

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL  
BIKASH BHAVAN, SALT LAKE CITY  
K O L K A T A – 7 0 0 0 9 1**

Present :-

*Hon'ble Justice Ranjit Kumar Bag,*  
Chairman In-charge.

-AND-

*Hon'ble Dr. Subesh Kumar Das,*  
Administrative Member.

**J U D G M E N T**

-of-

**Case No. : O.A. 1245 of 2016 : Dr. Nilanjan Ray & Others**

**Case No. : M.A. 49 of 2018 : Dr. Nilanjan Ray & Others**

**Case No. : O.A. 07 of 2017 : Dr. Sanjoy Kumar Roy & Others**

**Case No. : M.A. 50 of 2018 : Dr. Sanjoy Kumar Roy & Others**

..... Applicant.

-Versus-

State of West Bengal & Others.

..... Respondents.

**For the Applicants :-**

**Mr. M. Basu,  
Mr. M. Karim,  
Mr. A. Samad,  
Ms. P. Das,**  
Learned Advocates.

**For the State Respondents :-**

**Mr. G.P. Banerjee,**  
Learned Advocate.

**Judgment delivered on : July 31, 2018.**

**The Judgment delivered by Dr. Subesh Kumar Das,  
Administrative Member.**

## **JUDGEMENT**

OA-1245 of 2016 and OA-7 of 2017 and both MA-49 of 2018 arising out of OA-1245 and MA-50 of 2018 arising out of OA-7 of 2017 were taken up for hearing analogously with the consent of Learned Counsel representing all the parties. Since the facts and circumstances and the reliefs claimed in both the original applications are similar and both the original applications and miscellaneous applications can be disposed of by a common judgement, we have taken up all these applications for disposal by this composite judgement.

2. The petitioners in both the original applications OA- 1245 of 2016 and OA-7 of 2017 are Homeopathic Medical Officers ( in short HMOs) appointed through West Bengal Public Service Commission. They joined the service in 2011 and were posted in various health centres/ facilities in different districts.

3. As the Homeopathic Medical Colleges in West Bengal were passing through tremendous crisis for dearth of teachers, to tide over the crisis, the Government decided to fill up some of the vacant posts of Lecturers in the four Government Homeopathic Medical Colleges and Hospitals, on purely temporary and detailment basis by engaging Homeopathic Medical Officers, for a period of one year or till the posts are filled up on regular basis, whichever is earlier. The Director of Homeopathy issued a letter dated 9<sup>th</sup> December, 2013 to the Chief Medical Officers in the districts to ask the willing and interested HMOs having Post Graduate Degree in Homeopathy to appear before him for a walk-in interview on 23<sup>rd</sup> December 2013.

4. The Petitioners participated in the walk-in interview and they were detailed to work, vide No. 844/HD/4E-212/2013 dated 24-12-2013 as Lecturers in different Government Homeopathic Medical Colleges and Hospitals for a period of one year or till the posts are filled up on regular basis, whichever is earlier. It was also stipulated that they will continue to draw their pay and allowances from their original place of posting and that no additional remuneration/allowances will be paid to them for the purpose. Subject to these terms, the Petitioners joined the State Homeopathic Medical Colleges and Hospitals as Lecturers and have been working there since 27-12-2013.

5. It is the contention of the Petitioners that they are eligible for regular appointment as Lecturer in terms of Section 21 of the West Bengal State Homeopathic Health Service (Amendment) Act, 2014 read with Section 4 of the West Bengal Homeopathic Education Service (Recruitment) Rules, 2015. They have made several representations to the respondents, but it has not yet been done. Being aggrieved, they have approached this Tribunal praying, inter alia, for a direction upon the Respondent Authorities to issue necessary order for their regular appointment as lecturers against the sanctioned vacant posts of Lecturers. The O.A.-1245 of 2016 was admitted for adjudication and on 20-12-2016 and an interim order was passed that till disposal of the original application, the Petitioners would continue to function as Lecturers in the respective Homeopathic Medical Colleges. A similar order was passed by this Tribunal in OA-7 of 2017 on 09-01-2017.

6. Subsequently, Contempt Applications, being CCP-51 of 2017 and CCP-52 of 2017, were filed by the Petitioners for purported violation of the interim order passed by the Tribunal on 20-12-2016 and on 09-01-2017. The

case of the Petitioners in the Contempt Application was that notwithstanding the interim orders passed by the Tribunal, an advertisement dated 1<sup>st</sup> June, 2017 was issued by the Secretary, West Bengal Health Recruitment Board whereby recruitment to the post of Lecturers in the West Bengal Homeopathic Education Service was sought to be initiated. This advertisement, it was argued, infringes on the interim orders passed on 20-12-2016 and on 09-01-2017, based on which the Petitioners are functioning as Lecturers. This was opposed by the Ld. Counsel of the Health & family Welfare Department on the ground that the Petitioners have no right to the posts of Lecturer. They were only detailed as Lecturer for a particular period which has been extended from time to time. Their prayers for regularisation as Lecturers are devoid of merit as they are Medical Officers in the West Bengal Homeopathic Health Service, whereas the posts of the Lecturer belong to a different service viz, the West Bengal Homeopathic Education Service.

7. On 28-06-2017, after hearing both the sides in MA-51 of 2017 arising out of OA-1245 of 2016, the Tribunal was of the view that since the matter is sub-judice, in the event the impugned advertisement is given effect to, the whole purpose of filing the Original Application would become infructuous. It was, therefore, directed that the impugned advertisement dated 1<sup>st</sup> June, 2017 issued by the Secretary, West Bengal Health Recruitment Board be kept in abeyance and not given effect to till disposal of the Original Application.

8. On 25-07-2017, an application for vacating the interim order dated 28-06-2017 in the erstwhile CCP No. 51 of 2017 (since changed its nomenclature and treated as a Miscellaneous Application, being M.A. No. 74 of 2017) was filed on behalf of the Health Department. It was submitted

on behalf of the Health Department that the entire selection process for appointment to the post of Lecturer has been stalled and the State is suffering much due to the stay order passed by the Tribunal which was obtained without placing the actual facts before it. Accordingly, it was urged that the interim order passed on 28-06-2017 be forthwith vacated. The application for vacating the interim order was strongly opposed by the petitioners. After hearing all the parties and considering the materials on record, the Tribunal at that stage of the proceedings decided to focus only on the issue of vacating the interim order passed on 28-06-2017. On 21-09-2017, Hon'ble Tribunal modified the interim order as follows:

*“The stay granted earlier on giving effect to the advertisement dated 1<sup>st</sup> June, 2017 issued by Secretary, West Bengal Health Recruitment Board, is vacated. However, the panel of candidates selected for the post of Lecturer based on the said advertisement cannot be finalised without obtaining prior leave of this Tribunal. It is also directed that the Applicants herein shall continue to function as Lecturers in their respective Homeopathic Medical Colleges till final disposal of the Original Application”.*

With the order dated 21-09-2017, the MA-74 of 2017 was disposed of.

9. We have perused the applications along with connected documents, the replies filed by the State Respondents and the rejoinders filed by the petitioners thereon.

10. By submitting the two original applications the petitioners have sought for direction upon the Respondents for issuance of necessary order for regular appointment of the Petitioners against sanctioned and vacant posts of lecturers in Homeopathic Medical Colleges and Hospitals in terms

of Section 21 of the West Bengal State Homeopathic Health Service (Amendment) Act 2014 read with Rule 4 of the West Bengal Homeopathic Education Service (Recruitment) Rule 2015 and to treat such appointment as regular appointment with continuity of service.

11. In the two Miscellaneous Applications (MA-49 of 2018 and MA-50 of 2018), the petitioners have challenged the advertisement no. R/Lec-H/38(1)/1/2017 issued by the Secretary & Controller of Examination of West Bengal Health Recruitment Board whereby a process for filling the posts of lecturers in the West Bengal Health Education Service was initiated. The petitioners have sought for a direction upon the respondent authorities to cancel/ withdraw the said advertisement.

12. We have heard at great length Mr. M. Basu, Mr. M Karim, Mr. A. Samad, and Mr. P. Das, Ld. Counsel appearing for the Applicants and Mr. G. P. Banerjee and Mr. S.N. Roy, Ld. Counsel appearing for the State Respondents.

13. Ld. Counsel on behalf of the petitioners submitted that in the year 2013 a selection process was initiated by the respondent authority for filling up posts of lecturers to meet the problem of shortage of lecturers in four State Homeopathic Medical Colleges and Hospitals and the petitioners being eligible to apply participated in the selection process. The petitioners' names appeared in the list of 37 successful candidates and they joined as lecturers in the four Homeopathic Medical Colleges and Hospitals and all of them are performing their duty as lecturers there since 27.12.2013. Ld. Counsel for the Petitioners argued that the posting of Homeopathic Medical Officers as lecturers was not a Transfer as the West Bengal State Homeopathic Health Service Act 2002 as amended in 2007 prohibits

transfer from West Bengal Homeopathic Health Service to West Bengal Homeopathic Education Service under Section 4 of the said Act. The postings of the Homeopathic Health Officers as lecturers come within the ambit of Change of Cadre under Section 21 of the West Bengal State Homeopathic Health Service Act, 2002 as amended in 2014, which empowers the State Government to make such change of cadre. He elaborated that this inclusion has retrospective effect. He further submitted that the Recruitment Rules for engagement of lecturers published on 06.10.2015 provides that the persons appointed to the posts of lecturers in terms of Section 21 of the West Bengal State Homeopathic Health Service Act prior to issuance of the Rules shall be deemed to have been appointed under the Rules. Ld. Counsel also submitted that the Department took shelter of Section 21 of the Act during the recruitment of 29 lecturers in the year 2004 and 21 lecturers in 2008 and the case of the petitioners being similar they should be given regular appointment in the posts of lectures in terms of section 21 of the Act.

14. Ld. Counsel for the State respondents primarily relied on their reply while making oral submissions. Ld. Counsel for the State respondents submitted that the fate of appointment of the petitioners in the West Bengal Homeopathic Health Service is yet to be decided by the competent Court of Law and the petitioners have suppressed these facts while submitting the present original applications for regularisation of their services. The petitioners who have not yet been confirmed in the West Bengal Homeopathic Health Service due to pendency of cases before the Hon'ble High Courts have no locus-standi to claim regularisation in the posts of Lecturer under the West Bengal Homeopathic Education Service. He further submitted that the petitioners were detailed as 'Lecturer' purely on

temporary basis for a stipulated period of time from their original posts of Homeopathic Medical Officers pursuant to the notification dated 09.12.2013. He submitted that the petitioners had complete knowledge of the said notification that they were detailed purely on a temporary basis and no claim can be entertained for appointment to the said posts of 'Lecturer' on a regular basis. Ld. Counsel further submitted that the petitioners attempted to get benefit of the provisions of Section 21 of the West Bengal State Homeopathic Service (Amendment) Act 2014, while Section 21 of the principal Act of 2002 has specially earmarked the Section as a 'transitory provision' which, in public interest, the State Government may exercise, but in the case of the petitioners their appointment/detailment was not made under Section 21 of the Act and thus the petitioners cannot seek relief under the said Section of the Act. Ld. Counsel also submitted that as the petitioners have miserably failed to substantiate their claim, the original applications are liable to be dismissed and the interim order is to be vacated.

15. We first examine whether the petitioners can be treated as 'Homeopathic Medical Officers' in the West Bengal Homeopathic Health Service as it is yet to be decided by the Hon'ble High Court whether the appointment of the petitioners in the posts of 'Homeopathic Medical Officers' through a selection process conducted by the Public Service Commission in the year 2001 was legal and valid. Some unsuccessful candidates have challenged the said selection process and the matter is still pending before the Hon'ble High Court, Calcutta for adjudication. Although the matter is sub-judice, it is not an issue in the present original applications. In the said case before the Hon'ble High Court, the State Government along with Public Service Commission have defended the case questioning appointment of the present petitioners in the original applications. In the



present proceedings before the Tribunal, we do not take these matters into consideration and we treat the petitioners as Homeopathic Medical Officers under the West Bengal Homeopathic Health Service. Their confirmation in the West Bengal Homeopathic Service is not a subject matter to be decided in the present proceedings.

16. On scrutiny of materials on records, it appears that the posts of Lecturers in Homeopathic Medical Colleges are meant to be filled up by the members of West Bengal Homeopathic Education Service as per amended provisions of the West Bengal State Homeopathic Health Services Act, 2002 and the Rules framed there under. The petitioners belonging to West Bengal Homeopathic Health Service were detailed to work as Lecturers in the Homeopathic Medical Colleges for a period of one year or till the posts are filled up on regular basis, whichever is earlier vide Order No. 844/HD/4E-212/2013 issued by the Directorate of Homoeopathy. Their detailment as Lecturers in the said Colleges was extended from time to time by the respondents and they are now continuing in the said posts on the strength of the interim order passed by this Tribunal on 20.12.1016 and the modified interim order dated 21.09.2017.

17. We now refer to the provisions of the relevant Act and Rules at the time of first detailment of the petitioners as Lectures in the Homeopathic Medical Colleges. The relevant Act and Rules are the West Bengal State Homeopathic Health Service Act, 2002 as amended in 2007 and the West Bengal Homeopathic Education Service (Recruitment) Rules, 2009. Section 4(2) of the Act provides that, "*No person appointed to the Homeopathic Health Service shall be transferred to the West Bengal Health Education Service*". Section 14(1) of the said Act provides that, "*Recruitment to all teaching posts in the West Bengal Homeopathic Education Service shall be*

*made through the Public Service Commission, West Bengal, in such manner as may be prescribed by the Central Council of Homeopathy in its regulations under the Homeopathy (Minimum Standards of Education) Regulations, 1983*". The West Bengal Homeopathic Education Service (Recruitment) Rules, 2009 prescribes the essential qualifications for the posts of lecturers and provides that the method of recruitment will be: *'by selection (direct recruitment) through Public Service Commission, West Bengal'*. In the case of the petitioners, they were appointed in the posts under the West Bengal Homeopathic Health Service on the basis of recommendation by the Public Service Commission following the standard process of recruitment, but their detailment in the posts of lecturers in the Homeopathic Medical Colleges under the West Bengal Homeopathic Education Service was not done on the basis of any normal and standard procedure of recommendation by Public Service Commission, West Bengal as provided in the Act and the Rules.

18. Exception to the provisions of recruitment under normal rules is provided under Section 21 of the Act, 2002 (as amended in 2009), which provides that: *"Notwithstanding anything contained elsewhere in this Act, if the State Government is of opinion that it is necessary so to do in the public interest, it may, by order .....make recruitment to any teaching post in the West Bengal Homeopathic Service in such manner and subject to such terms and conditions as contained in the Homeopathy (Minimum Standards of Education) Regulations, 1983, of the Central Council of Homeopathy"*. We now examine whether the petitioners were appointed following the provisions of Section 21 of the Act. The letters addressed to the Chief Medical Officers bearing No. 815/HD/4E-212/2013 Pt-I dated 9<sup>th</sup> December, 2013 issued by the Director of Homeopathy invited willing and

interested Homeopathic Medical Officers belonging to the West Bengal Homeopathic Health Service having Post Graduate Degree in Homeopathy for filling up vacant posts of lecturers in four Government Homeopathic Collages on purely temporary and detailment basis for a period of one year or till the posts are filled up on regular basis, whichever is earlier. They were asked to appear in a walk-in-interview on 23<sup>rd</sup> December 2013 before the Director of Homeopathy, West Bengal. Their detailment order bearing No.844/HD/4E-212/2013 dated 24<sup>th</sup> December, 2013 was issued on the next day and they were asked to join to the respective Homeopathic Colleges by 30<sup>th</sup> December, 2013. The order of detailment was not issued by the appointing authority or the Principal Secretary to the Government of West Bengal, Health and Family Welfare Department in the name of Governor of West Bengal, but it was issued by the Director of Homeopathy, West Bengal. It is mentioned in the said order that they will continue to draw their pay and allowances from the places of posting, where they were posted as Homeopathic Medical Officers before joining their assignment as Lecturers of the Colleges. This can never happen in case of a regular appointment. There is no indication in the order that their cases will be regularised under Section 21 of the Act. Accordingly, their detailment as lecturer in Homeopathic Medical Colleges cannot be considered as an appointment under Section 21 of the Act.

19. The main contention of the petitioners is that the Health and Family Welfare Department took shelter of Section 21 of the Act during recruitment of 29 lecturers from in service Homeopathic Medical Officers in the year 2004 and subsequently for recruitment of 21 outside Homeopathic Doctors as lecturers in spite of availability of Recruitment Rules 2004, published in 2006. We have examined the Circular bearing No.

HF/O/ISMH/526(24)/3H-121/03 dated 7<sup>th</sup> August 2003, issued by the Health and Family Welfare Department, West Bengal initiating the process for recruitment of 29 Lecturers. In the said Circular applications were invited from willing and interested Homeopathic Medical Officers of West Bengal Homeopathic Health Service for ad-hoc appointment in the posts of Lecturer in the West Bengal Homeopathic Education Service with the assurance that their appointments will be regularised in due course following appropriate Rules and Norms. It was mentioned in the Circular that the pay and allowances of the Lecturers will be drawn from the establishment of the respective colleges. They were appointed vide notification no. HF/O/ISMH/448/3H-121/03 dated 5<sup>th</sup> August 2004 as per provisions of Section 21 of the West Bengal State Homeopathic Health Service Act, 2002. The case of the petitioners is different from the appointments of lecturers in 2004. In case of the petitioners the selection was done by the Director of Homeopathy through walk-in interview and the results were published on the next day and the detailment order was issued by the Director of Homeopathy, while in case of appointments in a Group-A Service the order has to be necessarily issued by the Secretary of the Department of the Government in the name of the Governor. Further, the petitioners continued to draw their pay and allowances from their original places of posting indicating strong employer-employee relationship with their previous place of posting. Under these circumstances, we are unable to accept the contention that the petitioners are similarly circumstanced with the 29 lecturers appointed in Homeopathic Colleges in the year 2004 under Section 21 of the Act.

20. The West Bengal State Homeopathic Health Services Act 2002 was last amended in 2014 by the West Bengal Homeopathic Health Service

(Amendment) Act 2014. We have examined the changed provisions of Section 21 of the Act. The amended provisions of Section 21 of the Amendment Act 2014 provides that the Government “...*may make recruitment to any post of Lecturer in the West Bengal Homeopathic Education Service by inviting option by the Department of Health and Family Welfare, Government of West from the members of West Bengal Homeopathic Health Service having only qualifications as per Homeopathy Council (Minimum Standards Requirement of Homeopathic Colleges and Attached Hospitals) Regulations, 2013 who has rendered at least two years service in rural areas*”.

21. Ld. Counsel for the petitioners claimed that the Amendment of the Act in 2014 has strengthened their claim for regularisation of their services as lecturers in the Homeopathic Medical Colleges in the West Bengal Homeopathic Education Service. The posting of Homeopathic Medical Officers as Lecturers in Homeopathic Medical Colleges comes within the ambit of change of cadre with the inclusion of the transitory provision of amended Section 21 of the Act for engagement of lecturers. The petitioners claim that this inclusion has retrospective effect. On this issue, Ld. Counsel on behalf of the respondents submitted that inviting option is a subject of the executive domain of the Health and Family Welfare Department, Government of West Bengal and no such option was invited by the Department. On close analysis of the amendment, it appears that in the past the State Government had the authority to make recruitment to any teaching post in the West Bengal Health Education Service, while through the Amendment Act, 2014 it has been restricted to the posts of lecturers (not any teaching post) and it is no longer from the open market, it is now only by inviting option from the members of West Bengal

Homeopathic Health Service. The above contention made on behalf of the petitioners is not substantiated from the amended provision of Section 21 of the Act. We do not find any merit in the submission that the amended provisions of Section 21 of the Act is given retrospective effect by the Legislature.

22. The petitioners have drawn attention to the new provision added under Section 14 of the West Bengal State Homeopathic Health Service (Amendment) Act 2014 relating to recruitment to State Homeopathic Health Service, which states, “... *Provided also that any person appointed to the West Bengal Homeopathic Health Service shall, subject to such terms and conditions as may be prescribed, be eligible to apply for the post of Lecturer*”. On perusal of the above provision, we are of the view that this provision allows the members of the West Bengal Homeopathic Health Service to apply for the post of Lecturers when advertised and are subject to such terms and conditions as may be prescribed. The Rules have not prescribed the terms and conditions, but discretion is left to the State Government to prescribe the terms and conditions for recruitment to the post of Lecturer in West Bengal Health Education Service from the members of West Bengal Homeopathic Health Service. While this provision will enable the members of the West Bengal Homeopathic Health Service to apply for the posts in the West Bengal Homeopathic Education Service, but in order to be appointed as Lecturers, they have to undergo through a selection process. The petitioners cannot claim any relief under this provision unless the State Government prescribes the terms and conditions and initiates the selection process for recruitment of Lecturers by allowing the members of West Bengal Homeopathic Health Service to apply on fulfillment of the terms and conditions to be prescribed.

23. The West Bengal Homeopathic Education Service (Recruitment) Rules, 2015 states, “... *Notwithstanding anything contained in these rules, persons appointed to the posts in terms of Section 21 of the West Bengal State Homeopathic Health Service Act, 2002 (West Ben. Act X of 2002) prior to issuance of these rules shall be deemed to have been appointed under these rules*” (Rule 4). We have already examined and observed that the petitioners were not appointed under Section 21 of the Act and the petitioners, therefore, cannot be deemed to be appointed under the Act.

24. The petitioners submitted that their posting as Lecturers are guarded by the saving clause of the West Bengal State Homeopathic Health Service (Amendment) Act 2014, which states, “*Anything done or any action taken under the principal act as amended by this act before the publication of this Act in the Official Gazette shall be deemed to have validly done or taken under the Principal Act as amended by this Act*”. As has been observed earlier, we are of the view that the petitioners were not given regular appointment in the posts of the Lecturer in the Homeopathic Medical Colleges following any regular process of recruitment under the principal Act, and as such the question of protection of the right of the petitioners under the saving clause of the Amended Act does not arise.

25. We now examine whether the engagement of the Homeopathic Medical Officers belonging to the West Bengal Homeopathic Health Service in the posts of Lecturers of the Homeopathic Medical Colleges belonging to West Bengal Homeopathic Education Service can be considered as appointment, transfer, deputation, or detailment. The order of their engagement in the posts of Lecturers in Homeopathic Colleges indicates that they were detailed to work in the posts on a temporary basis.

This engagement cannot be termed as a transfer as the provisions of the West Bengal State Homeopathic Health Services Act, 2002 as amended in 2007 do not permit transfer of Homoeopathic Medical Officers from the West Bengal Homeopathic Health Service to West Bengal Homeopathic Education Service. In the instant case, the eligible Post-Graduate Homeopathic Medical Officers were asked through the Chief medical Officers in the districts vide letter dated 9<sup>th</sup> December 2013 to appear in walk-in interview on 23<sup>rd</sup> December 2013 and the results of selected candidates were published on 24<sup>th</sup> December 2013 (next day) and they were asked to join by 30<sup>th</sup> December 2013 (within a week). There was no issue of lien or resignation from their original posts in the West Bengal Homeopathic Health Service. Most importantly, they continued to draw their pay and allowances from their respective previous posts under the West Bengal Homeopathic Health Service. Not only the prescribed selection process provided in the recruitment rules was not followed, but the order of detailment was not issued by the Secretary of the concerned Department of Health and Family Welfare in the name of the Governor. In view of the above, their engagement cannot be considered as a case of regular appointment by any stretch of imagination. Nor can the order of detailment be termed as transfer on deputation in the absence of existence of order of lending authority and borrowing authority.

26. The main prayer of the petitioners in the original applications is for regularisation of their engagement in the posts of Lecturers in Homeopathic Medical Colleges by issuing regular appointment letters in their favour by the respondents. The position relating to regularisation of employees who have been employed on casual, temporary, or on contract basis has been well-settled by the order of the Hon`ble Supreme Court of



India in the case of “Secretary, State of Karnataka Vs. Uma Devi and Others” reported in (2006) 4 SCC 1. In that order, the Hon`ble Supreme Court held that the courts should not give a direction for regularisation of the services of daily rated/ temporary/ casual employees as they had not been recruited following the due procedure and recruitment rules. In that case, the Hon`ble Apex Court held that: *“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”*. The Hon`ble Supreme Court in that case also observed that, *“There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution”*.

The principle laid down by the Apex Court in “Uma Devi” (supra) is that an employee who has been engaged/detailed in a post without following the proper selection process as recognized by the relevant rules and procedures cannot claim to be regularised in that post.

27. In the case of “**Secretary, State of Karnataka Vs. Uma Devi and Others**” (supra), the Hon`ble Apex Court has quoted the decision of the Court in the case “**State of Haryana Vs. Piara Singh and Others**” reported in (1992) 3 SCR 826, which is also relevant in the instant case and is quoted below.

*"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee".*

On consideration of the order of detailment of the petitioners vide No. 844/HD/4E-212/2013 dated December 24, 2013 as Lecturers of Homoeopathic Medical Colleges, we find that the detailment was done till the date of filling up the posts on regular basis or for one year, whichever is earlier. Since the state respondents have already completed the process of recruitment to fill up the posts of Lecturers on regular basis, the order of detailment will automatically come to an end. Accordingly, we are of the view that this Tribunal should not interfere in the recruitment process initiated by the respondents for appointment to the posts of lecturers in the Homeopathic Medical Colleges on regular basis.

28. In the case of “**Secretary, State of Karnataka Vs. Uma Devi and Others**” (supra), the issue before the Hon`ble Apex Court was that of

regularisation of employees who were temporarily engaged on daily wage basis. The ratio of that case is equally applicable in respect of regularisation of all categories of employees and it is more so in case of appointments in Group-A posts as the nuances for appointment in Group-A posts are far more rigorous than those in the Group-D posts. In the instant case the engagement of the Homeopathic Medical Officers in the posts of lecturers in Homeopathic Collages indicates that the selection and engagement was not done following the procedure as recognized by the relevant rules and, therefore, the theory of legitimate expectation cannot be advanced for regularisation of the petitioners in the posts of Lecturers. In sum, both the original applications fails.

29. We, therefore, dismiss both OA-1245 of 2016 and OA-7 of 2017.

30. On the same grounds, we dismiss both MA-49 of 2018 arising out of OA-1245 and MA-50 of 2018 arising out of OA-7 of 2017 and the interim order stands vacated.

31. The urgent Xerox certified copy of the judgment and order may be supplied to the parties, if applied for, subject to compliance of necessary formalities.

32. Mr. Karim, Learned Counsel for the petitioners has prayed for stay of operation of the judgment and order passed today. Mr. Banerjee, Learned Counsel for the state respondents has opposed prayer of Mr. Karim. On consideration of the facts and circumstances of the present case, we cannot persuade ourselves to stay of operation of judgment and order as prayed on behalf of the petitioners. So, prayer for stay is refused.

( Dr. Subesh Kumar Das )  
MEMBER(A)

(Ranjit Kumar Bag )  
MEMBER (J).