It is submitted that person who does not challenge the wrongful action and acquiesced the same cannot claim any benefit at a belated stage merely based on submission of representation.

76. It is further submitted that it is a well settled that merely submission of repeated representations can neither give rise to cause of action nor can have the effect of condoning delay & laches.

77. Learned counsel for the respondent no. 3/ Comptroller and Auditor General of India submitted that t in the instant writ petition the relief is sought only qua respondent No.1challenging various actions taken by them and no relief is sought against or from the answering Respondent. Therefore the respondent no.3 is not a necessary party in the instant writ petition.

78. It is submitted that the jurisdiction/ mandate of the respondent no. 3 is governed by Articles 149-151 of the Constitution of India as further elaborated by the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act 1971. Further, the statutory rules of the respondent no.1 mandate the respondent no. 3 to carry out its Audit annually.

79. It is further submitted that being the statutory Auditor, it is the duty of the respondent no. 3 to point out if any amount has been released to any entity in contravention to the Rules. Any audit objection raised by the respondent no. 3 is recommendatory in nature and if the auditee in the working of whom such objection is raised finds merit in the recommendations of the answering respondent, then such auditee department is free to take remedial actions.

80. It is submitted that during the audit of respondent No.1, the respondent no. 3 found some irregularities with respect to the Assured Career Progression (ACP) scheme benefits granted to its Grade 'A' officers by the respondent No.l. Accordingly, the respondent no. 3raised an Audit Objection regarding such irregularities in its Audit Inspection report for the period 2009-2011.

81. It is submitted that as per the the ACP scheme was introduced only for employees who had completed either 12 or 24 years of regular service. Moreover, as per the said Office Memorandum, no financial up gradation was proposed for Group 'A' employees and therefore, the ACP scheme was to be adopted for Group 'A' central government employees.

82. It is submitted that the classification of posts in Recruitment Rules of respondent No. 1 is different from the classification of posts done in Recruitment Rules of Central government employees.

83. It is further submitted that as per the Recruitment Rules of the respondent No. 1 the posts of Director, Deputy Director and Assistant Director have been classified as Group V however, the respondent No.1 treats these posts in terms of Group 'A' central government employees. Therefore, since the respondent No.1 treats these posts as Group 'A' central government employees, it needs prior approval from the Ministry of Finance to bestow any benefit to employees of these posts which is not granted to Group 'A' central government employees.

84. It is submitted that the respondent no. 3 while carrying out audit of the respondent No.1 for the period 2009-2011 raised the objection that the respondent No.1 without prior approval of the Ministry of Finance granted benefits of ACP scheme to Group 'A' officers which is in contravention to the said Office Memorandum dated 9th August1999. It was further stated that the respondent No. 1 granted the said benefits to employees on completion of 12/8 years whereas, the said Memorandum granted benefits of ACP scheme to employees only on completion of either 24 or 12 years of service.

85. It is submitted that pursuant to the audit objection raised by the respondent no. 3, the respondent No.1 vide impugned Order dated 18th November 2019 initiated recovery proceedings against the Petitioner with respect to irregular payments made to him. In this regard, it is submitted that the answering respondent's role is only limited to auditing the accounts of the respondent No.1 and to highlight irregularities through inspection reports.

86. It is submitted that the respondent no.3 has only fulfilled its statutory duty of highlighting irregular payments made by the respondent No.l and has no say in the recovery proceedings initiated by the respondent No. 1.

87. In view of the submissions made above, it is submitted that the instant petition is devoid of merit, hence is liable to be dismissed by this Court.

ANALYSIS AND FINDINGS

88. The matter was heard at length with arguments advanced by the learned counsels on both sides. This Court has also perused the entire material on record. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties and pleadings presented by the learned counsel of the parties.

89. It is pertinent to note that vide order dated 26th July 2023, it has been submitted by the learned senior counsel for the petitioner submitted that the petitioner does not press the matter qua prayer (i), (ii), (iii) before and requested that the instant petition to be adjudicated qua prayer (iv) and (v).

90. It is the case of the petitioner that the petitioner is entitled to regularization w.e.f. 13th July 1989 instead of 1st January 1996. It is further

contended that the respondent no. 1 is wrongly recovering financial benefits from the petitioner granted from the date of petitioner's date of ad- hoc joining i.e., 13th July 1989 and the petitioner is duly entitled to the said financial benefits.

91. In rival contentions, the respondent no. 1 has submitted that it has acted in accordance with the statutory mandates and the petitioner cannot be granted regularization from w.e.f. 13th July 1989 since, the petitioner did not attend office for 563 days which the Malimath Committee on grounds of equity regarded as technical break. It is further submitted that the petitioner that the Malimath Committee has recommended the petitioner's regularization w.e.f. 1st January 1996 and accordingly, the respondent no. 1 has regularized the position of the petitioner. Moreover, the order granting financial benefits granted to the petitioner from her ad- hoc joining date i.e. 13th July 1989 has been erroneously passed therefore, the said office order was eventually rectified.

92. It is contended that the recovery of the financial benefits wrongly granted to the petitioner is not violative of any legal right of the petitioner since, the petitioner had signed undertakings that in case the petitioner wass paid any excess amount by the respondent no. 1, it is entitled to recover the same from the petitioner.

93. Tersely stated, the two issues before this Court is-

a. *Whether the petitioner is entitled to regularization from her initial date of joining i.e., 13th July 1989*

b. Whether the recovery of the benefits by the Respondent no. 1 granted to the petitioner under ACP/ MACP illegal

94. Now adverting to adjudication of the first issue.

95. It is a settled position of law that regularization cannot be sought as a matter of right. It is a discretion vested with the employer/public authorities hence, they are clothed with the power to grant regularization to its employees. It is a policy decision taken by the said public authority who has requisite competence and power to take executive policy decisions.

96. An ad- hoc employee may seek regularization on two conditions i.e., firstly, initial appointment must be done by the competent authority and secondly, there must be a sanctioned post on which the daily rated employee must be working.

97. Regularization is usually not a mode of appointment at various posts in public offices and to ensure equality, a great amount of importance has been that all the eligible candidates to a particular position shall be given an opportunity to appointment. Hence, any back- door appointment done has been held to be constitutionally impermissible since it is violative of Articles 14 and 16 of the Constitution of India.

98. In cases where there is a departure from the rule of granting equal opportunity to all candidates and an ad- hoc employee is regularized, the public authority regularizing such employee shall ensure that there is due compliance of the statutory rules and their actions are within the four corners of the delegated power of the Authority concerned.

99. Now addressing the issue of doctrine of legitimate expectation pertaining to regularisation of employees, it is a settled position of law that the said doctrine can be applied in cases, where the decisions of the public authority deprive a person from certain benefits which he had given in the past, they were permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue until there has been a communication made to him regarding the withdrawal of the said financial benefit. Certain rational grounds for withdrawing it on which he had an opportunity to present his case or an assurance has been given by the decision maker that they will not deprive him of the benefits without giving him an opportunity of representing his case why his benefits should not be withdrawn.

100. The Hon'ble Supreme Court in the landmark judgment of ***Secretary, State of Karnataka & Ors. vs. Umadevi & Ors.***[3]**,** has reiterated the scope of regularization of an ad- hoc employee. The relevant extract of the judgment has been reproduced herein below:

> "*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*

[3] (2006) 4 SCC 1

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.

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.

This extract is taken from State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753 : 2006 SCC OnLine SC 407 at page 38

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 Labhu Bechar, (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, R.N. Nanjundappa and B.N. Nagarajan 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 9 of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

101. The two– judge bench judgment of ***U.P State Electricity Board v. Pooran Chandra Pandey***[4], tried to water down the binding effect of the decision of the Constitution Bench in **Umadevi (supra)**. However, a Three Judge Bench in ***Official Liquidator* v. *Dayanand***[5]**,** clarified that the comments and observations made by the two-Judge Bench **in *Pooran Chandra Pandey* (supra)** should be read as obiter, and the same should neither be treated as binding by the High Courts, Tribunals and other judicial for as nor they should be relied upon or made the basis for bypassing the principles laid down by the Constitution Bench in ***Umadevi* (supra)**.

102. The Hon'ble Supreme Court in a Three Judge Bench in ***Dayanand* (supra)** observed as follows:—

"65. The questions whether in exercise of the power vested in it under Article 226 of the Constitution of India, the High Court can issue a mandamus and compel the State and its instrumentalities/agencies to regularise the services of temporary/ad hoc/daily wager/casual/contract employees and whether direction can be issued to the public employer to prescribe or give similar pay scales to employees appointed through different modes, with different conditions of service

[4] (2007) 11 SCC 92
[5] (2008) 10 SCC 1

and different sources of payment have become subject-matter of debate and adjudication in several cases.

66. The judgments of 1980s and early 1990s—Dhirendra Chamoli v. State of U.P. [(1986) 1 SCC 637 : 1986 SCC (L&S) 187] , Surinder Singh v. CPWD [(1986) 1 SCC 639 : 1986 SCC (L&S) 189] , Daily Rated Casual Labour v. Union of India [(1988) 1 SCC 122 : 1988 SCC (L&S) 138 : (1987) 5 ATC 228] , Dharwad Distt. PWD Literate Daily Wage Employees Assn. v. State of Karnataka [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902] , Bhagwati Prasad v. Delhi State Mineral Development Corpn. [(1990) 1 SCC 361 : 1990 SCC (L&S) 174] and State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] are representative of an era when this Court enthusiastically endeavoured to expand the meaning of the equality clause enshrined in the Constitution and ordained that employees appointed on temporary/ad hoc/daily-wage basis should be treated on a par with regular employees in the matter of payment of salaries and allowances and that their services be regularised. In several cases, the schemes framed by the Governments and public employer for regularisation of temporary/ad hoc/daily-wage/casual employees irrespective of the source and mode of their appointment/engagement were also approved. In some cases, the courts also directed the State and its instrumentalities/agencies to frame schemes for regularisation of the services of such employees.

67. In State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] this Court while reiterating that appointment to the public posts should ordinarily be made by regular recruitment through the prescribed agency and that even where ad hoc or temporary employment is necessitated on account of the exigencies of administration, the candidate should be drawn from the employment exchange and that if no candidate is available or sponsored with the employment exchange, some method

consistent with the requirements of Article 14 of the Constitution should be followed by publishing notice in appropriate manner for calling for applications and all those who apply in response thereto should be considered fairly, proceeded to observe that if an ad hoc or temporary employee is continued for a fairly long spell, the authorities are duty-bound to consider his case for regularisation subject to his fulfilling the conditions of eligibility and the requirement of satisfactory service. The propositions laid down in Piara Singh case [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] were followed by almost all the High Courts for directing the State Governments and public authorities concerned to regularise the services of ad hoc/temporary/daily-wage employees only on the ground that they have continued for a particular length of time. In some cases, the schemes framed for regularisation of the services of the backdoor entrants were also approved.

68. The abovenoted judgments and orders encouraged the political set-up and bureaucracy to violate the soul of Articles 14 and 16 as also the provisions contained in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 with impunity and the spoils system which prevailed in the United States of America in the sixteenth and seventeenth centuries got a firm foothold in this country. Thousands of persons were employed/engaged throughout the length and breadth of the country by backdoor methods. Those who could pull strings in the power corridors at the higher and lower levels managed to get the cake of public employment by trampling over the rights of other eligible and more meritorious persons registered with the employment exchanges. A huge illegal employment market developed in different parts of the country and rampant corruption afflicted the whole system. This was recognised by the Court in Delhi Development Horticulture Employees' Union v. Delhi Admn. [(1992) 4 SCC

99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386] in the following words: (SCC pp. 111-12, para 23)

"23. Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is an Employment Exchange Act which requires recruitment on the basis of registration in the employment exchange, it has become a common practice to ignore the employment exchange and the persons registered in the employment exchanges, and to employ and get employed directly those who are either not registered with the employment exchange or who though registered are lower in the long waiting list in the employment register. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the employment exchanges for years. Not all those who gain such backdoor entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in government departments, public undertakings or agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped

undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days they have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts."

69. The menace of illegal and backdoor appointments compelled the courts to rethink and in a large number of subsequent judgments this Court declined to entertain the claims of ad hoc and temporary employees for regularisation of services and even reversed the orders passed by the High Courts and Administrative Tribunals — Institute of Management Development v. Pushpa Srivastava [(1992) 4 SCC 33 : 1992 SCC (L&S) 767 : (1992) 21 ATC 377] , M.A. Haque (Dr.) v. Union of India [(1993) 2 SCC 213 : 1993 SCC (L&S) 412 : (1993) 24 ATC 117] , J&K Public Service Commission v. Dr. Narinder Mohan [(1994) 2 SCC 630 : 1994 SCC (L&S) 723 : (1994) 27 ATC 56] , Arundhati Ajit Pargaonkar (Dr.) v. State of Maharashtra [1994 Supp (3) SCC 380 : 1995 SCC (L&S) 31 : (1994) 28 ATC 415] , Union of India v. Kishan Gopal Vyas [(1996) 7 SCC 134 : 1996 SCC (L&S) 468 : (1996) 32 ATC 793] , Union of India v. Moti Lal [(1996) 7 SCC 481 : 1996 SCC (L&S) 613 : (1996) 33 ATC 304] , Hindustan Shipyard Ltd. v. Dr. P. Sambasiva Rao [(1996) 7 SCC 499 : 1996 SCC (L&S) 619 : (1996) 33 ATC 309] , State of H.P. v. Suresh Kumar Verma [(1996) 7 SCC 562 : 1996 SCC (L&S) 645 : (1996) 33 ATC 336] , Surinder Singh Jamwal (Dr.) v. State of J&K [(1996) 9 SCC 619 : 1996 SCC (L&S) 1296] , E. Ramakrishnan v. State of Kerala [(1996) 10 SCC 565 : 1997 SCC (L&S) 331] , Union of India v. Bishamber Dutt [(1996) 11 SCC 341 : 1997 SCC (L&S) 478] , Union of India v. Mahender Singh [(1997) 1 SCC 245 : 1997 SCC (L&S) 717] , P. Ravindran v. UT of Pondicherry [(1997) 1 SCC 350 : 1997 SCC (L&S) 731]

, Ashwani Kumar v. State of Bihar [(1997) 2 SCC 1 : 1997 SCC (L&S) 267] , Santosh Kumar Verma v. State of Bihar [(1997) 2 SCC 713 : 1997 SCC (L&S) 751] , State of U.P. v. Ajay Kumar [(1997) 4 SCC 88 : 1997 SCC (L&S) 902] , Patna University v. Dr. Amita Tiwari [(1997) 7 SCC 198 : 1997 SCC (L&S) 1619] and Madhyamik Shiksha Parishad v. Anil Kumar Mishra [(2005) 5 SCC 122 : 2005 SCC (L&S) 628] .

70. The shift in the Court's approach became more prominent in A. Umarani v. Coop. Societies [(2004) 7 SCC 112 : 2004 SCC (L&S) 918] , decided by a three-Judge Bench, wherein it was held that the State cannot invoke Article 162 of the Constitution for regularisation of the appointments made in violation of the mandatory statutory provisions.

75. By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed by different two-Judge Benches for declining to entertain the claim of regularisation of service made by ad hoc/temporary/daily-wage/casual employees or for reversing the orders of the High Court granting relief to such employees — Indian Drugs and Pharmaceuticals Ltd. v. Workmen [(2007) 1 SCC 408 : (2007) 1 SCC (L&S) 270] , Gangadhar Pillai v. Siemens Ltd. [(2007) 1 SCC 533 : (2007) 1 SCC (L&S) 346] , Kendriya Vidyalaya Sangathan v. L.V. Subramanyeswara [(2007) 5 SCC 326 : (2007) 2 SCC (L&S) 143] , Hindustan Aeronautics Ltd. v. Dan Bahadur Singh [(2007) 6 SCC 207 : (2007) 2 SCC (L&S) 441] . However, in U.P. SEB v. Pooran Chandra Pandey [(2007) 11 SCC 92 : (2008) 1 SCC (L&S) 736] on which reliance has been placed by Shri Gupta, a two-Judge Bench has attempted to dilute the Constitution Bench judgment by suggesting that the said decision cannot be applied to a case where regularisation has been sought for in pursuance of Article 14 of the

Constitution and that the same is in conflict with the judgment of the seven-Judge Bench in Maneka Gandhi v. Union of India [(1978) 1 SCC 248] .

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed.

91. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qu non for effective and

efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law."

103. The Hon'ble Supreme Court enunciated the law on regularisation in the judgment of ***State of Rajasthan v. Daya Lal*** [6]as follows:

"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

[6] **(2011) 2 SCC 429**

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

104. The Division Bench of the Bombay High Court in the judgment of ***Mahesh Madhukar Wagh v. State of Maharashtra, (2019) 6 Mah LJ 8***

reiterated the principle enunciated in the judgment of ***Umadevi (Supra)*** and observed as follows:

> *"14. It could thus be seen that the Hon'ble Supreme Court has clearly held that theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot be held that the State had held out any promise while engaging these persons either to continue them or to make them permanent. It has been equally held that there is no fundamental right in those who have been employed on daily wages or temporary or contractual basis to claim that they have a right to be absorbed in service. It has been held that a regular appointment could be made only by making appointments consistent with the requirement of Articles 14 and 16 of the Constitution. The employees appointed on contractual or temporary basis cannot claim to be treated equally with those who are regularly employed. It has been held in an unequivocal terms that the mandamus could not be issued in favour of employees, directing Government to make them permanent since the employees, not selected through regular selection process, cannot have a legal right to be permanently absorbed."*

105. Moreover, recently in the judgment of ***Ganesh Digamber Jambhrunkar v. State of Maharashtra*** [7], the Hon'ble Supreme Court reiterated the settled position of law wrt to regularisation of ad- hoc/ temporary/ contractual employees and held as follows:

> *"3. The issue with which we are concerned in this petition is as to whether by working for a long period of time on contractual basis, the petitioners have acquired any vested legal right to be appointed in the respective posts on regular basis.*

[7] **2023 SCC OnLine SC 1417**

> *4. We appreciate the argument of the petitioners that they have given best part of their life for the said college but so far as law is concerned, we do not find their continuous working has created any legal right in their favour to be absorbed. In the event there was any scheme for such regularization, they could have availed of such scheme but in this case, there seems to be none. We are also apprised that some of the petitioners have applied for appointment through the current recruitment process. The High Court has rejected their claim mainly on the ground that they have no right to seek regularization of their service. We do not think any different view can be taken."*

106. In view of the aforesaid decisions of this Court, it is a settled position of law that the ad- hoc /temporary/ contractual employee does not have the vested right to seek regularization despite the fact that such employee has been working for a long time with the public authority. An exception is carved out in this regard that a temporary employee who has been appointed at a sanctioned post in accordance with the recruitment rules by the competent authority can seek regularization on his/her post.

107. Moreover, the Courts have time and time again reiterated the discretion vested with the public authority for regularization of the temporary employees. The Courts further emphasized that the authority shall based on its requirement and the eligibility of the employees, can regularize any employee.

108. Now adverting to the facts of the instant petition, the petitioner has alleged that the recommendations of the Justice Malimath Committee has not been implemented by the respondent no. 1. At this juncture, this Court

deems it fit to peruse the relevant extract of Justice Malimath's committee report and the same has been reproduced herein below:

> *"Smt. Alka Shrivastaya was first appointed on ad-hoc basis for a period of six months as Research Assistant (Grade I) on 13.7.1989. She was continued on ad-hoc basis upto 1.3.1996 with a technical break of one day at the end of every six months. On 1.3.1996 she was appointed on ad hoc basis for a further period of six months which expired on 30.9.1996. It is during this period that she made an application on 11.3.1996 for grant a leave for two months and went away without waiting for a decision on her application for leave. She made a further request for grant of leave upto 31.8.1996. The Council had not passed orders on any of her applications for grant of leave. It is in this background that she made a request on 2.9.1996 seeking permission of the council to report for duty. No one was made to permit her to join duty. On the contrary the Council issued a charge memo. on 6.3.1997 calling upon her to show cause for remaining absent upto 31.8.1996 without sanction of leave. She was also asked to explain why in the circumstances she should be considered for further employment for casual vacancies in the Council. On 12.3.1997 she gave her reply explaining the circumstances under which she remained absent and seeking indulgence of the Council. On the consideration of the cause shown by him, the Council constituted a Committee to examine her case. The Committee of officers noted that she had only two and-a half days Earned Leave and was, therefore, not entitled to two months leave, which was initially asked for and for further leave upto 31.8.1996. It also noticed that she absented herself without leave being sanctioned. Further, the Committee of officers recommended that her period of absence from 11.3.1996 till she joins her duty may be treated as technical break. Even before the P.A.C. took a decision on the recommendation of the committee of officers decision Smt. Alka Shrivastava was permitted to report for duty on 26.9.1997. The*

P.A.C., at its 41st meeting held on 31.10.1997, after considering the report of the committee treated the absence as technical break. This was followed by an order of appointment dated 22.10.1997 by which she was given an appointment as Research Assistant on ad-hoc basis initially on a pay of Rs.1640/- p.m. in the scale of Rs.l640-2900 for a period of six months w.e.f. 26.9.1997. It is clear from these facts that she did not have any order of appointment in her absence between 1.9.1996 and 25.9.1997. The expression used by the P.A.C. that the period of absence should be treated as technical has been used only to convey that her absence for such a long period should not in equity be held against her in the matter of giving fresh order of ad-hoc appointment for a period of six months. It is obvious that she did not perform duty during the said period not on account of any lapse on the part of the council.

2.18.15 Having regard to the fact that Smt. Alka Shrivastava has rendered service for over eight years and taking into account the equitable considerations, the Committee recommends that her services be regularised in relaxation of the relevant rules and given notional fixation of pay w.e.f. 1.1.1996, as has been recommended in all other cases, subject to the condition that no arrears shall be paid for the period of her absence from 11.3.1996 to 25.9.1997

Seniority list of Research Assistants on the basis of the recommendations of the Committee is at Annexure 2.18.1. At Annexure 2.18.2 is a certificate furnished by the Member-Secretary regarding satisfactory performance of those appointed on ad-hoc basis."

109. The petitioner was first appointed on ad hoc basis on 13th July 1989 and continued till 1st March 1996 on ad- hoc basis. Pursuant to which her appointment was extended for a period of six months till 30th September 1996. On 11th March 1996, the petitioner sought grant of leave for two

months and before her leave was sanctioned, the petitioner went on a leave. The petitioner further made a request for extension of leave till 31st August 1996. Pursuant to which, on 2nd September 1996 the petitioner sought permission from the respondent no.1 to report for duty.

110. The respondent no. 1 issued a memo to the petitioner as to explain her absentice from work without sanction of a leave. The petitioner filed its reply to the aforesaid memo

111. The Committee of respondent no.1 noted that petitioner was entitled to only two and half days of earned, leave and not for a leave of two months. Moreover, the Committee held that the period of absence from work of the petitioner shall be treated as a technical break and the same shall not be held against her in equity.

112. Hence, the Committee taking into consideration eight years of service, which the petitioner had rendered along with the equitable consideration pertaining to her technical break recommended that the petitioner's service shall be regularized from 1st January 1996 with the condition that no arrears shall be paid to her for the period of absence that is 11th March 1996 till 25th September 1997.

113. This Court has perused the recommendations of the Committee which recommended that the petitioner shall be regularized from 1st January 1996 taking into consideration the fact that the petitioner has worked for eight years with the respondent no. 1 and the period of 563 days on which the petitioner was absent shall not be considered in equity against her.

114. In view of the aforesaid discussion, this Court is of the view that the averment of the petitioner that the respondent no.1 is not implementing the recommendations of the Committee is not true. Since the respondent no.1 has acted as per the recommendations of the Committee and accordingly regularized the petitioner from 1st January 1996.

115. This Court further observes that the Committee has granted the petitioner regularization w.e.f. 1st January 1996 on grounds on equity since, the petitioner was not employed with the respondent no. 1 from the period of 1st September 1996 till 25th September 1997. Hence, the averments of the petitioner does not hold any water.

116. It is pertinent to peruse the Committee's minutes of the meeting to examine the petitioner's representation dated 9th April 2021 seeking regularization of her past service from 13th July 1989 instead of 1st January 1996. The relevant extract is reproduced herein below:

> *Report of the Committee constituted to examine the representation dated 9-4-2021 of Smt. Alka Srivastava, Deputy Director for regularization of her past service from 13.07.1989 instead of 01.01.1996.*
>
> *1.* ***Preliminary***
>
> *The Indian Council of Social Science Research (ICSSR), New Delhi vide its Office Order No A-47/89-A dated 9.9.21 had constituted a three Member Committee comprising of the following to examine the representation dated 9.4.2021 of Smt. Alka Srivastava, Deputy Director, ICSSR:-*

(i)	*Sh. Rajive Sabharwal*	*Director (Retired), NITI Aayog. New Delhi*

(ii)	*Dr. Ashish Deolia*	*Administrative Officer, ICSSR, New Delhi*
(iti)	*Sh. K.S. Mahajan*	*Retired Under Secretary (Vigilance), Ministry of Education and Consultant (F&A), Consortium for Educational Communication, New Delhi-110067.*

(a) The Committee held its first meeting on 05-10-2021 in the office of Administrative officer of ICSSR for preliminary discussions on the issues raised by Smt. Alka Srivastava. The Members of the Committee were provided the background Note on the subject. Subsequently, the Committee held its meetings on 12.10.2021, 02.12.2021 and 27.01.2022 to examine the issues raised in the representation of Smt. Alka Srivastava, Deputy Director, in detail.

(b) Before proceeding further, the committee noted that Smt. Alka Srivastava has raised following points in her representation dated 09th April, 2021:-

(i) To review the matter by an Administrative Committee since it is a matter of correct implementation of an administrative decision.

(ii) To consider her earlier representation dated 13.03.2020 for correct implementation of the Council's decision which according to her clearly confers her regularization w.e.f. 13.07.1989.

(iii) Reference to the report of the High Powered Committee (HPC) headed by Justice V.S. Malimath, former Chief Justice of High Court of Karnataka and former Chairman of CAT. (Section 2.18 page 220 of the report which provides that the services of all six persons need to be regularized on equitable considerations by invoking the power of relaxation vested in the

Council and they be allowed to be appointed to the cadre as on the respective dates on which they were for the first time appointed on ad-hoc basis as Research Assistant Grade-l.

(iv) The office order dated 29th October, 2002 of the Council may be revised as under: -

***FOR:-** The notional fixation of pay shall not confer any right to Smt. Alka Srivastava to claim any seniority and regularization from the date of the initial appointment.*

***TO BE READ:** The notional fixation of pay shall not confer any right to Smt. Alka Srivastava to claim any seniority on regularization from the date of her initial appointment.*

(v) The applicant may be granted the benefits of ACP/MACP taking her regularization of service w.e.f. 13.07.1989.

*2. **Observations of the case by the Committee**:-*

The Committee considered the representation of Smt. Alka Srivastava and grievances raised by her in the representation dated 09.04.2021 along with earlier representations dated 21.09.2019 and 13.03.2020 and carefully examined the entire matter together with records and personal file of Smt. Alka Srivastava and found the following: -

(a) The Service Rule 9 (SR-9) of ICSSR provides as under in respect of Direct Recruitment of Employees:-

Appointment by direct recruitment to any post may be made on the recommendation of a Selection Committee -

(i) From amongst candidates recommended by the Employment Exchange on requisition; or

(ii) From amongst candidates employed in other Government, autonomous or statutory organisations, who apply in response to any circular; or

(iii) From amongst candidates applying in response to any advertisement, or

(iv) From amongst candidates who have been recommended by Members of the Council and such other person or authorities from whom recommendation would have been called for by the Council;

(v) From amongst persons selected through personal contact.

Note 1. Clauses (iv) and (v) above are applicable only in the case of recruitment to the posts of Deputy Director, Director and other posts of equivalent rank.

(b) As per the office records, the ICSSR vide its order dated 13.07.1989, engaged Smt. Alka Srivastava as Research Assistant on ad-hoc basis initially for a period of six months with effect from 13-7-1989, subject to the condition that "The appointment will nol confer any right on her for any Regular appointment in the ICSSR". This was in violation of Service Regulations and Recruitment Rules, without following any prescribed procedure of selection and appointment.

(c) The services of Smt. Alka Srivastava were terminated with effect from 10-1-1990 (afternoon) and she was again appointed as Research Assistant (ad-hoc) for a period of six months with effect from 12-1-1990 (forenoon).

(d) Thereafter, ICSSR vide its order dated 02.02.1990 terminated the service of Smt. Alka Srivastava, Research Assistant w.e.f. 10.01.1990 (A/N).

(e) *Subsequently, ICSSR vide its order dated 30.08.1990 again appointed Smt. Alka Srivastava as a Research Assistant on adhoc basis for a period of six months w.e.f. 13.07.1990 and in the said order, the following specifically stipulated:-*

"The service of Miss Alka Srivastava can be terminated at any time without notice and without assigning any reason. This appointment will not confer any right on her for any regular appointment in the ICSSR."

(f) *This practice/procedure of appointment on ad-hoc basis for fixed period of 6 months and termination thereafter continued upto 1-1-1998, with the condition that such ad-hoc appointments will not confer any right on her for any regular appointment in the ICSSR.*

(g) *During the aforesaid period, Smt. Alka Srivastava was not having any appointment letter for engagement as Research Assistant in the Council during the following period:*

S.No.	From	To	No. of days
1.	10.01.1990	11.01.1990	02 days
2.	11.07.1990	12.07.1990	02 days
3.	11.01.1991	14.01.1991	04 days
4.	12.07.1991	15.07.1991	04 days
5.	16.01.1992		01 day
6.	16.07.1992	19.07.1992	04 days
7.	20.01.1993		01 day
8.	21.07.1993		01 day
9.	22.01.1994	24.01.1994	03 days
10	01.04.1994	03.04.1994	03 days

11	01.10.1994	03.10.1994	03 days
12	04.04.1995		01 day
13	05.10.1995		01 day
14	28.02.1996	29.02.1996	02 days
15	01.09.1996	25.09.1997	390days

(h) *Apart from above, she also remained absent or without pay during the following period:*

1	01.02.1991	20.02.1991	20 days
2	15.08.1991	08.09.1991	25 days
3	30.06.1992	04.07.1992	05 days
4	15.02.1993	30.06.1993	136 days
5	11.03.1996	25.09.1997	563days

(i) *Subsequently, ICSSR appointed a High Powered Committee headed by V.S. Malimath, former Chief Justice of High Court of Karataka and former Chairman of CAT to examine the matter pertaining to various employees of ICSSR. The said committee examined the matter pertaining to Research Assistants (Grade-I) (Rs. 550-Rs.900/-) and made following recommendations: -*

"2.18.1 It is necessary to point out that earlier there were two grades of Research Assistants namely Grade / and Grade Il in the Scale of pay of Rs.550-900 and Rs.425-700, respectively. There was a clamour for having a unified scale of Rs. 550-900 for Research Assistants and Documentation Assistants. At the 18h meeting of the P.A.C dated 6.3.1982 certain decisions were taken with the object of abolishing Grade Il in course of time and retaining only Grade I. It was decided that all those who were in Grade Il and who have put in three years of service, affer evaluation by the PC, should be inducted into Grade / with the approval of the Chairman.

Consequent increase in the sanctioned post of Grade I and reduction in the sanctioned post of Grade Il would take place. When the last incumbent in Grade Il gets inducted into Grade I, Grade Il would stand abolished. The rules regarding recruitment to Grade / were also amended prescribing direct recruitment as one of the modes for appointment to Grade I. Consequential amendment was also made to prescribed direct recruitment as one of the modes of recruitment to the cadre of Grade I. The educational and other qualifications including age limits were also prescribed for direct recruitment to Grade I. The education qualification prescribed is M.A. Degree in any of the Social Science subject with a minimum of 50% marks. The other qualification is three years experience in teaching, research, research work or research administration or M.A. Degree in a Social Science subject in second class or Grade B Plus. The minimum age prescribed is 24 and the maximum is 33 years.

2.18.4 There were twenty-six posts covering both the categories, out of which 12 were surrendered in implementation of economy measures. Though there are 14 posts left, presently there are only six incumbents as list below:-

1. *Shri Bhawani Singh Shri Radhey Shyam*
2. *Smt. Anjali Bali*
3. *Shri Mahesh P. Madhukar*
4. *Smt. Revathi Viswanath*
5. *Smt Alka Srivastava*

2.18.5 These six persons were directly recruited by the prescribed authority but without following the procedure prescribed by SR

9. None of them possesses all the prescribed qualifications.

2.18.6 It is clear from the information furnished in Annexure 2.18.1 that all the six persons mentioned therein have rendered service between seven to eleven years. The Council has taken a decision on 31.10.1996 not to make any further recruitment to this cadre. This would result in virtual abolition of the cadre on the demitting of office by the present incumbents by the process of promotion, death, retirement or resignation. Having regard to this background and the fact that they have rendered satisfactory service for long period, it would be unjust and inequitable to terminate their service at this stage on the ground that their recruitment or continuance is strictly not in accordance with the Recruitment Rules. The power to relax any of the provision is conferred on the Council by Regulation 77.

2.18.13 As the services are being regularised by exercising the power of relaxation it is just and proper to hold that their pay should be fixed on the basis that they are deemed to be in continuous service from their very first appointment on ad-hoc basis, but so far as financial benefits of notional fixation of pays is concerned, the committee recommended that it should be given w.e.f. 1.1.1996.

2.18.14 Smt. Alka Srivastava was first appointed on ad-hoc basis for a period of six months as Research Assistant (Grade I) on 13.7.1989. She was continued on ad-hoc basis upto 1.3.1996 with a technical break of one day at the end of every six months. On 1.3.1996 she was appointed on ad-hoc basis for a period of six months which expired on 30.9.1996. It is during this period that

she made an application on 11.3.1996 for grant of leave for two months and went away without waiting for a decision on her application for leave. She made a further request for grant of leave upto 31.8.1996. The Council had not passed order on any of her application for grant of leave. It is in this background that she made a request on 2.9.1996 seeking permission of the Council to report for duty. No order was made to permit her to join duty. On the contrary the Council issued a charge memo on 6.3.1997 calling upon her to show cause for remaining absent upto 31.8.1996 without sanction of leave. She was also asked to explain why in the circumstances under which she remained absent and seeking indulgence of the Council. On the consideration of the cause shown by her, the Council constituted a Committee to examine her case. The Committee of officers noted that she had only two-and-a-half days Earned Leave and was therefore, not entitled to two months leave, which was initially asked for and for further leave upto 31.8.1996. It also noticed that she absented herself without leave being sanctioned. Further, the Committee of officers recommended that her period of absence from 11.3.1996 till she joins her duty may be treated as technical break. Even before the P.A.C. took a decision on the recommendation of the Committee of Officer, Smt. Alka Srivastava was permitted to report for duty on 29.9.1997. The P.A.C. at its 41st meeting held on 31.10.1997, after considering the report of the Committee treated the absence as technical break. This was followed by an order of appointment dated 22.10. 1997 by which she was given an appointment as Research Assistant on ad-hoc basis initially on a pay of Rs. 1640/- p.m. in the scale of Rs. 1640-2900 for a period of six months w.e.f. 26.9.1997. it is clear from these facts that she did not have any order of appointment in her favour between 1.9.1996 and

25.9.1997. The expression used by the P.A.C. that the period of absence should be treated as technical has been used only to convey that her absence for such a long period should not in equity be held against her in the matter of giving a fresh order of ad-hoc appointment for a period of six months. It is obvious that she did not perform duty during the said period not on account of any lapse on the part of the Council.

2.18.15 Having regard to the fact that Smt. Alka Srivastava has rendered service for over eight years and taking into account the equitable considerations, the Committee recommends that her services be regularised in relaxation of the relevant rules and given notional fixation of pay w.e.f. 1.1.1996, as has been recommended in all other cases, subject to the condition that no arrears shall be paid for the period of her absence from 11.3.1996 to 25.9.1997.

(j) *It is apparent from the recommendation of High Powered Committee that after taking into account all facts & circumstances pertaining to initial ad-hoc appointments of Smt. Alka Srivastava and her working in the organization and also performance of her duties, the Committee specifically recommended that her services be regularized in relaxation of the relevant rules and given notional fixation of pay only w.e.f. 01.01.1996 subject to the further condition that no arrears shall be paid for the period of her absence from duty from 11.03.1996 to 25.09.1997*

(k) *The recommendation of High Powered Committee were accepted vide decision taken by Council in its 83rd*

Meeting held on 16.09.1998. Accordingly, the services of Smt. Alka Srivastava (ad-hoc) were regularized in temporary capacity as Research Assistant w.e.f. 01.01.1996 and Office Order dated 17.03.1999 was issued in this regard. In the said Office order, it was stipulated that her pay was to be fixed at appropriate stage in the scale of pay as on the said date subject to the condition that no arrears shall be paid to her for the period between 11.03.1996 to 25.09.1997.

(l) As per the seniority list dated 01.01.1997 in respect of Research Assistants on the basis of recommendations of the committee, the date of regularization for the purpose of seniorty of Smt. Alka Srivastava has been mentioned as 1-1-1996 which had been authenticated by her in the service record.

(m) Thereafter, ICSSR issued an Office Order dated 31.5.2000, whereby in revocation of ICSSR's order dated 17.03.1999, the services of Smt. Alka Srivastava were regularized w.e.f. 01.01.1996. However, in the said Office Order dated 31.5.2000, the following specifically stipulated:-

"Shri/Ms Alka Srivastava will be treated as junior to the regular employees of the ICSSR as on 1.1.1996 in his/her cadre. The benefit of past services of the ad-hoc employee will not count for any purpose pending the decision to be taken by a Committee formed for the purpose as per order of the Chairman, ICSSR."

(n) Thereafter, Smt. Alka Srivastava submitted representations dated 12-7-2001, 1-3-2002 and 19-3-2002 for rectification of the anomaly of pay fixation with effect from 1-1-1996 and re-fix her basic pay with effect

from 13-7-1989. In the said representations Smt. Srivastava requested as under:-

"4. Since I was first appointed on ad-hoc basis on 13.7.1989 in the Council have rendered continuous service thereafter till 1.1.1996, accordingly my notional pay fixation as on 1.1.1996, should be rectified. Of course, the condition laid that 'no arrears shall be paid to me for the period between 11.03.1996 to 25.09.1997', which falls after 1.1.1996, would stand for the simple reason that the period was without pay."

(o) The ICSSR vide its Memo dated 19.03.2002 rejected the representation submitted by Smt. Alka Srivastava.

(p) She had again submitted a representation dated 26-3-2002 requesting for rectification of her pay scale as per the recommendations of the High Powered Committee, which was not acceded to and she was informed accordingly vide communication F. No: A(47)/89-A dated 10-4-2002.

(q) Thereafter, ICSSR issued an Office order dated 29.10.2002, whereby, in partial modification of earlier order dated 17.03.1999, the pay of Smt. Alka Srivastava, Research Assistant was fixed on notional basis w.e.f. 13.07.1989 i.e. the date of her entry into the service. The said decision was taken subject to four conditions mentioned in the said Office order which includes the following conditions stipulated at serial No.3 & 4:-

"3. The notional fixation of pay shall not confer any right to Smt. Alka Srivastava to claim any

seniority and regularization from the date of her initial appointment.

4. Her pay shall be fixed notionally with effect the date of her initial appointment but financial benefit, if any, shall be given to her w.e.f. 1.1.1996 only."

While granting notional fixation, the period of absence/ break was not taken into account.

(r) *Thereafter, Smt. Alka Srivastava submitted an undertaking dated 10.04.2003 to the following effect:-*

"I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to ICSSR either by adjustment against any future payments due to me or otherwise."

(s) *Subsequently, in view of the decision taken by the Policy Planning and Administration Committee (PPAC) in its 65th meeting held on 29.01.2008 and endorsement of the Council in its 108h meeting held on 24.03.2008, the ICSSR issued an Office Order dated 24.04.2008 whereby, the earlier Office order dated 31.05.2000 was revoked and withdrawn with immediate effect and consequently, the Office order dated 17.03.1999 based upon the decision taken by Council in its 83d meeting held on 16.09.1998 was directed to remain effective.*

(t) *Smt. Alka Srivastava was initially granted the benefit of 1st ACP w.e.f. 01.09.2001 counting her services from 13.07.1989 as per Office Order F. No. 3-4/2008-A(Vol-I)*

dated 08.07.2008. Thereafter, she was granted 2nd MACP benefit w.e.f. 13.07.2009 counting her services from 13.07.1989 as per order F.No. 10-3/09-A dated 30.12.2011. Subsequently, a request was received from Smt. Alka Srivastava for grant of 3rd MACP w.e.f. 13.07.2019 counting her services w.e.f. 13.07.1989. The matter was considered the Departmental Screening Committee and the said committee observed as under:-

> *"The committee noted that she has been granted 1a ACP w.e.f. 01/09/2001 and 2nd MACP w.e.f. 13/07/2009 by counting her service from the date of her ad-hoc appointment i.e. 13/07/1989 as RA. However, as per records presented before the committee, it has been found that in her regularization order she has been regularized w.e.f. 01/01/1996°.*

Accordingly, the committee recommended that 1st ACP granted to her in the pay scale 8000-13500 may be made effective from 01.01.2008 and 2nd MACP in the grade pay of 6600 (Level 11) from 01.01.2016, because as per the records she has been regularized w.e.f. 01.01.1996.

(u) Subsequently, after lapse of considerable time, she submitted representation dated 21-9-2019 requesting for correction of expression "and" and substitution thereof by word "on" in Para no. 3 of Office Order No. A(47)88-A dated 29-10-2002, which was not acceded to vide letter F.No. A(47)/89-A dated 18-03-2021,

1. Findings/Recommendations of the Committee:-

Having examined the matter as per records and service book, the Committee concludes and recommends as under: -

(a) *The ICSSR has notified Service Regulations which provides for manner & procedure of selection & appointment of employees. The Service Regulation 9 of ICSSR provide for direct recruitment. The committee finds that the initial appointment of Smt. Alka Srivastava on ad-hoc basis was made in blatant violation of mandatory provisions of SR-9 of ICSSR Service Regulations 1970 and also on the date of her initial appointment from 13-7-1989 and also on the date of her regularzation w.e.f. 1.1.1996, she did not meet the eligibility criteria as prescribed in the recruitment rules. However, as per the report of the High Powered Committee (Justice V.S. Malimath Committee), six persons including Smt. Alka Srivastava were directly recruited by the prescribed authority but without following the procedure prescribed by SR 9. Most significantly, the said High Powered Committee also found that none of them (including Smt. Alka Srivastava) possessed all the prescribed qualifications.*

(b) *The High Powered Committee found that Smt. Alka Srivastava was given an appointment as Research Assistant on ad-hoc basis on a pay of Rs.1640 p.m. in the scale of Rs. 1640-2900 initially for a period of six months w.e.f. 13-7-1989 and kept it extending by six months after giving a day or two days break in between upto 31-8-1996. This ad-hoc appointment was further extended w.e.f. 16-9-1997 by treating her absence between 11-3-1996 to 25-9-1997 as a technical break. It is clear that she did not have any order of appointment in her favour between 1-9-1996 and 25-9-1997. The said committee also found that Smt Alka Srivastava did not perform duty during the said period from 01.09.1996 to 25.09.1997 not on account of any lapse on the part of the Council.*

(c) *Vide para 2.18.15 of the report of the High Powered Committee, the Committee specifically recommended that her services be regularized in relaxation of the relevant rules and given notional fixation of pay w.e.f. 1.1.1996 subject to the condition that no arrears shall be paid for the period of her absence from 11.03.1996 to 25.09.1997. Accordingly, as per the Seniority list of the officers in the cadre of Research Assistant as on 1-1-1997, the services of Smt. Alka Srivastava had been recommended to be regularized w.e.f. 1-1-1996 and also notional fixation of pay w.e.f. 1-1-1996.*

(d) *As per the office records, Smt. Alka Srivastava remained absent from duties for 563 days between 11.3.1996 to 25.9.1997. As per the rules [F.R.17-A-(ili)] of the CCS (Pension) Rules, 1972 'In the case of an individual employee, remaining absent unauthorisedly or deserting the post, shall be deemed to cause an interruption or break in the service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in departmental examinations, for which a minimum period of continuous service is required. So far as applicability of CCS (Pension) Rules, 1972 to the employees of the ICSSR is concemed, as per item No. 13, a resolution was adopted by the Administration Committee at its 2nd meeting held on 30-08-1969 wherein it was agreed that rules and orders of the Central Government may apply to the staff in matter which are not specifically covered by the Council's own rules, regulations and orders.*

(e) *The period which was not considered as qualifying service cannot be counted for the purpose of granting increments/ financial up gradation under MACPs, which is contrary to the provisions (FR*

26 (1), GIDs (2), (4), Als (1),(2) thereunder, and GID (3), FR 54.) viz:

Period not counting for increment etc.

(a) EOL without Medical Certificate;

(b) Overstayal of leave unless regularized by grant of leave;

(c) Dies non period;

(d) Period of suspension unless subsequently regularized by leave or treated as duty.

(f) The four members Departmental Screening Committee for Group 'A' posts comprising of (1) Sh. Navin Soi, Retired Joint Secretary, Ministry of Education, (2) Sh. K.G. Verma, Retired Joint Secretary (DoPT), (3) Dr. G.S. Saun, Retired Director, ICSSR and (4) Sh. A.S. Mehta, Consultant, (Administration) to consider and review grant of financial up gradation under ACP/MACP had clearly mentioned vide their minutes dated 30.09.2019 that she had been granted 1st ACP w.e.f. 01.09.2001 and 2nd MACP w.e.f. 13.07.2009 by counting her services from the date of her ad-hoc appointment i.e. 13.07.1989 as RA. However, as per records presented before the committee, it has been found that in her regularization order she has been regularized w.e.f. 01.01.1996.

(g) It would be pertinent to point out that when a person enters a temporary employment or gets engagement as a contractual worker or casual worker or ad-hoc employee and the engagement is not based on a proper selection as per the 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 / regularized in the past. As such the theory advanced by Smt. Alka Srivastava cannot be accepted. The applicant does not have any legal right to enforce.

(h) In terms of the existing MACP guide lines grant of benefit in the promotional hierarchy is contrary to the guidelines. As per the policy, the benefits under MACPs are to be granted in the Standard hierarchy of Grade pays/ pay level and not in the promotional hierarchy.

(i) The recommendations of the High Powered Committee including in respect of Smt. Alka Srivastava were considered opinion and were also accepted by the Council. This is not a typographical or clerical error which could be rectified. As such, the substitution of word 'and' in para 3 of Office Order dated 29-10-2002 with word 'on' cannot be done and should not be done as it will virtually amount to reviewing the earlier decision made effective by the Council. Further, Smt. Alka Srivastava was not engaged for the period w.e.f 11-3-1996 to 25-9-1997 (563 days). This period was not regularized by granting any leave, but treated as technical break. As per the provisions of relevant rules, such absence amounts to the forfeiture of the entire past service. Further, she remained absent/ without pay i.e. 01.02.1991 to 20.02.1991 (20 days), 15.08.1991 to 08.09.1991 (25 days), 30.06.1992 to 04.07.1992 (5 days) and 15.02.1993 to 30.06.1993 (136 days).

(j) The committee also noted that Smt. Alka Srivastava has submitted the representations against the Office Order dated 29.10.2002 which is extremely belated and afterthought. Smt. Srivastava has also not offered any explanation for submission of representations in question after such unexplained delay. The committee noted that Hon'ble Supreme Court of India has held that repeated representations cannot wipe out the delay and create cause of action. The committee is of the view that Smt. Alka Srivastava

submitted the representations in question at this belated stage only to create a cause of action. The committee is of the view that such belated representations submitted by Smt. Alka Srivastava also deserves to be rejected on the ground of delay apart from the fact that there is no merit in the claim.

In view of the afore mentioned observations and the findings, the committee recommends: -

(1) The substitution of the word 'and" with 'on' cannot be done in the recommendations of the High Powered Committee as the report of the Committee already been accepted by the Competent Authority. Even otherwise, the recommendations of the High Powered Committee cannot be changed or modified by any other committee as even mere substitution of the word "and" with "on" has huge implications.

(2) The request of Smt. Alka Srivastava, Deputy Director for counting of her services as regular w.e.f. 13-7-1989 instead of 1-1-1996, cannot be accepted as it is beyond rationality and is devoid of any merit.

*(3) Grant of financial benefits under ACP/MACP to Smt. Alka Srivastava may be done after taking into consideration the provisions mentioned in paras "e" & *h° of the findings of the Committee.*

(4) As per the relevant provisions of Rules/Regulations, the regular services of Smt. Alka Srivastava should have been counted from 26-9-1997 when she resumed her duties after technical break for 563 days.

The Council may like to take necessary/suitable action in the matter accordingly.

117. Upon perusal of the committee report, it is stated by the respondent no. 1 that as Malimath Committee, the petitioner was recommended to be regularized and to be given notional fixation of pay from wef 1st January 1996 subject to the condition that no arrears shall be paid for the period of her absence from duty from 11th march 1996 to 25th September 1997. Furthermore, as per order dated 29th October 2002, the order dated 17th March 1999 was modified and the petitioners' pay was fixed on notional basis from 13th July 1989, that is from the date of entry into the service. The said decision was subjected to two conditions. Firstly, that no fixation of pay shall not any confer seniority and regularization from the date of petitioners' initial appointment. Secondly, petitioners' pay shall be fixed from the date of initial appointment but financial benefit if any shall be given to her from 1st January 1996.

118. Pursuant to which, in view of the of the decision taken by the policy, Planning and Administration Committee in its 65th meeting held on 29th January 2008 and endorsement of the respondent no.1 in its 108th meeting held on 24th March 2008, due to certain financial discrepancies, the respondent no. 1 issued an office order dated 24th April 2008, revoking and withdrawing with immediate effect the order dated 31st May 2000.

119. Moreover, the request of the petitioner to be regularised from the date, 13th July 1989 was not accepted by the committee, citing reasons such as

absence from work of the petitioner in between the period of 1989 to 1997. hence it was held by the committee that the petitioner does not have any vested right to seek regularisation.

120. Conclusively, the high-powered committees report cannot be modified by the respondent. Hence the request of the petitioner for modification of the high-powered committee report was not acceded to by the Committee.

121. It was further held that the petitioner may be granted financial benefits under ACP/MACP on the basis that the period which was not considered as qualifying service cannot be counted for the purpose of granting increments/ financial up gradation under MACPs, which is contrary to the provisions (FR 26 (1), GIDs (2), (4), Als (1),(2) thereunder, and GID (3), FR 54.) and the same includes – EOL without Medical Certificate, Overstayal of leave unless regularised by grant of leave, dies non period, period of suspension unless subsequently regularised by leave or treated as duty. Moreover, the Committee report stated that the existing MACP guidelines of benefit in the promotional hierarchy is contrary to the guidelines since, the benefits under MACPs are to be granted in the standard hierarchy of grade pays/pay levels and not as per the promotional hierarchy.

122. This Court is of the view that the aforesaid Committee report has correctly decided the grievances of the petitioner that the petitioner is not entitled to the regularization from the year 1989 since, the High- Power Committee recommended that the petitioner shall be regularized from w.e.f. 1st January 1996. Moreover, the petitioner does not have vested right to seek

regularisation from the date of her date of ad- hoc appointment i.e., 13th July 1989

123. Now this Court will peruse the respondent no.1's reply to representation of the petitioner regarding the request for rectification of office order regarding regularization on 4th March 2022.

124. The relevant extract of the aforesaid letter has been reproduced herein below:

> *"To*
> *Smt. Alka Srivastava,*
> *Deputy Director,*
> *Indian Council of Social Science Research,*
> *New Delhi-1 10067.*
>
> *Subject: Request for rectification of Office Order regarding regularization.*
>
> *Madam ,*
>
> *I am directed to refer to your request dated 9 April, 2021 addressed to the Member Secretary, ICSSR, New Delhi and copy endorsed to the undersigned requesting to review the matter by an Administrative Committee and to say that as per your request, the Competent Authority of the ICSSR, constituted a three members Committee to examine the matter. The Committee has examined the grievances raised by you in the aforesaid request along with earliar representations dated 21.09.2019 and 13.03.2020 in detail as per the office records available with reference to the rules on the subject and concluded/recommended as under:-*
>
> *(a) The initial appointment of Smt. Alka Srivastava as R.A. on ad-hoc basis was made in blatant violation of mandatory provision of SR 9 of ICSSR Service Regulations 1970 from 13.07.1989 and also on the date of her regularization w.e.f.*

1.1.1996 as she did not meet the eligibility criteria prescribed in the recruitment rules for the post of R. A.

(b) As per the report of the High Powered Committee (Justice V.S. Malimath Committee), Smt. Alka Srivastava did not possess all the prescribed qualifications/experience.

(c) As per the report of the High Powered Committee, she did not have any order of appointment in her favour between 1-9-1996 and 25-9-1997. The said committee also found that Smt Alka Srivastava did not perform duty during the said period from 01.09.1996 to 25.09.1997 not on account of any lapse on the part of the Council.

(d) As per the Seniority list of the officers in the cadre of Research Assistant as on 1-1-1997, the services of Smt. Alka Srivastava had been recommended to be regularized w.e.f. 1-1-1996 and also notional fixation of pay w.e.f. 1-1-1996.

(e) As per the rules [F.R.17-A-(iii)] of the CCS (Pension) Rules, 1972 'In the case of an individual employee, remaining absent unauthorisedly or deserting the post, shall be deemed to cause an interruption or break in the service of the employee. So far as applicability of CCS (Pension) Rules, 1972 to the employees of the ICSSR is concerned, as per item No. 13, a resolution wasadopted by the Administration Committee at its 2nd meeting held on 30-08-1969 wherein it was agreed that rules and orders of the Central Government may apply to the staff in matter which are not specifically covered by the Council's own rules, regulations and orders.

(f) The period which was not considered as qualifying service cannot be counted for the purpose of granting increments/ financial up gradation under MACPs which is contrary to the provisions (FR 26 (1), GIDs (2), (4), Als (1),(2) thereunder, and GID (3), FR 54.).

(g) The Departmental Screening Committee for Group 'A' posts which was constituted to consider and review grant of financial up-gradation under ACP/MACP had clearly mentioned that as

per records it has been found that in her regularization order, she has been regularized w .e.f . 01.01.1996.

(h) When a person enters a temporary employment or gets engagement as a contractual worker or casual worker or ad-hoc employee and the engagement is not based on a proper selection as per the rules or procedure, he/she 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 / regularized in the past. As such the theory advanced by Smt. Alka Srivastava cannot be accepted. The applicant does not have any legal right to enforce.

(i) As per the policy, the benefits under MACPs are to be granted in the Standard hierarchy of Grade pays/ pay level and not in the promotional hierarchy.

(j) The recommendations of the High Powered Committee including in respect of Smt. Alka Srivastava were considered opinion and were also accepted by the Council. This is not a typographical or clerical error which could be rectified. As such, the substitution of word 'and' in para 3 (three) of Office Order dated 29-10-2002 with word 'on' cannot be done and should not be done as it will virtually amount to reviewing the earlier decision made effective by the Council.

(k) Smt. Alka Srivastava was not engaged for the period w.e.f. 11.03.1996 to 25.09.1997 (563 days). This period was not regularized by granting any leave, but treated as technical break. As per the provisions of relevant rules, such absence amounts to the forfeiture of the entire past service. Further, she remained absent/ without pay i.e. 01.02.1991 to 20.02.1991 (20 days), 15.08.1991 to 08.09.1991 (25 days), 30.06.1992 to 04.07.1992 (5 days) and 15.02.1993 to 30.06.1993 (136 days).

(l) The committee also noted that Smt. Alka Srivastava has submitted the representation dated 21.09.2019 against the Office Order dated 29.10.2002 which is extremely belated and afterthought. Smt. Alka Srivastava submitted the

representations in question at this belated stage only to create a cause of action. The committee is of the view that such belated representations deserve to be rejected on the ground of delay apart from the fact that there is no merit in the claim.

Accordingly, the Committee has recommended as under:-
(1) The substitution of the word 'and' with 'on' cannot be done in the recommendations of the High Powered Committee as the report of the Committee already been accepted by the Competent Authority. Even otherwise, the recommendations of the High Powered Committee cannot be changed or modified by any other committee as even mere substitution of the word "and" with "on" has huge implications.
(2) The request of Smt. Alka Srivastava, Deputy Director for counting of her services as regular w .e.f. 13-7-1989 instead of 1-1-1996, is an after thought and does not have any merit.
(3) Grant of financial benefits under ACP/MACP to Smt. Alka Srivastava may be done after taking into consideration the provisions mentioned in above paras "f"& "i".
(4) As per the relevant provisions of Rules/Regulations, the regular services of Smt. Alka Srivastava should have been counted from 26-9-1997 when she resumed her duties after technical break for 563 days.

In view of the above recommendations made by the Administrative Committee, the Competent Authority of the ICSSR has not acceded to the request dated 09.04.2021 of Smt. Alka Srivastava, Deputy Director, ICSSR, New Delhi."

125. The respondent no. 1 stated that the initial appointment of the petitioner was done in violation of the service regulations of the Respondent no. 1 as well as on the date of regularization of the petitioner w.e.f 1st January 1996, did not meet the eligibility criteria prescribed for the position

of Research Assistant. Moreover, the Malimath Committee recommended that the petitioner shall be regularized from w.e.f. 1st January 1996 not from 1989 since, the petitioner was not eligible to be appointed at the aforesaid position.

126. It was further stated that a person who works at an ad- hoc position does have a vested right to be regularized at the position by invoking the theory of legitimate expectation. Hence, the petitioner does not have a legal vested right to claim regularization from her initial date of joining.

127. It is pertinent to note that the respondent no. 1 states that the petitioner was not working from the period of 11th March 1996 to 25th September 1997 and such inability of the petitioner to work was not due to any lapse on the part of the respondent no.1. Therefore, the Malimath Committee considered that the aforesaid period of absence shall be treated such as the petitioner was on a technical break of 563 days.

128. Now with regards to the grant of the financial benefits, the respondent no. 1 stated that the period which was not considered as qualifying service cannot be counted for the purpose of granting increments/ financial up gradation under MACPs which is contrary to the provisions. Moreover, as per the benefits granted under MACPs are granted on the basis of the Standard hierarchy of Grade pays/ pay level and not as per the promotional hierarchy.

129. In the instant petition, this Court is of the view that there is no vested right with the petitioner to claim regularization from the year 1989. Since the petitioner has been time and again employed on contractual basis by the

Respondent no. 1. Moreover, it is pertinent to note that the various appointment letters issued by the Respondent no. 1 stipulated specifically that the petitioner has been employed on ad- hoc basis and her employment can be terminated by the respondent no. 1 without any basis. Hence, there was never a vested legal right in accrued in favour of the petitioner to seek regularization.

130. The respondent no. 1 has rightly acted in terms of the recommendations of the Malimath Committee which recommended that the appointment of the petitioner shall be regularized from 1st January 1996 taking into consideration the fact that the petitioner was ineligible to be appointed at the said job position as well as the fact that the petitioner was absent from work for 563 days without any sanctioned leave in this regard, which the Committee in equity accorded as a technical break and further stated that the such technical break shall ever negatively impact the petitioner.

131. This Court also deems it fit to whether the petitioner can seek regularization by invoking the concept of Doctrine of legitimate expectation. In this regards, it is reiterated that the legitimate expectation enters into picture when an individual is made to believed or assured by the public authority, that the individual will be recipient of certain benefits. In the instant case, the Respondent no. 1 never made any such promises/assurances to the petitioner that her services shall be regularized from the date of her ad- hoc appointment.

132. Hence, the impugned order dated 4th March 2022 does not merit any interference of this Court under its writ jurisdiction.

133. Nowadays, there is a growing trend of contractual employees seeking regularization of their employment despite the fact that they have not been appointed by the competent authority and at sanctioned position. There has been a wrong expectation from the public authority perpetrating that these contractual employment will eventually get converted into regularized positions.

134. This Court opined that the discretion to regularize position lies with the executive and it cannot be claimed as a matter of right. Since the executive which has to ensure that if a sanction position is being filled then equal opportunity is accorded to all the candidates who might be eligible for the position. If the executive appoints any contractual employee to the sanctioned post without even giving an opportunity to other candidates then it would amount to violation of article 14 and article 16 of the Constitution of India.

135. In view of the aforesaid discussion, the order dated 18th March 2021 issued vide office order no. 7/2021 does not suffer from any illegality since, the petitioner was erroneously paid financial benefits under 1st ACP and 2 nd MACP, therefore vide the aforesaid order the petitioner's pay was re-fixed.

136. Hence, the impugned order dated 18th March 2021 issued vide office order no. 7/2021 does not merit any interference of this Court under its writ jurisdiction.

137. Now adverting to the impugned order dated 18th March 2021 passed vide office order bearing no. A(47)/89-A. The relevant extract of the impugned order has been reproduced herein below:

> "*I am directed to refer to your request dated 21.09.2019 seeking substitution of the expression "and" with expression "on" in para 3 of the Office Order F.No. A(47)88-A dated 29th October, 2002.*
> *Your request has been examined in detail and it has not been found feasible to accede to it.*"

138. The petitioner vide its representation sought the rectification of the para -3 of the order dated 29th October 2022 which states as follows:

> *"3. the notional fixation of pay shall not confer, any right to Mts. Alka Srivastava to claim any seniority and regularisation from the date of her initial appointment."*

139. Vide impugned order the respondent no.1 denied the request of the petitioner that the word "and" shall be replaced by "or" in the aforequoted paragraph no. 3 of the order dated 29th October 2002.

140. This Court is of the view the respondent no.1 has correctly not acceded to the request of the petitioner since, the substitution of words have a major impact and would give the petitioner with certain rights/entitlements which the respondent no.1 is not intended on giving to the respondent no.1. Moreover, such substitution of the word shall is against the recommendations of the Malimath Committee report.

141. In view of the aforesaid discussion, the impugned order dated 18th March 2021 passed vide office order bearing no. A(47)/89-A does not suffer

from any illegality and not does not merit the interference of this Court under its writ jurisdiction.

142. Hence, the impugned orders do not suffer from any error/ illegality which merits the intervention of this Court under its writ jurisdiction.

143. Accordingly, this Court does not find any merit in the contentions advanced by the petitioner and issue no. (i) is decided against the petitioner.

144. Now adverting to adjudicating upon issue no. (ii) - recovery of the benefits by the respondent no. 1 granted to the petitioner under ACP/ MACP illegal.

145. It is the case of the petitioner that the respondent no.1 issued office order dated 17th March 1999 regularising the petitioner and stated that the petitioner's pay shall be fixed at appropriate stage. Subsequently vide order dated 31st March 2000, the respondent no. 1 passed an order stating that the petitioner will treated as regular employee w.e.f. 1st January 1996 and the benefits of her past ad- hoc services shall not be taken into account for purpose since the decision of the Committee is pending in this regard.

146. The respondent no.1 issued office order bearing no. F. No. A (47)88-A dated 29th October 2002 in respect of petitioner's appointment as regular employee fixing the pay on notional basis w.e.f. 13th July 1989 however, the financial benefits in this regard shall accrue from 1st January 1996. Pursuant to which, vide order 3rd March 2003, the pay of the petitioner was notionally fixed from 13th July 1989 subsequently vide order dated 24th April 2008 based upon the decision taken by the Council in its 83rd Meeting held on

16th September 1998, the order dated 31st May 2000 was revoked and the order dated 17th March 1999 shall remain effective.

147. The petitioner has contended that she is entitled to ACP and MACP from the date of her initial appointment that is from the year 1989 and not from 1996. It is further contended that the respondent no. 1 is wrongly recovering the amount being paid to the petitioner and the same is in violation of legal rights of the petitioner.

148. In rival contention, the respondent no. 1 submitted that the benefit of ACP and MACP was wrongly computed from the petitioners' initial appointment on ad hoc basis that is from 13th July 1989 instead of the date from which the petitioner was regularized that is 1st January 1996.

149. The respondent no 1 granted ACP/MACP to various employees of the respondent no. 1 and the petitioner was also granted on the same basis counting her service from the year 1989. Vide order dated 30th December 2011, 2nd MACP was granted to the petitioner again counting her service from the year 1989.

150. As per the audit report of for the period 2009–2011 of the respondent no. 1 forwarded by the respondent no.3 highlighted certain irregularities in the grant of ACP. Accordingly, the Department Screening Committee of respondent no. 1 in its meeting held on 30th September 2019, noted that the petitioner has been wrongly granted financial benefits from her initial date of ad hoc appointment instead of the date on which the petitioners appointment was regularised. Accordingly, the committee made effective the changes in grant of ACP.

151. Therefore, the Committee recommended that 1st ACP granted to her in the pay scale 8000– 13500, shall be made effective from 1st January 2009 and 2nd MACP shall be made effective from the year 1st January 2016.

152. It is a settled position of law that the employee if paid an excess by the employer, then such amount shall not be recovered from the employee if the same would cause hardship to the employee, while adjudicating upon the matter in equity waive of the right of the employee to pay back its employer. However, the said principal is subject to certain conditions such as when the employee had signed an undertaking in this behalf that if any excess paid to the employee, he/she shall return the same to the employer, etc

153. The Hon'ble Supreme Court stated the principle of recovery of the excess payment made to the employee in the judgment of ***Jagdev Singh(Supra)*** :

> *"10. In State of Punjab v. Rafiq Masih [State of Punjab v. Rafiq Masih, (2015) 4 SCC 334 : (2015) 2 SCC (Civ) 608 : (2015) 2 SCC (L&S) 33] this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law : (SCC pp. 334-35)*
> *(i) Recovery from employees belonging to Class III and Class IV service (or Group C and Group D service).*
> *(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
> *(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
> *(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid*

accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

(emphasis supplied)

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

154. The Hon'ble Supreme Court in the judgment of ***Rafiq Masih, (Supra)*** held that where it was that the recovery from the employees belonging to Class 3 and (group, C or group, D Service) , employees who have retired, or due to retire within a year from the date of recovery, when payment has been made for a period of more than five years before the order of recoveries issued ,in cases where employee wrongfully discharged duties of a higher post although he should have worked for the inferior post and in cases the Court is of the view that recovery against the employee will not be equitable. In the aforesaid cases, the employer has no right to recover the recovery amount from the employee.

155. In the instant petition before adjudicating upon the instant petition, this Court deems it fit to peruse the undertaking dated 23rd September 2008 and given by the petitioner to the respondent no.1 as well as the objections in the Audit report 2009-2011 of the respondent no.1.

156. The Office of the Director General of Audit (Central Expenditure) vide its letter dated 1st August 2011 forwarded an audit para to the respondent no.1 for the period of 2009-2011 in respect of irregular payment of benefits amounting to Rs.23.02 Lakh on account of ACP benefits given to group A officers. The relevant extract is reproduced herein below:

> *"Para 1:*
> *Irregular payment ofarrear amounting to Rs. 23.02 lakh on account ofACP benefit given to Group 'A' officers*
>
> *As per caricular No. 35034/1/97-Estt. (F) dated August 9, 1999, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel land Training), no financial upgradation under the scheme of ACP will be given to Group 'A' Central services (Technical/ non-Technical). Cadre Controlling Authorities in their case would, however, continue to improve the promotion prospect in organizations/cadres on functional grounds by way of organization study, cadre review, etc, as per prescribed norms. Further, Rules GFR 209 (6)(iv) (a) states that all autonomous bodies should Ordinarily formulate terms and conditions of service of their employees which are, by and large, not higher than those applicable to similar categories of employees in Central Governmentt. in exceptional cases relaxation may be made in consultation with the Ministry of Finance. Scrutiny of records revealed that Council had given the undue benefit of ACP to Group 'A' officers after completion of 12/8 years' service on the pleas that they do not have any further career advancement which was in contravention of orders of Government of India and General Financial Rules. The proposal for ACP to Group 'A' rnoved in May 2009 and approval of ACP scheme to Group 'A' was*

accorded by the then the Chairman ICSSR in May 2009 itself. The approval of the Ministry was not found on records. It has also been noticed that 25 Group "A" officers given ACP, out of which 17 were retired from service during the period from July 2001 to December 2009. The Council paid an arrear amount of Rs. 23.02 lakh to 22 employees out of 25 employees. Further, it was noticed that out of 17 retired employees to whom arrears were period till superannuation , Council had even issued revised PPO to four retired employees.

Non approval of ACP scheme to Group 'A' oaicers by the Ministry restated into irregular payment of amen of Rs. 23.02 lakh and subsequent payment of pay and allowance at next scale to officers.

H.M. No. 1 dated 7.7.2011 issued but no reply received"

157. The respondent no. 3 raised an issue regarding the irregularity in its audit inspection report for the period 2009–2011 with regards to the irregularities in granting ACP to the Grade A officers of the respondent no. 1. As per the office memorandum, it is stated by respondent no. 3 that the said ACP scheme was introduced for employees who have completed 12 or 24 years of regular practice.

158. The recruitment rules of the respondent no.1, the post of director, deputy director and assistant are categorized as group V however, the respondent no.1 treats them as Group A central government employee. In this regard, the respondent no. 3 states that the respondent no.1 needs prior approval from the Ministry of Finance to grant any benefits to employees of these post.

159. Hence, upon perusal of the contents of the respondent no.3's report it can be ascertained that the respondent no. 1 has acted on the basis of the report of the respondent no.3 which stated that there are some financial irregularities wrt to the grant of financial benefits to the employees of the respondents.

160. Furthermore, the petitioner gave an undertaking dated 23rd September 2008 to the respondent no.1 for recovery of any excess financial benefit paid to the petitioner and the same has been reproduced herein below:

> "*I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the government either by adjustment against any future payments due to me or otherwise*."

161. Upon perusal of the contents of the contents of the undertaking, it can be ascertained that the petitioner has undertaken that if any excess amount has been paid to the petitioner, then the petitioner shall refund the same either by adjustment against the future payment due to the petitioner or any other way.

162. This Court is of the opinion that, the petitioner after giving undertaking cannot take step back and contend that the respondent no. 1 is wrongly recovering money from the petitioner. Since, the petitioner was apprised of the fact that in case any excess amount of payment is made to her then, the same shall be recovered by the Respondent no.1.

163. In view of the aforesaid discussion, this Court is of the view that the petitioner has submitted the aforesaid undertaking/declaration for refund/adjustment of excess financial benefits extended to her, hence, the respondent no. 1 has correctly recovered the excess amount from the petitioner.

164. This Court is of the opinion that the respondent no.1 has rightly recovered the excess amount from the petitioner and there is no violation of any legal right of the petitioner in this regard.

165. Accordingly, issue no. ii is decided against the petitioner.

Conclusion

166. Under Article 226 of the Constitution of India, the Courts cannot encroach upon the executive of legislative domain since, it is the competent authority which to take such decisions. They shall exercise certain degree of judicial restraint while adjudicating upon the writ petition.

167. Accordingly, it is held by this Court that the respondent no. 1 acted in due compliance with the committee report, which suggested that the petitioner should be regularised w.e.f. 1996 and not from her date of ad hoc appointment that is 1989.

168. The impugned orders passed by the respondent no. 1 i.e., 4th March 2022, 18th March 2021 issued vide office order no. 7/2021 as well 18th March 2021 passed vide office order bearing no. A(47)/89-A does not suffer from illegality and does not violate any legal rights of the petitioner.

169. This Court further opines that the recovery of amount from the petitioner paid in excess to the petitioner is not violative of any legal right of

the petitioners since petitioner had previously given undertaking that any excess amount paid to her by the respondent no. 1 shall be duly recovered from her

170. In light of the above discussions of facts and law, it is hereby, held that there is no irregularity in the actions of the respondent which goes to the root of the matter and invites the intervention of this Court while exercising its writ jurisdiction.

171. Accordingly, the instant petition stands dismissed.

172. Pending applications, if any, also stands dismissed.

173. The judgment be uploaded on the website forthwith.

CHANDRA DHARI SINGH)
JUDGE

FEBRUARY 22, 2024
Dy/db/av