

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

KANCHAN
VINOD
MAYEKAR

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Date: 2021.12.14
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WRIT PETITION NO.3831 OF 2019

1. Vijay Pandurang Sawant,)
Age 38 years, Occ. : Service,)
R/o. Pandurang Krupa, Plot No.1,)
Lane No.1, Kirti Nagar, Survey No.71))
New Sangvi, Pune 411 027)

2. Satish B. Pawar,)
Age 43 years, Occ. : Service,)
R/o. Madhuban Society,)
Line No.2, Kate Building,)
Flat No.09, Old Sangvi, Pune 411 027)

3. Satish Goraksh Waman,)
Age 47 years, Occ. : Service,)
R/o. B/9, Mauli Apartment,)
Aadarsh Nagar, Navi Sangvi,)
Pune - 411 027)

4. Gajanan Gorakh Rakhunde,)
Age 29 years, Occ. : Service,)
R/o. Sinhagad Hsg.Soc.,)
Mhetre Wasti, Gat No. 1458,)
Landmark – Gajanan Mhetre)
Patsanstha, Tal. Haveli,)
Pune – 412 114.)

5. Mrunalini Nishikant Dharmadhikari,))
Age 44 years, Occ. Service,)
R/o. Flat No.D-1, Kalpanamati Hsg.))
Soc., Aundh, Pune – 411 007.)

6. Vanita Bhagwan Thokal,)
Age 37 years, Occ. : Service,)
R/o. Jaymala Nagar,)

**Behind St. Colony, Old Sangvi,)
Pune – 27.)**

**7. Rohit Manohar Bhalerao,)
Age 28 years, Occ. Service,)
R/o. Aba Kate Chawl,)
Near Aradhana Tea Stall,)
Dapodi, Pune – 411 012)**

**8. Amar Govindrao Gaikwad,)
Age 44 years, Occ. : Service,)
R/o. Sr.No.27.3A/2, Lane No.11-C,)
Near Moje School, Munjabawasti,)
Dhanori, Pune – 15)**

**9. Nitin Prakash Maghade,)
Age 29 years, Occ. : Service,)
R/o. NCH-204, New Building,)
Servant Quarter's, Savitribai)
Phule Pune University,)
Ganeshkhind Road, Pune – 411 007)**

**10. Nitin Suryakant Jagtap,)
Age 28 years, Occ. : Service,)
R/O. B-6-3, Utkarsh Nagar Hoc.Soc.,))
Back to Priyanka Hotel, Gadital,)
Solapur Road, Hadapsar,)
Pune - 411 028)**

**11. Sandip Sudhakar Gangurde,)
Age 34 years, Occ. : Service,)
R/o. Tirthraj Apartment, R.No.2,)
Shivdatta Nagar, Near Ramkrishna))
Mangal Karyalay, Pimple Gurav,)
Pune – 411 061)**

**12. Samadhan Ganpat Rakshe,)
Age 33 years, Occ. : Service,)
R/o. Renuka Niwas, R. No.8,)
Jaymala Nagar, Lane No.2,)**

Old Sangvi, Pune – 411 027.)

**13. Ganpat Anant Badbe,)
Age 28 years, Occ. : Service,)
R/o. Lane No.52, Maruti Mandir,)
Parvati Paytha, Sinhagad Road,)
Pune – 411 009.)**

**14. Vidita Mayur Kemse,)
Age 37 years, Occ. Service,)
R/o. Kshitkala Niwas, Jayprakash Nagar,))
Gavanewasti, Bhosari – 39.)**

**15. Renuka Rajesh Sharma,)
Age 40 years, Occ. : Service,)
R/o. 289, Mohankar Sadan,)
Tambe Lane, Shaniwar Peth,)
Pune – 411 030)**

**16. Rahul Sudhakar Kadam,)
Age 42 years, Occ. Service,)
R/o. R.No.172, Dr.Ambedkar Hsg.Soc.))
Yerawda, Pune – 411 006.)**

**17. Ashwini Jaywant Maghade,)
Age 23 years, Occ. : Service,)
R/o. 38, Aundh Road, Khadki,)
Anabhao Sathe Nagar, Patil Pada,)
Near Baudh Mandir, Pune – 411 003)**

**18. Sanjay Barku Kamble,)
Age 50 years, Occ. : Service,)
R/o. Survey No.1/2,)
Navin Laxmi Nagar Galli No.4,)
Pimple Gurav, Pune – 61)**

..... Petitioners

VERSUS

**1. Savitribai Phule, Pune University)
Ganeshkhind Road, Pune – 411 007)**

2. The Registrar,)
Savitribai Phule Pune University,)
Ganeshkhind Road, Pune – 411 007)

3. The Vice Chancellor,)
Savitribai Phule Pune University,)
Ganeshkhind Road, Pune – 411 007)

4. The State of Maharashtra,)
(Through the Principle Secretary,)
Ministry of Higher Education,)
Mantralaya, Madam Cama Road,)
Mumbai – 400 032)

..... Respondents

Mr.Anil V.Anturkar, Senior Advocate, a/w. Ms.Preet S.Phanse,
Mr.Vaibhav Kulkarni, i/b. Mr.Amol Gatne for the Petitioners.

Mr.Mihir Desai, Senior Advocate, i/b. Mr.Rajendra Anbhule for the
Respondent nos. 1 to 3.

Ms.Kavita N.Solunke, A.G.P. for the State – Respondent no.4.

**CORAM: R. D. DHANUKA AND
ABHAY AHUJA, JJ.**

**RESERVED ON : 20th OCTOBER, 2021
PRONOUNCED ON : 14th DECEMBER, 2021**

JUDGMENT (Per R.D.Dhanuka, J.) :-

Rule. Mr.Desai, learned senior counsel for the respondent nos. 1
to 3 waives service. Ms.Kavita N.Solunke, learned A.G.P. waives
service for the respondent no.4. By consent of parties, writ petition is
heard finally.

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioners have prayed for an order and direction against the respondents to regularize the services of the petitioners and shall be provided with the prescribed pay-scale equivalent to the posts and work rendered by the petitioners to the respondents. The petitioners also seek an order and direction to consider the petitioners' experience on priority basis if at all the advertisement is issued by the respondents for filling up in the posts already occupied by the petitioners. The petitioners also seek an order and direction that the petitioners shall not be removed from the service of the respondent nos. 1 to 3 without following the process of law. Some of the relevant facts for the purpose of deciding this petition are as under :-

3. It is the case of the petitioners, that the petitioners are employed with the respondent no.1 University on various posts such as peon, assistant, accounts assistant, assistant librarian etc. for the period from 5 years to 17 years as per their respective appointments with the respondent no.1. In paragraphs 2 to 8, the petitioners have made their averments in respect of the petitioner nos.1, 2, 6, 9, 12, 15, 17 and 18

who according to the petitioners are working with the respondent no.1 for several years on various posts. Some of the petitioners have crossed the age of appointment as per service norms and are quite eligible for appointment as per their present posting in the employment of the respondent no.1. The respondent no.1 however is not filling up these posts only with intent to save the money and get the services of the petitioners by providing them a fixed monthly salary which is lesser than the prescribed rate of salary to be paid according to the post and qualification similar to that of the petitioners. It is the case of the petitioners that the regular employees working on the similar post are getting almost double the salary than that of the petitioners which amounts to discrimination so far as the petitioners are concerned.

4. Mr.Anturkar, learned senior counsel for the petitioners tendered brief written propositions of law. He relied upon the judgment of the Hon'ble Supreme Court in case of ***Secretary, State of Karnataka & Ors. vs. Umadevi (1) & Ors., 2004(7) SCC 132*** (hereinafter referred to as Umadevi 1), judgment of the Hon'ble Supreme Court in case of ***Secretary, State of Karnataka & Ors. vs. Umadevi (2) & Ors., 2006(4) SCC 44*** (hereinafter referred to as Umadevi 2), judgment of the

Hon'ble Supreme Court in case of ***Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors., 2006(4) SCC 1*** (hereinafter referred to as Umadevi 3) and would submit that by the judgment in case of Umadevi (3), after noticing the conflicting opinions between the three Judges' Bench, decisions in case of ***Ashwani Kumar and Ors. Vs. State of Bihar and Ors., reported in 1997 (2) SCC 1*** on one hand and ***State of Himachal Pradesh vs. Suresh Kumar Verma and another, AIR 1996 SC 1565*** on the other hand and other connected matters, the Hon'ble Supreme Court was of the view that those cases are required to be heard by a Bench of Five learned Judges.

5. It is submitted that by the judgment of the Hon'ble Supreme Court in case of ***Umadevi (2)***, the matter was required to be heard by a Bench of Five learned Judges, Constitution Bench. He invited our attention to the judgment of Hon'ble Supreme Court in case of ***Umadevi (3)*** and more particularly paragraphs 53 and 54 and would submit that it is clear that if a person has worked for ten years or more without the intervention of orders of Courts and Tribunals, the said person is entitled to be absorbed in the service. It is submitted that in this case, out of several petitioners those petitioner nos. 2, 6, 7, 8 and

13 have completed more than 10 years without judicial intervention and are thus required to be given benefits of the judgment of the Hon'ble Supreme Court in case of ***Umadevi (3)***. It is thus necessary to direct that the respondent no.1 University should absorb those petitioners who have completed the period of more than 10 years.

6. It is submitted by the learned senior counsel that in this case, the appointments are on the posts which have been sanctioned by the State Government or the appointments which are sanctioned, money is paid from the University funds. The petitioners belong to the second category where the appointments were sanctioned and the salary had been paid from the University fund. The University had been allocating the funds to the Department and the Department on the other hand was spending the funds for the purpose of the payment of the salary.

7. It is submitted that the word 'sanctioned post' must be interpreted so as to mean posts where the salary is paid from the University funds as against post which are exclusively for limited tenure such as daily wages or the work which is confined only for one

week or two weeks etc.

8. It is submitted by the learned senior counsel that even in case of those persons, who have not completed the period of 10 years, it will be wholly unfair to replace one adhoc employee by another adhoc employee. It is submitted that in such circumstances, where the employment has been continued for years together would show that the requirement is permanent in nature. If the requirement is permanent in nature, then to make the appointment on adhoc basis is violative of Article 14 of the Constitution of India.

9. It is submitted by the learned senior counsel that it is necessary to direct that although the benefit of absorption cannot be given at this juncture since some of the petitioners have not completed the period of 10 years, nonetheless, those who have not completed the period of 10 years, and where the requirement is permanent in nature, they should be continued to be appointed on adhoc basis without absorbing them at this stage either until the period of 10 years is over or until the regularly selected candidate comes. Even in case of regularly selected candidate these persons who have been continued should be considered

on merit without considering the age bar.

10. Learned senior counsel invited our attention to the proposal sent by the respondent no.1 University to the Vice-Chancellor for sanction of post. He submits that under section 5(11) of the Maharashtra Public Universities Act, 2016, the University is empowered and has duty to create posts including for non-teaching staff from its funds and from the funds received from other funding agencies and to make appointments thereto. He also placed reliance on section 5(12) of the said Act and would submit that the said provision would apply to the post sanctioned by the State Government. He invited our attention to section 134(1)(b) which deals with the salary fund, section 134(3) which provides that the salary fund consist of all amounts received from the State Government, Central Government or University Grants Commission etc. He relied upon section 134(5)(a) and would submit that the said provision prescribes as to what the development and programme fund of the University shall consist of.

11. Learned senior counsel placed reliance on section 8(1)(a) and would submit that the University is not empowered to create new posts

of teachers, officers or other employees without prior approval of the State Government. University is however empowered to incur fund for the purposes of creation of post in various cadre.

12. It is submitted by the learned senior counsel that though the Hon'ble Supreme Court in case of ***Umadevi (3)*** had directed that the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure for the services of such irregularly appointed persons, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals. The Government should further ensure that regular recruitments are undertaken to fill up those vacant sanctioned posts which are required 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 the date of the said judgment.

13. It is submitted that the word 'sanction' shall mean the sanction qua the University also. No such process has been started by the State Government till date though directed by the Hon'ble Supreme Court in the said judgment of ***Umadevi (3)*** as far back as on 10th April, 2006.

No provision has been made by the State Government under the University Act to absorb adhoc employee on permanent post. All the petitioners were appointed on adhoc basis on temporary posts.

14. Learned senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of ***State of Karnataka and others vs. M.L.Kesari and others, (2010) 9 SCC 247*** and in particular paragraphs 11 and 13 and would submit that the Hon'ble Supreme Court after adverting to the judgment in case of ***Umadevi (3)*** has directed the Zilla Panchayat to undertake the exercise within six months as a general one time regularization exercise, to find out whether there are any daily wages/casual/ adhoc employees serving the Zilla Panchayat and if so whether such employees (including the respondents therein) fulfill the requirements mentioned in paragraph (53) of the judgment of ***Umadevi (3)***. It was further directed that if they fulfill them, their services have to be regularized. If such an exercise has already been undertaken by ignoring or omitting the cases of the respondent nos. 1 to 3 therein, because of the pendency of these cases, then their case shall have to be considered in continuation of the said one time exercise within three months.

15. Learned senior counsel pointed out that the Hon'ble Supreme Court also clarified that if the respondents did not fulfill the requirements of paragraph 53 of the judgment in case of ***Umadevi (3)***, their services need not be regularized. If the employees who have completed ten years of service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularization in suitable lower posts. It is submitted that the spirit of Article 14 of the Constitution of India has to be followed by the respondent no.1. This Court also thus shall direct the respondent no.1 University to comply with the directions issued by the Hon'ble Supreme Court in paragraphs 53 and 54 of the judgment of ***Umadevi (3)***. He submits that all the petitioners in this case are non-teaching staff.

16. Learned senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Narendra Kumar Tiwari and others vs. State of Jharkhand and others, (2018) 8 SCC 238*** and in particular paragraphs 5 and 7 and would submit that the Hon'ble Supreme Court has criticized the State of Jharkhand continuing with the irregular appointments for almost a decade after the decision in

Umadevi (3) which indicated that it believed that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularization and by placing the sword of Damocles over their head which is precisely sought to be avoided by the Hon'ble Supreme Court in case of ***Umadevi (3), State of Karnataka and others vs. M.L.Kesari and others*** (supra).

17. In support of this submission that no employees appointed on ad-hoc basis can be replaced by another ad-hoc employee, learned senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of ***State of Himachal Pradesh vs. Suresh Kumar Verma and another, (1996) 7 SCC 562*** and in particular paragraphs 4 and 5.

18. Mr.Mihir Desai, learned senior counsel for the respondent nos. 1 to 3 on the other hand on instructions, states that none of the petitioners had completed 10 years prior to 10th April, 2006 when the Hon'ble Supreme Court delivered the judgment in case of ***Umadevi (3)***.

Learned senior counsel placed reliance on section 31 of the Maharashtra Public Universities Act and would submit that under section 31(v) and (w), the Management Council of the University has power and duties to create posts of university teachers and non-vacation academic staff from the funds of the university and from the funds received from other funding agencies, on the recommendation of the Academic Council, as and when required and prescribe their qualifications, experience and pay-scales. He submits that the University has no power to create posts of non-teaching employees without sanction of the State Government. He relied upon section 28(s) of the Maharashtra Universities Act, 1994.

19. It is submitted that after enactment of the Maharashtra Public Universities Act, 2016 on 1st March, 2017, now there are two methods of appointment. One is the appointment on the post which have been sanctioned by the State Government. Second is the appointments which are sanctioned and where the money is paid from University funds. He submits that most of the petitioners claimed to have been appointed between 1999 and 2017. He submits that under section 8 of the Maharashtra Public Universities Act, 2016 without prior approval

of the State Government, the University shall not create new posts of teachers, officers or other employees.

20. It is submitted that under section 5(11) of the 1994 Act, the University has power and duties to create non-teaching skilled, administrative, ministerial and other posts and prescribe the qualifications and pay scales with prior approval of the State Government and to make appointments thereto. It is submitted that it is not the case of the petitioners that the posts on which the petitioners are working are sanctioned by the Government. Section 5(11) allows the University to create posts including of non-teaching staff. Even assuming that this is not subject to section 8, the method of creating these posts is provided under section 31 of the Act.

21. It is submitted that Section 31(w) empowers the Management Council to create non teaching posts from funds of the University and funds received from the other agencies, whenever required. It is not the case of the petitioners that the petitioners are appointed on the posts which were created/sanctioned by the Management Council of the respondent no.1 University. It is submitted that the petitioners have

been working on the posts which are not sanctioned and as such they have no right to continue on such posts. Learned senior counsel invited our attention to the averments made in paragraph (8) of the affidavit in reply and paragraphs 3 to 5 of the additional affidavit in reply on this aspect.

22. It is submitted by the learned senior counsel that none of the petitioners had been appointed in accordance with any selection procedure. They had neither been appointed through written test, oral interview, advertisement. Some of them did not have even the prescribed qualifications.

23. It is submitted by the learned senior counsel that the non-teaching staff of the University are governed by the Standard Code providing for the terms and conditions of service of non-teaching employees prescribed by the State Government of Non-Agricultural Universities in the State of Maharashtra State as prescribed as per section 8(3) of the Maharashtra Universities Act, 2016. Under this Code, all appointments which are not by way of promotion have to be advertised in newspapers and thereafter appointments can be made

after interview. None of the petitioners claim to have any promotional right.

24. Learned senior counsel for the respondent nos. 1 to 3 placed reliance on paragraphs 3, 4, 5, 7, 13, 14, 22, 31, 36 and 37 of the judgment of the Hon'ble Supreme Court in case of ***Umadevi (3)*** and would submit that the High Court is not empowered under Article 226 of the Constitution of India to prescribe any scheme for regularization. He submits that it is held by the Hon'ble Supreme Court that the regularization of the employees not recruited through proper procedure amounts to back door entry and in violation of Articles 14 and 16 of other persons who may compete for such posts. Not regularizing the employees does not violate their fundamental rights under Article 21 of the Constitution. Appointing employees on temporary basis on various projects cannot be treated as illegal. There is no right to legitimate expectation.

25. Learned senior counsel invited our attention to paragraph (53) of the said judgment in case of ***Umadevi (3)*** and would submit that an exception however is carved out in paragraph (53) to the effect that

those employees who have completed more than 10 years of continuous service in duly sanctioned posts without Courts' interventions or of the tribunals, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that are 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 the date of the said order.

26. It is submitted by the learned senior counsel that in this case, the exception carved out by the Hon'ble Supreme Court in case of **Umadevi(3)** would not apply because none of the petitioners had admittedly completed 10 years of employment on 10th April, 2006. None of the petitioners had been appointed on sanctioned posts. The initial appointment in terms of what may be regular appointment for filling up posts cannot be only treated as irregular. He submits that in case of **Umadevi (3)**, it is held that case of appointment can be treated as irregular only if a non-fundamental procedure for recruitment has

not been adhered to. The advertisement is obviously a foundational procedural principle. He relied upon the judgment of this Court in ***Writ Petition No.1492 of 2013*** along with connected matter delivered on 6th January, 2015 in case of ***Rajesh Keshrinath Deorukhkar & Ors. vs. Mumbai University.***

27. It is submitted by the learned senior counsel that there is no likelihood of regular selection on these posts since the petitioners are employed on various temporary schemes. They have no right to continue on these posts. The respondent no.1 University does not require any additional manpower for carrying out occasional/additional work in the Departments/Centres. In view of the Government of India, through the Ministry of Skill Development and Entrepreneurship implementing apprenticeship programme under National Apprenticeship Promotion Scheme with an objective to enhance employability of unskilled/semi skilled job seekers, the University has been availing of the services of apprentices through the third party aggregator empanelled by the Government of India.

28. Learned senior counsel for the respondent no.1 submits that the

arguments of the petitioners that if the petitioners cannot be absorbed in one scheme, they should be continued on other schemes cannot be accepted. In support of this submission, learned senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of ***State of Himachal Pradesh vs. Suresh Kumar Verma and another, (1996) 7 SCC 562*** which is cited with approval in paragraph (3) of the judgment in case of ***Umadevi (3)***.

29. It is submitted by the learned senior counsel that the appointment in this case were made in between 2009 and 2017. The Maharashtra Public Universities Act, 2016 came into effect in the year 2017. Section 8 of the 2016 Act is identical to section 8 of the 1994 Act.

30. Learned senior counsel for the respondent no.1 tenders a Standard Code for non-teaching staff in the year 1994 and relied upon the procedure prescribed under clause (4) for appointment to be made by nomination or by selection shall be by an advertisement. The Selection Committee has to be appointed for recommending the appointment under clause (4) (3) (c) comprising of various persons. No such procedure was followed for the purpose of appointment of the

petitioners to any of the non-teaching post.

31. Learned senior counsel for the respondent no.1 relied upon the order passed by the Division Bench of this Court on 6th January, 2015 in case of **Rajesh Keshrinath Deorukhkar** (supra) and would submit that after adverting to the judgment in case of **Ramkrishna Chauhan vs. Seth D.M.High School, 2007(6) Mh.L.J. 667**, the judgment of the Hon'ble Supreme Court in case of **State of Orissa & Anr. vs. Mamata Mohanty, 2011 AIR SCW 1332** and judgment of the Hon'ble Supreme Court in case of **Renu & Ors. vs. District and Sessions Judge, Tiz.Hazari and another, 2014 (2) SCALE 262**, this Court held that it is not the case of the petitioners that the appointment of the petitioners on the post of clerks was made by the Respondent – University after following the due process of recruitment. If the due procedure of recruitment was not followed by the respondent – University, the petitioners cannot seek their regularization in view of those judgments. It is submitted that after adverting to the judgment of the Hon'ble Supreme Court in case of **Umadevi (3)**, this Court held that the said judgment cannot be made applicable to the case in hand and dismissed the said writ petition.

32. Mr.Anturkar, learned senior counsel for the petitioners after closing the arguments, tendered a copy of the recent judgment of the Hon'ble Supreme Court in case of ***Union of India and others vs. Ilmo Devi and another, 2021 SCC OnLine SC 899*** holding that in absence of any sanctioned post and considering the fact that the respondents were serving as a contingent paid part-time Safai Karamcharies, even otherwise, they were not entitled for the benefit of regularization under the regularization policy framed by the Government. Learned senior counsel stated that he is not in a position to distinguish the said judgment of the Hon'ble Supreme Court.

REASONS AND CONCLUSIONS :

33. The question that arises for consideration of this Court is whether any of the petitioners were appointed on any of the regular posts sanctioned either by the University or by the Government for a period of ten years on the date of the judgment of the Hon'ble Supreme Court in case of ***Umadevi (3)*** i.e. on 10th April, 2006 or not and is entitled to be regularized or not. Out of 18 petitioners, the petitioners have given the details only in respect of petitioner nos. 1, 2, 6, 7, 9, 12,

15, 16, 17 and 18 who have been working according to the petitioners as non-teaching staff for various periods. Even according to the petitioners, none of these petitioners were working on any sanctioned post or in any case for 10 years prior to the date of judgment of the Hon'ble Supreme Court in the case of ***Umadevi (3)***.

34. Learned senior counsel for the petitioners also did not contend before this Court at the time of arguments that any of the petitioners had completed 10 years and that too on the sanctioned post. On the contrary, it is admitted by the petitioners that the petitioners were appointed on adhoc basis on temporary posts. The respondent nos. 1 to 3 have demonstrated before this Court that none of the petitioners were appointed by the respondent no.1 after following a prescribed procedure of recruitment. None of them had applied for any post duly advertised nor had undergone any written examination or interview. None of them were selected through proper and prescribed procedure of recruitment. No appointment letter for any post was given to any of the petitioners by the respondent no.1. The petitioners were appointed as per the exigency of work in different departments/centres of the respondent no.1 University.

35. The petitioners have not disputed that the respondent University has earmarked and sanctioned separate budget for different departments/centres in the University. All such expenses incurred to run the department/centre are made out of the said budget. The Finance and Accounts Department of the University has no role in utilization of the budget sanctioned for any department/centre nor the expenses incurred from this budget are any time termed as the expenditure incurred by the respondent University.

36. It is not disputed by the petitioners that the petitioners who were not appointed on the sanctioned posts after following the due process of selection, were paid by way of vouchers or cheques and not through online transactions.

37. The respondent no.1 University has several departments/centres such as physical education, communication studies, commerce, all branches of science, economics, philosophy etc. and have fixed number of employees which are sanctioned by the State Government or by the respondent University. All such employees are termed as 'employees of the University' and are employed by the respondent no.1 university

after following a prescribed procedure of selection.

38. It is the case of the respondent no.1 University that some departments/centres need some workforce to carry out occasional work in the departments/centres. If at all such work force is employed by the departments/centres to carry out occasional work, the responsibility of paying wages etc. are borne by the Head of the Department/Centre and wages of such employees are paid out of the budget sanctioned by the respondent University for that particular department/centre for the particular year. The respondent no.1 University does not get any grant for such posts from the State Government.

39. None of the petitioners were engaged on the posts sanctioned by the State Government and thus the Department/centre has to bear the expenses incurred on such work from its own budget. Even the petitioners had been paid wages and are being paid wages under various budget heads sanctioned to the department/centre in which they are engaged for carrying out occasional work. No grant is received by the university from the State Government for payment of wages of this workforce as none of the petitioners were employed on the sanctioned

post and were not appointed after following due procedure of recruitment.

40. It is the case of the respondent no.1 that at the time of offering the work to the petitioners, it was made clear to them time and again that the respondent University is not responsible for their future employment nor will be responsible for regularization of their services or permanency on the posts on which they were working as the posts on which they are working were not sanctioned. Such persons were engaged to carry out occasional work of the department/centre. The petitioners were paid only consolidated wages without making any deduction towards professional tax, income tax, ESI, PF etc. since they were engaged for carrying out occasional work in various departments/centres.

41. The next question that arises for consideration of this Court is whether the judgment of the Hon'ble Supreme Court in case of **Umadevi (3)** would at all apply to the facts of this case or not. Hon'ble Supreme Court in case of **Umadevi (3)** has held 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. It is a contractual appointment. The appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment.

42. It is held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right.

43. It is submitted that High Courts acting under Article 226 of the

Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service.

44. Hon'ble Supreme Court also held that it is not as if the person who accepts an engagement either temporarily 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.

45. It is held by the Hon'ble Supreme Court that 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. The theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees.

46. In paragraph (53) of the said judgment in case of ***Umadevi (3)***, the Hon'ble Supreme Court held that the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed persons, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of 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.

47. In our view, since it is not the case of the petitioners that they were appointed on any sanctioned post by the respondent no.1 University as and by way of any regular appointment, none of the petitioners who were appointed on temporary basis for carrying out occasional working in various departments/centres of the respondent no.1 University can claim any absorption or permanency. Such appointment for temporary work on daily wages or casual basis comes to an end on such occasional work is discontinued. The petitioners thus cannot claim to be made permanent on the expiry of their term of such appointment on their engagement for casual or occasional work and not on a sanctioned post. The principles of law laid down by the Hon'ble Supreme Court in case of ***Umadevi (3)*** thus would not apply to the case of the petitioners.

48. A perusal of the said judgment in case of ***Umadevi (3)*** makes it clear that the said judgment does not hold that even an employee

appointed on adhoc basis on a temporary post and without following the procedure even if for more than ten years or more is entitled to be absorbed on some other permanent post or sanctioned post.

49. In a recent judgment delivered by the Hon'ble Supreme Court in case of ***Union of India and others vs. Ilmo Devi and another***, (supra), the Hon'ble Supreme Court considered the case where the respondents employees were working as contingent paid part time sweepers in a post office at Chandigarh. There were no sanctioned posts of Safai Karamcharies in a Post Office. There was no documentary evidence on record to establish and prove that the respondents were working continuously. It was not the case on behalf of the respondents that their appointment was done after following due procedure of selection and to that extent, it could not be said that their appointments were irregular. It is held that as such in the absence of any sanctioned posts in the Post Office in which the respondents were working, there was no question of appointing the respondents after following due procedure.

50. The Hon'ble Supreme Court adverted to the various earlier judgments and held that as per the settled preposition of law, the

regularization can be only as per the regularization policy declared by the State/Government and nobody can claim the regularization as a matter of right dehors the regularization policy. In the absence of any sanctioned post and considering the fact that the respondents were serving as a contingent paid part-time Safai Karamcharies, even otherwise, they were not entitled for the benefit of regularization under the regularization policy framed by the Government. None of the appointments had been made in compliance with the provisions of Standard Code Procedure.

51. The Hon'ble Supreme Court held that the part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts and there cannot be a direction for absorption, regularization or permanent continuance of part-time temporary employees. 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. The Hon'ble Supreme Court accordingly was pleased to quash and set aside the judgment of the High Court directing the Government to reformulate their regularization/absorption policy and take a decision to sanction

the posts in a phased manner. In our view, the principles of law laid down by the Hon'ble Supreme Court in case of ***Union of India and others vs. Ilmo Devi and another*** (supra) squarely applies to the facts of this case. Learned senior counsel for the petitioners could not distinguish the said judgment.

52. In the facts of this case, it is an undisputed position that none of the petitioners were paid salaries as regular employees for all these years as paid to the employees appointed after following due selection procedure. None of these posts were sanctioned by the State Government. The submission of the learned senior counsel for the petitioners itself was that the petitioners who were adhoc employees and should not be substituted by appointing other ad-hoc employees but shall be continued as adhoc employees till they complete the ten years' of service. In view of this admitted position also, the question of the petitioners claiming any absorption in permanent posts or sanctioned posts did not arise. There is no question of relaxation of age bar in favour of such employees. Sections 5(11), 5(12), 134(1) (b) and 134(5)(a) of the University Act would not assist the case of the petitioners and would not apply to the appointments of the petitioners.

53. The Hon'ble Supreme Court in case of ***State of Karnataka and others vs. M.L.Kesari and others*** (supra) interpreted the judgment in case of ***Umadevi (3)*** and held that the object behind the said judgment is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of Courts or tribunals, before the date of decision in ***Umadevi (3)*** was rendered, are considered for regularization in view of their long service. In this case, neither the petitioners were appointed on any sanctioned post, nor the petitioners have completed ten years service prior to the date of delivery of the judgment in case of ***Umadevi (3)*** nor any of the petitioners were appointed on a sanctioned post. The said judgment in case of ***State of Karnataka and others vs. M.L.Kesari and others*** (supra) thus would not assist the case of the petitioners. Similarly, the judgment of the Hon'ble Supreme Court in case of ***Narendra Kumar Tiwari and others*** (supra) also would not assist the case of the petitioners since the petitioners were not appointed on any sanctioned post but were appointed for carrying out occasional work on purely temporary basis and without following any due selection procedure.

54. Insofar as judgment of the Hon'ble Supreme Court in case of ***State of Himachal Pradesh vs. Suresh Kumar Verma and another*** (supra) relied upon by Mr.Anturkar, learned senior counsel for the petitioners is concerned, the Hon'ble Supreme Court has held that the project in which the respondents were engaged had come to an end and therefore, they had necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become another mode of recruitment de hors the rules. The said judgment would not assist the case of the petitioners but would assist the case of the respondents.

55. Insofar as judgment of Hon'ble Supreme Court in case of ***University of Delhi vs. Delhi University Contract Employees Union and others, 2021 SCC OnLine SC 256*** relied upon by Mr.Anturkar, learned senior counsel for the petitioners is concerned, the Hon'ble Supreme Court in the said judgment held that the contract employees cannot claim the relief of regularization in terms of paragraph 53 of the decision in ***Umadevi (1)***. The rejection of their petition by the single

Judge of the High Court was quite correct and there was no occasion for the Division Bench to interfere in the matter.

56. In that matter, the University had filed an affidavit to place on record that the decision had been taken that in order to facilitate the contractual employees to participate in the recruitment process, age relaxation as well as certain advantage for the service rendered as contract employees will be given by the University. In view of such affidavit filed by the University, the Hon'ble Supreme Court held that all the concerned contract employees engaged by the University be afforded benefits in terms of the averments made in the affidavit filed by the University including the benefit of age relaxation. In the facts of this case, however no such concession is made by the University. This Court thus cannot issue any such direction against the respondent no.1 University to absorb any of these petitioners. The judgment of this Court in case of **Rajesh K.Deorukhkar & Ors.** (supra) would apply to the facts of this case and would support case of the respondents.

57. Insofar as the submission of Mr.Anturkar, learned senior counsel for the petitioners that this Court atleast at this stage shall give

appropriate direction to the University to comply with the directions issued by the Hon'ble Supreme Court in case of ***Umadevi (3)*** to commence the process within six months and shall take steps to recognize as one time measure, the service of such irregular appointments who have worked for ten years or more on the said sanctioned posts is concerned, in our view, since there are no sanctioned posts on which any of these petitioners were appointed as irregular appointments, no such directions are warranted in the facts of this case. In our view, the petition is totally devoid of merits.

58. We accordingly pass the following order :-

- (a) Writ Petition No.3831 of 2019 is dismissed.
- (b) Rule is discharged. There shall be no order as to costs.

[ABHAY AHUJA, J.]

[R.D.DHANUKA, J.]