

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 1015/2023
CM No. 2394/2023

Reserved on: **04.12.2023**

Pronounced on: **12.12.2023**

1. Aabid Rashid (28)
S/o Abdul Rashid Malik

R/o Gulzarpora, Pulwama District
2. Reyaz Ahmad Mir (24)
S/o Abdul Satar Mir

R/o Chithibandi Bandipora
3. Zumiya Rehman (26)
D/o Abdul Rehman Bhat
R/o Wadwan Budgam
4. Sabreena Majeed (25)
D/o Ab Majeed Mantoo

R/o TrahpooAchabal Anantnag
5. Majida Gulzar (28)
D/o Gulzar Ahmad Kumar

R/o KarewaKulga,
6. Fozia Ahad Basu (28)
D/o Abdul Ahad Basu
R/o Hajin Bandipora
7. Zahida Hassan (25)
D/o Gh Hassan Wani
R/o Machil Kupwara
8. Iqra Jabbar (25)
D/o Mohd Jabbar Wani

R/o Naidpora Anantnag
9. Shazia Akhtar (28)
D/o Abdul Majeed Rather

R/o Rakhi lajurah Pulwarna
10. Ulfat Kabul Khan (27)
D/o Kabul Khan

R/o Keran Kupwara
11. Sumaiya Mushtaq (24)
D/o Mushtaq Ahmad Bhat

R/o Nowgam Srinagar
12. Bilal Ahmad Dar (25)
S/o Abdul Ahad Dar
R/o ArhamaGanaerbal
13. Kulsooma Nabi (25)
D/o Gh Nabi Mir



- R/o PehliporaBoniyar
14. Snobar Nabi (27)
D/o Ghulam Nabi Gojri
- R/o Syed Kareem Baramulla
15. Suby Nisar (25)
D/o Nisar Ahmad Mir
R/o Hardpora Achabal
16. Afshana Bashir (26)
D/o Bashir Ahmad Reshi
- R/o WatlabSopore Baramulla
17. Iram Yaseen (25)
D/o Mohammad Yaseen Najar
- R/o Iqbal Colony Baramulla
18. MasoomMohd Sikander (25)
S/o Ab Rashid Bhat
- R/o ChursooAwantipora
19. Malik Shaeqah (25)
D/o Ghulam Mohammad Malik
- R/o Sonewari Bandipora
20. Azmat Shaheen (25)
D/o GhMohdThoker
R/o Chandgam Pulwama
21. Humaria Mahmood (28)
D/o Ghulam Mohammad Shah
- R/o Lolab Kupwara
22. Sameena Nazir (26)
D/o Nazir Ahmad Mir
R/o Magam Budgam
23. Muneema Bashir (26)
D/o Bashir Ahmad Wani
R/o SadiwaraDooru
24. Misba Yaseen (25)
D/o Mohammad Yaseen Shah
- R/o DevsarKulgam
25. MunazaReyaz (24)
D/o Reyaz Ahmad Bhat
- R/o chakpathLarkipora Anantnag
26. Aasrah Jan (25)
D/o Mohammad MustaffahTantray
- R/o SherporaKulgam
27. Irshada Ali (26)
D/o Ali Mohammad Parray
- R/o ChillyechChadoora
28. Arifa Jan (25)
D/o Mohammad Abdullah Mir
- R/o Ahmadabad DHPoraKulgam

29. Saima Amin (26)
D/o Mohammad Amin Malik
R/o Neehama Kulgam
30. Tabasum Ara (31)

D/o Mohd Yousuf Bhat
R/o Ranger Chadoora
31. Rumisa Jahangir (26)
D/o Tawoos Jahangir Lone
R/o KhrewsharPampore
32. Rubia Aziz (28)
D/o Abdul Aziz Teeli

R/o Mitrigam Pulwama
33. Ishrata Bashir (25)
D/o Bashir Ahmad Dar
R/o Sholipora Budgam
34. Razia Gulzar (25)
D/o Gul7ar Ahmad Dar
R/o Sholipora Budgam
35. Aqsa Bashir (291)
D/o Bashir Ahmad Dar
R/o Chanapora Srinagar
36. Onaiba Jan (25)
D/o Ali Mohmmad Rather

R/o Manigam Ganderbal
37. Iflah Bashir (25)
D/o Bashir Ahmad Bhat

R/o NoorporaAwantipora
38. Sabreena Mohiuddin (25)
D/o Gh Mohiuddin Bhat

R/o SK Bagh,Nowgam, Budgam
39. Iqra Nazir (25)
D/o Nazir Ahmad

R/o Parraypora Srinagar
40. Ruqaya Majeed (30)
D/o Abdul Majed Akhoon

R/o FatehKadal Srinagar
41. Aaqib Hafiz Shah (25)
S/o Hafizullah Shah

R/o Gagloosa Kupwara
42. Irtiza Bashir (25)
D/o Bashir Ahmad Magray

R/o Tangmarg Baramulla
43. Zahidalqbal (26)
D/o Mohammad IqbalGuroo

R/o Soura Srinagar



44. Shagufta Rajab (25)
D/o Mohammad Rajab Guroo
R/o Soura Srinagar
45. Harts Bin Rahim (25)
S/o Abdul Rahim Dar
R/o Shaltokuna Pulwama
46. Suhaib Noor Ellahie (25)
S/o Noor Mohammad Ellahie
R/o Awantipora
47. Asima Qadir (28)
D/o Ghulam Qadir Sofi
R/o HMT Srinagar
48. Saika Rashid (25)
D/o Abdul Rashid Malik
R/o New Colony Batamaloo
49. Insha Yousuf (25)
D/o Mohammad Yousuf Dar
R/o Wangipora Srinagar
50. Suhail Ahmad Hurrah (25)
S/o Mohammad Yousuf Hunah
R/o Manduna Pulwama
51. Aijaz ul Hassan (27)
S/o Ghulam Hassan Kumar
R/o Gusu Pulwama
52. Zeenat Wahab (24)
D/o Abdul Wahab Kaloo
R/o Dawar Gurez
53. Tabasum Akhtar (25)
D/o Nazir Ahmad Teli
R/o Gowharpora Chadoora
54. Mehvish Farooq (25)
D/o Farooq Ahmad Dar
R/o Sheikh Mohalla SR Gunj Srinagar
55. Mohammad Yaseen Wani (25)
S/o Abdul Gani Wani
R/o Lalpora Wanikhal Kunzer
56. Sajad Nazir Dar (25)
S/o Nazir Ahmad Dar
R/o Mangnipora Bandipora
57. Insha Shabir (25)
D/o Shabir Ahmad Bhat
R/o Lar Ganderbal
58. Aafreen Sultan (25)
D/o Mohammad Sultan Dar
R/o Galibabad Shalteng
59. Roomy Jan (25)

- D/o Bashir Ahmad Mir
R/o Barpora Pulwama
60. Shabir Ahmad Bhat (27)
S/o Ghulam Ahmad Bhat
R/o Handwara Kupwara
61. Khushboo Gul (25)
D/o Ghulam Mohammad Bhat
R/o Batwina Ganderbal
62. Naseer Ahmad Wani (26)
S/o Gh Nabi Wani
R/o Chewakalan Pulwama
63. Shahnaza Hassan (25)
D/o Ghulam Hassan Khan
R/o Lolab Kupwara
64. Jahangir Nazir (27)
S/o Nazir Ahmad Khan
R/o Newa Pulwama
65. Manzoor ul Islam (25)
S/o Abdul Aziz Dar
R/o Russu Budgam
66. Tanzeela Aijaz (29)
D/o Sheikh Ajaz Hussain
R/o Hyderpora Srinagar
67. Andleeb Jan (28)
D/o Abdul Gani Dar
R/o Wadwan Srinagar
68. Umer Maqsood (27)
S/o Mohammad Maqsood Bhat
R/o Bandgam Budgam
69. Altaf Hussain Bhat (28)
S/o Mohammad Abdullah Bhat
R/o Kunzar Baramulla
70. Arif Farooz (27)
S/o Farooze Ahmad Malik
R/o Naidkhah Sumbal
71. Adil Asif Pathan Sazdozi (28)
S/o Mohammad Asif Pathan Sazdozi
R/o Niloosa Boniyar Baramulla
72. Bilquees (27)
D/o Gh Mohammad Bhat
R/o Lawaypora Srinagar
73. Nadeem Ahmad Mir (28)
S/o Mohammad Shall Mir
R/o Hajan Payeen Pulwama
74. Mehnaz Showkat (27)
D/o Showkat Hussain

R/o Habak Naseem Bagh Srinagar

75. Aqib Naseer Dar (29)
S/o Naseer Ahmad Dar
R/o Hyderpora Srinagar

76. Shafqat Ahmad Awan (28)
S/o Mohammad L,?teef Awan
R/o Uri Baramulla

77. Abdul Suhaib Bashir (27)
S/o Bashir Ahmad

R/o Natipora Srinagar

78. Momin Amin (27)
S/o Mohammad Amin Gilkar

R/o Fateh Kadal Srinagar

79. Rafia Jan (26)

D/o Bashir Ahmad Rather
R/o Boonura Pulwama

80. Mehraj Ahmad Lone (29)
S/o Abdul Razaq Lone

R/o Mantribugh Shopian

81. Leyaqt Bashir (29)
S/o Bashir Ahmad Dar
R/o Pahloo Kulgam

82. Younis Ahmad Dar (34)
S/o Ghulam Mohammad Dar

R/o DharambughKralpora Srinagar

83. Tawfeeq Ayoub (28)
S/o Mohd Ayoub Hajam
R/o Mashwara Shopian

84. Mushtaq Ahmad Wani (22)
S/o Mohammad Ibrahim Wani

R/o Diver Yakhmanpora Baramulla

85. Shuja Ashraf (31)
S/o Mohammad Ashraf Lone

R/o Kachdoora Shopian

86. Zahid Bashir Zargar (27)
S/o Bashir Ahmad Zargar

R/o Khag Budgam

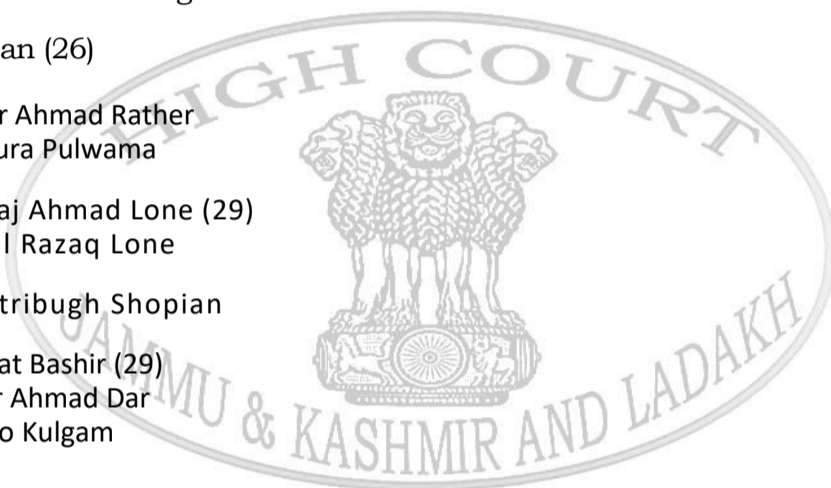
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S/o Abdul Gani Band

R/o Banderpora Pulwama

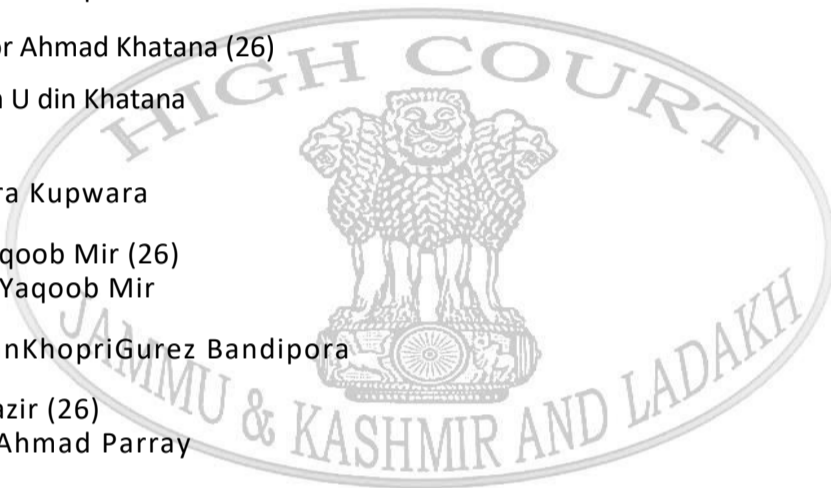
88. NaqshabNazli (27)
W/o Nadeem Sajad
R/o Harman Srinagar

89. Mir Ishfaq Ahmad (27)
S/o Gh Mohiuddin Mir
R/o Dialgam Anantnag

90. Aqib Hafiz (26)
S/o Raja Hafiz Khan



- R/o Gopalpora Anantnag
91. Jahangir Ahmad Mughal (32)
S/o Abdullah Mughal
- R/o Dangerpora Pulwama
92. Shafqat Majeed (28)
D/o Abdul Majeed Lone
R/o Tilagam Baramulla
93. Dr. Khalid Wani (--)
S/o Abdul Hamid Wani
R/o Eidgah Srinagar
94. Tanveer Ahmad Khatana (28)
S/o Nizam U din Khatana
- R/o Awoora Kupwara
95. Zahoor Ahmad Khatana (26)
S/o Nizam U din Khatana
- R/o Awoora Kupwara
96. Yasir Yaqoob Mir (26)
S/o Mohd Yaqoob Mir
- R/o MastanKhopriGurez Bandipora
97. Basit Nazir (26)
S/o Nazir Ahmad Parray
- R/o Kulgam
98. Ishfaq Majeed Makroo (28)
S/o Abdul Majeed Makroo
- R/o Dajipora Anantnag
99. Peerzada Irfan Bashir (27)
S/o Peerzada Bashir Ahmad
- R/o RednaghLolab Kupwara
100. Abdul Basit Bhat (27)
S/o Assadullah Bhat
R/o Shangus Anantnag
101. Farooq Ahmad Teli (27)
S/o Manzoor Ahmad Teli
- R/o AndergamPattan Baramulla
102. Aiman Zahoor (25)
D/o Zahoor Ahmad Bazaz
- R/o AmdaKadal La1 Bazar Srinagar
103. Amir Hamid Itoo (25)
S/o Abdul Hamid Itoo
R/o Awhatoo Kulgam
104. Basit Ali (28)
S/o Ali Mohd Rather
- R/o LarmooohAwantipora
105. Zahid Mushtaq Mir (26)
S/o Mushtaq Ahmad Mir
R/o Pahnoo Shopian



106. Jagdish Bhardwaj (29)
S/o Romera Chand
R/o Udampur Jammu
107. Shubeena Hamid (27)
D/o Hamid Ullah
R/o DardgundDevsarKulgam
108. Tahir Ahmad Shah (28)
S/o Gulam Hassan Shah
R/o Khag Budgam
109. Fayaz Ahmad Chohan (27)
S/oMohd Ismail Chohan
R/o Karnah Kupwara
110. Gurpreet Singh Bali (24)
S/o Santokn Singh Bali
R/o RajporaAwantipora
111. Aaqib Raja (26)
S/o Ghulam Nabi Parray
R/o Kumdalan Shopian
112. Sheikh Danish Hamid (25)
S/o Ab Hamid Sheikh
R/o Badasgam Anantnag
113. Irshad Ahmad Parray (24)
S/o Bashir Ahmad Parray
R/o Rayil Ganderbal
114. TowheedReyaz Bhat (24)
S/o Reyaz Ah Bhat
R/o DadsaraTral
115. Aqib Majeed Yatoo (24)
S/o Ab Majeed Yatoo
R/o BaghwanporaNoorbagh Srinagar
116. Basit Manzoor (24)
S/o Manzoor Ahmad Bhat
R/o LadooKulgam

...Appellant(s)

Through: Mr. Ateeb Kanth, Advocate.

Vs.

**1. Union Territory of Jammu And Kashmir through
Commissioner/Secretary to Govt. Health & Medical Education
Department Civil Secretariat at Jammu /Srinagar.**

2. Principal Govt. Medical College Srinagar.

...Respondent(s)

Through: Mr. Sajad Ashraf, GA.

CORAM:**HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE****JUDGMENT**

1. The petitioners have filed this petition under Article 226 of the Constitution of India, praying therein that the respondents by issuance of writ of mandamus, be directed to allow the petitioners to complete the period of three years of services as mandated vide condition / clause No. XII of the Government Order No. 398-JK(HME) of 2021 dated 18.05.2021. Furthermore, respondents be directed to release Ayushman incentives as well as Covid incentives in terms of the Notification No. 01-HME of 2019 dated 19.01.2019 in favour of the petitioners. Further prayer of the petitioners is that the respondents be directed to incorporate the condition in the future advertisement notice with regard to "05 numbers" as weightage, as has been done in the previous advertisement notices, where '05 numbers' as weightage, had been given to the candidates, who were engaged for the period of three months in the Government Institute under the "Emergency Covid Response Programme" (ECRP) on contractual basis and the same shall be accorded to the petitioners herein in future advertisement notices or appointments.
2. Essentially, the case of the petitioners is that they were appointed on contractual basis for a period of one year on the tenure based posts of Physicians, Anesthetists, Pediatricians, Medical Officer, Nursing and Paramedical/Technical staff, in terms of the Government Order No. 398-JK(HME) of 2021 dated 18.05.2021, vide which two 500 bedded temporary Covid Hospitals, one each at Jammu and at Srinagar were established, and 1366 such posts were created (683 posts for each Hospital), for making these two facilities operational,

in collaboration with the Defense Research and Development Organization (DRDO), Ministry of Defense, Government of India.

3. It is pleaded that the petitioners came to be engaged in terms of the respective engagement orders, when one year of contractual engagement of the petitioners came to an end in the year 2022, when in terms of communication No. ME-Gztd/198/2022 dated 08.08.2022, addressed by the Health and Medical Education Department of J&K Government, to the Principal Government Medical College Srinagar, on the approval of Administrative Department, providing for the grant of extension in the tenure of the engagement of the staff, actually on the rolls/ working in the said 500 bedded Covid Hospital at Khunmoh Srinagar, which was accorded upto 31.12.2022.
4. The petitioners, however, claimed that at the end of the extension period, the petitioners still continued to report for their duties though without any formal order of extension of their engagements. In such a state of uncertainty with respect to engagement status of the petitioners' post 31.12.2022, the petitioners have come up with the instant writ petition.
5. Pursuant to notice, respondents filed their reply asserting therein that the petitioners are trying to mislead this Court by sheer misrepresentation of material facts and have not approached this Court with clean hands. It is stated in the said reply that the respondents in order to provide medical care to the Covid-19 patients of UT of J&K, two 500 bedded temporary Covid Hospitals, one each at Jammu and Srinagar were established in collaboration with the DRDO vide Government Order No. 398-JK(HME) of 2021

dated 18.05.2021. It is further stated that since the pandemic was unprecedented and needed immediate measures, therefore, to meet the dearth of medical staff, many people were engaged on temporary basis initially for a period of one year, however, after the decline of Covid cases in the UT, both the Hospitals were closed down and deployed staff was repatriated back to their concerned departments. The contractual staff, however, was engaged for only one year, after the expiration of which the same was extended upto 31.12.2022 and thereafter no extension was granted. It is stated that in view of the closure of DRDO Hospitals, there was no justification for extending the tenure as the petitioners were engaged in the said hospitals only, therefore, the petition deserves to be dismissed.

6. During the course of arguments, learned counsel for the petitioners, argued that despite the petitioners having fulfilled all the requisite parameters for grant of extension and grant of incentives, same has not been extended to them; that the said condition/clause has been violated by the respondents, inasmuch as no notice was issued to the petitioners and they have been verbally told not to attend duties. The main plea, as has been raised by learned counsel for the petitioners, is with regard to condition/clause-XII of the Government Order dated 18.05.2021, which reads as under :-

“The contractual appointment shall be terminable on one month’s notice from either side or on payment of one month’s salary in lieu of notice by the appointing authority, provided that the appointment of the contracting party shall be terminable without notice by the appointing authority whenever the post is filled up on regular basis by it and in that case the contracting party shall have no claim against the Government / appointing authority.”

7. Learned counsel for the petitioners has referred to a press release dated 22.12.2022 issued by the Indian Medical Association, by virtue of which an advisory has been issued to its state and local branches to take necessary preparatory steps in case of Covid outbreak in their areas, and also make appeals to its all members to work proactively, as has been done in the past to combat the outbreak. Learned counsel argued that in such a situation manpower is essentially required to avert any untoward situation. Otherwise also manpower is required in such designated hospitals for the patient care which is suffering badly due to the dearth of manpower.
8. On the contrary, learned GA, reiterating the contentions raised in the reply, argued that after the decline of Covid cases in the UT, both the hospitals, at Jammu as well as at Srinagar, were closed down and deployed staff was repatriated back to their concerned departments. With regard to contractual staff, learned GA, submits that they were engaged for only one year and after expiration, the same was extended upto 31.12.2022, thereafter, no extension was granted. Learned GA has drawn the attention of this Court to the communication No. ME-Gztd/198/2022 dated 13.04.2023, whereby clarification was sought from the Principal Government Medical College, Jammu/Srinagar, in respect of continuous working of the staff beyond 31.12.2022, and as to how the staff had been working with effect from 01.01.2023, without any formal orders from the Administrative Department. Further argument of learned GA is that in view of the closure of DRDO Hospitals, there was no justification for extending the tenure, as the petitioners were engaged in the said hospitals only, besides, their services cannot be utilized in the

Associated Hospitals, which are being manned by regular staff which is already engaged there. Learned GA further submits that the petitioners have no case at all and are not entitled to any relief and seeks dismissal of the instant petition.

9. Heard, perused and considered.

10. It is a settled position of law that the contractual employment has no vested right to continue and it is not open for the Courts to direct an employer to continue the contract or to change the status of the contractual employment in any manner, once the same has been accepted by consent of both the sides without any demur.

11. The Apex Court in the case of **Yogesh Mahajan Vs. Professor R.C. Deka**, reported as **(2018) 3 SCC 218**, with regard to the status of contractual employment, has made the observations, some of the relevant observations in Paras 6,7 and 8 are reproduced as under:

“6. It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the petitioner was unable to show any statutory or other right to have his contract extended beyond 30th June, 2010. At best, the petitioner could claim that the concerned authorities should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the concerned authorities and therefore reject this contention of the petitioner.

7. We are also in agreement with the view expressed by the Central Administrative Tribunal and the High Court that the petitioner is not entitled to the benefit of the decision of this Court in *Uma Devi*. There is nothing on record to indicate that the appointment of the petitioner on a contractual basis or on an ad hoc basis was made in accordance with any regular procedure or by following the necessary rules. That being so, no right accrues in favour of the petitioner for regularization of his services. The decision in *Uma Devi* does not advance the case of the petitioner.

8. In so far as the final submission of the petitioner to the effect that some persons were appointed as Technical Assistant (ENT) in May 2016 is concerned, we are of the view that the events of 2016 cannot relate back to the events of 2010 when a decision was taken by the All India Institute of Medical Sciences not to extend the contract of the petitioner. The situation appears to have changed over the last six years and the petitioner cannot take any advantage of the changed situation. There is no material on record to indicate what caused the change in circumstances, and merely because there was a change in circumstances, does not mean that the petitioner is entitled to any benefit. On the other hand, it might have been more appropriate for the petitioner to have participated in the walk in interview so that he could also be considered for appointment as Technical Assistant (ENT), but he chose not to do so.”

12. In a case ‘**Secretary, State Of Karnataka & Ors. Vs. Umadevi & Ors**, reported as **2006 (4) SCC 1**’, the Apex Court has observed as follows:-

“...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...”

13. On account of outbreak of Covid-19 pandemic in the Country, the Government, in terms of Order No. 398-JK(HME) of 2021 dated 18.05.2021, accorded sanction to the establishment of two 500 bedded temporary Covid Hospitals, one each at Jammu and Srinagar in collaboration with the Defense Research and Development Organization (DRDO), Ministry of Defense, Government of India, and in consequence whereof 1366 posts of different categories, (683

posts for each hospital) came to be created for functioning of these hospitals. The administrative control of these hospitals was directed to be vested with the Principals of Government Medical College at Jammu and Srinagar, respectively, and the posts, so created, were directed to remain in existence for a period of three years to be filled up initially for a period of one year.

- 14.** The petitioners, 116 in number, claim to have been applied in line with the Advertisement Notice No.20-GS of 2021 dated 20.05.2021 issued by the Government Medical College Srinagar for the posts of Pharmacists, Lab. Technicians, Staff Nurses and Anesthesia Technicians, and were selected and appointed initially for the period of one year in terms of the Office Order No.78 of 2021 dated 17.06.2021 and Office Order No. 103-GS of 2021 dated 06.07.2021 issued by Government Medical College Srinagar. On expiry of the period of one year, Principal/Dean Government Medical College Srinagar, took up the matter with the administrative department of Health and Medical Education to the Government, for extension of services of the staff engaged at DRDO Covid Hospital at Srinagar, in view of the emerging Covid situation, vide communication dated 24.12.2022 seeking extension in the tenure of the contractual engagements of the petitioners by another six months w.e.f., 01.01.2023. The Administrative Department vide communication dated 06.01.2023, asked the Principal Government Medical College Jammu / Srinagar to examine the issue regarding present deployment of Nursing and Paramedical staff on rolls / working in DRDO Covid Hospitals under their administrative control, their job descriptions and how they are proposed to be utilized, if need arises.

15.The Principal / Dean Government Medical College Srinagar vide communication dated 12.01.2023, explaining the utility of all the staff, again requested for their term of engagement to be continued on the rolls of DRDO Covid Hospital Srinagar for another six months or more as deemed necessary w.e.f., 01.01.2023 in the interest of patient care. The Principal Government Medical College Srinagar vide communication dated 15.04.2023 again took up the matter with the Administrative Department, reminding them for extension in the tenure of DRDO staff.

16. The respondents have taken up the clear stand that while setting up the two 500 bedded temporary Covid Hospitals to provide medical care to the Covid-19 patients, one each at Jammu and Srinagar in collaboration with the DRDO vide Government Order No. 398-JK(HME) of 2021 dated 18.05.2021 and in view of the unprecedented and needed immediate measures to meet the dearth of medical staff, many people were engaged on temporary basis for a period of one year, however, after the decline of Covid cases, both the hospitals were closed down and the deployed staff was repatriated back to their concerned departments and the contractual staff who was engaged for only one year, after the expiration of their engagement upto 31.12.2022, no further extension granted in their favour. In view of the closure of DRDO hospitals, there was no justification for extending the tenure, as the petitioners were engaged on contractual basis in the said hospitals.

17. The engagement of the petitioners has its genesis in the Government Order No. 398-JK(HME) of 2021 dated 18.05.2021, which provided that these contractual staff shall be engaged on payment of full

salary corresponding to the minimum of the pay scale including all allowances as long as they remain in the service and actually perform their duties with the entitlement of 15 days casual leave for the whole period of their contractual appointment of one year and their services shall be terminable on one month's notice from either side or on payment of one month's salary in lieu of notice by the appointing authority, with further condition that the contract shall be terminable without notice by the appointing authority whenever the post is filled up on regular basis by it and in that case the contracting party shall have no claim against the Government / appointing authority.

18. Since, the appointment of the petitioners was purely on contract basis and to ask for regularization or for their continuation for the period of three years, was not in the Scheme of the establishment of the temporary Covid hospitals, as the services of the petitioners were hired in view of the emergent nature of Covid-19 pandemic. The petitioners were engaged on contractual basis just for the period of one year and extension of six months was granted to them, however, in view of Covid-19 pandemic being over, the temporary Covid hospitals, set up by the Government, were closed down and thereafter the permanent staff was repatriated back to their cadres, whereas the services of the contractual staff was discontinued beyond their engagement of one year and on extension of six months upto 31.12.2022.

19. The Apex Court has clearly laid down in both the cases (supra) that due to the appointment on contractual or on adhoc basis, without following the regular procedure in terms of the necessary rules, no

right accrues in favour of the petitioners for regularization or for continuation of their services. The Apex Court in **Umadevi's** case (supra), in particular, has held that the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be said that the State has held out any promise while engaging these persons either to continue them where they are, or to make them permanent, as the State cannot constitutionally make such a promise.

20. This Court is of the considered opinion that once the Government has decided to close down the temporary hospitals, established in view of emergency related to Covid-19 pandemic, where the petitioners were contractually employed, the respondents cannot be asked to continue their services as contractual employees without any work or their need. In this view of the matter the petition to the extent of asking the relief to continue the petitioners for a period of three years, in view of the Government order dated 18.05.2021, cannot be granted. So far as the other reliefs, that the respondents be directed to release Ayushman as well as Covid incentives in terms of the Notification No. 01-HME of 2019 dated 19.01.2019 in favour of the petitioners and to incorporate the condition in the future advertisement notice with regard to "05 numbers" as weightage, as has been done in the previous advertisement notices, where '05 numbers' as weightage, had been given to the candidates, who were engaged for the period of three months in the Government Institute under the "Emergency Covid Response Programme (ECRP)" on contractual basis, is concerned, the same, in view of the services rendered by the petitioners, can be considered by the respondents.

21. Viewed thus, the petition is **dismissed** to the extent of the relief asking for continuation of the petitioners for a period of three years, whereas, the petition is **allowed** to the extent of other reliefs, directing the respondents to release Ayushman as well as Covid incentives in terms of the Notification No. 01-HME of 2019 dated 19.01.2019 in favour of the petitioners and also to consider the condition to incorporate “05 numbers” as weightage in the future Advertisement Notices for the posts for which the petitioners had rendered their services to the Government under ECRP Programme, as contractual staff.

22. Disposed of, as partly allowed and partly rejected.

(M. A. CHOWDHARY)
JUDGE

Srinagar
12.12.2023
Muzammil. Q

Whether the Judgment / Order is Reportable:	Yes / No
Whether the Judgment / Order is Speaking:	Yes / No