

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.09.2017

Date of Verdict : 13-10-2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.29545 to 29556 and
33324 of 2012 &
M.P.Nos. 2 and 3 of 2012

Dr.Arockia Doss	..Petitioner	W.P.No.29545	of 2012
Dr.P.Kannadhasan	..Petitioner	W.P.No.29546	of 2012
Dr.S. Velmurugan	..Petitioner	W.P.No.29547	of 2012
D.Senthilkumar	..Petitioner	W.P.No.29548	of 2012
V.Alagamuthu	..Petitioner	W.P.No.29549	of 2012
Dr.M. Nagarajan	..Petitioner	W.P.No.29550	of 2012
Dr.M. Tamilvanan	..Petitioner	W.P.No.29551	of 2012
Dr.M. Susila	..Petitioner	W.P.No.29552	of 2012
K.Sankar	..Petitioner	W.P.No.29553	of 2012
R.Jayanthi	..Petitioner	W.P.No.29554	of 2012
A.Murugesan	..Petitioner	W.P.No.29555	of 2012
S.Geetha	..Petitioner	W.P.No.29556	of 2012
Dr.V.Mariyappan	..Petitioner	W.P.No.33324	of 2012

versus

1. The Union of India,
rep. by its Joint Secretary (Languages),
Department of Higher Education,
Ministry of Human Resource Development,
Govt.of India, Sastri Bhawan, 'C' Wing,
New Delhi-110 115.

2. The Director (Languages),
Department of Higher Education,
Ministry of Human Resource Development,
Govt.of India, Sastri Bhawan, 'C' Wing,
New Delhi-110 115.

3. The Director,
Central Institute of Classical Tamil,
No.40 IRT Campus, 100 Feet Road,
Taramani, Chennai-600 113.

4. The Registrar,
Central Institute of Classical Tamil,
No.40 IRT Campus, 100 Feet Road,
Taramani, Chennai-600 113.

..Respondents in all petitions

Prayer: This Writ Petition is are filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the advertisements, viz., i) Employment Notice No.1/Academic/2012 and ii) Employment Notice No.2/Non-Academic/2012 both dated 12.10.2012 for various posts, published in The Hindu issue dated 17.10.2012 by the 3rd respondent herein, quash the same and consequently, direct the respondent Institute to regularize the services of the petitioner as a Senior Resource Person and as a programmer, Junior Resource person, Lower Division Clerk, and dated inputer, respectively in the 3rd respondent Institute with effect from the date of his initial appointment.

For petitioners:Mr.N.G.R.Prasad for
M/s.Row and Reddy

For respondents:Mr.SU.Srinivasan,
Addl.Soliciter General for R1&R2
Mr.Karthik for R3
Mr.T.M.Pappiah, Spl.G.P. for R4

COMMON ORDER

All the writ petitioners, in the present Writ Petitions, espoused a common grievance as against the respondents for not regularizing their services in their respective cadres.

2. Since the issues and the grounds raised in all the Writ Petitions are one and the same, these writ petitions are taken up together and being disposed of by this common order.

3. Except the dates of appointments and cadres, all other things being common, the facts of each writ petitions need not be traversed separately. For the sake of convenience, the brief facts in W.P.No.29545 of 2012 are narrated hereunder.

4. The Government of India, in order to recognize Tamil as a classical language and for the purpose of a comprehensive understanding of its history and culture, had decided to establish a Central Institute of Classical Tamil. For the said purpose, a Committee was constituted with eminent scholars by the first respondent/Ministry of Human Resources Development. The said Committee had submitted a detailed proposal for establishing a Central Institute of Classical Tamil at Chennai. Initially, the work towards establishing the Central Institute of Classical Tamil was entrusted to the Central Institute of Indian Languages, Mysore under the first respondent/Ministry of Human Resources Development in 2005. The Institute started its work towards development of Tamil language in 2006 with skeleton staff, like Programmers, Web Designers and Administrative staff, etc. However, in order to give impetus from overall functioning of the Institute, a Notification was issued on 23.5.2007, calling for applications for filling up various posts both on

academic and non-academic side like Junior Resource persons, Proof Reader, Document Assistant, Data input, etc. Several vacancies in each of the cadres were sought to be filled up. The Notification prescribed the qualifications for both academic and non-academic sides and a communal roster was also mentioned to be followed while making appointments. According to the writ petitioners, they were all subjected to rigorous selection process, verifying their individual credentials and their academic qualifications. After being thoroughly interviewed in September 2007, by a Selection Committee which consisted of eminent Scholars from various departments, after subjecting the writ petitioners to the rigorous selection, they were appointed in various posts, viz., Senior Resource Person, Junior Resource Person, Programmer, Data Entry Operator, etc. The petitioners have been appointed after selection on various dates and ever since their appointment, they have been continued in their respective positions till date without any interruption or break. These facts have not been disputed or controverted.

5. While the Writ Petitioners continued as such in their respective positions and were paid with on consolidated basis, were denied regular employment with regular time scale of pay although their services continued without any interruption. It was relevant to mention that at the time when the petitioners came to be appointed in their respective positions, there were no recruitment Rules in place. However, in order to make the Institute function effectively to achieve the purpose and goal for which it was founded, the recruitment was made and the petitioners were appointed in public interest.

6. According to the petitioners, they were originally 65 persons in total who were recruited in various posts on different dates from 2007 onwards. Subsequently, in 2008, the Central Institute of Classical Tamil was shifted to Chennai and all the staff who were originally recruited when the Institute was part of Central Institute of Indian Languages, Mysore, had also been transferred to Chennai region.

7. While matters stood thus, by an Advertisement dated 17.10.2012 published in The Hindu (English edition), applications were called for appointment to various posts, such as Professor, Reader, Lecturer, Junior Research Officer on academic side and Web Designer, Personal Secretary, Assistant Librarian, Steno Grade II, UDC and LDC on non-academic side from open market, by which, according to the petitioners, the 3rd respondent Institute was attempting to do away the services of the petitioners by replacing them with the candidates from the open market. In the said circumstances, all the employees of the Institute through their Association had submitted representations on 12.10.2012 to the respondents requesting for regularization of their services, as they had been regularly working without any break for several years and all of them are qualified for regular appointment in their respective cadres.

They had also requested the respondents that their displacing after extracting regular work from them despite their eligibility, would cause them severe prejudice and hardship and such displacement also would be against public interest since the petitioners have gained enormous experience by serving in the Institute in their respective area of expertise and position. Since there was no response to the representations and the 3rd respondent was going ahead with the recruitment from the open source, the petitioners herein have approached this Court in the present Writ Petitions, seeking for issuance of Writ of Certiorarified Mandamus, challenging the employment Notification dated 17.10.2012, etc., and for a consequential direction to regularize their services in their respective cadres.

8. While admitting the Writ Petitions vide order dated 31.10.2012, this Court has passed interim order of stay of further recruitment until final consideration of the Writ Petitions. By virtue of the interim order passed by this Court, the petitioners have been continued in their respective positions and no further recruitment has taken place in the 3rd respondent Institute.

9. Upon notice, Mr.SU.Srinivasan, learned Additional Solicitor General entered appearance for respondents 1 and 2, Mr.Karthik, learned counsel for respondent 3 and Mr.T.M.Pappiah, learned Special Government Pleader for R4.

10. On behalf of the respondents 3 and 4, namely, Central Institute of Classical Tamil, a detailed counter affidavit has been filed.

11. Shri N.G.R.Prasad, learned counsel appearing for the petitioners would submit that by virtue of uninterrupted services rendered by the petitioners in their respective cadres and also by virtue of the fact that at the time of their initial recruitment, all the petitioners were subjected to rigorous selection and thereafter appointed to various posts and continued as such, their services cannot be dispensed with midstream, particularly, when the Institute had followed due procedure while appointing the writ petitioners. Admittedly, even by the Notification, which was issued prior to the recruitment, proper selection method was adopted and communal roster was also followed. In such event, for all practical purposes, their appointment has been regular and continuous and therefore, the attempt by the respondents 3 and 4 to displace these petitioners by recruiting the persons from the open source after extracting the work from the petitioners for several years, is per se unreasonable, unjust, illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. According to the learned counsel, the petitioners who were appointed on academic side were highly qualified, holding Doctorate in the filed of Research and

therefore, there was no justification to bring in any outsider at this distant point of time to replace the writ petitioners.

12. At this, the learned counsel appearing for the respondents 3 and 4 would vehemently oppose grant of any relief to the petitioners, contending that at the time when the writ petitioners were recruited, there was no sanction of posts and no recruitment Rules were framed and therefore, the appointment of the writ petitioners was without authority of law. Since the writ petitioners have gained their employment without being subjected to any due selection in terms of recruitment Rules, they cannot seek any relief of regularization, as such, relief if granted, is against law declared by the Hon'ble Supreme Court of India.

13. Shri Karthik Rajan, learned counsel appearing for the respondents 3 and 4 would submit that sanction of posts in the 3rd respondent Institute was granted only in the year 2010 and subsequently in 2011-12, Recruitment Rules was approved by the Central Government and thereafter, process of regular appointment has been initiated from 2012 onwards. According to the learned counsel, there is no post sanctioned with nomenclature of Senior or Junior Resource Person on the academic side and also on the non-academic side, some of the posts, for which, the writ petitioners were recruited do not come within the sanctioned strength and the nomenclature prescribed by the Government of India. In the said circumstances, continuation of the writ petitioners cannot be countenanced both on facts and in law since that would be in contravention of recruitment Rules. According to the learned counsel appearing for the respondents 3 and 4, continuity of employment of the writ petitioners is nothing but a litigious employment since they have obtained interim orders from this Court and have been continued in service from 2012 till date. Such period of continuous from 2012 till date, cannot be construed to be one as continuity of employment from the date of their initial appointment for the purpose of staking any claim towards regularization of their services in terms of certain observations made by the Hon'ble Supreme Court of India in the matter of "Secretary, State of Karnataka & others versus Umadevi and others" reported in (2006) 4 SCC 1.

14. The learned counsel would rely upon the following decisions of the Hon'ble Supreme Court of India, in support of his contentions and to resist the grant of any relief to the petitioners herein.

a) "(2006) 4 SCC 1 (Secretary, State of Karnataka and others versus Umadevi and others)". In this landmark judgment, the Constitution Bench has held that however long employment may continue whether on temporary, contractual, casual, daily-wage or ad hoc basis, if the appointment is outside the constitutional scheme of public employment, cannot be

regularized merely on the basis of continuous for a long period. According to the Hon'ble Supreme Court, even if any such regularization is granted, that would defeat social justice, equal opportunity for all and the constitutional scheme of public employment.

b) "(2006) 5 SCC 493 (National Fertilizers Ltd. and others versus Somvir Singh)" wherein, the Hon'ble Supreme Court has held that appointments made in transgression of recruitment rules, cannot be valid and the question of regularization does not arise in such cases.

c) "(2007) 9 SCC 337 (Punjab State Warehousing Corpn., Chandigarh versus Manmohan Singh and another)", wherein, the Hon'ble Supreme Court has held that a person who was illegally appointed, cannot stake claim for regular appointment thereafter as that would be against law laid down by the Hon'ble Supreme Court in 'Umade Devi' case as cited supra.

d) "2008 (10) SCC 1 (Official Liquidator versus Dayanand and others)", wherein, the Hon'ble Supreme Court has held that after the law laid down in 'Umade Devi' case, any appointment made contrary to the recruitment rules, cannot be regularized as that would encourage back door entry in public employment.

e) "(2009) 13 SCC 90 (Harminder Kaur and others versus Union of India and others)". In this case also, the Hon'ble Supreme Court relied upon the law laid down in Uma Devi case and refused to grant relief of regularization.

f) "(2014) 5 SCC 300 (Nand Kumar versus State of Bihar and others)", wherein, the Hon'ble Supreme Court has held that the persons who were not appointed through a proper procedure and consequences of their appointment being temporary which was within their knowledge, they cannot have a right to invoke the theory of legitimate expectation for being confirmed in the posts. The Supreme Court has refused to grant regularization as there were no Rules or Regulations governing the appointment of casual employees therein.

g) "(1992) 4 SCC 99 (Delhi Development Horticulture Employees Union versus Delhi Administration & others)". In this case, the workers were employed under the scheme "Jawahar Rozgar Yojna" by the District Rural Development Agency (DRDA), a registered autonomous society. The Hon'ble Supreme court has held that the workers have no right to claim regularization of their service because of completion of 240 or more days of work and that indiscriminate regularization jeopardizes public interest.

14. Mr.Karthik Rajan, learned counsel appearing for the respondents 3 and 4, therefore, would vehemently argue that the petitioners having gained their employment when the recruitment

Rules were not in place and without sanction of regular posts, they cannot claim for any regularization as their appointment itself was illegal. Such appointment cannot give rise to regularization of their services as that would defeat the constitutional scheme of public employment as held by the Hon'ble Supreme Court of India in Uma Devi case cited supra.

15. According to the learned counsel, the writ petitioners have acquired their respective positions through back door and such back door appointments, cannot be heard to complain about non-regularization of their services. According to him, by virtue of the interim orders granted by this Court and by virtue of the fact that they continued in service under legal compulsions, the interest of the Institute has been drastically affected and the purpose for which the Institute was founded for promoting Tamil language, is grossly defeated. In the said circumstances, he would pray for dismissal of the Writ Petitions as devoid of merit and substance.

16. Per contra, Mr.N.G.R.Prasad, learned counsel appearing for the petitioners would strongly place reliance on the judgment of the Hon'ble Supreme Court reported in "2013(5) LLN 109 (SC) = 2013 (14) SCC 65 (Nihal Singh versus State of Punjab)". He would draw the attention of this Court particularly to paragraphs 19 to 36, which are extracted hereunder:

"19. Coming to the judgment of the division bench of the High Court of Punjab & Haryana in LPA No.209 of 1992 where the claims for regularization of the similarly situated persons were rejected on the ground that no regular cadre or sanctioned posts are available for regularization of their services, the High Court may be factually right in recording that there is no regularly constituted cadre and sanctioned posts against which recruitments of persons like the appellants herein were made. However, that does not conclusively decide the issue on hand. The creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only demonstrates the arbitrary nature of the exercise of the power available under section 17 of the Act. The appointments made have never been terminated thereby enabling various banks to utilize the services of employees of the State for a long period on nominal wages and without making available any other service benefits which are available to the other employees of the State, who are discharging functions similar to the functions that are being discharged by the appellants.

" 20. No doubt that the powers under [section 17](#) are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts.

" 21. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.

"22. The question is whether this court can compel the State of Punjab to create posts and absorb the appellants into the services of the State on a permanent basis consistent with the Constitution Bench decision of this court in Umadevi's case. To answer this question, the ratio decidendi of the Umadevi's case is required to be examined. In that case, this Court was considering the legality of the action of the State in resorting to irregular appointments without reference to the duty to comply with the proper appointment procedure contemplated by the Constitution.

"4. ...The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and

in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over." (emphasis supplied)

23. It can be seen from the above that the entire issue pivoted around the fact that the State initially made appointments without following any rational procedure envisaged under the Scheme of the Constitution in the matters of public appointments. This court while recognising the authority of the State to make temporary appointments engaging workers on daily wages declared that the regularization of the employment of such persons which was made without following the procedure conforming to the requirement of the Scheme of the Constitution in the matter of public appointments cannot become an alternate mode of recruitment to public appointment. It was further declared that the jurisdiction of the Constitutional Courts under Article 226 or Article 32 cannot be exercised to compel the State or to enable the State to perpetuate an illegality. This court held that compelling the State to absorb persons who were employed by the State as casual workers or daily-wage workers for a long period on the ground that such a practice would be an arbitrary practice and violative of Article 14 and would itself offend another aspect of Article 14 i.e. the State chose initially to appoint such persons without any rational procedure recognized by law thereby depriving vast number of other eligible candidates who were similarly situated to compete for such employment.

24. Even going by the principles laid down in Umadevi's case, we are of the opinion that the State of Punjab cannot be heard to say that the appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.

25. In our opinion, the initial appointment of the appellants can never be categorized as an irregular appointment. The initial appointment of the appellants is made in accordance with the statutory procedure contemplated under the Act. The decision to resort to such a procedure was taken at the highest level of the State by conscious choice as already noticed by us. The High Court in its decision in LPA No.209 of 1992 recorded that the decision to resort to the procedure under section 17 of the Act was taken in a meeting dated 24.3.1984 between the Advisor to the Government of Punjab and senior officers of the various Banks in the public sector. Such a decision was taken as there was a need to provide necessary security to the public sector banks. As the State was not in a position to provide requisite police guards to the banks, it was decided by the State to resort to section 17 of the Act. As the employment of such additional force would create a further financial burden on the State, various public sector banks undertook to take over the financial burden arising out of such employment. In this regard, the written statement filed before the High Court in the instant case by respondent nos.1 to 3 through the Assistant Inspector General of Police (Welfare & Litigation) is necessary to be noticed. It is stated in the said affidavit:-

"2. That in meeting of higher officers held on 27.3.1984 in Governor House Chandigarh with Shri Surinder Nath, IPS, Advisor to Governor of Punjab, in which following decisions were taken:-

i) That it will not be possible to provide police guard to banks unless the Banks were willing to pay for the same and additional force could be arranged on that basis, it was decided that police guards should be requisitioned by the Banks for their biggest branches located at the Distt. and Sub Divisional towns. They should place the requisition with the Distt. SSPs endorsing a copy of IG CID. In the requisition, they should clearly state that the costs of guard would be met by them. It will then be for the police department to get additional force sanctioned. This task should be done on a top priority. In the meantime depending upon the urgency of the need of any particular branch, police Deptt. may provide from police strength for its protection.

ii) For all other branches guards will be provided by Distt. SSP after selecting suitable ex-servicemen or other able bodied persons who will be appointed as Special Police Officer in terms of Section 17 of the Police Act. Preference may be given to persons who may already be in possession of licence weapons. All persons appointed as SPO for this purpose will be given a brief training for about 7 days in the Police Lines in the handling of weapons taking suitable position for protection of branches. These SPOs will work under the discipline and control and as per Police Act, they will have the same powers, privileges and protection and shall be amenable to same penalty as an ordinary police personnel."

26. It can be seen from the above that a selection process was designed under which the District Senior Superintendent of Police is required to choose suitable ex-servicemen or other able bodied persons for being appointed as Special Police Officers in terms of section 17 of the Act. It is indicated that the persons who are already in possession of a licensed weapon are to be given priority.

27. It is also asserted by the appellants that pursuant to the requisition by the police department options were called upon from ex- servicemen who were willing to be enrolled as Special Police Officer (SPOs) under section 17 of the Police Act, 1861.[3]

28. Such a procedure making recruitments through the employment exchanges was held to be consistent with the requirement of Articles 14 and 16 of the Constitution by this Court in Union of India and Ors. v. N. Hargopal and Ors. (1987) 3 SCC 308.[4]

29. The above mentioned process clearly indicates it is not a case where persons like the appellants were arbitrarily chosen to the exclusion of other eligible candidates. It required all able bodied persons to be considered by the SSP who was charged with the responsibility of selecting suitable candidates.

30. Such a process of selection is sanctioned by law under section 17 of the Act. Viewed in the context of the situation prevailing at that point of time in the State of Punjab, such a process cannot be said to be irrational. The need was to obtain the

services of persons who had some experience and training in handling an extraordinary situation of dealing with armed miscreants.

31. It can also be noticed from the written statement of the Assistant Inspector General of Police (Welfare & Litigation) that preference was given to persons who are in possession of licensed weapons. The recruitment of the appellants and other similarly situated persons was made in the background of terrorism prevailing in the State of Punjab at that time as acknowledged in the order dated 23.4.2002 of the SSP. The procedure which is followed during the normal times of making recruitment by inviting applications and scrutinising the same to identify the suitable candidates would itself take considerable time. Even after such a selection the selected candidates are required to be provided with necessary arms and also be trained in the use of such arms. All this process is certainly time consuming. The requirement of the State was to take swift action in an extra-ordinary situation.

32. Therefore, we are of the opinion that the process of selection adopted in identifying the appellants herein cannot be said to be unreasonable or arbitrary in the sense that it was devised to eliminate other eligible candidates. It may be worthwhile to note that in Umadevi's case, this Court was dealing with appointments made without following any rational procedure in the lower rungs of various services of the Union and the States.

33. Coming to the other aspect of the matter pointed out by the High Court - that in the absence of sanctioned posts the State cannot be compelled to absorb the persons like the appellants into the services of the State, we can only say that posts are to be created by the State depending upon the need to employ people having regard to various functions the State undertakes to discharge.

"Every sovereign Government has within its own jurisdiction right and power to create whatever public offices it may regard as necessary to its proper functioning and its own internal administration."

34. It is no doubt that the assessment of the need to employ a certain number of people for discharging a particular responsibility of the State under the Constitution is always with the executive Government of the day subject to the overall control of the Legislature. That does not mean that an

examination by a Constitutional Court regarding the accuracy of the assessment of the need is barred. This Court in *S.S. Dhanoa v. Union of India* (1991) 3 SCC 567 did examine the correctness of the assessment made by the executive government. It was a case where Union of India appointed two Election Commissioners in addition to the Chief Election Commissioner just before the general elections to the Lok Sabha. Subsequent to the elections, the new government abolished those posts. While examining the legality of such abolition, this Court had to deal with an argument[6] whether the need to have additional commissioners ceased subsequent to the election. It was the case of the Union of India that on the date posts were created there was a need to have additional commissioners in view of certain factors such as the reduction of the lower age limit of the voters etc. This Court categorically held that "The truth of the matter as is apparent from the record is thatthere was no need for the said appointments.....".

35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the Legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits at par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such

additional burden. Apparently no such demand has ever been made by the State. The result is - the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi's judgment cannot become a licence for exploitation by the State and its instrumentalities."

17. The learned counsel also relied upon the order of this Court passed by the learned Judge in W.P.Nos.695 and 7403 of 2011. In the said order, the learned Judge has held that the recruitment in respect of which notifications had already been issued, cannot be taken to be covered by the Ordinance and the Rules which have been specifically given only in prospective effect. He would impress upon this Court that subsequent approval of Recruitment Rules in 2011 and sanctioning of posts cannot invalidate the appointments of the petitioners, who were admittedly recruited to various positions for advancing the cause of the Institute and in public interest. He would further emphasize the fact that at the time when the petitioners were recruited, admittedly there were no Recruitment Rules in force and in such event, what has to be seen whether there any due selection process which was put in place for selection of the petitioners herein. It is admitted case that there was proper Notification issued by the Institute calling applications from the public for both academic and non-academic posts and after rigorous selection process, including interview, the candidates were selected. The Institute had also applied communal roster while selecting the candidates. Such being the case, the respondents 3 and 4 cannot be allowed to take shelter that the appointment of the writ petitioners being pre-recruitment stage and has to necessarily satisfy the requirement of the present Recruitment Rules for the purpose of regularization.

18. Shri N.G.R.Prasad, learned counsel also argued that the dictum laid down by the Hon'ble Supreme Court in "Uma Devi's case, cannot be applied to the factual matrix of the present case since there was no irregularity or illegality in the appointment of the petitioners and outside the constitutional scheme of public employment. With the above said legal and factual submissions, the learned counsel for the petitioners would pray for allowing the writ petitions for achieving the larger objectives of justice and good conscience.

19. This Court, having heard the rival submissions of the learned counsels appearing for the petitioners and after perusing the relevant materials and pleadings placed on record, is of the considered view that the contentions put forth by the learned counsel appearing for the respondents 3 and 4 cannot be countenanced both in law and on facts as far as the present case is concerned.

20. The main argument of the learned counsel for the respondents 3 and 4 is that the initial appointments of the writ petitioners were illegal as there were no recruitment Rules in force and no sanctioned posts were available. Such arguments is on the fact of it, is fallacious and without substance for the simple reason that all the writ petitioners were admittedly selected through regular process by a Selection Committee of eminent persons from various fields. The writ petitioners were fully qualified for being selected to the posts both on academic and non-academic sides in terms of the Notification issued by the 3rd respondent which was circulated in the Website and after verifying all the credentials of the candidates concerned, the writ petitioners came to be appointed. The learned counsel appearing for the respondents 3 and 4 have lost the sight of the fact that terming the appointment of the writ petitioners as illegal presupposes the existence of any Rules for such recruitment. In the absence of existence of any Rules at the time of recruitment of the writ petitioners, their appointments cannot be construed to be illegal as there were no transgression of any Rules while making the appointment of the writ petitioners in the respective cadres. At the same time, it is also to be noted that the appointment cannot also be construed to be irregular for the simple reason again that the Institute had followed due process of selection while making the appointments of the writ petitioners. Any subsequent development that too after many years from the date of initial appointment of the petitioners, cannot take away the accrued rights of the petitioners for continuing in their employment. The Rules which were brought in 2013 can at best have a prospective application for future appointment and the same cannot be used as yardstick for deciding the correctness of the appointment of these petitioners which had taken place much earlier to coming into force of the present Recruitment Rules. In the above circumstances, the arguments advanced by the learned counsel, Shri N.G.R.Prasad would assume larger legal significance in favour of the writ petitioners, particularly, the legal dictum expressed by the Hon'ble Supreme Court of India, in the matter of "Nihal Singh versus State of Punjab)" (cited supra), which judgment has been extracted in extenso supra. The observations made by the Hon'ble Supreme Court in the said judgment would squarely apply to the factual matrix of the present case.

21. During the course of arguments, it is brought to the knowledge of this Court that in 2017, a communication was addressed to the third respondent Institute by the first respondent requesting to carry out a comprehensive review of existing temporary posts into permanent one up to Deputy Secretary level and to forward such proposals to the Ministry. This communication was dated 4.1.2017. Thereafter another communication was issued by the 3rd respondent Institute on 31.1.2017 recommending conversion of these temporary posts into permanent in the Institution with the incumbent. Taking cue and strength from the said communication, Shri N.G.R.Prasad would submit that the proposals have already been sent and are under consideration for conversion of temporary posts into permanent one and therefore, there is no legal impediment in considering the claim of the petitioners herein for grant of benefit of regularization. This Court, after taking into account the contents of the communication as aforesaid, is in full agreement with the submissions made by the learned counsel for the petitioners. This Court does not find any impediment in taking forward such proposal and as far as these writ petitioners are concerned. There are only 13 employees before this Court, out of which, 8 are on academic side and 5 are on non-academic side and admittedly, these persons have been continued since their initial appointment from 2007 onwards. As rightly contended by the learned counsel for the petitioners that the case was relied upon by the learned counsel for the respondents 3 and 4 would assume legal significance only when there were Recruitment Rules in force and such Recruitment Rules were not followed while making appointments. In the absence of Recruitment Rules, the appointment of the writ petitioners which were made by a due selection process, cannot either be termed as illegal or irregular and therefore, catena of decisions relied upon by the learned counsel for the respondents 3 and 4 cannot be of any help to him for advancing his case as against the writ petitioners. On the other hand, the writ petitioners have made out a case for grant of relief as prayed for.

22. In the upshot, this Court has no hesitation to allow the writ petitions. The impugned Notification dated 17.10.2012 is set aside. The respondents are directed to take up the claim of the petitioners for regularization of their services in their respective cadres and for this purpose, if necessary, formulate a scheme for the writ petitioners by issuing necessary instructions. The respondents are directed to pass necessary orders regularizing the services of the writ petitioners with effect from their initial appointment with all attendant benefits. It is also made clear that the respondents are permitted to take recourse to any further recruitment for various posts in terms of the Recruitment Rules and man power requirement. The respondents are directed to complete the process of regularization of services of the petitioners within a period of four months from the date of receipt of this order.

Accordingly, all the Writ Petitions are allowed on the above terms. No costs. Consequently, connected MPs closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Suk

To

1. The Joint Secretary (Languages),
The Union of India,
Department of Higher Education,
Ministry of Human Resource Development,
Govt.of India, Sastri Bhawan, 'C' Wing,
New Delhi-110 115.

2. The Director (Languages),
Department of Higher Education,
Ministry of Human Resource Development,
Govt.of India, Sastri Bhawan, 'C' Wing,
New Delhi-110 115.

3. The Director,
Central Institute of Classical Tamil,
No.40 IRT Campus, 100 Feet Road,
Taramani, Chennai-600 113.

4. The Registrar,
Central Institute of Classical Tamil,
No.40 IRT Campus, 100 Feet Road,
Taramani, Chennai-600 113.

+ 13 ccs to M/s. Karthik Mukundan, Advocate Sr.73945
+ 14 ccs to Mr. Row & Reddy, Advocate Sr.74063
+ 2 ccs to Mr. Sundar, Advocate Sr.73592

in W.P.Nos.29545 to 29556
and 33324 of 2012

(CS-IV
EU 2.11.17