

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CWP No. 16157 of 2015 (O&M)
Date of decision : 29.4.2016

...

Shilpa Jindal

.....Petitioner

vs.

Central Administrative Tribunal, Chandigarh Bench
Chandigarh and others

.....Respondents

2) CWP No. 6251 of 2016 (O&M)

...

Madhavi

.....Petitioner

vs.

Central Administrative Tribunal, Chandigarh Bench
Chandigarh and others

.....Respondents

Coram: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Amar Vivek, Advocate for the petitioner
(in CWP No.16157 of 2015).

Mr. Navdeep Chhabra, Advocate for the petitioner
(in CWP No. 6251 of 2016)

Mr. I.P.S. Doabia, Advocate
for respondent Nos. 3 to 5 (in CWP No.16157 of 2015)
for respondents No. 4 and 5 (in CWP No. 6251 of 2016)

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| 1. Whether Reporters of local papers may be allowed to see the judgment? |] |
| 2. To be referred to the Reporters or not? |] |
| 3. Whether the judgment should be reported in the Digest? |] |

P.B. Bajanthri, J.

In CWP No. 16157 of 2015, the petitioner has questioned

the validity of order dated 10.7.2015 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'Tribunal') in O.A.No. 060/00230/2014 and further prayed for direction to the respondents to regularise her services on the post of Associate Professor with effect from the date of her initial appointment with consequential benefits.

(2) The 5th respondent advertised the posts of Lecturers to fill up on contract basis. The petitioner was selected and appointed as Lecturer on contract basis on 30.7.2003. It was made clear to the petitioner that her appointment on contract basis was till regular recruitment from UPSC. Since no regular recruitment was made, consequently, petitioner's appointment was renewed from time to time.

(3) In the month of December 2008, the 5th respondent advertised to fill up the posts of Assistant Professor in Electronics and Electrical Communication Engineering on contract basis. The petitioner applied for that post and she was selected and appointed to the post of Assistant Professor on 16.1.2009. Thereafter, petitioner resigned from the post of Lecturer on 19.1.2009. When things stood thus, on 22.1.2010, the AICTE (Pay Scales, Service Conditions and Qualifications for the Teachers and Academic Staff in Technical Institutions (Degree) Regulations, 2010 (for short '2010 Regulations'), were notified, by which the existing cadre of Teachers in Engineering Colleges stood upgraded. The post of Assistant Professor was upgraded to that of Associate Professor. The incumbent

Assistant Professors who had completed 3 years of service as Assistant Professors were to be upgraded as Associate Professors with immediate effect. Those who have not completed three years of service, were placed in a special pay scale till completion of stipulated period of 3 years. The petitioner was also re-designated as Senior Assistant Professor and was held entitled for re-designation as Associate professor w.e.f. 19.1.2012, the date on which she would be completing 3 years of service.

(4) In the year 2012, Recruitment Rules, called Chandigarh College of Engineering and Technology, Chandigarh Administration, Professor, Associate Professor, Assistant Professor, Assistant Professor in Applied Sciences and Senior Librarian (Group 'A' Post) Recruitment Rules, 2012 (for short '2012 Rules'), were notified. Under these Rules, the posts mentioned above are to be filled up through UPSC.

(5) On 20.9.2013, amongst others, the posts of Associate Professor were notified to be filled up. The petitioner, feeling aggrieved by the said advertisement approached the Tribunal, questioning the validity of notification dated 20.9.2013, as also the 2012 Rules, 2010 Regulations and, further sought a direction to the respondents to regularise her services in the cadre of Associate Professor. The Tribunal vide the impugned order dated 10.7.2015 rejected the petitioner's OA being devoid of any merit. Aggrieved by the order of the Tribunal, the present petition has been filed.

(6) Her learned counsel contended that the petitioner is

entitled to regularisation/absorption in the post of Associate Professor for the reason that her initial appointment on contract basis was made in the absence of any Rules of Recruitment governing the post. The post was duly advertised, therefore, there was compliance of Articles 14 and 16 of the Constitution of India. In other words, due selection procedure was complied with and it is in conformity with the Constitutional Scheme, hence the denial of regularisation of her services is wholly unjustified. It was further contended that petitioner's appointment was not through backdoor entry nor she is ineligible to hold the post, and there is no legal impediment in the way of regularisation of her services. Thus the Tribunal has not appreciated the petitioner's case while rejecting petitioner's O.A.

(7) Learned counsel urged that the Rules of Recruitment/Regulations issued in the year 2010 and 2012 would be effective prospectively for future vacancies/posts only. Since the petitioner was appointed in the year 2003 and 2009 to the posts of lecturer and Assistant Professor, the same is regulated by the then executive order. She is thus entitled for regularisation prior to the issuance of Rules of Recruitment governing the post.

(8) It was further contended that the respondents have continued the petitioner on contract basis for 6 years as Lecturer and then 6 years in the post of Assistant Professor (Associate Professor). Having appointed against sanctioned posts of Lecturer and Assistant Professor denial of regularisation to her is not in accordance with the principles laid down by the Apex Court in the matter of regularisation

of employees.

(9) It was also contended that 2010 Regulations and 2012 Rules do not provide any provision for the incumbent employees who have been otherwise appointed in conformity with the Constitutional Scheme of equality and who are continuing in service for more than a decade. Therefore, both 2010 Regulations and 2012 Rules are deficient and bad in law. In support of the contentions, counsel for the petitioner relied on the following decisions:-

1. Dr. Gagan Inder Kaur and others vs. Union Territory of Chandigarh and others 1995 (6) Scale 581

2. Guneeta Chadha vs. Union of India 2001(1) RSJ 332

3. State of M.P. And others vs. Lalit Kumar Verma 2007 (1) SCC 575

4. Smt. Shashi Tejpal vs. State of Haryana and others 2008 (2) PLR 386

5. Sumangal Roy vs. Union of India and others 2008 (4) SLR 304,

6. Maninder Singh and others vs. Union of India and others 2009 (2) PLR 160

7. Nihal Singh and others vs. State of Punjab and others 2013 (14) SCC 65

8. Secy., Minor Irrigation Deptt. & ...vs. Narendra Kumar Tripathi Civil Appeal No. 3348 of 2015 decided on 7.4.2015

(10) Per contra, learned counsel for the respondents submitted that the petitioner was initially appointed on contract basis as a

Lecturer from 2003 to 2009. Thereafter, she was appointed as Assistant Professor on contract basis on 16.1.2009. She resigned from the post of Lecturer on 19.1.2009, before joining the post of Assistant Professor. The petitioner has not made out any case to quash the 2010 Regulations and 2012 Rules. So also, for regularisation of her service in the post of Assistant Professor (Associate Professor). It was submitted that petitioner was well aware of the fact that the post advertised for the post of Lecturer was on contract basis and it was for a period of 6 months or till regular recruitment by UPSC. Similar conditions were imposed at the time of appointment to the post of Assistant Professor also. Therefore, she was very much aware that her appointment on contract basis to the post of Lecturer, as well as, Assistant Professor, was adhoc appointment. The petitioner has no right to seek for regularisation to either of the posts. In support of the above contentions, learned counsel for the respondents relied on the following decisions :-

1. State of Andhra Pradesh and another vs. V.

Sadanandam and others AIR 1989 SUPREME

COURT 2060

2. Union of India and others vs. S.L. Dutta and another

AIR 1991 SUPREME COURT 363

3. State of Orissa and others vs. Sukanti Mohapatra

and others (1993) 2 Supreme Court Cases 486

4. Secretary, State of Karnataka and others vs.

Umadevi and others AIR 2006 SUPREME COURT

1806

5. Post Master General, Kolkata and others vs. Tutu

Das (Dutta) (2007) 5 Supreme Court Cases 317

6. M.P. State Coop. Bank Ltd., Bhopal vs. Nanuram

Yadav and others (2007) 8 Supreme Court Cases 264

7. State of Orissa and another vs. Mamata Mohanty JT

2011 (2) SC 164

- (11) Heard learned counsel for the parties.
- (12) The petitioner has questioned the validity of 2010 Regulations and 2012 Rules, as well as, the advertisement to the post of Associate Professor. In so far as challenge to the validity of Regulation and Rules is concerned, the petitioner has not pointed out in what way both the pieces of Subordinate Legislation are in violation of any Constitutional Provision like Articles 14, 16 and 309 so as to invoke the power of judicial review. Judicial review is permissible if the Rules/Regulation is unconstitutional, or is dehors the provisions of the Act or any other law. The petitioner has failed to point out that any of the above mentioned principles are attracted in this case. The sole contention of the petitioner is that both Regulations and Rules do not provide for regularisation to such of the employees who were appointed prior to commencement of Regulation and Rules on contract basis, which is certainly not a good ground to invalidate these provisions. The petitioner, while questioning the advertisement dated 20.9.2013 has also not pointed out any illegalities as the same was in conformity with the statutory Rules.

Consequently, question of striking down Regulation, Rules or the advertisement to the post of Associate Professor does not arise.

(13) The petitioner has prayed for alternative prayer, namely, to consider her for regularisation on the ground that as on the date of her appointment on contract basis to the post of Lecturer or Assistant Professor, Rules of recruitment were not framed. Having regard to the nature of appointment of the petitioner i.e. “contract appointment”, with condition that appointment would be till the regular recruitment through the UPSC, was made known to her while advertising the post, as well as, while issuing appointment order. Having accepted the nature of appointment, as well as, conditions imposed in the contractual appointment order, the petitioner cannot wriggle out of those binding terms and conditions and seek her regularisation on the basis of length of contractual service.

(14) For the purpose of seeking writ of mandamus, one has to establish the legal right. The petitioner does not have any legal right emanating from any statutory Rules/Regulation. In the absence of any provision for regularisation of contract employees, this Court has no power to give a direction to the respondents to consider the petitioner for regularisation either in the post of Lecturer or in the post of Assistant Professor (Associate Professor).

(15) The Supreme Court has authoritatively ruled that the Tribunal and Courts cannot give directions to the department/Government Institution or Organizations to regularise services of an employee. Such a direction and implementation of the

same would be violative of Articles 14 and 16 of the Constitution. When the petitioner was appointed on contract basis to the post of a Lecturer in the year 2003, the advertisement, as well as, appointment order made clear that selection and appointment was on contract basis. The contract appointment cannot be converted into regular appointment on the sole ground that the petitioner has continued for more than a decade. Had the respondents notified the selection and appointment to the post of Lecturer for 'regular recruitment', large scale candidates who were eligible and/or already working elsewhere on contract basis would be denied to compete for selection and appointment to the post of Lecturer/Assistant Professor. In other words, each and every eligible candidate must know the nature of public appointment. This Court cannot give direction to regularise petitioner's services by way of writ of mandamus, since the petitioner has not pointed out under which statutory rules she has got right to seek regularisation. Unless right is vested in a person, Court cannot issue writ of mandamus to the respondents. Mandamus can be issued against a public authority only on its failure to perform mandatory legal duty. If there is no such failure, mandamus would not be issued. The Supreme Court in the case of *Mani Subrat Jain vs. State of Haryana (1977) 1 SCC 486* held as follows :-

“9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially

enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something (See Halsbury's Laws of England 4th Ed. Vol. I, paragraph 122; [State of Haryana v. Subash Chander Marwaha & Ors.](#)(1)[Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors.](#) (2) and Ferris Extraordinary Legal Remedies paragraph 198.”

In the case of [Tirumala Tirupathi Devasthanams vs. K. Jotheeswara Pillai \(dead\) by LRs and others \(2007\) 9 Supreme Court Cases 461](#), it has been held that:-

"9. The principles, on which a writ of mandamus can be issued, are well settled and we will refer to only one decision rendered in [The Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. vs. Sipahi Singh](#) AIR 1977 SC 2149, where this Court observed as under: -

“A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge

the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limits of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance."

(16) None of the decisions cited on behalf of the petitioner would assist the petitioner's case for seeking regularisation of her services in the absence of statutory provision. Moreover, factual aspects of the cited decisions are entirely different and are not related to regularisation of contract appointees. The petitioner relied upon decision in *Dr. Gagan Inder Kaur's case (Supra)* which is of the year 1995. In the said case the adhoc appointment of the petitioners was held as regular. In *Guneeta Chadha's case (Supra)*, which is of the year 2001, this Court held that adhoc appointees are to be treated as having been regularly appointed. In *Lalit Kumar Verma's case (Supra)*, while referring to *Umadevi's case*, relief was refused to the employees. In *Smt. Shashi Tejpal's case (Supra)*, this Court in the year 2008, in the matter of grants-in-aid – regular appointment against un-aided post, held that regular appointment against un-aided

post to be treated against aided. In *Sumangal Roy's case (Supra)* decided in 2007 by this Court, adhoc appointment to the post of Lecturer, made in the year 2001 was directed to be treated as regular and to grant consequential benefits. Since that direction was not implemented, once again they approached the Court. In the said case, there is no reference to *Umadevi's case (Supra)*. In *Maninder Singh's case (Supra)*, decided by this Court in 2009, with reference to *Sumangal Roy's case (Supra)* and there is no reference to *Umadevi's case*. In *Nihal Singh's case (Supra)* decided in the year 2013, having regard to the factual aspects of the case, *Umadevi's case* was distinguished and direction was given to regularise the services by creating posts. In *Narendra Kumar Tripathi's case (Supra)* issue involved was of counting of adhoc service towards seniority.

(17) The respondent's counsel relied on *Sadanandam's case (Supra)* and *S.L. Dutta's case (Supra)*, both relate to policy matters pertaining to recruitment. In *Sukanti Mohapatra's case (Supra)*, the judgment pertains to inter se seniority between regular and irregular appointees, which is not relevant to the present case. The decision by Constitution Bench in *Umadevi's case (Supra)*, of the year 2006, is relevant to the present case.

(18) The decision in *Tutu Das (Dutta)'s case (Supra)*, relied upon by the respondent's counsel is relevant to the present case, wherein Supreme Court has referred to number of judgments including *Umadevi's case (Supra)*, to hold that regularisation of daily

wagers is not permissible. It is necessary to take note of paragraph 12 of the judgment, which reads as follows:-

“12. What was considered to be permissible at a given point of time keeping in view the decisions of this Court which had then been operating in the field, does no longer hold good. Indisputably the situation has completely changed in view of a large number of decisions rendered by this Court in last 15 years or so. It was felt that no appointment should be made contrary to the statutory provisions governing recruitment or the rules framed in that behalf under a statute or the proviso appended to [Article 309](#) of the Constitution of India.”

In *Nanuram Yadav's case (Supra)* though matter relates to adhoc appointment and regularisation, the facts of the case are entirely different. Therefore, it is not a relevant to the present case. The decision in *Mamata Mohanty's case (Supra)* of the year 2011, is also not relevant, since the matter pertains to grant of UGC pay scales with reference to lack of qualification etc.

(19) The Administration of the States has to be carried on through the agency of large number of persons employed in various services and posts under the States. The services under the State Governments consist of civil services. There is relationship of master and servant between the States and its servants but such relationship

is not left to be regulated as a mere contractual relationship in view of the provisions contained in part III of the Constitution (Fundamental rights) and part XIV (Articles 309 to 323). Their rights and obligations are all required to be determined by the provisions of statutes and statutory rules which may be framed or altered by the competent authority unilaterally and are not to be determined by consent of both the parties as in the case of contractual relationship. Matters relating to the services include the power to create or abolish the services or posts fixing the strength of a cadre, prescription of powers and duties attached to the post and every matter relating to services including matters relating to recruitment and conditions of service. It is competent for the legislature to provide for all matters relating to the services in exercise of its legislative power. Rules framed under [Article 309](#) have to be strictly confined to recruitment and conditions of services of persons mentioned therein. Under [Article 309](#) the power of legislature to regulate recruitment and conditions of service is wide and includes power to constitute a new cadre by merging certain existing cadres. Subject to the law made by legislature the rule has the same efficacy as that of legislative enactment. This legislative power carries with it the power to amend or alter the rules with retrospective effect. A rule made in exercise of the power under the proviso to [Article 309](#) constitutes law within the meaning of [Article 235](#). For the same reason such rule may be struck down only on such ground as may invalidate a legislative measure, e.g., violation of Articles 14 and 16 and not because the Court

considers it to be unreasonable.

(20) In *Umadevi's case (Supra)* it was held that adherence to the rule of equality in Public Employment is a basic feature of our Constitution. Court would certainly be disabled from passing an order upholding of Article 14 in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution of India. The Court further rejected the prayer that adhoc appointees working for long to be considered for regularisation as such a course only encourages the State to flout its own rules of recruitment and would confer undue benefits on some at the cost of many waiting to compete.

(21) The next word, which is of utmost important in deciding the issue in this case, is the meaning of the word 'regularisation'. The Constitution Bench in *Umadevi's case (Supra)* has approved the judgments in (1) *State of Mysore vs. S.V.Narayanappa 1967 (1) SCR 128* (2) *R.N.Nanjundappa vs. T. Thimmiah & another (1972) 1 SCC 409* and (3) *B.N.Nagarajan and others vs. State of Karnataka & others (1979) 3 SCR 937*, where this word has been explained. To understand the concept of regularisation, it is necessary to look into these decisions.

(22) In *R.N.Nanjundappa's case (Supra)*, the Hon'ble Supreme Court while considering the rules providing for methods of recruitment by promotion, selection or competitive examination has held as under :-

“26.regularisation cannot be said to be a form of appointment. Counsel on behalf of the respondent contended that regularisation would mean conferring the quality of permanence on the appointment whereas Counsel on behalf of the State contended that regularisation did not mean permanence but that it was a case of regularisation of the rules under [Article 309](#). Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularised. Ratification or regularisation is possible of an act, which is within the power and province of the authority, but there has been some non-compliance with procedure or manner, which does not go to the root of the appointment. regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.”

(23) In **B.N. Nagarajan's case (Supra)**, the meaning of the word 'regular' and 'regularisation' has been further explained:-

"Firstly, the words "regular" or

"regularisation" do not connote permanence.

They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to the methodology followed in making the appointments. They cannot be construed so as to convey an idea of the nature of tenure of the appointments. When rules framed under Article 309 of the Constitution of India are in force, no regularisation is permissible in exercise of the executive powers of the Government under Art. 162 thereof in contravention of the rules.....”

(24) A three judge Bench of the Apex Court in *A. Umarani Vs. Registrar of Co-operative Societies and others (2004) 7 SCC 112* dealing with regularisation has held as under:

"Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed thereunder. It is also now well settled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification

would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

40. It is equally well settled that those who come by back door should go through that door.

41. Regularisation furthermore cannot give permanence to an employee whose services are accused hoc in nature.

45. No regularisation is, thus, permissible in exercise of the statutory power conferred under [Article 162](#) of the Constitution if the appointment have been made in contravention of the statutory rules.”

(25) The Constitution Bench in *Umadevi's case (Supra)* dealing with regularisation has held as under:-

"17. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularise an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in

clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

18. XXX XXX XXX

19. One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court

ought not to impose a financial burden on the State by such directions, as such directions may turn counter- productive."

(26) Subsequently, the ratio of the Constitution Bench judgment has been followed as reiterated for declining the claim of regularisation of services made by adhoc/temporary/daily wage/casual employment in the cases (i) Indian Drugs and Pharmaceuticals Ltd. vs. Workmen (2007) 1 SCC 408; (ii) Gangadhar Pillai vs. Siemens Ltd. (2007) 1 SCC 533; (iii) Kendriya Vidyalaya Sangathan vs. L.V.Subramanyeshwara and another reported (2007) 5 SCC 326; and (iv) Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh and Others reported in (2007) 6 SCC 207.

(27) The doubts raised in UP State Electricity Board Vs. Pooran Chandra Pandey (2007) 11 SCC 92, on the applicability of Constitution Bench in Umadevi's case (Supra) in a case where regularisation is sought for in pursuance of Article 14 of the Constitution or the conflict with the judgment of the seven judges bench in Maneka Gandhi Vs. Union of India (1978) 1 SCC 248, has also been set at rest in the case of Official Liquidator vs. Dayanand and others (2008) 10 SCC 1.

(28) From the above discussion, it is clear that the law regarding regularisation is now well settled by the decision of the Constitution Bench of the Apex Court in Umadevi's case (Supra). The said judgment holds the field and is binding.

(29) What could be deduced from the cited decision is as

under:-

- (i) Any public employment has to be in terms of the Constitutional scheme.
- (ii) Adherence to the rule of equality in public employment is a basic feature of our Constitution.
- (iii) Regular appointment must be the rule.
- (iv) A regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up.
- (v) The appointment should be in terms of relevant rules and after a proper competition among the qualified persons. Otherwise, such appointment would not confer any right on the appointee.
- (vi) If a contractual appointment is made, the appointment comes to an end at the end of the contract. The Government or the instrumentality of the State cannot confer any permanency of such employment either by way of regularisation or by way of absorption.
- (vii) If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.

(viii) A temporary employee could not claim to be made permanent on the expiry of his term of appointment.

(ix) Merely because a temporary employee or a casual wage worker is continued for a time being beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength on such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

(x) Regularisation is not a mode of appointment.

(xi) The Government or the instrumentality of the State cannot regularise the appointment made contrary to the course of selection as envisaged by the relevant rules governing the posts.

(xii) The High Court acting under [Article 226](#) of the Constitution of India should not issue directions for regularisation or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.

(xiii) There should be no further by-passing of the constitutional requirement and regularisation

or making permanent those not duly appointed
as per the constitutional scheme.

(30) The Constitutional principle is thus for providing equality of opportunity to all which mandatorily requires that each vacancy must be notified in advance, meaning thereby that information of the recruitment must be disseminated in a reasonable manner in public domain ensuring maximum participation of all eligible candidates, thereby the right of equal opportunity and merit is effectuated.

(31) The petitioner though contended that she has been appointed on contract basis with due procedure, like advertisement and selection and in accordance with the Constitutional Scheme, but the nature of appointment is only for contract and it is for a limited period, that too with the condition that such appointment would be till regular recruitment is made through UPSC. Therefore, contention of the petitioner that due procedure has been followed while appointing her as a Lecturer/Assistant Professor, is distinguishable for the purpose of regularisation. In Umadevi's case (Supra), the Supreme Court has made clear that “we also clarify that regularisation, if any already made, but not subjudice, need not be reopened based on this judgment, **but there should be no further by-passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”**

(32) In Umadevi's case (Supra) there is an exception. General

principles against regularisation like the employees who have worked for 10 years or more against a sanctioned post without the benefit or protection of the interim order of any Court or Tribunal. Thus the employee should have been continued in service voluntarily and without break of more than 10 years and appointment of such employee should not be illegal even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments would be considered to be illegal. However, the employee while possessing the prescribed qualification and was working against sanctioned post but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular. *Umadevi's case (Supra)* casts a duty upon the concerned Government or instrumentality to take necessary steps to regularise the services of those irregularly appointed employees who had served for more than 10 years without the benefit or protection of any interim orders of Courts or Tribunals as a one-time measure. The said direction was to be set in motion within 6 months from the date of its decision i.e. w.e.f. 10.4.2006. The true effect of the direction is that all employees who have worked for more than 10 years as on 10.4.2006, the date of decision in *Umadevi's case (Supra)* are entitled to be considered for regularisation, if otherwise they are eligible. Unfortunately, petitioner's case does not fall within the principle laid down by the Supreme Court in the case of *Umadevi's case (Supra)*. The

conditions stipulated for regularisation would be prior to the date of disposal of Umadevi's case (Supra) i.e. 10.4.2006. Consequently, it has no prospective application.

(33) The equality clause enshrined in Article 16 requires that every appointment be made by an open advertisement as to enable all eligible persons to compete on merit. However, appointment of the petitioner on contract basis, it is crystal clear, was only for a limited period for 6 months, even though it was extended from time to time, one of the condition is that appointment is till the regular recruitment is made through UPSC. It is to be understood that a contractual appointment comes to an end at the end of the contract. It is also a term of the contract as well as the law regulating recruitment of persons on contract basis. Therefore, when such persons are to be recruited into service on permanent basis the law must again be followed i.e. all persons who are eligible be considered for appointment on permanent posts in accordance with the rules of recruitment and all of them should be given an opportunity by inviting applications indicating that selection and appointment to permanent/regular post/vacancy. That is the mandatory Policy of Articles 14 and 16 of the Constitution. If the regularisation of the petitioner is made, it is per se illegal and discriminatory as those eligible candidates, who had the requisite merit are denied the right to compete for the subject post. There is no intelligible differentia to treat the petitioner as a class by itself, so as to exclude other eligible candidates who possess requisite qualification and other eligibility

criteria from being considered as Lecturer/Assistant Professor.

(34) One of the petitioner's contention is that she has rendered service more than a decade on contract basis when she is over age for the recruitment. In such eventuality, at the most the petitioner can seek for relaxation of age as approved by the Supreme Court in Umadevi's case (Supra).

(35) In view of the principles laid down by the Constitution Bench of the Supreme Court in Umadevi's case (Supra) and other subsequent judgments, the petitioner is held not entitled to seek for regularisation of her service either to the post of Lecturer or as Assistant Professor. Accordingly, we decline to interfere with so far as denial of regularisation of the petitioner's services on the post of Lecturer/Assistant Professor is concerned. We also uphold the AICTE (Pay Scales, Service Conditions and Qualifications for the Teachers and Academic Staff in Technical Institutions (Degree) Regulations, 2010; Chandigarh College of Engineering and Technology, Chandigarh Administration, Professor, Associate Professor, Assistant Professor, Assistant Professor in Applied Sciences and Senior Librarian (Group 'A' Post) Recruitment Rules, 2012 and advertisement dated 20.9.2013.

(36) In view of the above, CWP No. 16157 of 2015 is dismissed.

(37) In CWP No. 6251 of 2016 titled as Madhavi vs. Central Administrative Tribunal, Chandigarh Bench and others, the petitioner has questioned the validity of order dated 17.3.2016 (Annexure P-1)

passed by the Tribunal in OA No. 060/00270/2015. Whereas her claim for regularisation has been rejected on 10.2.2015 by the respondents, which was also subject matter before the Tribunal in above mentioned OA. The petitioner was appointed in the month of May 2006 on contract basis as faculty members for six months by the respondents and it is learnt that it was renewed from time to time. Since the Tribunal rejected petitioner's claim with reference to CWP No. 16157 of 2015 Shilpa Jindal vs. Central Administrative Tribunal etc., and CWP No. 23457 of 2015 Parul Aggarwal and others vs. Central Administrative Tribunal and others, the question of regularisation has been answered above and accordingly, CWP No. 6251 of 2016 is also dismissed. In this petition, counsel for the respondents relied on the judgment Dayanand's case (Supra). The same has been taken note of supra.

(38) No order as to costs.

(**Surya Kant**)
Judge

(**P.B. Bajanthri**)
Judge

April 29, 2016.
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