

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.ATHINATHAN

W.P.Nos.36491 and 36947 of 2016
W.M.P.Nos.31402 and 31746 of 2016

R.Angayarkani .. Petitioner in W.P.No.36491 of 2016
M.S.Sharmila .. Petitioner in W.P.No.36947 of 2016

versus

1. The Secretary to the Government,
Union of India,
Education Department,
Puducherry.
 2. The Principal,
Dr.Ambedkar Government Law College,
Kalapet, Pondicherry.
 3. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi 110069.
 4. The Registrar,
Central Administrative Tribunal,
City Civil Court Buildings,
Chennai-104.
- .. Respondents in both W.Ps.

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records, relating to the order of the 4th respondent made in O.A.No.1246 of 2013, dated 26.09.2016, quash the same and consequently, to direct the respondents 1 to 3 to absorb/regularise the services of the petitioner, in anyone of the posts of Assistant Professor/Lecturer in Law, in the 2nd respondent College and to extend all benefits forthwith thereto.

For Petitioners : Mr.L.Chandrakumar
For Respondents 1 & 2 : Mr.R.Syed Mustafa,
Addl. Govt. Pleader (Pondicherry)
For 4th Respondent : Tribunal

ORDER

As facts and law involved in both the writ petitions are similar, they are taken up together and disposed of, by a common order.

2. In November 2008, pursuant to the selection process undertaken, the petitioners have been appointed as Lectures in Law, on contract basis. Initially, they were engaged on consolidated pay of Rs.10,000/-, which was subsequently, in the year 2011, enhanced to Rs.25,000/-. Lateron, vide order, dated 19.05.2015, they were granted regular scale of pay. According to them, they have been discharging their duties and responsibilities, as per the norms of the University Grants Commission, in handling classes and working hours. When they made representations for absorption against regular vacancies, there was no response. Hence, they filed O.A.No.1246 of 2013, before the Central Administrative Tribunal, Madras Bench, for a direction to the respondents to regularise their services as Lecturers in Law, from the date of their intitial appointment, with all consequential benefits.

3. Before the Central Administrative Tribunal, Madras, the petitioners have submitted that in similar circumstances, pursuant to the orders of the Tribunal/High Court, Government of Puducherry, have regularised the services of the lecturers, engaged on consolidated pay. They have also submitted that this Court in W.P.No.19528 of 2013, dated 14.08.2013, directed transfer of law colleges in Puducherry, from the Law Department to Education Department and further directed the Education Secretary, Puducherry, to fill up the vacancies of regular lecturers, on or before 31st December, 2013, petitioners have submitted that pursuant to the same, their services ought to have been regularised, against the vacancies in the law college.

4. Respondents 1 and 2 have filed a detailed counter affidavit and contended that Union Territory of Puducherry, comprises of four regions, viz., Pondicherry, Karaikal, Mahe and Yanam and for the said four regions, Dr.Ambedkar Government Law College, is the only law college. Vacancies in the post of Lecturers, in the said law college, are filled up by the Union

Public Service Commission (UPSC), New Delhi, subject to the requirement of posts and on the request of Union Territory administration. Owing to the time lag, in filling up the post of Lecturer in the abovesaid college by UPSC, the Union Territory Administration had to make temporary engagement, to educate law students. An advertisement was issued by the respondent-Department, in the newspaper on 21st November, 2008, calling for 'walk-in-interview' for filling up 7 posts of Lecturers on contract basis, in the said college.

5. As per the notification, the essential qualifications are, "Candidates with Masters degree with Ph.D in Law or A pass in NET examination (Lecturer)." It was also mentioned that in case of non-availability of eligible candidates for the said posts, candidates with atleast M.L., and one year teaching experience as Lecturer in Colleges, may also be considered. On the basis of walk-in-interview, the petitioners were appointed, along with five other candidates, as Lecturers in Law, on contract basis, vide Memorandum No.2636/AGLC/2008/839, dated 24.11.2008 of Dr.Ambedkar Government Law College, Puducherry, subject to terms and conditions. Having accepted the above terms and conditions, both the petitioners joined duty on 15.12.2008 and 12.12.2008 respectively. Subsequently, vide G.O.Rt.No.55/2009-LD, dated 31.12.2009, Government of Puducherry, have revised the pay of the petitioners as Rs.25,000/- per month, with effect from 31.2.2009.

6. Before the Tribunal, respondents 1 and 2 have further submitted that pursuant to the directions of this Court in W.P.No.19528 of 2013, dated 14.08.2013, to the effect that Dr.Ambedkar Government Law College, should be under the administrative control of the Education Department and all the vacant posts, like Principal, Lecturers, Superintendent, LDC, etc., should be filled, on or before 31st December, 2013, the administrative control of Dr.Ambedkar Government Law College, was transferred from Law Department to Education Department and that recruitment rules for the post of Lecturers, re-designated as Assistant Professors in Law, were notified by the Government, during the month of July, 2013. When the matter stood thus, the petitioners have filed O.A.No.1246 of 2013 and the Tribunal, vide order, dated 05.09.2013, ordered to maintain status-quo, as on date, with regard to the engagement of the petitioners, till the next date of hearing.

7. Respondents 1 and 2 have further contended that every year, the petitioners were disengaged, during the month of June and again, during the month of July, their engagement was renewed. Since every year, their contract was terminated, the concept of regular service does not arise. Engagement of the petitioners were purely temporary, subject to the condition that their appointments shall not confer upon them, any right to

regularisation or permanent appointment.

8. It was further contended that the posts of Assistant Professor in Dr.Ambedkar Government Law College, Puducherry, have to be filled up, only through a proper recruitment procedure, after communicating the vacancies to UPSC. Hence, they submitted that merely because, the petitioners have acquired the educational qualification for the said post, they cannot seek for appointment, without undergoing the selection process. According to them, the Cabinet has given its 'in principle' approval for extending only the benefits, granted to identically situated Lecturers in Arts and Science Colleges, by granting time scale of pay and no directions were issued to regularise the services of the petitioners.

9. Before the Tribunal, placing reliance on a decision of the Hon'ble Apex Court in Secretary, State of Karnataka and others v. Umadevi and others reported in 2006 (4) SCC 1, Municipal Committee, Amristar v. Hazara Singh reported in 1975 (1) SCC 794, Delhi Administration v. Manoharlal reported in 2002 (7) SCC 222 and Jammu and Kashmir Public Service Commission v. Dr.Narinder Mohan reported in 1994 (2) SCC 630, respondents 1 and 2 have contended that the petitioners have no right to claim regularisation in the post of lecturers, as they were appointed only on contract basis, engaged to handle the classes, till regular lecturers were filled up by UPSC.

10. Reliance has also been placed a decision of this Court in W.P.Nos.14954 to 14957 of 2013, dated 21.11.2014, wherein, this Court has declined to grant the relief of regularisation of adhoc/hourly paid lecturers. On the basis of the decision made in Secretary to Government, School Education Department, Chennai reported in 2014 (II) LLJ 1 (SC), a contention has also been made that mere continuation of service by the petitioners, under an status-quo order, passed by the Tribunal, would not confer any right to be absorbed into service.

11. Further contention has also been made that knowing full well that appointment as lecturers in law, on contract basis, was purely temporary, they joined the posts and thereafter, cannot claim regularisation. On the aspect of regularisation/absorption of similarly placed lecturers, who were paid on consolidated basis, respondents 1 and 2 have submitted that similarly placed lecturers were working as 20 years of service, whereas, the petitioners have put in only 8 years of service. For the abovesaid reasons, they have prayed for dismissal of the original application.

12. Considering the rival submissions, the Central Administrative Tribunal, Madras Bench, vide order made in O.A.No.1246 of 2013, dated 26.09.2016, at Paragraphs 7 to 9,

ordered as follows:

"7. After a careful consideration of the facts of the case in terms of the material placed before us, we note that the applicants were originally appointed on contract basis and it was made clear to them that they would have no right of absorption/regularisation. The mere fact of grant of regular scale of pay subsequently for the reason that they were performing work of a regular nature would not entitle them to regularisation/absorption unless provided for in the recruitment rules. In the absence of any material to show that persons who were identically placed as the applicants had been regularised, it is not possible to arrive at a view that there was any discrimination. The respondents are justified in not considering regularisation/absorption of the applicants de-hors the recruitment rules.

8. We also note that the applicants are already participating in the recruitment process that is underway. Since the applicants have an experience of eight years, in case they qualify in the selection process, at the time of interview, perhaps, they would be able to perform better and consequently, enjoy an advantage over raw applicants. The selection committee may also prefer experienced persons, other things being equal. We are, therefore, not inclined to interfere with the regular recruitment process nor consider any relief outside the recruitment rules.

9. The O.A. is disposed of with the aforesaid observations. There shall be no order as to costs."

13. Pursuant to the directions of the Tribunal, Dr.P.Angayarkanni (petitioner in W.P.No.36491 of 2016), has sent a letter, dated 27.09.2016, to the Secretary to Government, Education Department, Chief Secretariat, Puducherry, to accept her application, without reference to the age limit. In her representation, she has also made a reference to the order of the Tribunal, dated 21.03.2016 in O.A.No.469 of 2016, by which, directions have been issued to consider her application for the said post. Letter, dated 27.09.2016, discloses that UPSC has sent a letter, addressed to her, stating that her candidature is provisional, subject to the production of specific age relaxation certificate, from Government of Puducherry and in the abovesaid circumstances, she had requested to relax the age in the recruitment rules.

14. Based on the orders made in O.A.No.1246 of 2013, dated 26.09.2016, Dr.P.Angayarkanni (petitioner in W.P.No.36491 of

2016) has sent letters to the Secretary, Union Public Service Commission, New Delhi and the Secretary to Government, Education Department, Chief Secretariat, Puducherry, to consider her experience of eight years and relax the age limit. Thereafter, by virtue of the orders made in O.A.No.1236 of 2013, dated 26.09.2016, they participated in the selection process, undertaken by the Union of India and now challenged the same order of the Tribunal, before this Court.

15. Inviting the attention of this Court to the advertisement made in November, 2008, Mr.L.Chandra Kumar, learned counsel for the petitioners submitted that as per the extant rules, the petitioners were appointed as lecturers, on contract basis, on consolidated pay of Rs.10,000/- and in June' 2011, their pay was increased to Rs.25,000/-. Appointments were made against regular vacancies. Except for the nomenclature, the petitioners were taking classes, as per the UGC norms. In 2013, when recruitment rules to Group 'A' posts of lecturers in law, in Dr.Ambedkar Government Law College, Puducherry, were framed, by re-designating the post of Lecturers, as Assistant Professors in Law, the petitioners had put in 8 years of service.

16. Learned counsel for the petitioners submitted that the initial appointment cannot be termed as a back door entry, nor can it be said that they did not possess the qualifications for appointment as lecturers, as per the advertisement issued in November' 2008. He further submitted that in terms of Rule 5 of the Government of Puducherry, Law Department, Group 'A' Posts of Assistant Professor in Law in Dr.Ambedkar Government Law College, Puducherry Recruitment Rules, 2013, the Lieutenant Governor, Puducherry, in consultation with the UPSC and for reasons to be recorded in writing, can relax any of the provisions of the recruitment rules and therefore, by considering the experience and qualifications, regularisation ought to have been made.

17. He further added that as on today, as per the recruitment rules, when both the petitioners are fully qualified for the post of Lecturers in law in Dr.Ambedkar Government Law College, Puducherry, the respondents 1 and 2 have failed to invoke the power of relaxation for issuing appropriate orders of regularisation. It is also his contention that the Government have issued orders in G.O.Ms.No.2, Chief Secretariat (Higher and Technical Education) Puducherry, dated 03.01.2013, regularising 54 persons and non-consideration of the claim of the petitioners, against regular vacancies, is discriminatory and violative of Article 14 of the Constitution of India.

18. Placing reliance on an order made in W.P.No.23479 of 2006, dated 18.12.2007 [S.Srinivasan v. Union of India], learned counsel for the petitioners prayed for similar directions to be

issued to the respondents, to regularise the services of the petitioners, as lecturers in law, in Dr.Ambedkar Government Law College, Puducherry, by setting aside the orders of the Central Administrative Tribunal, Madras Bench, made in O.A.No.1246 of 2013, dated 26.09.2016.

19. Based on the counter affidavit filed by the Secretary to Government, Chief Secretariat, Puducherry, Mr.R.Syed Mustafa, learned Additional Government Pleader (Pondicherry), submitted that appointment was purely on contract basis, subject to the condition that it would not confer any right to regularisation or permanent appointment.

20. Learned Additional Government Pleader (Pondicherry), submitted that at the time of appointment as Lecturer in law, on contract basis, both the petitioners have completed LLM. Dr.P.Angayarkanni (petitioner in W.P.No.36491 of 2016) has acquired the essential qualification for the post of Assistant Professor in Law, ie., NET, in November' 2011. Mrs.M.S.Sharmila (petitioner in W.P.No.36947 of 2016) has completed NET on 25.03.2013.

21. Learned Additional Government Pleader (Puducherry) further submitted that at the time of initial appointment, Dr.P.Angayarkanni (petitioner in W.P.No.36491 of 2016) possessed a second class Master's Degree in Law in "Labour and Industrial Relations and Administrative Law" from Annamalai University under Distance Education mode and therefore, she does not satisfy the eligibility conditions for regular appointment as faculty in law, as per the norms laid down by UGC and Bar Council of India.

22. Learned Additional Government Pleader (Puducherry) submitted that one Mr.P.Murthy, has filed a Public Interest Litigation in W.P.No.9589 of 2010 and this Court, vide order, dated 19.10.2015, directed to fill up the existing vacancies in the law college and as per the interim orders of the Tribunal in O.A.No.1246 of 2013, dated 05.09.2013, two posts could not be included. Hence, respondents 1 and 2 have filed M.A.No.310/00669 of 2015, to vacate the interim order passed on 05.09.2013, so as to enable the Department to take up the matter of filling up of posts with UPSC and also to report compliance before this Court in W.P.No.9589 of 2010. On 11.09.2015, the Tribunal modified the interim order, dated 05.09.2013, stating that, "the engagement of the applicants on consolidated basis, has to be continued till the candidates appointed through the process of regular recruitment in accordance with rules in force." Thereafter, taking note of the recruitment rules, the Tribunal, vide order, dated 26.09.2016, declined to interfere with the regular recruitment process.

23. Learned Additional Government Pleader (Pondicherry), submitted that both the writ petitioners appeared for the interview for the post of Assistant Professor in Law, but they did not find place in the select list of UPSC, notified on 06.10.2016. He further submitted that the writ petitioners, having failed in their attempt to get selected for the post, through UPSC, have filed the present writ petitions on 19.10.2016, claiming regularisation. According to him, as per the recruitment rules, lecturers are to be appointed by direct recruitment, through Union Public Service Commission, which is the statutory body and appointment on contract basis, does not confer any right for regularisation.

24. Learned Additional Government Pleader (Pondicherry), further submitted that when this Court in W.P.No.9589 of 2010, dated 19.10.2015, directed the respondents to fill up the regular vacancies, the same has to be done, by following the recruitment rules. Attention was also invited to the order of the Tribunal, dated 11.09.2015 that engagement of the writ petitioners, on consolidated basis, has to be continued, till candidates are appointed, through the process of regular recruitment, in accordance with the rules in force.

25. Learned Additional Government Pleader (Pondicherry), further submitted that conditions of initial appointment are binding on the petitioners. UPSC has already selected 12 persons, against 12 vacancies in the post of Assistant Professor in Law (Lecturer), in Dr.Ambedkar Government Law College, Puducherry. According to him, both the petitioners were initially not engaged with reference to UPSC and therefore, they have no right to seek for regularisation.

26. On the reliance placed by the petitioners to a decision in W.P.No.23479 of 2006, dated 18.12.2007 [S.Srinivasan v. Union of India], learned Additional Government Pleader (Pondicherry), submitted that in the above case, the petitioners therein were working from 1985 for nearly 22 years and taking note of such a long period of service, directions were issued to regularise their services. Whereas, in the instant writ petitions, the petitioners were working on contract basis for only eight years and therefore, submitted that on the facts and circumstances of the instant case, order made in W.P.No.23479 of 2006, dated 18.12.2007, is inapposite.

Heard the learned counsel appearing for the parties and perused the materials available on record.

27. In November' 2008, Law Department, Puducherry, has issued an advertisement for 'walk-in-interview', for filling up 7 posts of Lecturers, on contract basis, in Dr.Ambedkar Government Law College, Puducherry. As per the advertisement,

the essential qualifications are, "Candidates with Masters degree with Ph.D in Law or A pass in NET examination (Lecturer). " and in case of non-availability of eligible candidates for the said posts, candidates with atleast M.L., and one year teaching experience as Lecturer in Colleges, may also be considered.

28. It is the case of the respondents that at the time of appointment as Lecturers in law, on contract basis, both the petitioners have completed LLM. However, both of them have acquired the essential qualification for the post of Assistant Professor in Law, ie., NET, on Nil.11.2011 and 25.03.2013 respectively, i.e., after the initial appointment on contract basis. Thus, on the date of their initial appointment on contract basis, the petitioners did not possess Ph.D in Law or a pass in NET examination (Lecturer). In the light of the advertisement, selection and appointment, on contract basis, inference can be made that at that time, as there was no sufficient number of eligible candidates with Master's Degree with Ph.D in Law and that the petitioners have been considered for appointment, on contract basis. Appointment of the petitioners, along with five other candidates, as Lecturers in Law, on contract basis, vide Memorandum No.2636/AGLC/2008/839, dated 24.11.2008 of Dr.Ambedkar Government Law College, Puducherry, is subject to the following terms and conditions,

"(i) The appointment shall be purely temporary and on contract basis on a consolidated sum of Rs.10,000/- p.m.

(ii) The contract shall be for the period from the date of engagement till the completion of the academic year 2008-09 or until the appointment of Lecturer in Law on regular basis, whichever is earlier.

(iii) The appointment shall not confer upon the appointee any right to regularisation or permanent appointment.

(iv) The appointee shall remain in the college during the working hours and shall handle classes as allotted by the Head of the Institution from time to time.

(v) The Contract Lecturer shall be eligible for all the public holidays, as admissible to other Lecturers on regular basis.

(vi) On the expiry of the period of engagement/appointment, the contract will automatically stand terminated without any reference. In case of misconduct or violation of any of the contractual terms, the Government reserves the right to terminate the contract without any reference, even before the expiry of the contract."

29. As rightly contended by the learned counsel for the respondents 1 and 2, three things are very clear from the Memorandum, dated 24.11.2008, ie., (i) Appointment is purely temporary and on contract basis; (ii) Contract was for the period from the date of engagement, till the completion of the academic year 2008-09 or until the appointment of Lecturer in Law on regular basis, whichever is earlier; and (iii) Appointment shall not confer any right to regularisation or permanent appointment.

30. Contention of the respondents that services of the petitioners were disengaged every year, during the month of June and again, their engagement was renewed, has not been disputed. Renewal of contract for subsequent years, is also subject to the appointment of Assistant Professors in Law, on regular basis.

31. In W.P.No.7398 of 2003, dated 28.11.2006, this Court has directed the Union Public Service Commission, University Grants Commission and the Government of Puducherry and their instrumentalities, to take necessary steps, and as a one time measure, to regularise the services of the petitioner therein and similar placed lecturers in Arts and Science Colleges, within six weeks, from the date of receipt of the copy of the order. Pursuant to the same, G.O.Ms.No.135, Chief Secretariat (Higher and Technical Education) Puducherry, dated 24.12.2009 has been issued. It is to be noted that directions have been issued to regularise, as a one time measure and not periodically.

32. In G.O.Rt.No.55/2009-LD, dated 31.12.2009, while revising the pay of the petitioners as Rs.25,000/- per month, with effect from 31.2.2009, the Government of Puducherry, have categorically stated that the same would have the effect from the date of engagement or till the closure of the academic year 2009-10 or till the date on which, the candidates selected by the Union Public Service Commission join duty, whichever is earlier. Hereagain, Government of Pondicherry have categorically stated that the pay revision would be till the candidates selected by UPSC join the posts.

33. G.O.Ms.No.124, Chief Secretariat - (Education I) Puducherry, dated 26.10.2010, has been issued, following the directions of this Court in W.P.No.12666 of 2002, dated 25.07.2007, directing hourly paid lecturers in Government Arts and Science Colleges, in all regions of Union Territory, be engaged as Assistant Professors/Lecturers on casual basis, on consolidated pay and their engagement should be continued, till regular lecturers selected by the Union Public Service Commission join duty. From the above, it could be noticed that this Court only directed the Government to retain the hourly paid lecturers, on casual basis on consolidated pay, till

regular lectures are appointed by UPSC. The Government of Puducherry have reiterated their stand that while issuing orders of appointment of the writ petitioners and four others, it was categorically mentioned that it was only temporary and not conferred with any right to claim regularisation or permanency.

34. The Government of Puducherry, Law Department, have issued a notification in G.O.Ms.No.30, dated 14.07.2013, framing rules, regulating the method of recruitment to Group 'A' posts of Lecturers in Law in Dr.Ambedkar Government Law College, Puducherry, called as Government of Puducherry, Law Department, Group 'A' Posts of Assistant Professor in Law in Dr.Ambedkar Government Law College, Puducherry Recruitment Rules, 2013. Rule 5 deals with power to relax and it reads thus,

"5. Power to relax.— Where the Lieutenant-Governor, Puducherry is of the opinion that it is necessary or expedient so to do, he may, by order, in consultation with the Union Public Service Commission and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

35. Class 7 of the Schedule to the Recruitment Rules, deals with educational and other qualifications, required for direct recruits for the post of Assistant Professor in Law in Dr.Ambedkar Government Law College, Puducherry and the same is extracted hereunder:

"I. Good academic record as defined by the concerned for direct recruits. University with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited Foreign University.

II. Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.

III. Notwithstanding anything contained in sub-clauses (I) and (II) above, candidates, who are, or have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities / Colleges/Institutions.

IV. NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/ SET is not conducted.

Note 1: A relaxation of 5% may be provided at the graduate and master's level for the scheduled caste/scheduled tribe/differently-abled (physically and visually differently-abled) categories for the purpose of eligibility and for assessing good academic record during direct recruitment to teaching positions. The eligibility marks of 55% marks (or an equivalent grade in a point scale wherever grading system is followed) and the relaxation of 5% to the categories mentioned above are permissible, based on only the qualifying marks without including any grace mark procedures.

Note 2: A relaxation of 5% may be provided from 55% to 50% of the marks to the Ph.D. Degree holders, who have obtained their Master's Degree prior to 19th September, 1991.

Note 3: Qualifications are relaxable at the discretion of the Union Public Service Commission for reasons to be recorded in writing, in the case of candidates otherwise well qualified."

36. Persons, who have not satisfied the educational qualifications, prescribed in the recruitment rules, at the time of initial appointment, for regular appointment, in instant case, direct recruitment, more particularly, passing of NET and appointed on contract basis, temporarily, which is periodically extended, cannot seek for regularisation of appointment, retrospectively.

37. Though Dr.P.Angayarkanni (petitioner in W.P.No.36491 of 2016), has been granted age relaxation to appear in the selection process conducted by UPSC, for the post of Assistant Professor in Law, in Dr.Ambedkar Government Law College, Puducherry, she cannot be regularised, in the light of the decisions, referred to above. Yet another factor to be taken note of, is that at the time of initial appointment on contract basis, which was purely temporary, she did not acquire the eligibility criteria, NET. But lateron, she has cleared the same. Prayer made in the writ petition is to regularise the appointment, from the date of initial appointment.

38. Insofar as Mrs.M.S.Sharmila (petitioner in W.P.No.36947 of 2016), is concerned, though she did not possess the required qualification of NET, at the time of appointment, on contract basis, subject to the condition that she cannot seek for regularisation. Persons, who do not satisfy the recruitment rules or UGC regulations, on the date of initial appointment, but acquired NET qualifications lateron, cannot, as a matter of

right, seek for regularisation. As per the Recruitment Rules, 2013, vacancies have to be filled up, by direct recruitment, in consultation with UPSC and there is no other source of appointment.

39. Material on record discloses that after the directions of the Tribunal, permitting participation of the writ petitioners, in the selection process, both the writ petitioners have appeared in the interview, for the post of Lecturers and select list has been notified on 06.10.2016. The Tribunal in O.A.No.1246 of 2013, dated 26.09.2016, while passing orders, has also taken note of the fact that the writ petitioners have already participated in the recruitment process and therefore, observed that, "Since the applicants (petitioners herein) have experience of eight years, in case they qualify in the selection process, at the time of interview, perhaps, they would be able to perform better and consequently, enjoy an advantage over raw applicants." The said observation has been made, taking note of the mode of recruitment for the post, viz., direct recruitment and that the Tribunal was not inclined to interfere with regular recruitment process nor considered any relief, outside the recruitment rules. Thus, on the basis of the order made in O.A.No.1246 of 2013, dated 26.09.2016, the petitioners have participated in the interview and did not have any grievance, over the decision of the Tribunal made in O.A.No.1246 of 2013, dated 26.09.2016. But, coming to know that they were not successful in the selection notified on 06.10.2016, petitioners have sought for regularisation, by challenging the abovesaid order of the Tribunal.

40. In the light of the decisions in Municipal Committee, Amristar v. Hazara Singh reported in 1975 (1) SCC 794, Jammu and Kashmir Public Service Commission v. Dr.Narinder Mohan reported in 1994 (2) SCC 630 and Delhi Administration v. Manoharlal reported in 2002 (7) SCC 222, each case has to be decided on its own merits and the directions issued in the writ petitions, relied on, by the learned counsel for the petitioners, with due respect, cannot be taken as a binding precedent in all the matters.

41. Petitioners in P.Ravindran v. Union Territory of Pondicherry reported in 1997 (1) SCC 350, were appointed as lecturers, on adhoc basis. Some of them had obtained M.Phil, Ph.D. also. When the regular recruitment through Public Service Commission was conducted, the petitioners therein also appeared before the Commission, but they were not selected. Subsequently, the petitioners therein filed petitions for regularisation of their services. Pointing out that when posts are required to be filled up, by recruitment, from open market, through the Commission, the Tribunal has no power to issue directions to regularise the services, the Tribunal dismissed the petitioners

therein. Assailing the correctness of the same, Special Leave Petition was filed. Adverting to the abovesaid submission, the Hon'ble Supreme Court, at Paragraph 3, held as follows:

"The admitted position is that the Commission having been entrusted with the constitutional duty to select suitable candidates by inviting applications from the open market, every candidate has a fundamental right to seek consideration and for selection through open competition. The petitioners also have that right. At one time, they staked their claims but were not selected. Therefore, the process of recruitment through the Commission, as envisaged under the Constitution, cannot be bypassed by issuing direction for regularisation of the services of the ad hoc persons who had come to the service through back-door entry. This Court in catena of decisions has deprecated this practice of regularisation except in extra-ordinary cases by directing the Government to frame a scheme and regularise Class III and IV services in accordance with the scheme. Even in subsequent decisions, that leverage is not being insisted upon. This Court in J & K Public Service Commission & Ors., v. Dr.Narinder Mohan & Ors., [(1994) SCC (L & S) 723] had held that the Court cannot adopt hybrid process of direction to regularise the services bypassing process of selection envisaged under the Constitution. This Court has deprecated the Government for exercising the power under Article 320 of the Constitution taking out the posts from the purview of the Commission and to regularise services de hors the Commission. Under those circumstances, we are of the view that the Tribunal has rightly rejected the claim to grant the relief sought for.

Decision in P.Ravindran's case is proximate to the case on hand, except the variation in initial appointment and therefore, can be made applicable.

42. It is worthwhile to consider the decision in Secretary, State of Karnataka and others v. Umadevi and others reported in 2006 (4) SCC 1, relied on, by Mr.Syed Mustafa, learned Special Government Pleader (Pondy), wherein, at Paragraphs 36 and 38, the Hon'ble Apex Court, held as follows:

"36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or

casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. 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 employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

.....

38. When a person enters a temporary employment or gets engagement as a contractual or casual worker

and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

43. In the light of the judgment in Umadevi's case (cited supra), it cannot be contended that the writ petitioners, who have accepted their contractual temporary appointment, are not aware of the same, as observed by the Hon'ble Apex Court and when they have accepted the employment with open eyes, it would not be appropriate to jettison the constitutional scheme of appointment and to take a view that the person, who has been appointed temporarily or casually, be directed to continue permanently.

44. National Eligibility Test is a requirement for appointment to the post of Assistant Professors. Petitioners, who have not acquired the same, at the time of initial appointment, cannot seek for regularisation, from the date of initial appointment, as a matter of right. Their initial appointment was purely on contract basis, subject to the conditions, stated supra, more particularly, till regular appointments are made. Thus, knowing fully well, they accepted appointment and therefore, as rightly contended by the learned Additional Government Pleader (Pondicherry), they cannot, as a matter of right, seek for regularisation. In the light of the above discussion and decisions, we do not find any infirmity in the order of the Tribunal in O.A.No.1246 of 2013, dated 26.09.2016, warranting interference.

45. Hence, the writ petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

s/d-
Assistant Registrar(CO)

//True Copy//

Sub-Assistant Registrar

skm

To

1. The Secretary to the Government,
Union of India,
Education Department,
Puducherry.
2. The Principal,
Dr.Ambedkar Government Law College,
Kalapet, Pondicherry.
3. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi 110069.
4. The Registrar,
Central Administrative Tribunal,
City Civil Court Buildings,
Chennai-104.

+1 CC to M/s.L. Chandrakumar, Advocate sr 352
+1 CC to The Govt. Pleader to puducherry,
High court, madras(1154/1155)

W.P.Nos.36491 and 36947 of 2016

GN
sp/24/1