

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 4546 OF 2016
WITH
CIVIL APPLICATION NO. 6661 OF 2017
AND
CIVIL APPLICATION NO. 3167 OF 2021**

Ganesh Digamber Jambhrunkar
and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Ms. P. S. Talekar, Advocate h/f Talekar and Associates, Advocate
for the Petitioners.

Shri L. M. Acharya, Special Counsel for the State/Respondent
Nos. 1 and 2.

Shri Milind M. Joshi, Advocate for the Respondent No. 3.

Shri Chaitanya V. Dharurkar, Advocate for the Respondent No.
4.

**WITH
CIVIL APPLICATION NO. 8691 OF 2017
IN
WRIT PETITION NO. 4546 OF 2016**

The State of Maharashtra and another .. Applicants

Versus

Ganesh Digamber Jambhrunkar
and others .. Petitioners

Shri L. M. Acharya, Special Counsel for the State/Applicants.

Ms. P. S. Talekar, Advocate h/f Talekar and Associates, Advocate
for the Respondent Nos. 1 to 17.

Shri Chaitanya V. Dharurkar, Advocate for the Respondent No.
19.

Shri Milind M. Joshi, Advocate for the Respondent No. 21.

**WITH
WRIT PETITION NO. 8024 OF 2017**

Rahul Sandu Ankushe and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Ms. P. S. Talekar, Advocate h/f Talekar and Associates, Advocate for the Petitioners.

Shri L. M. Acharya, Special Counsel for the State/Respondent Nos. 1, 2, 5 and 6.

Shri Chaitanya V. Dharurkar, Advocate for the Respondent No. 3.

Shri Milind M. Joshi, Advocate for the Respondent No. 4.

**WITH
WRIT PETITION NO. 8027 OF 2017**

Vaibhav Bapurao Aundhkar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Ms. P. S. Talekar, Advocate h/f Talekar and Associates, Advocate for the Petitioner.

Shri L. M. Acharya, Special Counsel for the State/Respondent Nos. 1, 2, 5 and 6.

Shri Chaitanya V. Dharurkar, Advocate for the Respondent No. 3.

Shri Milind M. Joshi, Advocate for the Respondent No. 4.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

CLOSED FOR JUDGMENT ON : 16.09.2022

JUDGMENT PRONOUNCED ON : 20.09.2022

JUDGMENT (Per Sandeep V. Marne, J.) :-

THE CHALLENGE

. By present petitions, petitioners seek regularization of

their services and all benefits of permanency including deemed date with effect from 01 April 2016. The petitioners also seek directions for payment in the pay scales prescribed by the University Grant Commission (for short “U.G.C.”). They are working as lecturers in various departments/subjects in Shri Guru Govind Singhji Institution of Engineering and Technology, Nanded and had rendered about 3/5 years of service on the date of filing of the petitions.

PLEADINGS OF THE PARTIES

2. Facts of the case as pleaded in the Petition are that the Government of India launched a programme known as **Sub Sector Development Programme for Technical Education/Technical Education Policy Improvement Programme of Government of India**. The State of Maharashtra decided to implement the same for technical education in the State with the aid of World Bank. Towards implementation of the programme, two Government Resolutions were issued by the State on 19.07.2002 and 31.03.2004. The programme aimed that give autonomy to technical institutions so as to improve the quality of technical education. Accordingly, three engineering colleges, including the respondent No. 3 college, came to be granted administrative, financial and managerial autonomy with a further direction to procure educational autonomy.

3. Petitioners aver that directorate of the respondent No. 3 collage submitted a proposal dated 12.09.2012 for sanction of the posts of Assistant Professors, Associate Professors and Professors as per the norms of the All India Council of Technical Education (for short “A.I.C.T.E.”) and before receiving such sanction

proceeded, to fill up the posts as per the norms of the U.G.C. The respondent No. 3 college issued advertisements from time to time starting from the year 2011 for appointments on the posts of lecturers on contract basis on consolidated salary. The petitioners applied in pursuance to the advertisements. They were subjected to interviews before the Interviewing Committees consisting of subject experts and were selected in the selection process. They were appointed as lecturers/assistant professors on various dates beginning from the year 2011 onwards. The petitioners have produced a chart at Exhibit – A to the petition showing their dates of first appointments. The appointments were purely on contract basis and on fixed consolidated salary for a period of eleven (11) months. At the end of the contract period, they were subjected to fresh interviews every year and were again selected. They have completed 3/5 years of service as lecturers as on the date of filing of the petitions.

4. It is averred that they fulfill the qualifications required for the posts, that they were appointed through proper selection committee and have worked for a substantially long period warranting regularization of their services. It is pleaded that in similar circumstances, this Court in the case of **Sachin Ambadas Dawale Vs. The State of Maharashtra and others** reported in **2014(2) Mh.L.J. 36** directed regularization of services of lecturers in Government Polytechnics in the State and upon rejection of Special Leave Petition of the State, the judgment was implemented regularizing services of similarly situated lecturers.

5. On these pleadings, the petitioners have sought the relief of regularization of their services and all benefits of permanency

including the deemed date with effect from 01.04.2016. They also seek salary in the pay scales prescribed by UGC. They also prayed for interim injunction to restrain respondents from terminating their services.

6. The petition is opposed by the respondent No. 3 college by filing affidavit in reply. It is pleaded that the petitioners have not worked continuously for 3/5 years. They were appointed purely on temporary basis as a stop gap arrangement for eleven (11) months without following due process of recruitment. They were engaged on the basis of walk in interviews. For every academic year, fresh recruitment was carried out for such contractual appointments of eleven months. The norms of reservation were not followed. It is also pleaded that recruitment was not on the Government sanctioned posts.

7. The Joint Director, Technical Education, Regional Office, Aurangabad has filed affidavit in reply opposing the petitions. It is averred that as per the Government Resolution dated 23.10.2012, the board of management of the respondent No. 3 college was permitted to effect temporary appointments to fill up vacancies on contractual basis as a stop gap arrangement under para 10(xiii) of the G. R. The appointment process is otherwise not validly conducted. The appointments of the petitioners are without applying roster or reservation policy. The petitioners are not appointed on sanctioned posts. Only 109 posts were sanctioned divided into six posts for post graduate courses and 103 posts for the under graduate courses. The appointments of the petitioners are outside the said sanctioned strength. The judgment of this Court in the case of **Sachin Ambadas Dawale**

(*supra*) has no application to the present case, as the appointments are not on sanctioned posts.

8. Numerous pleadings have been filed by the parties after filing of affidavit in reply by respondent Nos. 2 and 3. However, since we are proceeding to record the detailed submissions made before us by the learned counsels appearing for the parties, we do not wish to burden this judgment by referring to each and every pleading.

DEVELOPMENTS AFTER FILING OF PETITIONS

9. By order dated 04 May 2016, this Court had directed the respondents to maintain *status quo* regarding services of the petitioners and the interim protection was continued from time to time and continues to operate till date.

10. Ms. Talekar, learned counsel appearing for the petitioners has made a statement that the petitioner in Writ Petition No. 8027 of 2017 (Vaibhav Bapurao Aundhkar) and petitioners in Writ Petition No. 8024 of 2017 (Rahul Sandu Ankushe, Nitin Gangadhar Dhutraaj and Pallavi Rameshwar Kamthekar) have left the services of the respondent No. 3 college during the pendency of these petitions. This is how rest of the Petitioners continue to be in service on account of interim order of status quo passed by this court. Civil Application No. 3167 of 2021 is also filed to seek interim orders for payment of salary as per payscales prescribed by UGC.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

11. In her erudite style, Ms. Talekar, the Ld. Counsel appearing for the Petitioners would first take us through **Sub Sector Development Programme for Technical Education/Technical Education Policy Improvement Programme of Government of India**. She invites our attention to the Government Resolution dated 19.07.2002 to explain the scheme as implemented by the State Government. Relying on Clause 21 of the Government Resolution, she would submit that complete financial autonomy is aimed to be achieved by the management. Relying on para No. 4.1 of the Annexure I to the G. R. dated 19.07.2002, she would submit that the college was given freedom to decide number of teaching and non teaching staff.

12. Ms. Talekar would then rely upon Government Resolution dated 31.03.2004 issued for making improvements in the earlier Government Resolution dated 19.07.2002. She would submit that under the 2004 G. R., the college was given complete autonomy to determine staffing pattern other than the sanctioned posts. Under clause 2.3(i) and (viii), financial autonomy including determination of fee and other revenue sources was granted to ensure payment of salary for newly created posts. She would submit that under the Government Resolution, the college was empowered to create posts of teaching, managerial, technical, clerical and other posts and to make appointments thereon.

13. Ms. Talekar would then rely upon the Government Resolution dated 23.10.2012 issued for amending the

Government Resolutions dated 19.07.2002 and 31.03.2004. She would contend that in the list of colleges included in the G. R. dated 23.10.2012, the respondent No. 3 college was identified as, “Government owned college”. Inviting our attention to clauses (xiii) and (xiv) of paragraph 10 of the G. R., she would submit that the State Government made a conscious distinction between “Government autonomous institutions” and “Government owned autonomous institutions” in the matter of making appointments. She would submit that, for “Government autonomous institutions” regular appointments by nomination are to be made by the Government, whereas in, “Government owned autonomous institutions” such appointments are to be made at institution level by the board of management. She would submit that since the respondent No. 3 college is identified as, “Government owned autonomous institution”, it would be governed by the provisions of Clause 10(xiv), under which the respondent No. 3 college enjoyed full authority to carry out appointments by nomination at institution level through its board of management. She would therefore submit that appointments of the petitioners being made at institute level, are fully compliant to the provisions of the G. R. dated 23 October 2012. She would then invite our attention to the G. R. dated 06 May 2017, by which the powers conferred on the board of management to make appointments under Clause 10(xiii) of the G. R. dated 23.10.2012 of vacancies on contractual basis were withdrawn. She would submit that such withdrawal of authority is inconsequential to the petitioners as the respondent No. 3 college was never governed by the provisions of Clause 10(xiii) of the G. R. dated 23.10.2012. This is evidenced by the advertisement dated 23.12.2017 issued by the respondent No. 3

college to fill up the posts on contractual basis even after issuance of the G. R. dated 06.05.2017.

14. Ms. Talekar would then invite our attention to various advertisements issued by the respondent No. 3 college in pursuance of which petitioners have been appointed. She would submit that the advertisements were given wide publicity in the newspapers. She would further submit that norms of reservation were followed while issuing the advertisements. That the petitioners were subjected to interviews by duly constituted selection committees. She took us through various documents to buttress her contention that the selection committee comprised of some members as required under the recruitment rules proposed by the state level expert committee constituted by the Directorate of Technical Education Mumbai as well as the recruitment rules for regular appointments. She has also taken us through various appointment orders issued in favour of the petitioners. She would contend that breaks to the petitioners are technical in nature as the petitioners were mandated to discharge duties even during the break period. She would invite our attention to the A.I.C.T.E. report of the year 2016 in which the dates of initial appointments of each petitioner have been mentioned thereby belying theory of breaks in service.

15. Ms. Talekar, would then make strenuous efforts to demonstrate before us that the appointments were against sanctioned vacant posts. She would contend that under the AICTE norms, minimum 80% faculty is required to be regular faculty and the remaining could be adjunct faculty/ resource persons from industry. She would submit that the college has

only 80 sanctioned posts and that as per the A.I.C.T.E. norms, atleast 82 more posts are required for functioning of the college. She would submit that the college has less than 76 regular appointments, whereas it is operating with as many as 109 contractual appointments. She would further submit that in the year 1989 when students strength in the college was 240, 91 posts were sanctioned, whereas students strength rose upto 806 in the year 2016 with marginal increase in the sanctioned posts of 109. She would therefore submit that the posts against which the petitioners are working are the ones which are mandatorily required to be operated under AICTE norms and are thus required to be treated as sanctioned posts.

16. Ms. Talekar would submit that the petitioners are not appointed under Technical Education Quality Improvement Programme (TEQIP). In support of this contention, she relies upon information received under the Right to Information Act vide letter dated 31 May 2021, under which the college had given an information that no posts were filled under the TEQIP I, II and III. She would further submit that for filling up posts under the TEQIP, recruitment process is conducted by either MHRD or NPIU and since the recruitment process of the petitioners is done by the college, the same cannot be treated as TEQIP appointment.

17. Lastly, Ms. Talekar has cited several instances where faculty members in every colleges have been granted benefit of regularization relying on the judgment in the case of **Sachin Ambadas Dawale** (*supra*).

18. In support of the relief of equal pay for equal work, Ms. Talekar would submit that all the departments in the college are being run by the contractual faculty without there being single regular faculty member thereby evidencing that the petitioners are discharging the duties and responsibilities of regular lecturers/Assistant Professors. Giving instances of other colleges such as College of Engineering, Pune, she would submit that they are being extended the pay scales prescribed by the A.I.C.T.E. or are being paid much higher salaries than the Petitioners.

19. Ms. Talekar would rely upon following judgments in support of her contentions:

- I. Khusheshwar Prasad Singh Vs. State of Bihar and others reported in (2007) 11 SCC 447.
- II. Mohd. Abdul Kadir and another Vs. Director General of Police, Assam and others reported in (2009) 6 SCC 611.
- III. State of Haryana and others Vs. Piara Singh and others reported in (1992) 4 SCC 118.
- IV. State of Punjab and others Vs. Jagjit Singh and others reported in 20016 SCC Online SC 1200.
- V. Sabha Shanker Dube Vs. Divisional Forest Officer and others reported in (2019) 12 SCC 297.
- VI. Nihal Singh and another Vs. State of Punjab and others reported in (2013) 14 SCC 65.
- VII. Bhartiya Kamgar Sena and others Vs. State of Maharashtra and others reported in 2012(3) Mh.L.J. 872.

SUBMISSIONS ON BEHALF OF THE STATE GOVERNMENT

20. Mr. Acharya, learned Special Counsel appearing for the State Government would first explain the scheme of making appointments under the Government Resolution dated 31.03.2004. Inviting our attention to para No. 2.1(ii) of the G. R. ,

he would submit that specific distinction has been made in respect of regular government teaching and non-teaching staff already in service as on the date of grant of autonomy and those engaged by the college after grant of autonomy. He would submit that while the former would continue to be the Government employees, the latter would remain the employees of the college. Referring to the G. R. dated 23.10.2012, by which earlier G. R. dated 31.03.2004 has been amended, Mr. Acharya would contend that the petitioners cannot be permitted to take benefit of unhappy wordings in para No. 10(xiii) and (xiv). He would take us through the terms and conditions of the appointments of the petitioners under which it was specifically agreed that there was no approval by the Government of Maharashtra to the posts against which the petitioners were appointed. He would submit that the appointment orders mandated the petitioners to submit undertakings, which were indeed submitted by them and under which they undertook not to claim regularization. He would invite our attention to the appointment order dated 15.06.2009 issued to one Mr. Jatti Sunil Madhukar by the respondent No. 3 college, by which he came to be appointed as lecturer on regular basis. He would therefore contend that the college has made regular appointments even after implementation of the scheme which are contra distinct from the contractual appointments of the petitioners. He would further submit that the judgment in the case of **Sachin Ambadas Dawale** (*supra*) is lateron clarified by this Court by order dated 27.04.2017 and under that clarificatory order, the petitioners are not entitled to claim regularization.

21. Mr. Acharya would rely upon the following decisions in

support of his contentions:

- I. State of Manipur and another Vs. KSH. Moirangninthou Singh and others reported in (2007) 10 SCC 544.
- II. Official Liquidator Vs. Dayananad and others reported in (2008) 10 SCC 1.
- III. State of Maharashtra others Vs. Anita and another reported in (2016) 8 SCC 293

REASONS AND ANALYSIS

22. Since we are dealing with the prayer for regularization of services, no discussion can be complete without reference to the landmark judgment of the Apex Court in the case of **Secretary State of Karnataka and others Vs. Umadevi and others 2006(4) SCC 01** which marks a critical turning point on the issue of regularization of services of ad-hoc or temporary employees. The Constitution Bench of the Supreme Court considered the question whether State can frame a scheme for regularization of services of an ad hoc/temporary/daily wagers appointed in violation of doctrine of equality or those appointed with a clear stipulation that such appointments would not confer any right on them to seek regularization. The Supreme Court also considered the issue whether Courts can issue mandamus for regularization or absorption of such appointees. While answering the questions in negative, the Constitution Bench has held as under :

“47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to

the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It

cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

23. Since Ms. Talekar has relied upon the decision of the Apex Court in the case of **State of Haryana and others Vs. Piara Singh and others** (*supra*), we must refer to para 26 of the judgment in the case of **Umadevi** in which it is held that the directions given in the case of **Piara Singh** were inconsistent and run counter to the constitutional scheme of employment. It is specifically clarified that the decision in the case of **Piara Singh** cannot be said to have held that all ad hoc/temporary/casual

employees appointed without following recruitment procedure should be made permanent. In fact in para 54 of the judgment in Umadevi, the Constitution Bench has clarified that all the earlier decisions of the Apex Court which run counter to the principles settled by it in Umadevi would be denuded of their status as precedents.

24. Thus, it is the Constitution Bench judgment in Umadevi which would govern the field of regularization and all the earlier judgments rendered by the Apex Court have lost their precedential value. Despite of law on regularization having been authoritatively laid down by the Constitution Bench in Umadevi, an attempt was made by a two judges Bench of the Apex Court in the case of **U. P. State Electricity Board Vs. Pooran Chandra Pandey** reported in **2007 (11) SCC 92** to water down the binding effect of judgment in the case of Umadevi. A three judges Bench of the Apex Court was therefore required to examine permissibility of such watering down of the Constitution Bench decision in the case of Umadevi. In the case of **Official Liquidator Vs. Dayanand** (*supra*) in para Nos. 90, 91 and 92 the Apex Court has held as under :

"90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in

this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed.

91 We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

92. In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judges Bench in [UP State Electricity Board vs. Pooran Chandra Pandey](#) (supra) should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.

25. Thus, the settled position of law now is that no person appointed on temporary/casual/adhoc/contractual basis can claim regularization or permanency in service. A one time exception has been carved out by the Apex Court in para No. 53 of the judgment in the case of [Umadevi](#), wherein irregular appointments of duly qualified persons in duly sanctioned vacant posts where

employees have worked for 10 years or more without intervention of Court orders have been permitted to be regularized. This Court at its Principal Seat in the case of **Union of India and others Vs. Smt. Lalita V. Mertia** in Writ Petition No. 1338 of 2015 decided on 08 October 2021 has held that the said exception made in the case of Umadevi is a one time exception and applicable only in respect of employees who have completed ten years as on 10th April 2006. It is held that it was never the intention of the Apex Court to permit regularization of those who had not completed 10 years of service as on the date of rendering of the judgment.

ISSUE OF REGULARISATION OF PETITIONERS

26. Having considered the law on the subject of regularization, we now advert to the issue of entitlement of the petitioners to seek the relief of regularization. At the outset, it must be noted that the petitioners are not covered by the one time exception carved out in para 53 of the judgment in the case of Umadevi as the very entry of the petitioners in service is after the cut-off date of 10th April 2006. Thus, applying the law enunciated by the Constitution Bench in the case of Umadevi as interpreted by this Court in **Lalita Mertia**, there is no right in favour of the petitioners to seek regularization of their services.

27. Now we proceed to examine the entitlement of the Petitioner for regularization as per the judgment of this Court in the case of **Sachin Ambadas Dawale** (*supra*), which has been the sheet anchor of Ms. Talekar's submissions for extension of similar treatment to the petitioners. In the case of **Sachin Ambadas Dawale** (*supra*) the petitioners therein were lecturers

appointed in various departments of Government Polytechnic in the State of Maharashtra as per the policy incorporated in the G. R. dated 25 July 2002, 02 August 2003 and 03 August 2003. Since there was a ban on recruitment in the State of Maharashtra since 1998, contract appointments were effected on vacant sanctioned posts of lecturer in Government Polytechnic till nomination of candidates by the Maharashtra Public Service Commission. In these peculiar facts of the case, this Court directed regularization of services of the petitioners therein on completion of three years' service. However, since the judgment in **Sachin Ambadas Dawale** (supra) resulted in raising of numerous claims for regularization by persons dissimilarly situated, this Court was required to clarify its judgment by its order dated 27.04.2017. In the clarificatory order, it is held as under :

"In these peculiar facts and circumstances, we had observed that the appointment of petitioners could not be said to be a backdoor entry and as such, we had distinguished the Judgment of the Apex Court in the case of **Secretary, State of Karnataka and Ors. vs. Umadevi and Others** reported in AIR 2006 SC 1806 (1). We had also considered that the State Government itself in the category of various other employees had regularised the services of various employees. We had further observed that, for a long period during which the petitioners were in employment, the Maharashtra Public Services Commission had also not conducted the interviews and as such, during the intervening period when the petitioners were continued in the employment, after having undergone due selection process, they had attained upper age limit and as such, when the State itself had not conducted the selection process through MPSC for more than 10 years, the petitioners who were selected through due selection process could not be penalised. We had observed that, on account of inaction on the part of the State, selection process for a period of more than 10 years was not held and hence, the petitioners, who had by efflux of time,

become age bar, cannot be penalised and thrown out of their job. We had specifically observed that, insofar as the case of Umadevi is concerned, the appointments therein were made clandestinely and without advertisement and the persons were appointed without following the due process of law.

It could thus be seen that, in the peculiar facts and circumstances of the case, the petitioners in the present petition were selected in pursuance of the Government Resolution dt.25.7.2002 after following the due selection process by the Selection Committee duly constituted under the said Government Resolution and on account of inaction on the part of the State Government in not holding the selection process through the MPSC for a period of more than 10 years, many of the petitioners had become age bar and as such, they were deprived of opportunity of undergoing selection process through MPSC, we had found that a special case was made out for regularisation of services of the petitioners therein. We may specify that we had restricted the claim of the petitioners who were already in service when they had approached the Court. By no stretch of imagination, the said Judgment could be applicable to the persons who had already left the job and taken chances.

We may also observe that, citing the said Judgment, some of the employees who are appointed on temporary or contractual basis and who are removed after putting in a year's or two years service are also seeking regularisation. We may clarify that the said Judgment would not lay the ratio that, the persons who are appointed on purely contractual or temporary basis without following the due selection process as laid down by the Apex Court in the case of Umadevi, would also be entitled to regularisation of their services.

28. Thus, this Court has specifically clarified that the judgment in **Sachin Ambadas Dawale** (*supra*) does not lay down a ratio that persons appointed on purely contractual or temporary basis without following due selection process as laid down by the Apex Court in the case of Umadevi would also be entitled to regularization of their services. The present petitions

have been filed on 18.04.2016 before issuance of the clarification by this Court on 27.04.2017. Thus, in view of the specific clarification issued by this Court by order dated 27.04.2017, the petitioners are not entitled to the relief of regularization by relying on the judgment in the case of **Sachin Ambadas Dawale** (*supra*).

29. The entire case of the petitioners is otherwise completely misconceived. Under G. R. dated 31.03.2004, a clear distinction was made between the Government teaching/non teaching staff already in service before grant of autonomy to the respondent No. 3 college and those who are appointed by the college after grant of such autonomy. While former were to remain as Government employees, the latter were to continue as employees of the college. Furthermore, under para No. 7 of the G. R. dated 31.03.2004, the respondent No. 3 college was granted autonomy to decide staffing pattern including the posts sanctioned by the State Government. Thus, the autonomy extended to the respondent No. 3 college did not include filling up of posts sanctioned by the State Government in any manner. This itself would make it clear that the appointments of the petitioners are not against sanctioned posts. No benefit can be derived by the petitioners out of the provisions of para 10 (xiii) and (xiv) of the G. R. dated 23.10.2012 by making hypertechnical distinction in the wordings used in the said provision, which do not appear to be very happy. There is no *iota of doubt* that the Government never sanctioned the posts against which the petitioners have been appointed on contractual basis.

30. Perusal of the appointment orders issued to the petitioners

would leave no matter of doubt that the same were made on purely contractual basis for a period of eleven months on consolidated fixed salary of Rs. 20,000/- per month. It was specified in the appointment orders that, “there is no approval of the Government of Maharashtra for the above posts”. We have therefore no hesitation in holding that the appointments of the petitioners are not made against sanctioned posts.

31. Faced with the difficulty of specific stipulation in the appointment orders that the posts are not sanctioned, Ms. Talekar has made strenuous efforts to demonstrate that an inference of sanction of the posts is required to be drawn in the peculiar facts and circumstances of the case. Most of her submissions that we have recorded hereinabove are in this direction. Since we have come to the conclusion that the Petitioners do not fit in the parameters laid down in **Umadevi**, we do not wish to burden this judgment by dealing with each of them. Suffice it to state that, on the basis of her submissions that (i) the college was given autonomy to sanction staffing pattern, (ii) in AICTE reports names of Petitioners are reflected, (iii) entire college is being run essentially through contract faculty, (iv) AICTE norms require operation of posts occupied by Petitioners and (v) Petitioner are not appointed under TEQIP; we are unable to draw a conclusion that the Petitioners are appointed against sanctioned posts.

32. Since Petitioner are unable to demonstrate that their appointments are against sanctioned posts, the manner in which they are appointed becomes inconsequential. Therefore, submissions of Ms. Talekar about selection committee

comprising members required for regular appointments or Petitioners fulfilling the eligibility criteria required for regular appointments would have no material bearing on the Petitioners' right to seek regularization.

33. The petitioners therefore have no right to seek regularization of their service as per the law laid down by the Constitution Bench of the Apex Court in **Umadevi** (*supra*). The reliance of Mr. Acharya on the judgment of the **KSH. Moirangninthou Singh and others** (*supra*) in this regard is apposite, in which it is held that Courts do not have powers to direct regularization or to grant benefits payable to regular employees.

34. The petitioners accepted the contractual appointments as well as executed undertakings. They knew from the very beginning that the appointments were purely contractual, for specified time and they were outside the sanctioned posts in the college. Mr. Acharya has in this regard relied upon the judgment of the Apex Court in the case of **State of Maharashtra others Vs. Anita and another** reported in **(2016) 8 SCC 293**, in which it is held that after having accepted contractual appointments, appointees are estopped from challenging the terms of their appointments.

35. Reliance of Ms. Talekar on the judgments of the Apex Court in the case of **Khusheshwar Prasad Singh** (*supra*) on the principle of impermissibility to take benefit of one's own wrong and **Mohd. Abdul Kadir and another** (*supra*) on the issue of artificial breaks has become academic in view of our finding that

the appointments of the petitioners are not against sanctioned posts.

36. In the result we are of the considered view that no case is made out by the petitioners for regularization of their services.

ISSUE OF EQUAL PAY FOR EQUAL WORK

37. The relief of payment of wages as per the pay scale prescribed by the U.G.C. is sought by way of an interim relief both in the petition as well as in the Civil Application No. 3167 of 2021. Since, we are deciding the petitions finally, there is in fact no occasion to consider the interim relief sought for by the petitioners. On this ground alone, the claim for grant of UGC pay scales deserves to be rejected. However, since detailed submissions are made by Ms. Talekar on the issue of equal pay for equal work, we proceed to decide and examine this issue as well, purely by way of indulgence.

38. The relief of equal pay for equal work is claimed by placing reliance on the judgment of the Apex Court in the case of **Jagjit Singh** (*supra*), in which the Apex Court has directed that all temporary employees are entitled to be granted pay in the minimum of the pay scale which is extended to regular employees holding the same posts. The judgment in the case of **Jagjit Singh** has been followed in the case of **Sabha Shanker Dube** (*supra*).

39. In our opinion, the judgment in **Jagjit Singh** would have no application to the present case, as the contractual appointments of the petitioners are made in pursuance of specific

scheme/program without any relation to the sanctioned posts in the college. The appointments are outside the staffing pattern sanctioned by the Government. The petitioners are claiming pay scales prescribed by the UGC. To claim this relief, the petitioners will have to first make out a case that they are working against the sanctioned posts within the staffing pattern. Had the Petitioners' appointments been effected against regular sanctioned posts, albeit on contractual basis, they would have been justified in claiming equal pay for equal work relying on Jagjit Singh. But having been appointed outside sanctioned strength in exercise of financial autonomy conferred on the college and being paid out of the self generated funds of the college, the claim for grant of UGC pay scales is not maintainable.

40. In the case of **Official Liquidator** (*supra*), the Apex Court has also considered the issue of equal pay for equal work and has held in para No. 100 as under :

"100. As mentioned earlier, the respondents were employed/engaged by the Official Liquidators pursuant to the sanction accorded by the Court under Rule 308 of the 1959 Rules and they are paid salaries and allowances from the company fund. They were neither appointed against sanctioned posts nor they were paid out from the Consolidated Fund of India. Therefore, the mere fact that they were doing work similar to the regular employees of the office of the Official Liquidators cannot be treated as sufficient for applying the principle of equal pay for equal work. Any such direction will compel the Government to sanction additional posts in the offices of the Official Liquidators so as to facilitate payment of salaries and allowances to the company paid staff in the regular pay scale from the Consolidate Fund of India and in view of our finding that the policy decision taken by the Government of India to reduce the number of posts meant for direct recruitment does not suffer from any legal or constitutional infirmity, it is not possible to entertain the plea of the

respondents for payment of salaries and allowances in the regular pay scales and other monetary benefits at par with regular employees by applying the principle of equal pay for equal work.”

41. In the present case also, the petitioners are not being paid the salary or allowances from the Government funds. They are neither appointed against sanctioned posts, nor are being paid out of consolidated funds. Therefore, merely because they are doing similar work to that of regular teaching staff of the college, they cannot be granted same pay scale as extended to the regular teaching staff. As a matter of fact, from various submissions made by Ms. Talekar, with regard to relief of regularization, it is apparent that contractual appointments of the petitioners have been made in exercise of complete autonomy (administrative, financial and managerial) extended to the college. This clearly shows that the salaries of the petitioners are to be paid by the college out of its own funds and the Government has no liability in respect thereof. Therefore, we do not find that any case is made out by the petitioners for grant of salary in the pay scale on the principle of equal pay for equal work.

CONCLUSION

42. We are therefore of the view that the petitioners are not successful in making out any case for issuance of writ of mandamus for regularization of their services or for payment of salary in the pay scale prescribed by the U.G.C.

43. We therefore proceed to pass the following order.

ORDER

- A. The writ petitions are dismissed.
- B. Interim orders passed earlier stand vacated.
- C. There shall be no order as to costs.
- D. Pending civil applications also stand disposed of.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

44. After pronouncement of the judgment, learned advocate Ms. Talekar for the petitioners submits that the interim relief has been in operation till date and a breathing time be given to the petitioners to approach the Apex Court.

45. Considering the reasons for which we are dismissing the writ petitions, the request is rejected.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Sept. 22