IN THE SUPREME COURT OF BANGLADESH

APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain,

Chief Justice

Mr. Justice Muhammad Imman Ali

Mr. Justice Hasan Foez Siddique

Mr. Justice Mirza Hussain Haider

Ms. Justice Zinat Ara

Mr. Justice Abu Bakar Siddiquee

Mr. Justice Md. Nuruzzaman

CIVIL PETITION FOR LEAVE TO APPEAL NOS.994 OF 2018 WITH 990 AND 993 OF 2018.

(From the judgment and order dated 14.03.2017 and 22.03.2017 passed by the High Court Division in Writ Petition Nos7741, 8925 and 14780 of 2016.)

The Director General, represented by Bangladesh Rural Development Board (BRDB), Dhaka	:	Petitioner. (In all the cases)
=Versus=		
Md. Rabeul Karim and others	:	Respondents. (In C.P.No.994/18)
Md. Anamul Kabir, Mymensingh and others	:	Respondents. (In C.P.No.990/18)
Asma Sarif, Shariatpur and others	:	Respondents. (In C.P.No.993/18)

For the Petitioner : (In all the cases)

Mr. Mahbubey Alam, Senior Advocate, Mr. Syed Amirul Islam, Senior Advocate, Mr. Biswajit Debnath, Advocate and Mr. Apurba Islam, Advocate instructed by Mr. Mohammad Abdul Hai, Advocate -on-Record.

For the Respondent Nos. 25, 243-248, 415, 368, 249, 410, 375, 30, 50, 318, 321, 322, 352, 309, 310, 312, 311, 308, 353, 315, 313, 307, 306, 320, 316, 314, 317, 319, 304, 305, 124, 118, 115, 119, 33, 127, 116, 122, 117, 128, 121, 129, 130, 123, 39, 125, 126, 231, 233, 354, 236, 35, 131, 237, 232, 228, 234, 229, 237, 235, 367, 362, 36, 63, 55, 57, 58, 60, 53, 62, 413, 369, 54, 61, 59, 56, 211, 212, 43, 214, 215, 216, 217, 213, 29, 47, 110, 112, 111, 114, 113, 109, 395, 396, 398, 397, 401, 399, 385, 391, 383, 382, 386, 384, 388, 387, 381, 390, 389, 392, 406, 405, 404, 403, 393, 104, 31, 108, 407, 03, 06, 105, 91, 90, 85, 80, 82, 83, 84, 51, 93, 92, 95, 94, 49, 324, 327, 339, 325, 326, 334, 333, 330, 336, 328, 329, 332, 338, 335, 337, 334, 210, 209, 207, 206, 323, 256, 255, 268, 253, 251, 250, 252, 259, 257, 260, 261, 258, 262, 263, 273, 272, 265, 271, 274, 267, 266, 269, 268, 270, 24, 250, 251, 252, 253, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 271, 270, 272, 273, 274, 42, 102, 98, 96, 97, 101, 100, 99, 409, 349, 41, 400, 182, 186, 184, 185, 26, 181, 183, 40, 194, 201, 198, 197, 196, 193, 195, 202, 203, 205, 204, 190, 200, 23, 218, 221, 223, 219, 227, 220, 264:
(In C.P.No.994/18)

Mr. Salahuddin Dolon, Advocate instructed by Mr. Mohammad Ali Azam, Advocate -on-Record.

For the Respondent Nos.32, 275, 350, 276, 283, 284, 285, 287, 286, 279, 278, 280, 281, 288, 282, 289, 290, 291, 277, 27, 74, 79, 65, 64, 66, 68, 78, 77, 69, 75, 70, 73, 71, 46, 76, 67, 72, 208, 34, 133, 135, 134, 137, 136, 138, 146, 174, 169, 163, 168, 145, 172, 175, 180, 165, 173, 140, 48, 132, 179, 147, 159, 153, 148, 164, 152, 141, 160, 156, 155, 142, 143, 179, 149, 144, 22, 166, 178, 157, 167, 162, 171, 170, 176, 177, 139, 371, 373, 374, 372, 378, 370, 376, 380, 394, 379, 377, 402, 239, 240, 411, 242, 416, 414, 238, 241, 1, 20, 11, 10, 18, 21, 19, 8, 7, 6, 9, 5, 4, 2, 3, 12, 13, 14, 17, 15, 16, 356, 359, 357,358, 45, 341, 340, 343, 344, 346, 342, 345, 92, 44, 347, 348 : **(In C.P.No.994/18)**		Mr. Salahuddin Dolon, Advocate instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.
For the Respondent Nos.418-421 (In C.P.No. 994 /18)	:	Mr. Haridas Paul, Advocate -on-Record.
Respondent Nos.28, 37, 38, 52, 81, 86, 87, 88, 89, 107, 108, 120, 151, 154, 158, 161, 187, 188, 189, 191, 192, 225, 292, 254, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 351, 355, 360, 361, 363, 364, 365, 366, 408, 412, 417: (In C.P.No.994/18)		Not represented.
For the Respondents (In C.P.Nos.993 & 990/18)	:	Mr. Abdul Matin Khasru, Senior Advocate instructed by Mr. Mohammad Ali Azam, Advocate-on-Record.

Date of hearing : ***28.11.2019, 05.12.2019,12.12.2019,15.12.2019,08.01.2020, 09.01.2020, 16.01.2020 & 09.02.2020.***

Date of judgment : ***09.02.2020***

J U D G M E N T

Hasan Foez Siddique, J: These Civil Petitions for leave to Appeal Nos. 994 of 2018, 993 of 2018 and 990 of 2018 have been heard analogously and they are being disposed of by this common judgment.

The factual matrix of the petitions is that the writ petitioner-respondents have been serving in a project namely "সমন্বিত দারিদ্র বিমোচন কর্মসূচী" under Bangladesh Rural Development Board (in short, BRDB). Earlier they had been serving in different projects namely (১) ক্ষুদ্র কৃষক ও বর্গা চাষী উন্নয়ন কর্মসূচী (SSFDP) (২) সমন্বিত দারিদ্র বিমোচন কর্মসূচী and (৩) দারিদ্র বিমোচনে মহিলাদের আত্ন কর্মসংস্থান কর্মসূচী (দাবিমোআক) In a Board meeting, BRDB took

decision on 09.03.2006 to merge those three projects into one, namely, সমন্বিত দারিদ্র বিমোচন কর্মসূচী which became effective on and from 01.07.2006.

The writ petitioner-respondents filed 3 different writ petitions for a direction upon the writ respondent-petitioners to absorb them in the revenue setup. The High Court Division, by the impugned judgment and order, made the Rules absolute making identical directions upon the writ respondents to regularize/absorb the writ petitioners in the revenue budget with continuity of their service and to pay other benefits in accordance with law provided that they have requisite qualifications and subject to availability of the same/equivalent posts as admissible in law as expeditiously as possible.

The issues in all the writ petitions are identical. Hundreds of cases were filed in the High Court Division making identical prayers for transfer/absorption/ regularization of service in the revenue set up and the High Court Division passed identical orders.

Admittedly, all the writ petitioners, getting appointments in the projects, have been and still are working in the projects. The only question is that whether they are entitled to be absorbed / regularised in the revenue budget or not. In other words, whether the High Court Division is authorized to direct the government or its instrumentalities to absorb /transfer/regularize the service of the officers and employees of the Development project in revenue budget or not.

Mr. Syed Amir Ul Islam, learned Senior Counsel appearing for the petitioners in all the petitions, submits that Supreme Law of the State is the Constitution and the Constitution has not permitted the Government and

autonomous bodies to appoint/absorb/transfer/ regularize the service of anyone in revenue budget before exhausting the respective service law provided for appointment in the Government office or its autonomous organizations. Only the laws authorized the executive to create posts and appoint a public servant following the relevant service rules. He submits that in order to create a post in the revenue set up, several steps, are required to be exhausted by different ministries, the Court cannot compel the executive to create posts and to absorb/transfer/regularise a person serving in the project in the revenue set up on creating posts.

Mr. Mahbubey Alam, learned Senior Counsel also appearing for the petitioners, adds that neither in the BRDB Service Rules nor anywhere in the connected laws is there any provision to transfer/absorb/regularize in the revenue budget. He submits that there is no scope to transfer or regularise any service in the revenue set up if the law does not provide so, in such view of the matter, the High Court Division acted illegally in making the impugned directions. Mr. Alam, producing some service rules, submits that only process to transfer any service in revenue budget is by way of enactment and a court cannot compel the legislature to enact law.

Mr. Murad Reza, learned Additional Attorney General appearing for the Government, submits that the Constitutional scheme did not provide any such provision to absorb/transfer/regularise service of anyone who has been serving in the development project in the revenue set up except where the respective service rules provide so. He submits that the Constitution is the Supreme Law and the Constitution allowed the Government or its instrumentalities to appoint public servant following process of law and no

direction can be given to compel the Government to appoint anyone without following the service rules.

Mr. Abdul Matin Khashru and Mr. Salahuddin Dolon, learned Counsel appeared on behalf of the respondents. They, in their submissions, contended that the respondents have been serving in the development project for a long period and project proforma and different letters exchanged between the writ respondents genuinely gave rise to an expectation in the mind of the writ petitioners that their service may be transferred/absorbed/ regularised in the revenue set up, the High Court Division rightly passed the impugned directions.

Regularization of the services of any employees means that the persons concerned who had no status within the purview of the definition of "employees " would become employees. Recently these issues have been dealt with by this Division in Civil Appeal No.460 of 2017(Secretary V. Abdur Razzak and others) with the following observations:

> "1.The legitimate expectation would not override the statutory provision. The doctrine of legitimate expectation can not be invoked for creation of posts to facilitate absorption in the offices of the regular cadres/non cadres. Creation of permanent posts is a matter for the employer and the same is based on policy decision.
>
> 2.While transferring any development project and its manpower to revenue budget the provisions provided in the notifications, government orders and circulars quoted earlier must be followed. However, it is to be remembered that executive power can be

exercised only to fill in the gaps and the same cannot and should not supplant the law, but only supplement the law.

3.Before regularization of service of the officers and employees of the development project in the revenue budget the provisions of applicable "Bidhimala" must be complied with. Without exhausting the applicable provisions of the "Bidhimala" as quoted above no one is entitled to be regularised in the service of revenue budget since those are statutory provisions.

4.The appointing authority, while regularising the officers and employees in the posts of revenue budget, must comply with the requirements of statutory rules in order to remove future complication. The officers and employees of the development project shall get age relaxation for participation in selection process in any post of revenue budget as per applicable Rules.

5.A mandamus can not be issued in favour of the employees directing the government and its instrumentalities to make anyone regularized in the permanent posts as of right. Any appointment in the posts described in the schedule of Bangladesh Civil Service Recruitment Rules, 1981, Gazetted Officers (Department of Livestock Service) Recruitment Rules, 1984 and Non-gazetted Employees (Department of Livestock Service) Recruitment Rules, 1985 bypassing Public Service Commission should be treated as back door appointment and such appointment should be stopped.

6.To become a member of the service in a substantive capacity, appointment by the President of the Republic shall be preceded by selection by a direct recruitment by the PSC. The Government has to make appointment according to recruitment Rules by open competitive examination through the PSC.

7.Opportunity shall be given to eligible persons by inviting applications through public notification and appointment should be made by regular recruitment through the prescribed agency following legally approved method consistent with the requirements of law.

8.It is not the role of the Courts to encourage or approve appointments made outside the constitutional scheme and statutory provisions. It is not proper for the Courts to direct absorption in permanent employment of those who have been recruited without following due process of selection as envisaged by the constitutional scheme."

In the aforesaid observations we have categorically mentioned that it is not the role of the Court to encourage or approve the appointments made outside the constitutional scheme and statutory provisions. We have further observed that it is not proper for the Courts to direct absorption/ regularization/transfer service of the employees of any development project in the permanent employment in the revenue set up of the Government since they are not recruited following process of selection as envisaged by the constitutional scheme .

Mr. Syed Amirul Islam, in his submission repeatedly argued that any appointment made without following the appropriate procedure under the service rules and without proper advertisement or inviting applications from eligible candidates in open competition amount to breach of Constitutional provisions, particularly, article 27 and 29 of the Constitution.

The object of the article 29 is to ensure equality of opportunity for all citizens in matters relating to appointment to public offices. Any appointment made in violation of mandatory provisions of the spirit of article 29 of the Constitution and statute would be illegal and such illegality cannot be cured by taking recourse to regularization. The appointment to any post under the Government or autonomous organizations must be made after a proper advertisement has been made inviting applications from eligible candidates and holding selection by the Public Service Commission or body of experts or specially constituted committee whose members are impartial. The constitutional principle of providing equality of opportunity to all is a fundamental right to the citizens and it mandatorily requires that vacancy must be notified in advance meaning thereby that information of the recruitment must be disseminated in a reasonable manner in the public domain ensuring maximum participation of all eligible candidates, thereby the right of equal opportunity is effectuated. Aforesaid views have been expressed by the Supreme Court of India in the case of State of Orissa V. Mamata Mohanty reported in (2011)3SCC 436. Equality of opportunity in matters of employment being the constitutional mandate is always to be observed. The advertisement must specify the

number of posts available for selection and recruitment. The qualification and other eligibility criteria for the posts should be explicitly mentioned and the schedule of recruitment process should be published with certainty and clarity. The Advertisement should specify the Rules and procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process has commenced, thereby, unjustly benefiting someone at the cost of others. In the case of R.N. Nanjundappa Vs. T. Thimmiah reported in (1972)1 SCC 409 the Supreme Court of India observed that if the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority conferred by the statute. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules. .

The constitutional scheme clearly reflects strong desire and constitutional philosophy to implement the principle of equality in the true sense in the matter of public employment. In view of the clear and unambiguous constitutional scheme the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularisation of services of the person who has been working either as daily wager or adhoc employee or temporary contractual employee and employees of the projects not appointed following the statutory provisions and procedure.

We find support of the aforesaid views in the case of Surindra Prasad Tiwari Vs. U.P. Raiya Krishi Utpadan Mandi Parishad and others reported in (2006) 7 SCC 864.

With a view to make selection and appointment procedure fair and impartial the Constitution in articles 137,138 and 139 provides for the establishment of Public Service Commissions. Article 140 of the Constitution provides the functions of the Public Service Commission which are (a) to conduct tests and examination for the selection of suitable persons for appointment to the service of the Republic; (b) to advise the President on any matter on which the Commission is consulted under clause (2) or on any matter connected with its functions which is referred to the Commission by the President; and (c) such other functions as may be prescribed by law. Article 140 (2) provides that subject to the provisions of any law made by Parliament and any regulation (not inconsistent with such law) which may be made by the President after consultation with a Commission, the President shall consult a Commission with respect to- (a)matters relating to qualifications for, and methods of recruitment to the service of the Republic; (b) The principles to be followed in making appointments to that service and promotions and transfers from one branch of the service to another, and the suitability of candidates for such appointments, promotions and transfers; (c) matters affecting the terms and conditions (including pension rights) of that service, and (d) the discipline of the service.

Article 133 of the constitution provides that subject to the provisions of the Constitution Parliament may by law regulate the appointment and conditions of service of persons in the service of the Republic:

Provided that it shall be competent for the President to make rules regulating the appointment and the conditions of service of such persons until provision in that behalf is made by or under any law and rules so made shall have effect subject to the provisions of any such law.

The service of the Republic has been interpreted in article 152 of the constitution with the following words.

"the service of the Republic means any service, post or office whether in a civil or military capacity, in respect of the Government of Bangladesh, and any other service declared by law to be a service of the Republic".

This Court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional provisions requiring recruitment to the services through the Public Service Commission. It appears that since this Court has in some cases permitted regularisation of the irregularly recruited employees, Government and authorities have been increasingly resorting to irregular recruitments. Any appointment in the service of the Republic violating the spirit of articles 27, 29, 133 and 140 of the Constitution is not only irregular but also illegal and that cannot be sustained in view of the constitutional provisions. Past practice is not always the best practice. If any illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. Any appointment made on a post in the service of

the Republic ignoring the provisions articles 29, 133 or 140 of the Constitution and without issuing advertisement inviting applications from eligible candidates and without following a proper selection procedure where all eligible candidates get a fair chance to compete would violate the guarantee enshrined in the Constitution.

It would be highly detrimental to the public interest to issue direction for wholesale transfer/absorption/regularisation of the employees of project/adhoc/contract daily wagers in the revenue budget and thereby abrogate/stultify the opportunity of competition to younger generation comprising of more meritorious candidates who may be waiting for a chance to apply for direct recruitment. Obviously, the court should not want to sacrifice merit by showing undue sympathy for employees of the project/adhoc/daily wagers/contract workers who joined their service with full knowledge about their status, terms and conditions of their employment and the fact that they were not to be paid from Consolidated Fund. It is to be mentioned here that payment of money into and its withdrawal from the Consolidated Fund or Public Account is to be regulated by an Act of Parliament and if no such Act has been passed, by rules made by the President. The Government cannot make any expenditure without the sanction of Parliament.

The position of law as it appears till today that the legislature has provided only one option to the employees of the development projects that they would get privilege of relaxation of age limit for participation in examination for getting employment in the posts of revenue budget, that is,

“সমাপ্ত উন্নয়ন প্রকল্প হইতে রাজস্ব বাজেটের পদে নিয়োগের ক্ষেত্রে বয়স শিথিলকরন বিধিমালা, ২০০৫”. All such employees shall compete with other candidates who file application for appointment in the posts advertised. However, Mr. Mahbubey Alam produced some rules by which services of the employees of some projects were transferred to revenue budget. These are- (১)প্রাথমিক ও গনশিক্ষা মন্ত্রনালয়ের উন্নয়ন প্রকল্পে নিয়োগপ্রাপ্ত কর্মকর্তা ও কর্মচারীরে রাজস্ব বাজেটের পদে নিয়মিতকরন ও জ্যৈষ্ঠতা নির্ধারন বিধিমালা, ২০০৫; (২) কৃষি মন্ত্রনালয়ের আওতাধীন এই ২(ক) উপ-বিধিতে বর্নিত যে কোন উন্নয়ন প্রকল্প হইতে রাজস্ব বাজেটে সৃষ্ট কারিগরি পদের পদধারীদের নিয়োগ/নিয়মিতকরণ ও জ্যেষ্ঠতা নির্ধারন (বিশেষ বিধান) বিধিমালা, ২০০৫; (৩)শিক্ষা মন্ত্রনালয়ের মাধ্যমিক ও উচ্চ শিক্ষা বিভাগের অধীনস্থ মাধ্যমিক ও উচ্চ শিক্ষা অধিদপ্তরের আওতাধীন Secondary Education Sector Improvement Project(SESIP) শীর্ষক উন্নয়ন প্রকল্প হইতে রাজস্ব বাজেটে স্হানান্তরিত পদের পদধারীদের নিয়মিতকরন ও জ্যেষ্ঠতা নির্ধারন (বিশেষ বিধান) বিধিমালা, ২০১৮; and some other identical rules. Though Mr. Syed Amirul Islam who appeared for the petitioners seriously raised question regarding vires of those rules saying those are inconsistent with the provision of article 29 of the Constitution but in this case the vires of the rules have not been challenged.

Mr. Murad Reza, learned Additional Attorney General, appearing for the Government, makes an unique submission that notifications, government orders and circulars are not laws. Indirectly, he did not support the executive orders provided in notification(not published in the gazette), government orders and circulars for transferring the posts of development projects in the revenue budget and to absorb the employees of the Projects in the same. We have no disagreement with the submissions made by the learned Additional Attorney General, that is why in observation No.2 in

our judgment passed in C.A. No. 460 of 2017 we have observed that the executive power can be exercised only to fill in the gaps and the same cannot and should not supplant the law, but only supplement the law.

We want to make it clear that regularization is not itself a mode of recruitment and any act in the exercise of executive power of the government can not override rules framed under the Constitution. In the case State of Jammu and Kashmir Vs. District Bar Association reported in (2017) 3 SCC 410 Supreme Court of India observed that regularization is not a source of recruitment nor is it intended to confer permanency upon appointments which have been made without following the due process envisaged by Articles 14 and 16 of the Constitution. Essentially a scheme for regularisation, in order to be held to be legally valid, must be one which is aimed at validating certain irregular appointments which may have come to be made in genuine and legitimate administrative exigencies. In all such cases it may be left upon to courts to lift the veil to enquire whether the scheme is aimed at achieving the above objective and is a genuine attempt at validating irregular appointments. In a democratic set up like ours, which is governed by rule of law, the supremacy of law is to be acknowledged and absence or arbitrariness has been consistently described as essence of rule of law. The unquestionable authority is always subject to the authority of the Constitution.

It is important to cite the case of Secretary to Government, School Gobinda Swamy and others [(2014)] 4SCC 769. In that case Supreme Court of India considering the case of State of Rajasthan and others V. Daya Lal and others reported in AIR 2011 SC 1193 has made observation

about the scope of regularization of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularization relevant in the context of the issues involved therein. The same is as under:

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

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

The submission of Mr. Dolon so far the same relates to doctrine of legitimate expectation is concerned 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).

There is no case that any assurance was given by the Government or the department concerned while making the appointment in development project or 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, there is a case that the Government had made regularisations in the past of similarly situated employees, the fact remains that in some cases such regularisations were done pursuant to judicial directions. 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.

When a person enters a temporary employment in the development project 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 Government has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The Government 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.

Employment in a development project or casual employment is meant to serve the exigencies of administration. In our judgment in C.A. No.460 of 2017 we have said that continuance of service for long period in the development projects or contractual or temporary basis confer no right to seek regularisation in service. The person who is engaged on temporary or in project is well aware of the nature of his employment and he consciously accepted the same. They are not entitled to seek regularisation

as they are not working against any sanctioned posts. It is our consistent view that unless the appointment is in terms of the relevant rules/regulations 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. 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.

While directing to regularise the service in the revenue budget of the persons who have been serving in the project or on contract basis or “no work no pay” basis, the Court ought to have taken into consideration whether their appointments were made in consonance with the constitutional scheme and statutory rules or not. If disregard of the rules

and by-passing of the Public Service Commission are permitted, it will open a backdoor for illegal recruitment without limit. If the person who accepts an engagement either in the development project or on contract basis or casual in nature he accepts the employment with open eyes. It may be true that they are not in a position to bargain at arm's length since they might have been searching for some employment so as to eke out their livelihood and accepts whatever they get. 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 got employment in the Project or on contract basis or casual basis should be directed to be absorbed in revenue budget. By doing so, it will be creating another mode of public appointment which is not permissible. The result of such appointments would be to keep recruitment rules and Public Service Commission in cold storage.

The Constitution is the supreme law of the State. All the institutions be it legislature, executive or judiciary, being created under the Constitution, cannot ignore it. The dictum - “Be you ever so high, the law is above you” is applicable to all, irrespective of his status, religion, caste, creed, sex or culture . Henry D Bracton - “The King is under no man but under the God and the Law”. No one is above the law.

It is to be noted that the Government has no authority to issue any orders granting regularization/ absorption or appointment in violation of the Constitutional scheme and recruitment rules in force. All recruitment in matters of Public employment must be made in accordance with prevailing rules. While dealing with the concept of recruitment the

Supreme Court of India has categorically laid down that the expression "recruitment" would mean recruitment in accordance with the Rules and not ***dehors*** the same and if an appointment is made ***dehors*** the Rules, it is not appointment in the eye of law. (ref: R.S. Garg V. State of UP (2006) 6SCC 430 and University of Rajasthan V. Prem Lata-AIR 2013 SC 1265). Similarly, the High Court Division in exercising power under article 102 of the Constitution will not issue any direction for transfer/absorption/regularization or permanent continuance, unless employees claiming so had been appointed in pursuance of regular recruitment in accordance with relevant rules in open competitive process, against sanction posts. The BRDB, an autonomous body, while making any recruitment must strictly follow its rules and no appointment can be made in the BRDB in contravention of its rules which is not a conformity with article 29 of the Constitution. Similarly, all the statutory bodies/Corporations/autonomous organizations must strictly follow their respective service Rules while making any recruitment in any permanent post.

It is true that in their heydays of life the respondents are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be made destitute, there being no provision for pension, retirement benefits etc. The employment cannot be on exploitative terms.

When the employees of the development projects or casual employees appointed as stop-gap arrangement have put in for considerable years of service in the posts and their works have been approved but they

could not be regularized, the only provision provides for them is to qualify the requisite examination and in such circumstances, they would get relaxation of upper age limit. If they are not selected, at the end of the day, they would return home from their respective working place with empty hand. It is the duty of the Government/employers to provide some benefits to them, on the basis of the period of service they rendered, so that they may not fall in extreme hardship otherwise the families of the those employees would face economic ruination.

However, sympathy, empathy or sentiment by itself, cannot be a ground for passing an order where the litigants miserably fail to establish legal right. It is true that the respondents had been working for a long time, the same by itself would not be a ground for directing regularization of the service.

In view of the discussion made above, this Court is of the view that the writ petitioners are not entitled for any relief as sought for.

With the observations made above, all the civil petitions are disposed of. Judgments and orders impugned are hereby set aside.

C.J.

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The 9th February, 2020.
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