

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE**

WRIT PETITION NO.10894 OF 2018

Jyatinkumar H. Solanki & Ors. ... Petitioners

Vs

Union of India & Ors. ... Respondents

Mr.M.M. Vashi, Senior Advocate i/b Mr.Rahul Walia for the
Petitioners

Mr.S.S. Deshmukh for Respondent Nos.1 to 6

Mr.Sandeep Marne i/b V.P. Shirke for Resp. Nos.7 to 9

Ms.Lata Patne with Mr.Vinod Joshi for Resp. No.6 UPSC

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

**JUDGEMENT RESERVED ON: JULY 10, 2019
JUDGEMENT DELIVERED ON: JULY 23, 2019**

JUDGMENT (Per Akil Kureshi, J.):

1. The petitioners are the original applicants of Original Application No.733 of 2016 filed before the Central Administrative Tribunal, Mumbai Bench. Their Original Application came to be dismissed by the impugned judgment dated 19.9.2018 by the Tribunal. In the present petition, they have challenged the said judgment on various grounds.

2. Brief facts are as under:

The Original Application No.733 of 2016 was filed by seven original applicants before the Tribunal. During the pendency of the proceedings, some of the original applicants lost interest. The present petition is pursued by the petitioners, who were the original applicant Nos.1, 2, 5 and 7 respectively. These petitioners were appointed on temporary basis as Lecturers/Assistant Professors in Government College at Daman, during different periods ranging from the year 2001 to 2011. The details of their initial appointment and the subjects in which they have been appointed as Lecturers / Assistant Professors are given by the petitioners as under:

Sr. No.	Name of the Applicant	Date of Birth & Age	Main Subject	Working Since
1.	Applicant No.1 (Shri Jyatin Kumar H. Solanki)	16.02.1977 39 years & 08 months	Chemistry	07.12.2001
2.	Applicant No.2 (Dr.Sandhya P. Meriya)	08.01.1974 42 years & 09 months	Hindi	11.08.2004
3.	Applicant No.5 (Mr.Chandrakant Makwana)	15.05.1974 42 years & 05 months	Gujarati	19.9.2007
4.	Applicant No.7 (Mr.Vijaykumar P. Patil)	08.02.1986 30 years & 07 months	Botany	6.9.2011

3. According to the petitioners, these appointments were after issuance of advertisement and following due selection process. They were appointed against sanctioned posts and have been working continuously on such posts. According to the petitioners, by virtue of their initial engagement/appointment, having been made after following due process of selection and being against sanctioned posts, by virtue of efflux of time and their continuous engagement, they have acquired quasi permanent position. Their services could not have been terminated to replace them by the UPSC selected candidates.

4. In October, 2016, the Union Public Service Commission ('UPSC', for short) advertised various vacancies of teaching posts in Government colleges under the Administration of Union Territory of Daman and Diu, Department of Education, including those against which the present petitioners were discharging their duties. According to the petitioners, since they had been working on the posts in question for years together, their services should have been regularised. The petitioners, therefore, filed above mentioned Original Application No.733 of 2016 before the Tribunal seeking their regularisation on the posts in question and their absorption in

the service on regular basis. They were granted an interim protection pending the said Original Application against the termination of their services.

5. The case of the Department is that the petitioners were engaged on purely ad-hoc and temporary basis. The posts in question, could be filled up on regular basis only in consultation with UPSC. In the present case, no such procedure was followed. Since regularly selected candidates were not available, the petitioners were engaged on purely temporary basis. Their appointment orders also specified that their services would be terminated as and when regularly selected candidates in consultation with UPSC are available. According to them, mere passage of time would not grant permanency benefits. The said respondents have also taken up the issues of certain irregularities at the time of initial engagement of the petitioners.

6. During the pendency of the Original Application before the Tribunal, the selection process pursuant to the advertisement issued by the UPSC continued. The selection process was completed and select list was drawn. The respondent Nos.7 to 9

are the candidates who are placed in the select list but are not appointed on account of pending litigation. They were obviously not parties to the Original Application before the Tribunal. They had, therefore, filed application for permission to intervene in the petition. Such permission was granted by order dated 5.2.1999. The case of these private respondents is similar to that of the official respondents. They also opposed the petition and supported the impugned judgment passed by the Tribunal.

7. The Tribunal noticed that the petitioners were engaged on different dates between 2001 to 2011 on contractual basis. The Tribunal noted that the revised Recruitment Rules of 2012 were published and UPSC had commenced the selection process in terms of the said Rules. It was noticed that the appointment letters of the petitioners specified that their appointments were temporary subject to replacement by UPSC nominated candidates. The Tribunal recorded that the advertisement inviting suitable candidates specifically provided that the appointments were purely on daily wages for short term contract basis. The Tribunal was of the opinion that a specification of minimum qualification of 55% marks in the Masters Degree in the relevant subject as stated in

the advertisement was contrary to the Recruitment Rules of 1983 since in the opinion of the Tribunal, the Rules require a minimum of 58% marks in such Degree examination. (We would however notice later on that it was admittedly an error on the part of the Tribunal and the relevant Recruitment Rules merely prescribed a minimum 55% marks in the said examination which all the petitioners possessed). The Tribunal was of the opinion that the petitioners were appointed pursuant to an advertisement for ad-hoc engagement which cannot be compared with a regular selection process being undertaken by UPSC. Their engagement was purely stop-gap, would not vest any right of regularisation. They had accepted such engagement with a specific condition that upon availability of candidates nominated by UPSC, their services would be terminated. The Tribunal was of the opinion that the petitioners had not made any attempt to have their services regularised by selection through UPSC. The petitioners' contention that after a long gap, when the UPSC had advertised the vacancies, all the petitioners had become overaged, was discarded on the ground that as in-house candidates, they would be entitled to age relaxation. Primarily, on such grounds, the Original Application came to be dismissed.

8. Appearing for the petitioners, the learned Counsel submitted that the selection and appointment of the petitioners as Lecturers / Assistant Professors was after issuing advertisement and following regular selection process for the sanctioned posts. All the petitioners were duly qualified and found meritorious during the selection process. They have been discharging their duties since several years. There is no grievance about their performance. The services of the petitioners, therefore, should have been regularised. After such a long period of time, the petitioners cannot be replaced by the candidates recommended by UPSC. The Counsel for the petitioners relied on various decisions reference to which we may make at a later stage.

9. On the other hand, the learned Counsel for the Respondent Nos.1 to 6 opposed the petition contending that the Tribunal has examined all relevant aspects of the matter and come to correct conclusions. The petitioners were engaged on purely temporary basis. The advertisement itself specified that the engagement is stop-gap. The appointment letters also specified that the petitioners would be replaced by the regularly selected candidates as and when available. He submitted that it is a consistent

experience of the Government that whenever vacancies are advertised for stop-gap engagements, much fewer candidates show interest as compared to the notification for regular appointment where much wider pool of candidates is available to select from. He pointed out that the candidates selected and nominated by UPSC are available, could not be granted appointment on account of interim relief granted to the petitioners.

10. The learned Counsel for the respondent Nos.7 to 9 also opposed the petition contending that the decision of the Tribunal calls for no interference.

11. The basic facts emerging from the record are not seriously in dispute. All the petitioners were appointed on a purely temporary and ad-hoc basis during the period ranging from 2001 to 2011. We may take note of one of the advertisements which led to the appointment of petitioner No.1. This advertisement was issued by the Government of India, Administration of Daman & Diu inviting applications from eligible candidates for appointment of Lecturers on a short term contract basis in the categories mentioned therein. The qualifications prescribed were consistently good academic record with at least First or Higher Second class (55% marks or

more) in Master's Degree in the relevant subject of a recognised university or an M.Phil. Degree in the relevant subject of a recognised university. It was in response to such and similar advertisements that the petitioners had applied for respective posts. They were appointed under different orders but which were worded similarly. We may take note of one such appointment order dated 9.1.2005 issued in favour of petitioner No.2 which reads as under:

“O R D E R

Sanction of the Administrator of Daman and Diu & Dadra and Nagar Haveli is hereby conveyed for the continuation of appointment of the following persons, **on Short Term Contract basis as Lecturers on fixed consolidated amount of Rs.12,880/- (Rupees Twelve thousand eight hundred eighty only) per month in the subject shown against their names below for the Second Term ending on 30/04/2005 or the date on which UPSC nominees join, whichever is earlier from the date of their joining duties in the Government College, Daman.**

Sr.No.	Names	Subjects
1.	Dr.Sagar A. Desai	Chemistry
2.	Shri Jyatinkumar H. Solanki	Chemistry
3.	Ms.Darshita Vyas	English
4.	Mr.Patel Dharmesh U.	English
5.	Ms.Sandhya P. Meriya	Hindi
6.	Dr.Gulabbhai J. Wag (appointed against leave vacancy of Dr.(Mrs.) D.H. Joshi, Reader in Gujarati	Gujarati
7.	Mr.Patel Sureshbhai Bahadurbhai	Sanskrit

This will not bestow any right to them for regular appointments.

The expenditure of payment to the post/candidates mentioned above will be debited under the following Budge Head:-

....”

12. From the material on record, it emerges that the advertisements pursuant to which the petitioners were engaged, were for appointments on short term contract basis on consolidated salary. Their appointment orders clearly specified that the engagement was short term ending on specified date (in case of petitioner No.2, as per the said order dated 29.1.2005 ending on 30.4.2005) or the date on which the UPSC nominees joined, whichever is earlier. The appointment orders also specified that such engagement will not give any right for regular appointments. Thus, from the beginning, the entire process of selection and appointment was for ad-hoc engagements. The appointment orders which were issued in tune with such advertisements were for appointments on short term contractual basis on fixed salary. The term of the appointments would end on a specified date or earlier if UPSC nominated candidates were available.

13. The appointments of the petitioners were thus purely ad-hoc and temporary since UPSC nominated candidates were not available. It is undisputed that regular appointments to the post in question could be made only by way of selection through UPSC. None of the petitioners, therefore, had any right to permanency on the posts in question or any claim for being regularised merely by virtue of passage of time.

14. At no point of time from the inception, the petitioners ever objected to the terms of their appointment. It is not their case that the insistence on selection through UPSC was impermissible. They never took any objection when from time to time, their engagements were continued making it clear that the same was contractual and short term.

15. It is not in dispute that the petitioners were selected after conducting interviews by a panel drawn by the Government. It is also not in dispute that their appointments were against posts which were vacant. The Tribunal was not correct in holding that the advertisement specified a minimum 55% marks in Master's Degree which was not in tune with the Recruitment Rules which according to the Tribunal specified a minimum of 58% marks. This

was clearly a wrong reading of a figure. The Counsel for the respondents also agree that the prevailing Recruitment Rules prescribed minimum qualification of 55% marks in the Master's Degree. This objection of the Tribunal is clearly erroneous. The Tribunal is also not correct in criticising the petitioners for not applying in response to the advertisement issued by the UPSC observing that there is always concession for age relaxation for in-house candidates. Neither the advertisement specified this possible age relaxation nor the Government asked the petitioners to apply even though they had, by the time the advertisement was issued, become age barred. Despite these observations, we do not find that the Tribunal, as a final analysis, has committed any error in dismissing the Original Application. The Supreme Court in the case of **Secretary, State of Karnataka & Ors. vs. Umadevi & Ors.**¹ has frowned upon the regularisation of ad-hoc employees dehors the service rules. The petitioners were merely interviewed by an ad-hoc panel drawn by the Government for the purpose of making short term appointments to the posts in question. The Government is perfectly justified in pointing out that in response to such advertisements, the response is generally lukewarm. Only

1 AIR 2006 SC 1806

when the vacancies are advertised for regular appointment, all eligible interested candidates would apply. When a vacancy is notified for short term engagement on contractual basis on fixed salary subject to termination on availability of regularly selected candidate, naturally, many eligible candidates would be unwilling to apply. If an eligible candidate is already working elsewhere, accepting such engagement, will require him to to relinquish the existing position and accept an employment which may be terminated at any time. It is only when a vacancy is notified for permanent appointment, all interested eligible candidates are likely to apply. The petitioners, who were selected from a limited pool of candidates who may have responded to the advertisement for appointment on fixed salary contractual basis, cannot convert the same into regular appointments by passage of time. When Recruitment Rules require selection of a candidate through UPSC, the same can be filled only in such mode.

16. This view is taken by the Supreme Court on a number of occasions. We may refer to only some of the judgments.

17. In the case of **Harinder Kaur and others vs. Union of India and others and connected Civil Appeals**², it was held that

² (2009) 13 SCC 90

contractual teachers appointed against vacancies for which substitutes were not available cannot be regularised. Mere long service by itself is not a ground for directing regularisation. Regularisation is not a mode of appointment. In this decision, the Supreme Court had taken note of judgment in case of **Umadevi (supra)** and observed that appointments to public posts have to be made by giving equality of opportunity as enshrined in Articles 14 and 16 of the Constitution of India.

18. In case of **Secretary, State of Karnataka vs. Umadevi (supra)**, the Constitution Bench of the Supreme Court had emphasised that absorption or regularisation of contractual or casual ad-hoc employees dehors the Constitutional scheme of the public employment is wholly impermissible. It was observed that unless the appointment is in terms of the relevant Rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract.

19. The Supreme Court in the case of **Kendriya Vidyalaya Sangathan & Ors.**³ Observed that the appellants were selected

³ (2007) 5 SCC 326

not by regular selection committee. Their appointment was subject to stipulations that the same would not confer any right to claim regular appointment and they were appointed as a stop-gap arrangement. In such background, their request for regularisation was rejected.

20. In case of **Renu and others vs. District and Sessions Judge, Tis Hazari Courts, Delhi and Another**⁴, the Supreme Court held that even in appointments of employees in the High Court, Articles 14 and 16 of the Constitution of India would be applicable. It was held that the powers of the Chief Justice to make such appointments are not unfettered and cannot be exercised in arbitrary manner. The exercise of power must adhere to the Articles 14 and 16 of the Constitution.

21. Even where the ad-hoc employees' services are regularised, Courts have accepted the principle that past services would not count towards seniority and such employees cannot be granted seniority over their regularly selected candidates through UPSC. There are series of judgements taking such a view. We may refer to only one of them. In the case of **M.P. Palanisamy and Others**

4 (2014) 14 SCC 50

vs. A. Krishnan and others and companion Appeal⁵, it was held that ad-hoc appointees cannot be granted higher seniority over candidates appointed through Public Service Commission after competitive examination.

22. The Division Bench of this Court in the case of **Hareshbhai Mohanbhai Patel & Ors. vs. Union of India & Ors. and companion petition** in a judgment dated 24.7.2018, had considered a challenge to a judgment of the Central Administrative Tribunal who had rejected the Original Application of the petitioners seeking regularisation of their services to the post on post-graduate teacher and trained graduate teachers. The petitioners were engaged on ad-hoc basis in the years 2006 and 2007. About 3 years later, the administration issued advertisements for regular selection and appointments. The Court dismissed the petitions. The Court took note of the fact that in response to the advertisements issued in the years 2006-2007 for appointment to the post on ad-hoc basis, very few applications were received. As against this, in response to the advertisement issued on 4.6.2010 for filling up the posts on regular basis, as many as 11000 candidates had applied. Referring to several decisions of the

⁵ (2009) 6 SCC 428

Supreme Court, the Court held that the petitioners had no right to regularisation.

23. We may now refer to the decisions relied upon by the Counsel for the petitioners. Heavy reliance was placed on the decision of the Division Bench of this Court in the case of **Sachin Ambadas Dawale & Others vs. State of Maharashtra & anr. Dated 19.10.2013** rendered in **Writ Petition No.2046 of 2010**. It was a case in which the Government of Maharashtra had made appointments to different posts in Government Polytechnic colleges on ad-hoc basis in view of ban on regular recruitment imposed by the Government on all departments. On account of this ban, large number of teaching posts in Government and Government aided educational institutions were vacant. Limited permission was granted to fill up part of such teaching posts on temporary contractual basis. The petitioners were appointed pursuant to such notification inviting eligible candidates for posts of Lecturers in Government Polytechnic colleges. Their services were continued from time to time. However, when they requested the State of Maharashtra for regularisation of their services, the same was not accepted. They thereupon filed a Writ Petition before the

High Court and cited several instances in the past where the Government had regularised such contractual engagements. The Division Bench was of the opinion that the petitioners therein were selected by duly constituted selection committee. They were engaged for years together. The Maharashtra Public Service Commission had not conducted recruitment process for a long time. On such grounds, the Government, in the opinion of the Court, could not deny the benefits given to similarly situated other employees in the past.

24. However, there are certain distinguishing features in the said case as compared to the case on hand. The Court noticed that even according to the Government, there were more than 5000 teaching posts which were still vacant and the advertisement issued by MPSC was only for 400 posts. Thus, in the opinion of the Court, even after the candidates who were selected through such selection process, more than 4500 positions would still be left vacant. Clearly, therefore, the petitioners' absorption would not in any way affect the candidates, who were selected by the MPSC. The observations of the Court in this respect can be noted as under:

“19. One more fact that needs to be taken into consideration is that even according to the respondent - State there are more than 5000 teaching posts which are still vacant and the advertisement issued by the MPSC is only 39 for 400 posts. It can, thus, be clearly seen that even after the candidates who would be selected through the selection process conducted by the MPSC are available, more than 4500 posts will be vacant. It is, therefore, clear that the petitioners' absorption would in no way affect the candidates who would now be selected through the MPSC. It is, thus, clear that the petitioners' continuation in service would not adversely affect the fundamental right guaranteed under Article 16 to the citizens. We are of the considered view that the respondent - State having extracted the work from the petitioners for years together, the petitioners cannot be deprived of the right of regular employment particularly when their entry can neither be termed as "illegal" nor "back door".”

25. In the present case, the MPSC has already made selection and recommendations for the very posts in question on which the petitioners seek regularisation. If the petitioners' request is accepted, the candidates selected and nominated by the UPSC would not get employment.

26. Reliance was placed on the decision of the Supreme Court in the case of **H.C. Puttaswamy & Ors. vs. Hon'ble Chief Justice, Karnataka High Court**⁶, in which the Supreme Court while holding that the appointments to subordinate Courts must be made strictly following the law and the Constitution and, therefore, the appointments in such post without consulting the Public

6 (1991) SUPP 2 SCC 421

Service Commission and bypassing the District Judge were improper had also sympathised with the employees who were working for a long time. It was observed that one could only imagine their untold miseries and of their families if get left at the midstream.

27. The contention of the Counsel for the Petitioners that the case of these petitioners would fall within the exceptional area carved out in the case of **Umadevi (supra)**, is also not correct. The petitioners are holding Class I posts, recruitment to which, as per Recruitment Rules, could be made only through UPSC. Their engagement pursuant to selection by an ad-hoc Select Committee drawn by the State Government would not confer any right of regularisation or permanency on the post. They were appointed with a clear stipulation that the engagement will be terminated upon availability of candidates nominated by UPSC.

28. In the result, the petitioners have not made out any case of interference in the Writ Petition. Writ Petition is dismissed. Interim relief, if any, stands vacated.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)