THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.2176, 2285, 2997, 3083, 3084, 3091, 3101, 3129, 3203, 3245, 3255, 3258, 3344, 3345, 3351, 3512, 3564, 3571, 3724 & 3961 of 2016

COMMON ORDER:

Since all the petitioners share the common grievance, this Court deems it apt and appropriate to dispose of these writ petitions by way of this common order.

2. Challenge in these writ petitions is to the action of the respondent-State Government in issuing G.O.Rt.No.28 Health, Medical and Family Welfare (I) Department dated 20.1.2016 and making it applicable to the existing field staff of Dr.NTR Vaidya Seva Trust as illegal, arbitrary, unconstitutional and consequently petitioners herein are praying for their continuation.

3. According to the petitioners, they were appointed as Field Staff, such as, Aarogya Mitras etc. during the years 2008 & 2009 under Rajiv Aarogyasri Scheme pursuant to the process of selection undertaken by the District Committees headed by the District Collectors. It is further pleaded that the said scheme is a scheme run by State Government through the Respondent Trust; that after their appointments, petitioners were allotted to various private man power agencies; that except showing the petitioners as being supplied by the outsourcing agencies, petitioners have no connection with the said agencies; that their monthly remuneration comes from the Respondent Trust by way of bank transfer to the account of the outsourcing agency and from there to the account of the petitioners immediately; that the work of the petitioners would be supervised by the District Coordinators of the Trust who are directly under the control of the Trust; that the petitioners for all purposes are the employees of the Trust and the outsourcing agencies are only a make believe.

4. The State Government by virtue of G.O.Rt.No.28 Health, Medical and Family Welfare (I) Department dated 29.1.2016 stipulated qualifications and eligibilities for various categories of employees in the scheme and by virtue of the said GO, State Government permitted the Chief Executive Officer of Dr.NTR Vaidya Seva Trust to identify the number of posts and to communicate the same to the respective District Collectors along with pay particulars to enable to notify the same. Government also accorded permission to the District Collectors to select the outsourcing agency through a committee headed by the District Collector, consisting of District Collector as Chairman and District Medical and Health Officer as Member Convenor, District Coordinator of Hospital Services, Superintendent of Teaching Hospital (if teaching hospitals are located) and District Coordinator of Dr.NTR Vaidya Seva as members. In pursuance of the said GO, the Chief Executive Officer of Dr.NTR Vaidya Seva Trust vide letter No.Dr NTRVS/F25/FS/2016 dated 20.1.2016 issued instructions to all the District Collectors to select the outsourcing agency as per the procedure and to recruit the Field Staff with revised qualifications duly following the instructions and existing procedures as per the GO.

5. In the above back ground, calling in question the validity and the legal sustainability of the said action of resorting to recruit the candidates afresh by applying the qualifications and eligibilities prescribed in G.O.Rt.No.28 dated 20.1.2016 and seeking continuation of the petitioners, this batch of writ petitions came to be filed. A counter affidavit, justifying the impugned action and denying the writ averments is filed and a reply is also filed by the petitioners.

6. Heard the learned Advocates, appearing for the petitioners and the learned Additional Advocate General for the Respondents, apart from perusing the material available before the Court.

7. <u>Submissions/contentions advanced on behalf of the petitioners:</u>

(1) The impugned action of resorting to fresh recruitment process, totally

ignoring the petitioners who are the existing Field Staff, by applying the qualifications and eligibility criteria as prescribed in GO Rt.No.28 dated 20.1.2016 is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India.

(2) The guidelines issued in G.O.Rt.No.28 dated 20.1.2016 cannot be applied with retrospective effect to the detriment of the petitioners as the authorities appointed them by following due procedure of written test and interview.

(3) In the absence of any complaints of inefficiency, there is no justification for disengaging the petitioners after 6 to 7 years in the name of lack of qualifications and eligibilities.

(4) The respondents are not justified in denying master and servant relationship in between the respondents and petitioners.

(5) The authorities failed to see that through a regular process of selection held by Committees headed by District Collector, petitioners were appointed as such in the name of change in the qualifications and eligibility, the petitioners cannot be disengaged.

(6) Since the authorities recruited the petitioners to work for the Respondent Trust, which is completely owned, controlled and funded by the State, the impugned action is untenable.

To bolster their submissions and contentions, the learned counsel relied on the following judgments:

(1) **Hussainibhai v. The Alath Factory Tezhilali Union and others**[1].

(2) **Balwant Rai Saluja and another v. AIR India Limited and others**[2]**;** and

(3) **State of Punjab v. Amar Singh, General Secretary, Punjab Roadways**[3]

8. Submissions/ contentions of the learned Additional Advocate

General:

(1) There is no illegality nor there exists any infirmity in the impugned action, as such, the present writ petitions are not maintainable and the petitioners are not entitled for any relief from this Court under Article 226 of the Constitution of India.

(2) In the absence of any master and servant relationship between the petitioners and the respondents, especially the trust, the petitioners have no locus to assail the impugned action and the aspect of relationship cannot be gone into under Article 226 of the Constitution of India and the petitioners have to approach Labour Court.

(3) In view of the object behind issuing the impugned G.O. i.e., due to non availability of fully trained and qualified Vaidya Mitras and other staff, the BPL families are not getting full information, the impugned action cannot be faulted.

(4) The issues raised in these writ petitions such as existence of relationship of master and servant between the petitioners and the respondents cannot be gone into by this Court under Article 226 of the Constitution of India.

(5) Neither the outsourcing agencies nor the persons who are engaged by them have any vested right to claim continuation.

(6) The State Government issued the GO under challenge in the larger interest of public (patients) hailing from BPL, Employees Health Scheme and Working Journalists Health Scheme.

(7) It is only the outsourcing agency which is selected through tender process every year for a period decided by the District Committee and it will provide service as per the scheme.

(8) In order to review the performance of the Field Staff, key performance indicators are set up at all levels of Field Staff and many Field Staff are not in "A" grade and more in "B"&"C" grades and even in "D" grade.

(9) As per Key Performance Indicators (KPI), the Mitras working at network hospitals need to forward the pre-authorization to the Trust within (10) minutes for approval to enable the patient to undergo treatment at the

earliest but when observed the data for the months of December, 2015 and January, 2016, it is noticed that sending of pre-authorization got delayed even upto (5) days.

(10) The hospital wise data of number of medico therapies raised and not forwarded by Vaidya Mitras in time would demonstrate the undesirability to continue the petitioners.

(11) After thorough discussions and deliberations, new qualifications have been prescribed, keeping in view the advantages.

The learned Additional Advocate General, in support of his submissions and contentions, places reliance on the following judgments:

(1) **Secretary, State of Karnataka and others v. Umadevi and others**[4]

(2) **R.K.Panda and others v. Steel Authority of India and others**[5]

(3) **Steel Authority of India Ltd., and others v. National Union Waterfront Workers and others**[6]

9 . In the above back ground, now the issues that emerge for consideration of this Court are;

(i) Whether there exists master and servant relationship between the Trust and Government on one hand and the petitioners on the other hand and whether the same can be gone into and can be decided by this Court under Article 226 of the Constitution of India?

(ii) Whether the action of the respondents in seeking to disengage the petitioners on the ground of lack of qualifications and eligibility as prescribed in G.O.Rt.No.28 dated 20.1.2016 is tenable?

(iii) Whether the prescriptions, touching the qualifications and eligibility as contained in G.O.Rt.No.28 dated 20.1.2016 can be implemented with retrospective effect ?

10. **Issue No.1:**

According to the petitioners, the State Government floated Rajiv

Aarogyasri Scheme and in furtherance of the said scheme, created the Respondent Trust and the said Trust is being funded and supervised by the State Government and the Trust so created entrusted the function of recruiting the employees to the District Rural Development Authorities headed by the District Collectors. The Constitution of the Trust Board is as follows:

(1) The Principal Secretary to Government, HM & FW Department, Government of Andhra Pradesh & Chairman, Board of Trustees.

(2) The Principal Secretary to Government, HM & FW Department, Government of Telangana & Co-Chairman, Board of Trustees.

(3) The Secretary to Government, Finance Department, Government of Telangana.

(4) The Director of Medical Education, Government of A.P.

(5) The Director of Medical Education, Government of Telangana.

(6) The Director of Health, Government of A.P.

(7) The Director of Health, Government of Telangana.

(8) The Commissioner (FAC), APVVP, Government of A.P.

(9) The Commissioner (FAC), Telangana Vaidya Vidhana Parishad, Government of Telangana.

(10) The Chief Executive Officer, Aarogyasri Health Car Trust.

11. The further case of the petitioners is that it is only pursuant to employment notification issued by the District Level Committee headed by District Collector and followed by selection process which included a written test, the petitioners were selected initially and only thereafter they were allotted to private man power supplying agencies. It is the further case of the petitioners that the respondents have resorted to such course of action only to make the things to appear as if the Aarogya Mitras are the employees of outsourcing agencies and to show that there is no relationship of master and servant between the petitioners and the respondents. In order to substantiate the said stand, notification issued by the Zilla Samakhyas in the year 2009 is placed on record, which shows

that the President, District Committee issued the said notification. By referring to G.O.Ms.No.71 Finance (SMPC) Department dated 27.2.2009, it is the case of the petitioners that the Government has control over the scheme.

12. On the contrary, it is the case of the respondents that there is no relationship of master and servant between the petitioners and the respondents and the petitioners are the persons working in outsourcing agencies who are selected by the Committee headed not by the District Collectors. It is the further case of the respondents that the Collectors have nothing to do with the Zilla Samakyas and the said Zilla Samakyas are autonomous bodies having their own bye-laws and Zilla Samakyas are registered as Confederation of Mandal Samakyas under APMAC Act, 1995.

13. In this context, it would be appropriate to refer to judgments cited by the learned counsel for the petitioners.

(1) In *Hussainibhai v. The Alath Factory Tezhilali Union* (1 supra), the Hon'ble Supreme Court at paragraphs 3, 5 & 6 held as under:

> "3. Who is an employee, in Labour Law ? That is the short, diehard question raised here but covered by this Court's earlier decisions. Like the High Court, we give short shift to the contention that the petitioner had entered into agreements with intermediate contractors who had hired the respondent-Union's workmen and so no direct employer-employee vinculum juris existed between the petitioner and the workmen.
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> 5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though Sniped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half hidden in fold after fold of legal form depending on the degree of

concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43A of the Constitution. The court must be astute to avoid mischief and achieve the purpose of the law and not be misled by the may a of legal appearances.

6. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefits and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the Management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off."

(2) In *Balwant Rai Saluja and another v. AIR India Limited* (2 supra), the Hon'ble Supreme Court at paragraphs 2, 3 4, 6, 52, 62, 65 & 66 held as under:

"2. At the outset, it requires to be noticed that the learned Judges differed in their opinion regarding the liability of the principal employer running statutory canteens and further regarding the status of the workmen engaged thereof. The learned Judges differed on the aspect of supervision and control which was exercised by the Air India Ltd. (for short, "the Air India")-Respondent No. 1, and the Hotel Corporations of India Ltd. (for short, "the HCI")-Respondent No. 2, over the said workmen employed in these canteens. The learned Judges also had varying interpretations regarding the status of the HCI as a sham and camouflage subsidiary by the Air India created mainly to deprive the legitimate statutory and fundamental rights of the concerned workmen and the necessity to pierce the veil to ascertain their relation with the principal employer.

3. The Two Judge bench has expressed contrasting opinions on the prevalence of an employer-employee relationship between the principal employer and the workers in the said canteen facility, based on, *inter alia*, issues surrounding the economic dependence of the subsidiary role in management and maintenance of the canteen premises, representation of workers, modes of appointment and termination as well as resolving disciplinary issues among workmen. The Bench also differed on the issue pertaining to whether such workmen should be treated as employees of the principal employer only for the purposes of the Factories Act, 1948 (for short, "the Act, 1948") or for other purposes as well.

4. The present set of appeals came before a two-Judge Bench of this Court against a judgment and order dated 02.05.2011 of a Division Bench of the High Court of Delhi in LPA Nos. 388, 390 and 391 of 2010. The present dispute finds origin in an industrial dispute

which arose between the Appellants-workmen herein of the statutory canteen and Respondent No. 1-herein. The said industrial dispute was referred by the Central Government, by its order dated 23.10.1996 to the Central Government Industrial Tribunal cum Labour Court (for short "the CGIT"). The question referred was whether the workmen as employed by Respondent No. 3-herein, to provide canteen services at the establishment of Respondent No. 1-herein, could be treated as deemed employees of the said Respondent No. 1. Vide order dated 05.05.2004, the CGIT held that the workmen were employees of the Respondent No. 1-Air India and therefore their claim was justified. Furthermore, the termination of services of the workmen during the pendency of the dispute was held to be illegal.

6. In the present set of appeals, the Appellants are workers who claim to be the deemed employees of the management of Air India on the grounds, *inter alia*, that they work in a canteen established on the premises of the Respondent No. 1-Air India and that too, for the benefit of the employees of the said Respondent. It is urged that since the canteen is maintained as a consequence of a statutory obligation Under Section 46 of the Act, 1948, and that since by virtue of notification dated 21.01.1991, Rules 65-70 of the Delhi Factory Rules, 1950 (for short, "the Rules, 1950") have become applicable to the Respondent No. 1, the said workers should be held to be the employees of the management of the corporation, on which such statutory obligation is placed, that is, Air India.

52. To ascertain whether the workers of the Contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, this Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer-employee relationship between the factory and the workmen working in the canteen. In this regard, the following cases would be relevant to be noticed.

62. A recent decision concerned with the employer-employee relationship was that of the *NALCO* case (supra). In this case, the Appellant had established two schools for the benefit of the wards of its employees. The Writ Petitions were filed by the employees of each school for a declaration that they be treated as the employees of the Appellant-company on grounds of, *inter alia*, real control and supervision by the latter. This Court, while answering the issue canvassed was of the opinion that the proper approach would be to ascertain whether there was complete control and supervision by the Appellant-therein. In this regard, reference was made to the case of *Dhrangadhra Chemical Works* case (supra) wherein this Court had observed that:

14. The principle which emerges from these authorities is that

> the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at p. 23 in *Mersey Docks and Harbour Board* v. *Coggins and Griffith (Liverpool) Ltd.* : (1952) SCR 696 "The proper test is whether or not the hirer had authority to control the manner of execution of the act in question".
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> 65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, *inter alia*, (i) who appoints the workers; (ii) who pays the salary/remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and (vi) extent of control and supervision, i.e. whether there exists complete control and supervision. As regards, extent of control and supervision, we have already taken note of the observations in *Bengal Nagpur Cotton Mills* case (supra), the *International Airport Authority of India* case (supra) and the *NALCO* case (supra).
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> 66. In the present set of appeals, it is an admitted fact that the HCI is a wholly owned subsidiary of the Air India. It has been urged by the learned Counsel for the Appellants that this Court should pierce the veil and declare that the HCI is a sham and a camouflage. Therefore, the liability regarding the Appellants herein would fall upon the Air India, not the HCI. In this regard, it would be pertinent to elaborate upon the concept of a subsidiary company and the principle of lifting the corporate veil."

(3) In *State of Punjab v. Amar Singh, General Secretary, Punjab Roadways* (3 supra), the Punjab and Haryana High Court at paragraphs 10 & 31 held as under:

> "10. In The Manager Govt. Branch Press and Anr. v. D.B. Belliappa, : A.I.R. 1979 S.C. 429, a three judges bench of the Supreme Court held that protection of Articles 14 and 16 is available even to a temporary government servant and if the action of the employer is found to be arbitrary or discriminatory, it is liable to be invalidated. While repelling the argument advanced on behalf of the appellant that Articles 14 and 16 do not have any relevance in the matters involving termination of services of temporary employees, their Lordships held as under:-
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> "Mr. Veerappa's first contention is that Articles 14 and 16 (1) of the Constitution have no application, whatever, to the case of a temporary employee whose service is terminated in

accordance with the terms and conditions of his services because the tenure or the duration of the employment of such an employee is extremely precarious being dependent upon the pleasure and discretion of the employer-State. In our opinion, no such generalisation can be made. The protection of Articles 14 and 16 (1) will be available even to such a temporary Government Servant if he has been arbitrarily discriminated against and singled out for harsh treatment in preference to his juniors, similarly circumstanced. It is true that the competent authority had the discretion under the conditions of service governing the employee concerned to terminate the latters employment without notice. But, such discretion has to be exercised in accordance with reason and fair play and not capriciously. Bereft of rationality and fairness, discretion degenerates into arbitrariness which is the very antithesis of the rule of law on which our democratic polity is founded. Arbitrary invocation or enforcement of a service condition terminating the service of a temporary employee may itself constitute denial of equal protection and offend the equality clause in Articles 14 and 16 (1). Article 16(1) guarantees "equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State". Moreover, according to the principle underlying S. 16 of the General Clauses Act, the expression appointment used in Article 16(1) will include termination of or removal from service, also.

31. The propositions of flaw which emerge from the above discussion are:-

(i) Article 14 is the genus while Article 16 is the species. It gives effect to the doctrine of equality in all matters relating to public employment.

(ii) The wide sweep of Articles 14, 15 and 16 takes within its fold not only the legislative instruments and all executive/administrative actions of the State and its agencies/instrumentalities but also contractual matters.

(iii) Every State action must be informed by reasons. It must be fair, reasonable and in public interest and must be free from arbitrariness.

(iv) The basic requirement of Article 14 is fairness in State action irrespective of the nature of power exercised by the State. The State cannot act arbitrarily by way of giving jobs or entering into contracts or issuing quota or licence. Its every action must be confined and structured by rational, relevant and non-discriminatory standard and if the government departs from such standards or norms, its action is liable to be struck

down on the touch-stone of Article 14 of the Constitution.

(v) Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid and relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations.

(vi) The ambit and reach of Articles 14 and 16 are not limited to cases where the public servant in fact has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Articles 14 and 16 if he has ; been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machinery and it is no answer to the charge of infringement of Articles 14 and 16 to say that the petitioner has no right to the post.

(vii) The government cannot justify its arbitrary action in matters involving public employment by relying upon the terms and conditions contained in the letter of appointment or the contract of service or service rules.

(viii) The decisions of the State and public authorities involving termination of | service of permanent and temporary or officiating or ad hoc employees must i satisfy the test of reasonableness. In other words the termination of service even of a temporary employee must be disclosed to the Court as and when such action is ! challenged by the aggrieved person and it is no answer to the charge of arbitrariness, unfairness or discrimination that the action has been taken in accordance with the terms of employment.

(ix) The expression "matters relating to employment" used in Article 16(1) are j not confined to the initial matters prior to the act of employment, but also comprehend all matters after employment, which are incidental to the employment and from part of the terms and conditions of the employees, such as salary, increments, leave, gratuity, pension, age of superannuation, promotion and even termination of employment.

(x) The termination of service of an employee without the existence of any cogent reasons would be arbitrary and against public policy.

(xi) The decision of the Full Bench in Y.K. Bhatia's case (supra) cannot be regarded as laying down correct law on the issue of applicability of Articles 14 and 16 in the matters involving termination of services of temporary employee or reversion of an ad hoc and officiating promoter in view of the law laid down by the Supreme Court in E.P. Royappa v. State of Tamil Nadu : A.I.R. 1974 S.C. 555; The Manager, Government Branch Press v. D.B. Belliappa : A.I.R. 1979 S.C.

429" Managing Director, U.P. Warehousing Corporation v. Vijay Narayan Vajpayee : A.I.R. 1980 S.C. 840; Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi : A.I.R. 1975 S.C. 1331 : Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly : A.I.R. 1986 S.C. 1571 and Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors. : A.I.R. 1991 S.C. 101.

(xii) The judgment of the Division Bench in Krishan Chand Goyat v. Punjab State (supra) is based on incorrect reading of the judgment of the Supreme Court in The Manager, Government Branch Press v. D.B. Belliappa (supra) and first of the two propositions laid down by the Division Bench do not represent the correct law."

14. Coming to the judgments relied on by the learned Additional Advocate General.

(1) In *Secretary, State of Karnataka v. Umadevi* (4 supra), the Hon'ble Apex Court at paragraphs 45, 46 & 47 held as under:

"45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person 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 eyes open. It may be true that he is not in a position to bargain -- not at arms 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 succor 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 of India.

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 regularized since the decisions in Dharwad (supra), Piara Singh (supra), Jacob, and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularized. 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 of Civil Service Unions v. Minister for the Civil Service 1985 Appeal Cases 374, National Buildings Construction Corporation v. S. Raghunathan : AIR1998SC2779 and Dr. Chanchal Goyal v. State of Rajasthan : [2003]2SCR112 . There is no case that any assurance was given by the Government or the concerned department 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 the Dharwaddecision. Though, there is a case that the State had made regularizations in the past of similarly situated

employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some case 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 regularized 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 regularization 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 recognized 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 concerned cases, 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."

(2) In *R.K.Panda v. Steel Authority of India* (5 supra), the Hon'ble Apex Court at paragraph 7 held as under:

"7. It is true that with the passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. In fact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularisation in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and whether the engagement and employment of labourers through a contractor is a mere camouflage and smoke screen, as has been urged in this case, is a question of fact and has to be established by the contract labourers on the basis of the requisite material. It is not possible for

> High Court or this Court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions, only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the Court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the competent fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

(3) In *Steel Authority of India Ltd., v. National Union Waterfront Workers* (6 supra), the Hon'ble Apex Court at paragraph 126 held as under:

> "126. We have used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires inquiry into disputed question of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. therefore, in such cases the appropriate authority to go into those issues will be Industrial Tribunal / Court whose determination will be amenable to judicial review."

15. In view of the judgment of the Hon'ble Apex Court in *R.K.Panda and others v. Steel Authority of India* (5 supra), it is very much limpid and clear that the petitioners need to approach the Labour Court/Industrial Tribunal to establish the relationship in the light of various factual aspects and controversies and the said factual controversies cannot be resolved in the present Writ Petitions filed under Article 226 of the Constitution of India. The judgments in *Hussainibhai v. The Alath Factory Tezhilali Union* (1 supra) and *Balwant Rai Saluja v. AIR India Limited* (2 supra) arose out of the industrial disputes and the same in the facts and circumstances of the case would not render any assistance to the petitioners. In the considered opinion of this Court, having regard to the nature of controversy, the present writ petitions cannot be maintained by the petitioners for the relief sought. In view of the law laid down above, it is open for the petitioners to approach appropriate forum for redressal of their grievance as indicated above and this Court is not inclined entertain the writ petitions.

Issue Nos.2 & 3

16. In view of the finding on Issue No.1, this Court does not propose to go into these issues.

17. For the aforesaid reasons, the writ petitions are dismissed. However, liberty is granted to the petitioners to approach appropriate forum of law for redressal of their grievances in the light of the observations made supra. However, for availing alternative remedy, the petitioners herein are granted two months time and till then, status quo as on today with regard to the status of the petitioners shall be maintained.

18. Subject to above, the Writ Petitions are dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

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A.V.SESHA SAI, J

Date: 31.3.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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[1] AIR 1978 SC 1410

[2] (2014) 9 SCC 407

[3] 1998 Law Suit (P&H) 82

[4] (2006) 4 SCC 1

[5] (1994) 5 SCC 304

[6] (2001) 7 SCC 1