

their respective appointments and grant all benefits as admissible to the regular Assistant Teachers (Secondary) appointed in Zilla Parishad/Aided Schools. The petitioners also seek a direction on the respondents to pay regular salary to them as being paid to the regular Assistant Teachers (Secondary) appointed in Zilla Parishad/Aided Schools from the dates of their respective appointments with a further direction to pay all consequential benefits as admissible to the regular Assistant Teachers (Secondary).

2. Petitioners contend that with a view to impart compulsory education to the students of remote areas, the Central Government and the State Government introduced a scheme and decided to form the mission namely Maharashtra Manav Vikas Mission. After making survey, certain districts were identified for implementing the aforesaid scheme and as per the policy decision, education was to be imparted to the students of 6th to 8th standards. Pursuant thereto, a comprehensive scheme was prepared to that effect and the school namely, Kasturba Gandhi Balika Vidyalaya, was started to impart education to the students of 6th to 8th standards in a rural area. As per the said scheme, one school in each taluka was to be established with four Assistant Teachers. The procedure to that effect has been laid down in Government Resolution dated 29th June, 2006.

3. The funds for implementing the aforesaid scheme were provided by the Central Government and the scheme was being implemented through the State Government.

4. By Government Resolution dated 27th May, 2008, the State Government laid down the procedure for selection of staff to be appointed in Kasturba Gandhi Balika Vidyalaya. The petitioners contend that the posts of Assistant Teachers and other posts have been sanctioned, they are permanent and the scheme is permanent as well.

5. Government Resolution dated 19th July, 2011 came to be issued in relation to the sanction of posts, selection process, etc., whereafter advertisements dated 20th June, 2012 and 2nd July, 2013 were issued calling upon eligible candidates possessing requisite qualifications to offer their candidature for being appointed as Assistants Teachers (Secondary). The petitioners came to be selected as Assistant Teachers (Secondary) by following due procedure but they were given technical breaks while continuing their services.

6. Petitioners are working from July, 2012 and their services have been continued. It is also claimed that the petitioners are performing the duties of regular Assistant Teachers. They have provided a chart showing details of their appointment, etc.

7. By Government Resolution dated 7th May, 2016, the remuneration of the petitioners came to be increased to Rs.20,000/- per month with effect from 1st April, 2014. However, they have been paid actual remuneration of Rs.8,000/- per month till May, 2016 and increased remuneration of Rs.20,000/- is being paid from 1st June, 2016 onwards.

8. Relying upon the Government Resolution dated 1st March, 2014, the petitioners seek regularization of their services and also seek salary as applicable to regular teachers. Petitioners contend that teachers appointed in the Vasti-school have been absorbed by the said Government Resolution and their services have been regularized by absorbing them in other departments.

9. Petitioners also press into service the principle of 'equal pay for equal work'.

10. Respondents 6 and 17 in Writ Petition No.232 of 2017 have filed affidavit-in-reply, *inter alia*, contending that the prayers of the petitioners are contrary to the provisions of the Government Resolution dated 19th July, 2011. The said resolution is crystal clear and the posts of Assistant Teachers on which the petitioners have been appointed are purely temporary and only honorarium is being paid to them.

Accordingly, appointments of teachers under the scheme in Kasturba Gandhi Balika Vidyalaya are made for 10 months in a year on honorarium basis. Petitioners who have been appointed for a fixed period are not entitled to be treated as regular teachers. In terms of the aforesaid resolution, the petitioners are eligible to receive honorarium and not salary. It is further contended that since in terms of the Government Resolutions dated 19th July, 2011 and 7th May, 2016 the honorarium is to be paid for 10 months in one academic year, the petitioners are not eligible to receive honorarium for 12 months. Also, it is placed on record that as per Government Resolution dated 7th May, 2016, the honorarium payable to the petitioners has been increased from Rs.8,000/- to Rs.20,000/- per month with effect from the financial year 2016-17 and, thus, they are not entitled to enhanced honorarium from 1st April, 2014.

11. Respondent no.7 has filed affidavit-in-reply, *inter alia*, reiterating that the Assistant Teachers are entitled only to honorarium. The Government Resolution dated 19th July, 2011 does not speak about sanction of post of Assistant Teacher on regular basis, whereas it clearly states appointment is on honorarium basis.

12. Similar is the stand of the respondent no.7 in Writ Petition No.2667 of 2017.

13. We have heard Mr. Nagargoje, learned advocate for the petitioners. He contends that not only are the petitioners entitled to regularization of their services as Assistant Teachers, they are also entitled to equal pay for equal work at par with the regular teachers. He has placed reliance on the decision of a co-ordinate Bench of this Court in **Sachin Ambadas Dawale Vs. State of Maharashtra**, reported in **2014 (2) Mh.L.J. 36**, in support of the relief claimed by the petitioners.

14. We have not considered it necessary to call upon the learned advocates for the respondents to answer the aforesaid contentions of Mr. Nagargoje.

15. The advertisements to which the petitioners responded are annexed to the petition memo and marked Exhibit "D". It would appear from such advertisements that applications were invited from eligible candidates for being appointed as Assistant Teachers in several subjects on a temporary and contractual basis. Once the petitioners were considered and selected for appointment, letters of appointment were issued which also contain a similar stipulation. The petitioners accepted the appointment knowing fully well the terms and conditions the appointments were offered. We may quote a

couple of terms and conditions from the appointment letters, herein below:

- "१. सदर नियुक्ती ही निव्वळ तात्पुरत्या स्वरूपाची आहे.
२. नियुक्ती पदावर कायम करण्याचा हक्क सांगता येणार नाही. तसेच सदरहू नियुक्ती ही कधीही कोणतेही कारण न दर्शविता संपुष्टात आणण्याचे अधिकार नियुक्ती प्राधिकारी यांनी राखून ठेवलेले आहेत."

The translated version of the above two conditions in English reads as follows:

(1) The said appointment is purely on temporary basis; and

(2) The right to permanency can not be claimed on the said post. Also, the appointing authority reserves the right to terminate the said appointment at any time without assigning any reason.

16. On the face of such terms and conditions in the appointment letters which were unconditionally accepted by the petitioners, it is too late in the day for the petitioners to contend that they have a legal right to claim regularization and paid salary at par with the regular teachers, instead of honorarium.

17. In **Mahesh Madhukar Wagh vs. State of Maharashtra & Ors.**, reported in **2019 (6) Mh. L.J. 8**, wherein the decision in **Sachin Ambadas Dawale** (supra) was

duly considered, Hon'ble B. R. Gavai, J. (as His Lordship then was) after extracting relevant passages from the decision in **Secretary, State of Karnataka and anr. vs. Umadevi & Ors.**, reported in **(2006) 4 SCC 1**, had the occasion to observe as follows:

"14. It could thus be seen that the Hon'ble Supreme Court has clearly held that theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot be held that the State had held out any promise while engaging these persons either to continue them or to make them permanent. It has been equally held that there is no fundamental right in those who have been employed on daily wages or temporary or contractual basis to claim that they have a right to be absorbed in service. It has been held that a regular appointment could be made only by making appointments consistent with the requirement of Articles 14 and 16 of the Constitution. The employees appointed on contractual or temporary basis cannot claim to be treated equally with those who are regularly employed. It has been held in an unequivocal terms that the mandamus could not be issued in favour of employees, directing Government to make them permanent since the employees, not selected through regular selection process, cannot have a legal right to be permanently absorbed."

Before concluding, His Lordship lamented that the decision in **Sachin Ambadas Dawale** (supra) was being widely misquoted and that such decision was rendered in a different fact situation. Since His Lordship was a member of the Division Bench that decided the case, His Lordship felt that it had become necessary to give an elaborate reasoning.

18. In view of the decision in **Mahesh Madhukar Wagh** (supra), the decision in **Sachin Ambadas Dawale** (supra) must be held to be a decision which turns on its own facts and cannot be applied here.

19. Turning to the advertisements to which the petitioners responded, what we find is a clear representation to the public at large that applications were being invited from eligible candidates to fill up posts of Assistant Teachers temporarily and on contractual basis. No promise was held out to the petitioners that once appointed on contract, they would ultimately be considered for substantive appointments by dint of their performance or tenure. There could be candidates having equal or better qualifications than the petitioners who may have decided against offering their candidature noticing that appointments were to be made for a temporary period and on contract basis and that there was absence of any rule which permitted contractual appointees to be granted permanency in

service. If indeed the petitioners' services are to be regularized, the aggrieved would be all those who had equal or better qualifications than them but might not have applied for the post, because, firstly they were not interested in short time appointment on contract or any temporary appointment on contract, which has no security of service, and secondly there was no promise held out that the contractual appointees could subsequently stake a claim for regularization based on continuous contractual service. If regularization as claimed by the petitioners is allowed, that would amount to a fraud on public, running counter to the advertisements itself being a representation to the public inviting applications for temporary appointment on contract, and no court, far less this Court, should be a party to such a fraud.

20. Paragraph 6 of the decision in **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society vs. M. Tripura Sundari Devi**, reported in (1990) 3 SCC 655, contains an instructive passage on appointments made in disregard of an advertisement on a public post, reading thus:

"6 It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing

authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.”

21. A co-ordinate Bench of this Court in **Union of India vs. Smt. Lalita V. Mertia**, reported in **2021 (6) ABR 388**, had the occasion to consider when a claim for regularization could arise for consideration. The tests laid down therein, based on decisions of the Supreme Court, are not satisfied in the present case and hence question of directing regularization does not and cannot arise.

22. Insofar as the prayer for grant of equal pay at par with regular employees is concerned, we may once again refer to the decision in **Mahesh Madhukar Wagh** (supra) where the Court held that employees appointed on contractual or temporary basis cannot claim to be treated equally with those who are regularly employed. That apart, the principle of ‘equal pay for equal work’ would get attracted when for both groups

of employees, *inter alia*, the source and mode of recruitment/appointment, the qualifications, the nature of work, responsibilities, reliability, experience, functional need, confidentiality, etc. are the same. The principle is not attracted on similarity in the designation or quantum of work. One may profitably refer to the decision of the Supreme Court in **Official Liquidator vs. Dayanand, reported in (2008) 10 SCC 1**, in this regard.

23. Given the present circumstances, it would amount to showering of grace and compassion in favour of the petitioners, if relief as prayed for by them is granted. It is equally well settled that considerations of grace and compassion in matters such as these are outside the scope of writ jurisdiction.

24. For the reasons aforesaid, we find no merit in the writ petitions. The same stand dismissed. No costs.

25. However, it is made clear that if the petitioners have been discharging their duties as Assistant Teachers appointed under the special scheme and have not been paid honorarium according to their entitlements, as has been alleged by Mr. Nagargoje, the respondents shall be under an obligation to make the requisite payment of honorarium in favour of the

petitioners for the work put in by them. In the event the respondents are of the view that the petitioners' claim is without substance, a reasoned order shall be passed and communicated to them within 60 days of any representation that may be received from the petitioners claiming honorarium. In such a case, the petitioners shall have the liberty to challenge such an order of rejection in appropriate proceedings before the appropriate forum.

[SMT. VIBHA KANKANWADI, J.] [CHIEF JUSTICE]

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