

No. 6/28/2007-1GS1

From

The Chief Secretary to Government Haryana.

To

1. All the Heads of Departments, Commissioners Ambala, Hisar, Rohtak, and Gurgaon Divisions
2. The Registrar, Punjab and Haryana High Court, Chandigarh.
3. All Deputy Commissioners and Sub Divisional Officers (Civil) in Haryana.

Dated, Chandigarh, the 19th JUNE, 2007

Subject: - Judgements of the Hon'ble Apex Court regarding creation of posts, appointment to posts, regularization, fixing of pay scales, continuation in service, promotions etc.

Sir/Madam,

I am directed to address you on the subject noted above and to say that the Hon'ble Supreme Court of India in its Judgement titled as "Indian Drugs & Pharmaceuticals Ltd. Vs Workmen, Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC-408" has held inter alia that creation of posts, appointments to posts and regularization etc. are purely executive functions. Hence the courts cannot issue directions to create posts and to absorb employees. The gist of the judgement is as under:-

"The term "temporary employee" is a general category which has under its several sub-categories e.g. casual employee, daily-rated employee, adhoc employee etc. A daily rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post or to be continued in service, to get absorption, far less of being regularized and getting regular pay. No doubt, there can be occasions when the State or its instrumentalities employ persons on temporary or daily-wage basis in a contingency as additional hands without following the required procedure, but this does not confer any right on such persons to continue in service or get regular pay. Unless the appointments are made by following the rules, such appointees do not have any right to claim permanent absorption in the establishment. The Court can not direct continuation in service of a non-regular appointee. Even if an adhoc or casual appointment is made in some contingency the same should not be continued for long, as was done in the present case. A casual or temporary employment is not an appointment to a post in the real sense of the term. 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 appointment when he first took it up, is one that would enable the jettisoning of the procedure established by law for public employment

the age of superannuation (unless he is dismissed or removed after an enquiry, or his service is terminated due to some other valid reasons earlier). As regard a temporary employee, there is no age of superannuation because he has no right to the post at all. Hence, it follows that no direction can be passed in the case of any temporary employee that he should be continued till the age of superannuation.

Similarly, no direction can be given that a daily-wage employee should be paid salary equivalent to a regular employee. If an employee is not appointed against a sanctioned post he is not entitled to any scale of pay. This Court also observed that temporary, contractual, casual or daily wage adhoc employees appointed dehors the constitutional scheme to public employment have no legitimate expectation to be absorbed or, regularized or granted permanent continuation in service on the ground that they have continued for a long time in service. It was observed by this Court that non-grant of permanent continuation in service of such employees does not violate Article 21 of the Constitution and such employees do not have any enforceable legal right to the permanently absorbed, nor to be paid salary of regular employees. A regular process of recruitment or employment has to be restored to when regular vacancies and posts are to be filled up. This Court further observed that public employment must comply with Articles 14 and 16 of the Constitution as the rule equality in public employment is a basic feature of the Constitution.

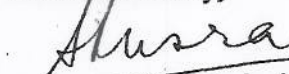
Regularization can not be a mode of appointment. A post must be created and/or sanctioned before filling it up. The employees, in question, had not been appointed by following the regular procedure, and instead they had been appointed only due to the pressure and agitation of the union and on compassionate grounds. There were not even vacancies on which they could be appointed. Such employees can not be regularized as **regularization is not a mode of recruitment.** If the Court/Tribunal directs that a daily-rated or adhoc or casual employee should be continued in service till the date of superannuation, it is impliedly regularization such an employee, which can not be done. Regularization can only be done in accordance with the rules and not dehors the rules. The rules of recruitment can not be relaxed and the court /tribunal cannot direct regularization of temporary appointee's dehors the rules, nor can it direct continuation of services of a temporary employee (whether called a casual, adhoc or daily-rated employee) or payment of regular salaries to them. Orders for creation of posts, appointment on these posts, regularization, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for judges to step in this sphere, except in a rare and exceptional case. The courts must exercise judicial restraint in this connection, and not encroach in to the executive or legislative domain. The tendency in some courts/tribunals to legislate to perform executive functions cannot be appreciated. Judicial activism in some

Creation and abolition of posts and regularization are purely executive functions. Hence, the court cannot create a post where none exists. Also the Supreme Court cannot issue directions to absorb the respondents or continue executive functions. The Supreme Court cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the Constitution, and the judiciary, too, must know its limits. ”

Similarly in another case titled “Principal, Mehar Chand Polytechnic and other V/s Anu Lamba and others (2006) 7 SCC 161” the Hon’ble Supreme Court has held that the Hon’ble High Court was not justified in issuing directions to create posts and regularization of service of the employees. Such functions are purely executive functions and courts have no jurisdiction to interfere in such executive functions.

These are undoubtedly important judgments and will enable all the departments to deal with/defend such like cases in the light of aforesaid judgments in order to curtail litigation. It is therefore, requested that these instructions should be brought to the notice of all concerned for their information and further action accordingly.

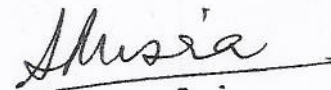
Yours faithfully,



(Sumita Misra) 19.6.07

Special Secretary General Administration,
for Chief Secretary to Government Haryana.

A copy is forwarded to all Financial Commissioners and Principal Secretaries/ all Commissioners and Secretaries to Government Haryana for information and necessary action.



Special Secretary General Administration,
for Chief Secretary to Government Haryana.

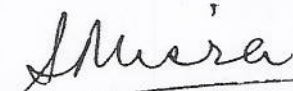
To

All Financial Commissioners and Principal Secretaries / Commissioners and Secretaries to Government Haryana.

U.O.No. 6/28/2007-1GSI

Dated Chandigarh, the 19th JUNE, 2007

A copy is forwarded to the Principal Secretary/Additional Principal Secretary-I-II/OSD-I-II/Senior Secretary/ Secretary /Private Secretary to Chief Minister/ Deputy Chief Minister/Ministers for information.



Special Secretary General Administration,
for Chief Secretary to Government Haryana.

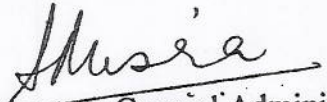
To

Endst.No.6/28/2007-1GSI

Dated, Chandigarh the 19th JUNE, 2007

A copy is forwarded to the following for information and necessary action:-

1. The Managing Directors/ Chief Executives/Member Secretaries of all Boards and Corporations in Haryana.
- 2.. The Registrars, Maharishi Dayanand University, Rohtak, Kurukshetra University Kurukshetra, Ch. Charan Singh Haryana Agriculture University, Hisar, Guru Jambheshwar University, Hisar and Ch. Devi Lal University, Sirsa, Bhagat Phool Singh Mahila Vishav Vidayala, Khanpur Kalan, Sonapat.
3. Principal, Divisional Training Centre, S.C.O. 11, Sector 16, Panchkula.


Special Secretary General Administration,
for Chief Secretary to Government Haryana.

Internal Distribution

- 1 PS/CS
 - 2 PA/SSGA
 - 3 Steno/DSGA.
-