

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.26176 of 2008, 17525, 18819 and 18891 of 2012
and M.P.Nos.1 and 2 of 2008
and M.P.Nos.1 of 2012, 1 of 2013 and 1 of 2015
and M.P.No. 1 of 2012

K.Sangeetha .. Petitioner
(in all W.Ps)

Vs.

The TamilNadu Dr.Ambedkar Law University,
Represented by its Registrar,
'Poompozhi', 5 Greenways Road,
Chennai - 600 028. .. Respondent
(in W.P.Nos.26176 of 2008
and 17525 of 2012)

1.The TamilNadu Dr.Ambedkar Law University,
Represented by its Registrar,
'Poompozhi', 5 Greenways Road,
Chennai - 600 028. .. 1st Respondent
(in W.P.Nos.18819 & 18891 of 2012)

2.Dr.P.Vasanth Kumar,
Assistant Professor,
School of Excellence in Law,
The Tamil Nadu Dr.Ambedkar Law University,
'Poompozhi', 5 Greenways Road,
Chennai - 600 028. .. 2nd Respondent
(in W.P.Nos.18819
and 18891 of 2012)

3.Dr.Balu,
Professor and Head of the Department,
Department of Legal Studies,
Madras University. .. 3rd Respondent
(in W.P.No.18891 of 2012)

Prayer in W.P.No.26176 of 2008: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the Respondent to continue the Petitioner in the post of Lecturer in International Law in the respondent University until a regular candidate is appointed to the said post.

Prayer in W.P.No.17525 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondent to consider and regularize/confirm the petitioner in the post of Assistant Professor/Lecturer in the respondent University with effect from the date of original appointment i.e., 11.07.2006 with all consequential and attendant benefits.

Prayer in W.P.No.18819 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records and quash the order No.2497/Regr/Estt/B1/2012 dated 12.07.2012 issued by the I Respondent and consequently direct the respondent to consider and regularize/permanently appoint the petitioner in the post of Assistant Professor/Lecturer in the respondent University with effect from the date of petitioner's original appointment i.e., 11.07.2006, with all consequential benefits.

Prayer in W.P.No.18891 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Declaration declaring the appointment of the 2nd Respondent Dr.P.Vasantha Kumar in the post of Assistant Professor in the Ist Respondent University as illegal and null and void.

In W.P.Nos.26176 of 2008 and 17525 of 2012:

For Petitioner : Mr.E.Om Prakash, Senior Advocate
for Ms.Kanimozhimathi
For Respondent : Mr.Vijay Narayanan
Advocate General
for Mr.Karthik Rajan, counsel for
TNDALU

In W.P.No.18819 of 2012:

For Petitioner : Mr.E.Om Prakash, Senior Advocate
for Ms.Kanimozhimathi
For R1 : Mr.Vijay Narayanan
Advocate General
for Mr.Karthik Rajan, counsel for
TNDALU
For R2 : Mr.K.Rajasekaran

In W.P.No.18891 of 2012:

For Petitioner : Mr.E.Om Prakash, Senior Advocate
for Ms.Kanimozhimathi
For R1 : Mr.Vijay Narayanan
Advocate General
for Mr.Karthik Rajan, counsel for
TNDALU
For R2 : Mr.K.Rajasekaran
For R3 : No Appearance

C O M M O N O R D E R

W.P.No.26176 of 2008 is filed for a direction to the respondent to continue the Petitioner in the post of Lecturer in International Law in the respondent University, until a regular candidate is appointed to the said post.

2.W.P.No.17525 of 2012 is filed for a direction to the respondent to consider and regularize/confirm the petitioner in the post of Assistant Professor/Lecturer in the respondent University, with effect from the date of original appointment i.e., 11.07.2006, with all consequential and attendant benefits.

2(a).W.P.No.18819 of 2012 is filed challenging the order No.2497/Regr/Estt/B1/2012 dated 12.07.2012 issued by the first respondent and to direct the first respondent to consider and regularize/permanently appoint the petitioner in the post of Assistant Professor/Lecturer in the respondent University, with effect from the date of petitioner's original appointment, i.e., 11.07.2006, with all consequential benefits.

2(b).W.P.No.18891 of 2012 is filed to declare the appointment of the 2nd Respondent Viz., Dr.P.Vasantha Kumar in the post of Assistant Professor in the first Respondent University as illegal and null and void.

3.The issue in all the Writ Petitions are interlinked and therefore disposed of by this Common Order. The parties are referred to as per their rank in W.P.No.18891 of 2012.

Case of the Petitioner:

4.According to petitioner, she is a Post Graduate in Law (M.L.) and secured more than 55% marks in M.L. Degree. The first respondent issued an advertisement in one issue of an English Daily Viz., the New Indian Express on 24.05.2006, calling for

appointment to various post of Lecturer in various departments of law. The qualification for the post of Lecturer is Masters Degree with minimum of 55% mark and pass in National Eligibility Test [hereinafter referred to as "NET"] or the State Level Eligibility Test [hereinafter referred to as "SLET"] examination. In response to the advertisement issued by the first respondent, the petitioner applied for the post of Lecturer. The petitioner was selected and as per the resolution of Syndicate, she was appointed by the order dated 19.07.2006 on tenure basis for a period of one year on condition that she will be considered for appointment on regular basis only if she pass the NET/SLET examination.

4(a).The Syndicate Sub Committee by memo dated 18.07.2007 decided to extend the tenure of the petitioner for a period of one year or till a regular candidate is appointed in her place. Despite that the first respondent extended for 6 months till 30.04.2008 and subsequently extended for further period of 6 months till 04.11.2008. The petitioner was permitted to register and do Ph.D by the first respondent only after the order of this Court. The petitioner registered herself for Ph.D and submitted her thesis. The petitioner passed NET on 15.06.2012.

4(b).In the meanwhile, the petitioner gave representation dated 10.09.2008 for extending her tenure beyond 04.11.2008. No order was passed on the representation made by the petitioner. The petitioner filed W.P.No.26176 of 2008 for a direction to the first respondent to continue the petitioner in the post of Lecturer in International Law in the first respondent University, until a regular candidate is appointed to the said post. This Court by the order dated 04.11.2008 made in M.P.No.1 of 2008, granted interim injunction restraining the respondents from discontinuing the services of the petitioner as Lecturer in International Law in the first respondent University until a regular candidate is appointed to the said post pending disposal of the Writ Petition No.26176 of 2008.

4(c).The petitioner is continuing as Lecturer for 7 years and teaching various subjects to the Under Graduate and Post Graduate students in first respondent University. After passing NET examination, the petitioner gave representation dated 18.06.2012 to the first respondent to regularize her services, as there are number of vacancies in the first respondent University. No orders was passed on the representation of the petitioner. After re-opening of college for the academic year 2012-2013, the first respondent failed to allot work to the petitioner from 02.07.2012. The petitioner made oral representation to the Registrar of the first respondent University requesting for allotment of work. The action of the respondents in not allotting the work to the petitioner is

arbitrary. In such circumstances, the petitioner filed W.P.No.17525 of 2012 for a direction to the first respondent to consider and regularize/confirm the petitioner in the post of Assistant Professor/Lecturer in the first respondent University, with effect from the date of original appointment i.e., 11.07.2006, with all consequential and attendant benefits. In the said Writ Petition, this Court granted interim order dated 06.07.2012, in M.P.No.1 of 2012 in W.P.No.17525 of 2012 restraining the first respondent from terminating the services of the petitioner or in any manner hindering in the discharge of her duties.

4(d).The first respondent served the impugned letter dated 12.07.2012 stating that the first respondent was under no obligation to continue the service of the petitioner in view of the interim order, since they have appointed a candidate on regular basis. The first respondent also stated that request of the petitioner for regularization cannot be considered and stated that she can apply afresh when fresh advertisement is given. The petitioner filed W.P.No.18819 of 2012 challenging the said order of the first respondent dated 12.07.2012 and to regularize/permanently appoint the petitioner in the post of Assistant Professor/Lecturer in the first respondent University, with effect from the date of petitioner's original appointment, i.e., 11.07.2006, with all consequential benefits.

4(e).According to petitioner, she is fully qualified to be appointed as Lecturer/Assistant Professor as she had passed NET examination on 15.06.2012. The third respondent in W.P.No.18891 of 2012 Viz., Dr.Balu was guide of the second respondent in W.P.Nos.18819 and 18891 of 2012 in Ph.D and third respondent has influenced the selection Committee to appoint the second respondent, even though the second respondent did not pass NET examination. The petitioner filed W.P.No.18891 of 2012 for a declaration declaring the appointment of the second Respondent Viz., Dr.P.Vasantha Kumar in the post of Assistant Professor in the first Respondent University as illegal and null and void.

5.The learned Senior Counsel appearing for the petitioner contended that the petitioner was appointed on tenure basis for one year as per the resolution of Syndicate Committee and Syndicate Committee extended the tenure for a period of one year or till a regular candidate is appointed. The Syndicate Sub Committee did not mention "whichever is earlier". In view of the same the tenure of the petitioner was not restricted to one year but it was extended till regular candidate is appointed. In the counter affidavit only the first respondent has stated that tenure of the petitioner was extended to one year or till a regular candidate is appointed and inserted a word "whichever is earlier". When the Syndicate Sub Committee has not stated so,

the first respondent University cannot take such a stand that petitioner's tenure is only for one year or till a regular candidate is appointed "whichever is earlier". The first respondent without appointing a regular candidate in the place of the petitioner, sought to discontinue the services of the petitioner. In view of the interim order granted by this Court, the petitioner is still continuing as a Lecturer. University Grants Commission [hereinafter referred to as the "UGC"] has prescribed standards for obtaining Ph.D and the second respondent has not obtained Ph.D in International Law, but obtained Ph.D. only in 'Right to Information Act'. Only in the amendment made in the year 2009 in UGC, the persons possessing Ph.D for passing NET/SLET are exempted. The second respondent attended Viva in November 2011 for obtaining Ph.D. Notification issued on December 2011. The respondents have not stated when the second respondent has obtained Degree. As per UGC Norms, there must be two external examiners. But when the second respondent attended Viva, there was only one examiner. The second respondent was not having required 2 years teaching experience in December 2011, whereas the petitioner had more teaching experience and she has passed NET examination on 15.06.2012. The first respondent has also not followed the roster system for appointment while appointing the second respondent. The learned Senior Counsel appearing for the petitioner further contended that the petitioner in her 4th attempt passed the NET examination, held in December 2011 and results were published on 15.06.2012. The first respondent University ought to have considered the petitioner for appointment in the regular vacancy called for by the advertisement dated 04.12.2011. From the date of appointment of the petitioner, i.e., from 19.07.2006 no regular appointment was made till 2011. In the year 2015, the petitioner completed Ph.D. Only in the year 2016, the first respondent University called for appointment in regular vacancy. The petitioner by that time crossed the age and hence prayed for considering the case of the petitioner.

5(a). In support of his contentions, the learned Senior Counsel appearing for the petitioner relied on the following judgments :

(i) 2013 SCC Online Delhi 3248 [Anita Ghosh Vs. Shri Ram College of Commerce & Others]:

"21. The question now is that having rejected the arguments of Ms. Anita Ghosh and UGC what must follow. It was argued that this Court should again refer the matter back to UGC and should not take a decision on its own. Of course, normally, once a decision of a body is set aside, such a body will be again asked to take a decision in accordance with law, however, in the facts of the present

case, where there have been not one but three decisions of UGC persistently refusing to grant exemption from NET qualification, I feel that instead of wasting further time, and that too in these cases which are now over 17 years old, this Court should give its decision instead of UGC doing so. In my opinion, considering the facts and circumstances of the present cases, since Smt. Kuljeet Kaur had obtained NET qualifications within 1 ½ years from the date of original appointment, and for the NET test which was given within 1 year of the date of appointment, therefore, in my opinion, the only order which is required to be passed is that there is no need of giving exemption from NET qualification, however, the period for obtaining NET qualification of Smt. Kuljeet Kaur is extended up to 12.12.1996. I have already stated that it is not unknown that UGC itself has extended the time for various candidates to obtain the NET qualification. Therefore, if UGC can extend the time for candidates to get NET qualification, there is no reason why this Court cannot exercise similar power and extend the time for obtaining of NET qualification. I do so in the facts of the present case."

(ii) (2012) 8 MLJ 433 [Dr.D.Purushottaman Vs. State of Tamil Nadu]:

"5. It is the admitted case of the respondents in their counter affidavit that there is a work load and to protect the interest of the students, they resorted to fill up the vacancies of lecturers. It is evident from the materials that during the academic year 1988 - 90, for the reasons best known to the respondents, they have not gone for regular selection to fill up the vacancies but resorted to go for appointment of lecturers on contract basis by virtue of which, the appellant and others, were deprived of service benefits at the end of their retirement from service. Once there is a workload, the respondents should have gone for regular appointment instead of making contract appointments for years together. Moreover, though the stand of the respondents is taken into consideration, in the case of the other lecturers, who were engaged in 1988 - 89 and 1989 - 90, the respondents thought it fit to regularise their services from 26.3.1993 as per G.O. No. 9 Law Department dated 12.01.2001. It is not known as to why they have not applied

the same principle in the case of the appellant and others recruited in 1997 for regularisation as per G.O. No. 170 dated 22.7.2008. This is another circumstance under which we consider that the entire action of the respondents in not regularising the services of the appellant and others not only from the date of their initial appointment or at least after completion of four years of service, amounts to violation of Article 14 of Constitution of India."

(iii) Judgment of this Court dated 18.12.2007 in W.P.Nos.23479 of 2006, 12706 and 12707 of 2007 [S.Srinivasan vs. Union of India]:

"13. There is no dispute with regard to the fact that the applicants were appointed in regular vacancies between 1989 and 1991, through Employment Exchange, since there was urgent need to fill up the vacancies and they are continuing in their services all these years, either with or without artificial breaks. It has also been seen that they were selected by a local Selection Committee. When such a procedure was admissible under the old Recruitment Rules, which were in vogue at the time of their appointment, it cannot be said that they were recruited by resorting to back door methods, so as to deny their regularisation. It is to be pointed out that the selection itself has been done by the organs of the Government of Pondicherry and not by any private management of any educational institution, at the cost of the regular selection process. The age and educational qualification of the applicants was held to be perfectly fit for the post by the respondents at the time of their selection under the old Recruitment Rules. Admittedly, the new Recruitment Rules came into force much later the selection of the applicants, i.e. w.e.f. 10.4.1995 only. Therefore, we wonder as to how such new Recruitment Rules could be pitted against the candidates like the applicants who were selected by the procedure contemplated under the old Recruitment Rules. At the cost of repetition, we are unable to accept the contention raised on the part of the UPSC and the Government of Pondicherry that the appointments of the applicants is a back door method.

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"19. In the present case many of the writ petitioners have been working

from 1985 i.e. they have put in about 22 years service and it will surely not be reasonable if their claim for regularization is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularization and are made to face the same selection which fresh recruits have to face."

(iv) 2015 SCC Online Mad 9158 [D.Gayathri Vs. State of Tamil Nadu]:

"12.14. Furthermore, it is useful to refer to Section 45(7) of the Act that deals with the appointment to temporary posts. It is useful to extract Section 45(7) of the Act as hereunder:

"45(7) Appointments to temporary posts shall be made in the manner indicated below:-

(i) If the temporary vacancy is for a duration longer than one academic session, it shall be filled on the advice of the Selection Committee in accordance with the procedure indicated in the foregoing provisions:

Provided that if the Vice-Chancellor is satisfied that in the interest of work it is necessary to fill the vacancy, the appointment may be made on a temporary basis by a local Selection Committee referred to in sub-clause (ii) for a period not exceeding six months;

(ii) If the temporary vacancy is for a period less than a year, an appointment to such vacancy shall be made on the recommendation of a local Selection Committee consisting of the Dean of the Faculty concerned, the Head of the Department and a nominee of the Vice Chancellor:

Provided that if the same person holds the offices of the Dean and the Head of the Department, the Selection Committee may consist of two nominees of the Vice-Chancellor.

Provided further that in case of sudden casual vacancies in teaching posts caused by death or any other reason, the Dean may, in consultation with the Head of the Department concerned, make a temporary appointment for a month and report to

the Vice-Chancellor and the Registrar about such appointment:

(iii) No teacher appointed temporarily shall, if he is not recommended by a regular Selection Committee for appointment under this Act, be continued in service on such temporary employment unless he is subsequently selected by a local Selection Committee or a regular Selection Committee, for a temporary or permanent appointment, as the case may be."

12.15. The aforesaid extract of Section 45(7) of the Act makes it clear that the petitioners were not appointed to temporary posts or in sudden casual vacancies. But the petitioners were appointed in the posts regularly sanctioned vide G.O.Ms. No. 308, Higher Education Department, dated 15.09.2006, and also approved by the Syndicate, as stated above. Hence, I am of the view that it is not lying in the mouth of the University that the Selection Committee constituted by them was not in terms of the UGC Regulations.

12.16. I am of the considered view that the Selection Committee was constituted by the University as per the Act and the Statutes and the Regulations framed thereunder.

12.17. It is a different matter if the petitioners were appointed without any selection process and they came by back door method. Factually, it is admitted that there was a Selection Committee duly constituted by the University and the same was headed by the Vice Chancellor. Now the University cannot turn around and disown the said Selection Committee that it was not constituted in terms of the UGC Regulations and send out the teachers that too after they have been serving for about eight years.

12.18. Furthermore, in the notification calling for applications for appointment to the post of Lecturers, it was not stated that the recruitment was for temporary posts. On the other hand, as stated above, the University issued paper publication to fill up the sanctioned posts and also constituted the Selection Committee to select the teachers, as per the Act, Statutes and the Regulations framed thereunder. The Syndicate also approved the posts.

.....

13.1. Though it is the normal procedure to deal with the cases cited by the learned counsel for the petitioners first, for the sake of convenience, I intend to deal with the judgments cited by the learned counsel for the University first.

14.1. The learned counsel for the University heavily placed reliance on the judgment of the Constitution Bench of the Apex Court in Secretary, State of Karnataka v. Umadevi (3), (2006) 4 SCC 1:

(i) I am of the considered view that the said judgment held that the State or its instrumentalities shall not resort to fill up the regular vacancy by way of irregular appointment without following the due process of selection as envisaged in the Act/Rules relating to appointments. That is, the Apex Court categorically held that appointing a person in public employment without sanction of post, without qualification and without following the due process of selection is illegal and violative of Articles 14 and 16 of the Constitution.

(ii) In fact, the Apex Court noted in paragraph 4 that the States have resorted to irregular appointments, especially in the lower rungs of the services, without following the recruitment procedure.

(iii) That the case arose out of appointment of temporary employees on daily wages in Commercial Taxes Department in the State of Karnataka without the sanctioned posts and without reference to qualification and without following the due process of selection and they were continued for years together.

(iv) Even in those cases, the Apex Court held in paragraph 53 that as a one-time measure, the temporary employees, who were appointed irregularly, could be regularized in those posts, if there are sanctioned posts and they possess requisite qualification for the posts, and if they rendered more than 10 years of service.

(v) In the cases on hand, I have categorically held that the petitioners were appointed against the sanctioned posts, they possessed the requisite qualification and they were selected by the duly

constituted Selection Committee. Therefore, in my view, the judgment rendered by the Constitution Bench of the Apex Court in Umadevi's case would not render any assistance to the University.

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15.3. The last judgment, relied on by the learned counsel for the University, is P. Suseela v. University Grants Commission, (2015) 3 MLJ 734 (SC):

(i) In that case, the issue that arose before the Apex Court is as to the constitutional validity of the University Grants Commission Regulations (Minimum Qualifications Required for the Appointment And Career Advancement of Teachers in Universities and Institutions affiliated to it) (the Third Amendment) Regulation 2009, under which, the NET/SLET is to be the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/Colleges/Institutions.

(ii) The Apex Court upheld the validity of the said regulations. In the cases on hand, the petitioners have not questioned the UGC Regulations 2009.

(iii) In fact, paragraphs 14 and 15 of the said judgment support the case of the petitioners. It is held therein that the persons, who were appointed based on the UGC Regulations, that existed prior to UGC Regulations 2009, derive a vested right to continue in the employment and their employment shall not be disturbed. The following passage in paragraphs 14 and 15 of the said judgments:

"14. The other interesting argument made is that such regulations should not be given retrospective effect so as to prejudicially affect the interests of any person to whom such regulation may be applicable. In order to appreciate this contention, it is necessary to distinguish between an existing right and a vested right.

15. Similar is the case on facts here. A vested right would arise only if any of the appellants before us had actually been appointed to the post of Lecturer/Assistant Professors. Till that date, there is no vested right in any of the appellants. At the highest, the appellants could only contend

that they have a right to be considered for the post of Lecturer/Assistant Professor. This right is always subject to minimum eligibility conditions, and till such time as the appellants are appointed, different conditions may be laid down at different times. Merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regulation laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail."

6.The first respondent filed counter affidavit.

7.Per contra, the learned Advocate General appearing for the first respondent University contended that the first respondent is a School of Excellency imparting good quality of education to students. The faculty members are appointed strictly in accordance with UGC Regulations. During the year 2006, number of students were transferred from Dr.Ambedkar Government Law College to School of Excellence in law of the first respondent University. Due to the same, the first respondent appointed the petitioner and two others on tenure basis for one year. The reliance placed by the learned Senior Counsel appearing for the petitioner on the Official Memorandum is without merits. Even if the same is valid, that will be in force only for one year. The probation applies only for the persons appointed on regular basis as against permanent vacancy. The petitioner being appointed on tenure basis, the principle of probation does not apply to the petitioner.

8.The Syndicate passed a resolution dated 14.02.2007 that persons appointed on tenure basis need not be terminated in the middle of the academic year and their tenure can be continued till regular appointment is made. Based on the said resolution, the tenure of the petitioner and two others were extended for further period of one year or till the regular appointment is made, whichever is earlier. It was also made clear to the petitioner and two others that the tenures are continued till the end of the academic year 2007-2008. The petitioner also entered into an agreement dated 05.05.2008, wherein the petitioner accepted the condition that she will not claim any privilege or benefit. The petitioner's tenure was not extended subsequently. The petitioner filed W.P.No.26176 of 2008 with a

specific prayer to direct the Respondent to continue the Petitioner in the post of Lecturer in International Law in the respondent University until a regular candidate is appointed to the said post. The petitioner continued in service based on the interim order granted by this Court dated 06.07.2012, in M.P.No.1 of 2012 in W.P.No.17525 of 2012, even when the petitioner did not possess requisite qualification prescribed by UGC Regulations.

8(a).The first respondent notified regular vacancies in one issue of an English Daily Viz., the New Indian Express on 24.05.2006 and called for application for appointment including for the post of Lecturer in International Law. The petitioner did not apply in response to the said notification, as she did not possess requisite qualification. The second respondent is fully qualified as per UGC Norms and he was selected by the Committee and approved by the Syndicate. The petitioner has no locus standi to challenge the appointment of the second respondent as she had not even applied for the said post. The learned Advocate General appearing for the first respondent contended that the learned Senior Counsel for the petitioner during arguments contended that Ph.D obtained by the second respondent is not valid and it is not according to UGC Norms. The petitioner did not take such a stand in the affidavit filed in all the 4 Writ Petitions and it is not open to the learned Senior Counsel for the petitioner to put forth the said contention without any pleadings. The second respondent has obtained M.L. degree in International Law and Ph.D in law and same is valid as per UGC Regulations. The petitioner obtained M.L. degree through private study and the said degree is not valid. Only persons, who have obtained P.G. Degree in regular course are eligible to be considered for appointment on regular basis. The petitioner is not possessing valid M.L.Degree and she had not possessed the prescribed qualification at the time of appointment till 2012 and therefore the petitioner is not entitled for regularization and entitled for other benefits.

8(b).The petitioner cannot be regularized from the date of her initial appointment as the same would be in violation of qualification prescribed and the University did not approve her request for regularization and by letter dated 05.11.2008, her letter for regularization was rejected. The regularization sought for by the petitioner is for a entry through back door. It is open to the petitioner to apply for appointment on regular basis when the first respondent issued notification. The UGC prescribed guidelines for registering Ph.D and for qualification for guide for the person pursuing Ph.D. The second respondent obtained Ph.D in accordance with UGC Regulations.

8(c).The learned Advocate General appearing for the first

respondent in support of his contentions relied on the following judgments:

(i) (2009) 13 SCC 90 [Harinder Kaur and others Vs. Union of India and others]:

"13. Para 53 of the said decision on which reliance has been placed by Mr Patwalia reads as under: [Umadevi (3) case [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] , SCC p. 42]

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [State of Mysore v. S.V. Narayanappa, AIR 1967 SC 1071] , R.N. Nanjundappa [R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409] and B.N. Nagarajan [B.N. Nagarajan v. State of Karnataka, (1979) 4 SCC 507 : 1980 SCC (L&S) 4] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

(emphasis in original)

14. A judgment of a Constitution Bench of this Court laying down the law within the meaning of Article 141 of the Constitution of India must be read in its entirety for the purpose of finding

out the ratio laid down therein. The Constitution Bench in Umadevi (3) case [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] , in no uncertain terms, based its decision on the touchstone of the "equality clause" contained in Articles 14 and 16 of the Constitution of India. Emphasis has been laid at more than one place for making appointments only upon giving an opportunity to all concerned. Appointment through side door has been held to be constitutionally impermissible.

15. We are not oblivious of the fact that in some decisions rendered by different Benches of this Court taking a sympathetic view in favour of the employees who had been serving the State for a long time, the rigours (sic rigorous) test laid down therein were sought to be dilated. However, some other Benches of this Court had interpreted para 53 of Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] in the light of the decisions mentioned therein.

24. The Court noticed the spoils system as also a large number of decisions rendered thereon including Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] to hold: (Upendra Narayan case [(2009) 5 SCC 65 : (2009) 1 SCC (L&S) 1019 : (2009) 4 Scale 282] , SCC p. 102, para 65)

"65. In view of the above discussion, we hold that the initial appointments of the respondents were made in gross violation of the doctrine of equality enshrined in Articles 14 and 16 and the provisions of the 1959 Act and the learned Single Judge gravely erred by directing their reinstatement with consequential benefits." "

(ii) Judgment of this Court dated 03.01.2017 made in W.P.Nos.36491 and 36947 of 2016 [R.Angayarkani and another Vs. The Secretary to the Government and others]:

"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 initial appointment, with all consequential benefits.

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."

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.

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."

(iii) (2008) 7 SCC 153 [Pramod Kumar Vs. U.P. Secondary Education Services Commission and others]:

"18. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularised, particularly, when the statute in no unmistakable term says so. Only an irregularity can be. [See Secy., State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753], National Fertilizers Ltd. v. Somvir Singh [(2006) 5 SCC 493 : 2006 SCC (L&S) 1152] and Post Master General, Kolkata v. Tutu Das (Dutta) [(2007) 5 SCC 317 : (2007) 2 SCC (L&S) 179] .]

....
28. Yet again reliance has been placed on Santosh Yadav v. State of Haryana [(1996) 9 SCC 320 : 1996 SCC (L&S) 1246] . The appellant therein was having a diploma which was not approved by the State of Haryana and despite the same, teachers were appointed to meet the State's educational needs.

The validity of the said degree was not in question. Not only appointments were made but also appointment to the appellant was offered in 1980. His services were confirmed in 1984 and sought to be terminated in the year 1990. This Court noticed that a relaxation was granted by the State itself which was available to her and others similarly situated. She, having obtained regularisation in her service, it was wrong and arbitrary on the part of educational department and the school to deprive her of the job. The same is not the case here."

(iv) (2014) 4 SCC 769 [Secretary to Government, School Education Department, Chennai Vs. R.Govindaswamy and others]:

"8. This Court in State of Rajasthan v. Daya Lal [State of Rajasthan v. Daya Lal, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340 : AIR 2011 SC 1193] has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under: (SCC p. 435, para 12)

"(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even

temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute." "

(v) (2001) 10 SCC 447 [Mohd. Shafi Pandow Vs. State of J & K and others]:

"2.....Further, the appellant did not possess the minimum qualification required for direct recruitment, namely, TDC (Final) Medical, and therefore, he was ineligible for being considered as a direct recruit. In that view of the matter, he had no locus standi to assail the appointment made in favour of others who pursuant to the advertisement, did make application and did possess the requisite qualification, and were ultimately appointed. In this view of the matter, we see no infirmity with the impugned judgment of the Division Bench requiring our interference with the same. The appeal fails and is accordingly dismissed."

9.The learned counsel appearing for the second respondent submitted that he is adopting the arguments of the learned Advocate General appearing for the first respondent and reiterated the contentions of the learned Advocate General appearing for the first respondent that petitioner has no locus standi to challenge the appointment of the second respondent as she did not possess requisite qualification and did not participate in the selection process in response to the notification issued by the first respondent. The learned counsel appearing for the second respondent further contended that the Registrar of the University has issued a certificate that second respondent obtained Ph.D degree as per the Norms prescribed by UGC and second respondent has obtained Ph.D in Law and in view of the same, the second respondent is exempted from passing NET examination. The petitioner obtained M.L. degree from the University of Madras by private study, which is not considered as valid qualification in teaching. The Bar Council of India by circular bearing BCI:D:1661/2012(LE.Affi.) dated 21.08.2012, has stated that the degree obtained in private study or distance education is not a valid degree for appointment in teaching profession. The learned counsel appearing for the respondents denied that second respondent was selected and appointed only by the influence of third respondent. The third respondent is only one of the members of the Selection Committee and he has not influenced the other members of the Selection Committee. In support of his contentions, the learned counsel appearing for the second respondent produced the certificate issued by the University of Madras, Department of Legal Studies.

10.The third respondent has filed counter affidavit and denied that he influenced the Selection Committee and appointed the second respondent.

11.The learned Senior Counsel appearing for the petitioner in reply contended that the UGC has recognized a degree obtained through open university. When the first respondent is following the UGC norms, it is not open to the first respondent to contend that M.L. degree obtained through private study is not a valid degree for appointment of Lecturers/Assistant Professors. The judgments relied on by the learned Advocate General appearing for the first respondent are not applicable to the facts of the present case. All those judgments relate to appointment on contract, adhoc or temporary basis. In the present case, the notification was issued for appointment on regular basis. The petitioner was appointed on tenure basis, as she did not possess NET qualification. She was given time to pass NET examination. The third respondent attended the viva-voce for Ph.D in November 2011 and notification was issued in December 2011. It is not known when the third respondent obtained Ph.D and contended that exemption is only prospective and not retrospective and prayed

for allowing the Writ Petition.

12.The learned Advocate General appearing for the first respondent in rejoinder contended that the first respondent being the employer is entitled to fix qualification for appointment of the faculty members. The first respondent has fixed M.L. degree obtained on regular basis and hence, M.L. degree obtained by the petitioner through private study is not a valid degree for being considered for appointment as Lecturer/Assistant Professor. The Hon'ble Apex Court in Annamalai University case, has held that University has right to fix the educational qualification obtained on regular basis and not private study through open University and prayed for dismissal of all the Writ Petitions.

13.Heard the learned Senior Counsel appearing for the petitioner, learned Advocate General appearing for the first respondent as well as the learned counsel appearing for the second respondent and perused the materials available on record.

14.The two issues to be decided in all the four Writ Petitions are:

(1). Whether the petitioner is entitled for regularization as Lecturer/Assistant Professor of International Law in first respondent University. If she is entitled for regularization from which date she is entitled to be regularized?

(2). Whether selection and appointment of the second respondent is as per Norms prescribed by the UGC and his appointment is valid?

Point No.1:

15.I have extensively incorporated the arguments advanced by the learned Senior Counsel appearing for the petitioner, learned Advocate General appearing for the first respondent and learned counsel appearing for the second respondent, even though this issue is no longer res-integra. The learned counsel for the parties made elaborate arguments and referred extensively to the documents filed in the typed set of papers. It is not in dispute that the petitioner was not qualified to be appointed as Lecturer in the first respondent University on 19.07.2006 as she did not pass NET examination when she was appointed for the said post in response to the notification issued by the first respondent in one issue of an English Daily Viz., the New Indian Express dated 04.11.2012. In spite of not possessing requisite qualification, the petitioner was appointed for the said post. According to the learned Advocate General, during the year 2006, number of students were transferred from Dr.Ambedkar Government Law College to the School of Excellence in law of Dr.Amberkar Law University. Due to the said exigency and for the benefit of students, the first respondent considered the application of the

petitioner and two others for appointment and appointed them for one year on tenure basis. Subsequently, the period of one year was extended initially for six months and another six months till the academic year 2007-2008. When the tenure of the petitioner was extended, it was made clear that when a regular appointment is made, the tenure of the petitioner will come to an end or at the expiry of one year, whichever is earlier. The first respondent did not extend the tenure of the petitioner, before end of the academic year 2007-2008 i.e., before November 2008. The petitioner filed W.P.No.26176 of 2008 and she is continuing in service as per the interim order granted by this Court on 04.11.2008 in M.P.No.1 of 2008. The issue whether irregular appointees like petitioner are entitled to be regularized in permanent post was considered by the Hon'ble Apex Court, this Court and various High Courts. The landmark judgment on this issue is the judgment of the Hon'ble Apex Court in the case of State of Karnataka Vs. Uma Devi reported in [2006 4 SCC 1]. The Hon'ble Apex Court after considering the issue in detail in Paragraph No.53 of the said judgment held that irregular appointees have entered the service by back door and they are not entitled for regularization. The Hon'ble Apex Court in the said judgment also considered the irregular appointees who continued in service as per the orders of Courts and termed it as 'litigious employment'. The Hon'ble Apex Court has categorically held that such persons are not entitled for regularization under any circumstances. The Hon'ble Apex Court made a distinction with regard to irregular appointees, who continued in service for a long period and considering the long period of service of such irregular appointees and number of regular vacancies are available, directed the Government to consider regularizing such appointees as one time measure. The ratio in the said judgment is squarely applicable to the case of the petitioner, as she is an irregular appointee continuing in service from 2008 as per the interim order of this Court. In view of this admitted fact, as per ratio of the Hon'ble Apex Court referred to above, the petitioner is not entitled to be regularized, as she had continued for long period of service only due to the interim order passed by this Court.

15(a).The learned Senior Counsel appearing for the petitioner contended that the petitioner had passed NET as well as obtained Ph.D., and therefore, she can be considered for regularization in the vacancy now exist in the first respondent University.

15(b).From the materials on record and arguments of the learned Advocate General and the learned counsel for the second respondent, it is seen that the petitioner obtained M.L. Degree by private study. A candidate can obtain such a degree by attending classes for 10 to 15 days in a year. The learned

Senior Counsel appearing for the petitioner did not dispute that the petitioner obtained M.L. degree only by private study. The contention of the learned Senior Counsel appearing for the petitioner that U.G.C. recognised M.L. degree obtained by private study and hence, the petitioner is eligible to be appointed as Lecturer/Assistant Professor, is without merits. The contention of the learned Advocate General appearing for the first respondent that as per notification, a person who has obtained M.L. degree in regular course only is eligible for appointment as Lecturer/Assistant Professor and the petitioner, who has not obtained M.L. degree in regular course is not eligible for appointment, has considerable force and acceptable. Further, the first respondent has passed a resolution, dissolving that the persons who have obtained Post Graduate degree by private study or distance education are not eligible for appointment in teaching post. In view of the above material, the contention of the learned Senior Counsel appearing for the petitioner that the petitioner may be regularized, as she has obtained Post Graduate degree and passed NET on 15.06.2012, is without merits. The petitioner is not possessing Post Graduate degree as prescribed by the first respondent University as well as the Bar Council of India. The Bar Council of India also issued a letter stating that a person who had obtained Post Graduate Course other than through regular course is not entitled to be appointed in teaching post. A portion of the letter is extracted hereunder:

"The Committee after deliberation, in respect of LLM Course, it has been pointed out that some of the Universities are granting L.L.M. Degree as Correspondence Course or through distance education mode also. It has been pointed by the Directorate of Legal Education of the Bar Council of India that most of these courses are attending only for about 10 to 15 days in a year and that Degree/certificate is issued by the concerned University and the degrees/certificate does not indicate that whether they have passed the course through distance education mode or correspondence mode. The Committee resolves for the purpose of appointing faculty members to teach Law in centre of Legal Education, any L.L.M degree through distance/correspondence course should not be considered a qualification for appointment to teach Law to the students. However, person joining as faculty member should be asked specifically whether they have done L.L.M through correspondence course or not."

Therefore, the petitioner is not entitled for regularization as Lecturer in International Law in the first respondent University. This issue is answered accordingly.

Point No.2:

16. In response to the notification dated 04.12.2011, the second respondent applied for appointment as Lecturer in International Law. According to the respondents, the second respondent has obtained Post Graduate in International Law and also obtained Ph.D. in the theses titled 'Right to Information Act, 2005- An Analysis'. The first respondent after considering the persons who have applied for the appointment as Lecturer on permanent basis, selected the second respondent to be appointed as Lecturer in International Law. The petitioner is challenging the said appointment on two grounds:

(i) The second respondent has not passed NET examination.

(ii) The third respondent, who is the guide of the second respondent in Ph.D., was in the selection committee and he influenced the selection of the second respondent.

16(a). At the time of arguments, the learned Senior Counsel appearing for the petitioner contended that Ph.D. obtained by the second respondent is not in accordance with the U.G.C. norms and he has not obtained Ph.D. in the concerned subject, i.e., in International Law. For the above reasons, the learned Senior Counsel appearing for the petitioner contended that the appointment of the second respondent has to be declared as null and void. The said contentions are without merits. Firstly, the petitioner has not made any averments with regard to Ph.D. degree obtained by the second respondent in the affidavit in the Writ Petition and has not challenged the same. Only at the time of arguments, the learned Senior Counsel appearing for the petitioner made submissions with regard to validity of Ph.D. obtained by the second respondent. The learned Advocate General appearing for the first respondent contended that it is not open to the petitioner to dispute the validity of the degree obtained by the second respondent, without any pleadings. The learned Advocate General appearing for the first respondent as well as the learned counsel appearing for the second respondent referred to the document issued by the Registrar, University of Madras, dated 18.02.2019, certifying the validity of the Ph.D. obtained by the second respondent. They also referred to the UGC regulation, which contained guidelines and condition for obtaining Ph.D. From the materials on record and arguments of the learned Advocate General appearing for the first respondent and the learned counsel appearing for the second respondent, it is seen that the second respondent has obtained Post Graduate degree in International Law by regular study and obtained Ph.D in Law. From the amended regulation of UGC, it is seen that a person can obtain Ph.D. in any subject in Law and need not be in relevant subject, in this case in International Law.

16(b). The contention of the learned Advocate General appearing for the first respondent and the learned counsel appearing for the second respondent that the petitioner has no locus standi to challenge the selection and appointment of the second respondent, as she did not possess requisite qualification on the date of notification and she did not participate in the selection process, is acceptable. The petitioner except making an allegation that the third respondent, who is the guide of the second respondent in Ph.D., influenced the selection and appointment of the second respondent, has not substantiated the same. As per the contentions of the learned Advocate General appearing for the first respondent and the learned counsel appearing for the second respondent, the third respondent is not the only person, who considered the application for selection and appointment of the second respondent. In view of the same, the contention of the petitioner that due to influence of the third respondent, the second respondent was selected and appointed, is rejected as devoid of merits. For the above reasons, I hold that the selection and appointment of the second respondent is valid and the second point is answered accordingly.

17. For the foregoing reasons, all the four Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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W.P.Nos.26176 of 2008, 17525,
18819 and 18891 of 2012

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